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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000734
Supreme Court Appellate Case No. 2024-001781

IN THE MATTER OF THE CARE AND TREATMENT
OF ANDY EUGENE HYMAN,

Respondent.

APPENDIX

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IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Roger E. Henderson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF ANDY EUGENE HYMAN,

APPELLANT.

APPELLATE CASE NO. 2021-000734

RECORD ON APPEAL

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In Circuit Court of the
Twelfth Judicial Circuit
2020-CP-21-01045

THE STATE,

Plaintiff,

vs.

IN THE MATTER OF THE CARE
AND TREATMENT OF:
ANDY EUGENE HYMAN,

Defendant.

Transcript of Record

Florence, South Carolina
June 7-9, 2021

B E F O R E:

The Honorable Roger E. Henderson

A P P E A R A N C E S:

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1 MR. FALK: And so everything leading up to today I
2 believe is relevant.

3 THE COURT: Okay. I'll allow you to ask that
4 question. I don't have a problem, where you have been? I
5 don't find it to be that prejudicial, quite frankly.

6 MR. FALK: Thank you.

7 THE COURT: I'll allow it. I think it somewhat
8 relevant, okay.

9 MS. SHAW: Thank you, Your Honor. And then as a
10 final preliminary matter Mr. Falk filed a motion for a
11 counsel hearing. He has requested, any and all, evidence
12 regarding the PPG examination that was administered to Mr.
13 Hyman be barred. I have my expert here prepared to testify
14 concerning the PPG. She is here. I'm ready to qualify her
15 and we can produce the evidence required under counsel's --
16 -

17 MR. FALK: Your Honor, I also filed a motion, just
18 a general motion, related to the PPG. Whether or not
19 you're going to admit it under counsel, just whether or not
20 it's should be admitted period, but, you know, whether
21 there are other issues about the nature of that. So I
22 filed a motion in limine about the PPG and I said we need
23 45 minutes for that. And then a motion for the counsel
24 hearing and I felt we needed 90 minutes without.

25 MS. SHAW: Your Honor, the counsel motion would be

1 the same because if Your Honor finds that there's not an
2 inherited liability indicia, you're not going to let the
3 PPG testimony to come in which would grant the motion be
4 barred.

5 MR. FALK: Your Honor ---

6 MS. SHAW: So as far as ---

7 MR. FALK: But it still could be considered
8 reliable but still for the reasons that I've raised in my
9 motion it would be suitable for the jury to hear.

10 MS. SHAW: Well, Your Honor, just because the
11 results of the PPG are extremely unfavorable for his client
12 doesn't mean that the jury shouldn't hear it. In fact,
13 they absolutely should hear it because they, I mean, the
14 areas of stimulants that Mr. Hyman, he, I would say lit up,
15 but I would use the clinical word which is it showed
16 clinical, arousal clinical significance prepubescent
17 females, pubescent females coercive situations where the
18 adult women and men and consensual situations with females
19 and adult females and situations involving an infant. This
20 information while highly prejudicial to Mr. Hyman is also a
21 highly relevant because his target group is children under
22 the age of ten. He's been diagnosed with pedophilic
23 disorder by both Dr. Gehle and Dr. Gottfried and the
24 results of the PPG I would submit are inherently reliable
25 and they're highly predictive of the risk of recidivism.

1 So regardless of whether it's prejudicial to Mr. Falk's
2 client, I firmly believe the jury needs to hear it. And if
3 Your Honor needs to conduct a reliability hearing under
4 counsel, we're ready to go.

5 THE COURT: Okay.

6 MR. FALK: Your Honor, if I could just -- before
7 you rule on the other issues I would invite you to read the
8 opinion in Bilton. The State has a different
9 interpretation of what I think - the case stands for what
10 it stands for and I've got a copy that I can supply to you
11 - but certainly for my reading, the Court of Appeals did
12 not have a lot of positive things to say about a jury
13 hearing of a PPG test. Now, granted the Bilton decision
14 was on a limited ground. But, if you read the remaining
15 dicta notes in that decision and does not appear to be a
16 lot of positive statements. You can so in glean from the
17 Court of Appeals that they had some questions about the
18 test and they clearly said that the admission of the test,
19 if it should be admitted, it's gonna be highly prejudicial.
20 I mean, there was, you know, the fact that the jury heard
21 the PPG when it shouldn't have, granted under different
22 grounds, was grounds for a new trial. So, I mean, the
23 Court of Appeals understands that the PPG test is not just
24 another test. It is extremely, it's something that the
25 juries are going to grab onto. I like to make the

1 comparison to eyewitness testimony in a criminal case where
2 that is something that juries, you know, juries tend to
3 rely on testimony of an eyewitness but it's you know there
4 is plenty of times where there's reason to believe that
5 eyewitness testimony is not always reliable. This is the
6 situation where the jury is gonna grab onto these results
7 from the PPG test, I believe possibly to the exclusion of
8 any other information and not listen to anything else and
9 they'll convict him based on the PPG test. So if came in
10 wrong I think this case, again, if the court made an error
11 in admitting the PPG test, it's going to be prejudicial
12 error that's gonna justify a new trial and I think that's a
13 clear reading from Bilton.

14 THE COURT: If you have a copy of that, I'd
15 appreciate it.

16 MS. SHAW: Your Honor, I think you might have a
17 copy with my packet because ---

18 MR. FALK: I have it right here. This is not a
19 West copy it's an Alexis.

20 MS. SHAW: I have a copy in my trial binder if I
21 didn't add one to yours, you can have it. And when the
22 court is ready I will respond to that.

23 (Whereupon, the judge takes a moment to read the case)

24 THE COURT: Okay. All right. Mr. Falk, how do you
25 wish to proceed with your argument? Do you

1 MR. FALK: Well, Your Honor, I would offer
2 counsel, I'd wanna have a counsel hearing on the
3 reliability of the PPG test and then I would argue about
4 whether or not that, under 402, 403 kind of analysis of
5 whether or not it's more prejudicial than ---

6 THE COURT: Probative.

7 MR. FALK: --- probative.

8 THE COURT: Okay. All right, sir. You may
9 proceed.

10 MR. FALK: I'd call Dr. Gehle to the stand.

11 MS. SHAW: Your Honor, before the court hears the
12 testimony of Dr. Gehle can I just make a record from the
13 State side regarding Mr. Falk's interpretation of Bilton
14 and his reliance on Billips as well.

15 THE COURT: Just speak for us.

16 MS. SHAW: Sorry, Your Honor, I will try and do
17 that. Your Honor, our argument is that Mr. Falk's position
18 that Bilton stands for the proposition that the PPG is
19 inherently unreliable is factually and legally wrong. The
20 Bilton opinion - which by the way he and I will be trying
21 in September of this year because it's been remanded for
22 new trial- the Bilton opinion reversed that decision based
23 on improper hearsay testimony. In the trial of that matter
24 Dr. Swan testified concerning PPG that Dr. Burke, who
25 actually develop the real child voices protocols

1 administer, but which she did not review the raw data. She
2 did not interpret the results and she had no direct
3 knowledge of how it was done or what happened. That's why
4 they reversed it because that is improper conduit hearsay.
5 That's the same reason that the findings were reversed in
6 the Billips case and I will refer to you to Billips v.
7 Commonwealth, 274 VA 805 Page 809, 2007. Where the court,
8 they did, they did reverse a sentencing hearing decision on
9 the grounds of improper PPG testimony. And in that matter
10 there is a relaxed standard and then there was a Spencer
11 argument. But in that case the court heard testimony of a
12 probation officer and a licensed clinical social worker,
13 not the person who administered the PPG, not anyone who
14 interpreted the data, but they heard from two unlicensed
15 untrained professionals about it. That's the reason they
16 were reversed. And I will quote, it say, "neither witness
17 qualified as an expert in the field of plethysmograph
18 testing and the circuit court may no threshold finding of
19 fact that the system was reliable." So I would say that
20 Mr. Falk's request for counsel hearing is appropriate given
21 the case law and given the unfavorable dicta Bilton. But
22 it's not a -- these two cases were not reversed because of
23 the PPG itself. They were reversed because of improper
24 hearsay testimony which we are perfectly prepared to
25 remedy.

1 THE COURT: Okay.

2 MS. SHAW: Thank you. I appreciate the court
3 hearing my argument.

4 THE COURT: Certainly. Yes, ma'am. Yes, sir?

5 MR. FALK: I'd just -- the language in the case
6 speaks for itself.

7 THE COURT: Yes, sir. All right. Dr. Gehle?
8 (Whereupon, she comes forward)

9 THE COURT: Dr. Gehle, you've already been sworn so
10 you're still under oath.

11 DR. GEHLE: Okay.

12 **Conti. Redirect Examination by Mr. Falk:**

13 Q. Dr. Gehle, can you hear me if I'm standing here?

14 A. Yes.

15 Q. Can you tell me what your current occupation is?

16 A. I'm a clinical forensic psychologist, the Department
17 of Mental Health.

18 Q. And what is your specific, with respect to the
19 Department of Mental Health, what is your specific day-to-
20 day obligations?

21 A. I conduct pre-commitment evaluations.

22 Q. How many pre-commitment evaluations have you done?

23 A. More than two hundred of them for the Department of
24 Mental Health.

25 Q. And in any of these pre-commitment evaluations have

1 you ever subjected the respondent to a PPG test?

2 A. No.

3 Q. Are you aware of any other employees, not contract,
4 not independent contract, employees of the Department of
5 Mental Health who have used PPG testing?

6 A. No. Not any current employees.

7 Q. Can you tell me why it's your opinion, why you do not
8 use the PPG test?

9 A. Well, because the test isn't standardized. So when a
10 test isn't standardized that means that it's given
11 differently by different people that makes the results
12 unreliable. Therefore, you can't establish validity or
13 reliability and it really means that you can't look at
14 research that exists based on other people who have
15 conducted the PPG and you can't apply that research and say
16 that it's valid to your administration of it if it's not
17 given in the same manner as it was in the research.

18 Q. So when you're talking about non-standardized, what do
19 you mean, what do you mean do you mean specifically?

20 A. Well, in psychology we typically do standardized
21 testing. So the kind of a hallmark of standardized testing
22 is the IQ test. The very first semester of graduate school
23 you learn how to give an IQ test. It has an instruction
24 book. It has a scoring manual. It is, it's -- everybody is
25 trained to do it the exact same way. So one of the subtest

1 is you'll ask, you'll ask for a definition of a term, you
2 know, for a word. And all of the words are there in the
3 book, you don't pick your own words to ask, you use the
4 words that are provided. They've been well researched.
5 And depending on what the person answers you'll look at how
6 their answer compares in the manual, in the administrative
7 manual and it will tell whether you can ask a follow-up
8 question or not. That standardized testing. Everybody is
9 trained to give it the exact same way. Everybody is trained
10 to score it the exact same way. There is not a lot of
11 interpretation there. That way I know if I give, if I give
12 an IQ test I can compare it to somebody else who gave the
13 same IQ test and I'll know that they gave it the same way
14 and I'll know that the results are comparable. When you
15 take away that standardization you don't know how, how this
16 person gave the test. And in terms of the PPG they,
17 everybody uses different stimulants sets. The stimulants
18 sets are the things that they're showing the person to
19 illicit sexual arousal. Those vary from site to site.
20 People use different stimulus sets. And there is not
21 research on the stimulus sets that is used at MUSC, the
22 real child voices, to show that it's invalid, reliable
23 assessment. So we don't know if when they say that they're
24 measuring pedophilic arousal if they're actually measuring
25 pedophilic arousal. We don't know if they, when they say

1 they're measuring exhibitionistic arousal if there actually
2 measuring that because it's not been proven in research.
3 They haven't public research on that stimulus set. So it's
4 similar to if I decided to give an IQ test, but I'm gonna
5 make up my own words, I'm gonna make up my own, I don't
6 know, portions of the test to give to somebody but then I'm
7 gonna say it's an IQ test because it looks similar to other
8 IQ test. It's just not the way it works in psychology.

9 Q. So when we're talking about the stimulus sets they
10 attempt to make a distinction between sexual attraction to
11 gender, right? Some of the stimulus sets are designed to -
12 --

13 MS. SHAW: Your Honor, objection. He's leading.
14 Is this a question or is Mr. Falk testifying?

15 THE COURT: Try to rephrase your question, Mr.
16 Falk.

17 Q. What -- are you aware of how the stimulus sets are
18 broken down as to, you know, what the descriptors are for
19 each stimulus set?

20 A. Well, they labeled them like infant, child,
21 pedophilic, stuff like that, it just depends. I don't have
22 that information right in front of me.

23 Q. But in general, is one of those -- is one of the
24 categories of the sets the age of the attraction?

25 A. Yes.

1 Q. And what are some of the other distinctions that are
2 made in the stimulus sets?

3 A. So it's looking at age and gender preferences and then
4 it's looking at activity preferences. So is it coercive?
5 Is it exhibitionistic? Is it things like that? So those
6 would be the behaviors. The other ones are categories in
7 terms of, you know, infant, child, adolescent, adult.

8 Q. And when you talk about reliability what types of,
9 what does that mean with respect to a test in psychology?

10 A. Well, one of the primary types of reliability is
11 test/retest. So if I give the test on one day, can I come
12 back later and get a similar result with the same test so
13 that's one type. So with the PPG, when you look at short
14 periods of time the test/retest reliability is okay, but if
15 you do like six months which is more typical to how often
16 somebody would get a PPG, the test/retest reliability is
17 very poor.

18 Q. And as far as measuring somebody's attraction to
19 prepubescent children, how reliable are the real child
20 voices in making that distinction.

21 MS. SHAW: Objection, Your Honor. There's been no
22 foundation laid for what the real child voices stimulus set
23 actually is. What are the stimulus sets broken down by.
24 There's just -- you can't say, you know, okay what's the
25 reliability factor, you have to identify what, that she

1 knows, what the real child voices stimulus set is.

2 THE COURT: Ask her some questions about that ---

3 Q. Are you aware of a ---

4 THE COURT: --- because I don't know what it is
5 either.

6 Q. --- real child voice stimulus set?

7 A. Yes.

8 Q. And what is your understanding of the scope of that
9 stimulus that?

10 A. It's one of the stimulus sets that used that MUSC. It
11 was developed by Dr. Burke. It used to be called the Burke
12 Mosoft (ph), I think, stimulus set, they renamed it to the
13 real child voices stimulus set. And it measures,
14 apparently, it's supposed to be measuring a variety of age,
15 gender, and activity sorts of arousal.

16 Q. And what -- can you describe, I mean, what is it? I
17 mean, is there a visual component to the real child voices
18 stimulus set?

19 A. So the real child voices stimulus set is it's auditory
20 scenarios followed by some pictures.

21 Q. And what is your understanding of what the pictures
22 are?

23 A. The pictures are supposed to be of the, like, category
24 of arousal that they're measuring. So if they're talking
25 about a scenario between an adult and, you know, young

1 child, a female child, the pictures would be of a female
2 child. They're all clothed. It's not - it's not, um,
3 there's nothing, um, there's no child pornography in the
4 stimulus set.

5 Q. And then what is the auditory portion of the stimulus
6 sets?

7 A. So it's a guy at times talking out, like, talking out
8 loud, like, some of his thoughts, but it can also be an
9 interaction between him and a child actor.

10 Q. Is it your understanding that the child actor is why
11 it's called real child voices?

12 A. Yes. Because they use real children.

13 Q. Is there -- are you aware of any studies that show
14 that everybody will respond -- so would one of those real
15 child voices stimulus sets have a voice from somebody who
16 is described as a pubescent female, is that a possibility?

17 A. Yes.

18 Q. Are you aware of any studies that show that people,
19 whether or not they were sex offenders, would hear that
20 voice and equated with a pubescent female?

21 A. No.

22 Q. Are you aware of any study -- and similarly is it your
23 understanding that they're going to hear a voice of
24 somebody is described as a prepubescent female ---

25 MS. SHAW: Your Honor, I haven't objected so far

1 because this is gross leading and more importantly he's
2 asking Dr. Gehle if she's aware of any studies where sex
3 offenders or non-sex offenders were able to identify a
4 particular voice as a pubescent or a prepubescent. There is
5 no way to know that. And he's made no reference to any
6 study that, I'm guessing he's trying to find one, that
7 would suggest people can't differentiate between the
8 quality of the voices and that's not even relevant. And
9 more importantly he can't testify for Dr. Gehle just to get
10 the yes or no answers. So I'm requesting, formally, that
11 he restrict his questions to proper direct questions.

12 THE COURT: All right. Mr. Falk, I agree. Just
13 make your make your questions direct and not

14 Q. Are you aware of any peer-reviews studies on real
15 child voices stimulus set?

16 A. No. There haven't been any to my knowledge.

17 Q. What would be the importance of a peer-review study in
18 your field? Why do we care about peer-review studies?

19 A. We care because it would show whether there is any
20 reliability, validity to that testing stimulus set and
21 whether there was major problems or whether it was a good
22 set. We don't have research to say either way.

23 Q. Is reliability and validity the same thing?

24 A. They're similar concepts but reliability is how a test
25 is use like over time so can you give the same test and get

1 similar results. Validity is whether are you measuring
2 what you say you're measuring, what you think your
3 measuring.

4 Q. So in the context of measuring somebody as a part of
5 making a sexual violent predator evaluation what would the
6 validity -- what would you be concerned that the test was
7 measuring? You said validity -- you said validity -- does
8 a test measure when it purports the measures, is that
9 correct?

10 A. Yes.

11 Q. Okay. So in this context of a sexually violent
12 predator pre-commitment evaluation what would you be trying
13 to, what would the test be trying to measure?

14 A. So whether he shows arousal to specific types of
15 activities or, you know, gender, age preferences or whether
16 the tests can differentiate between non-offenders and sex
17 offenders and how well it can do that. Those would be like
18 the two of the primary.

19 Q. Okay. Are you aware of a book series that's
20 Evaluations of Sexually Violent Predators, Best Practices?

21 A. Yes.

22 Q. And is that this book here?

23 A. Yes.

24 MR. FALK: May I approach the witness?

25 THE COURT: Yes, sir.

1 Q. Dr. Gehle, what is that book?

2 A. This is a Best Practices in forensic mental health
3 assessment. It's Evaluation of Sexually Violent Predators
4 by Phillip, Witt, Mary Alice Conroy. It's one of the few
5 books that have been written on doing sexually violent
6 predator evaluations.

7 Q. Is that something that you rely on as part of your
8 training?

9 A. Yes.

10 Q. And what does -- and does that book talk about using
11 PPG testing?

12 A. Yes.

13 Q. So this is called Best Practices so, just to be clear,
14 what does Best Practices mean?

15 A. Best Practices means this is the recommendations from
16 the field, from experts in the field. They look at all
17 different types of practices in doing these evaluations.
18 All of the research that's out there and they make
19 recommendations.

20 Q. Okay. And what is their opinion regarding -- have
21 they made a recommendation or does the book discuss PPG
22 test?

23 A. Yes.

24 Q. Does the book consider administering PPG test -- let
25 me back up -- you could use a PPG test -- when a PPG test

1 is being used as part of pre-commitment evaluation is it
2 accurate to say that it's being used as a diagnostic test?

3 A. Yeah. It's used as a diagnostic test. I also see it
4 used as a risk assessment measure.

5 Q. Now -- are you aware of PPG testing being used as a
6 part of therapy?

7 A. Yes.

8 Q. And how -- how are those two things, the use of a PPG
9 test as part of a pre-commitment evaluation versus using it
10 in therapy, how is that different?

11 A. Well, the stakes are very different in those settings.
12 So in a pre-commitment evaluation when you're using a PPG
13 they're making decisions based on that information. And in
14 therapy they could also be making decisions based on the
15 information from the PPG but it's gonna be more about what
16 the focus and treatment is. The outcomes are very minimum
17 compared to a sexually violent predator evaluation.

18 Q. Is it your understanding when a PPG test is used in
19 therapy they start with a baseline and then they measure,
20 then there is a subsequent test and you see, you know ---

21 A. Well, that's how people use it but it's not used well
22 because the test/retest reliability is so poor that you
23 can't really compare a test like that.

24 Q. Okay.

25 A. Really what the purpose of a PPG in therapy is to

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1 start a conversation with the offender about their arousal.

2 Q. Okay.

3 A. That's the utility I see of that test, if at all.

4 Q. Okay. Now, is that book -- the use of a PPG as part of
5 a pre-commitment evaluation is that considered the Best
6 Practice according to that book?

7 A. This book says we recommend against their use of SVP
8 commitment evaluations.

9 Q. And what page of that book is that?

10 A. It's page 136.

11 Q. Okay. Does it say why?

12 A. Well, they go through a lot of the literature but is
13 basically because there reliability and validity can't be
14 established because the test isn't standardize. It's a very
15 intrusive test. And it's, it's not sufficiently reliable
16 and valid to use in such a high-stakes evaluation.

17 Q. Are you, I mean, you're familiar with Dr. Burke's
18 practice, are you not?

19 A. Yes.

20 Q. Okay. You're aware that the PPG's use is a part of
21 his therapy practice, is that true?

22 A. Yes.

23 Q. So is it fair to say that you're concerned about the
24 PPG test and that it's not sufficiently reliable for what's
25 at stake, is that

1 A. Yes. The stimulus sets have not been established in
2 terms of reliability and validity. We don't have peer-
3 review studies on them. I don't know what the error rate
4 is on that test. There is a lot of problems in using a
5 test like that to make such big decisions.

6 Q. Well, would a false/positive be on a test like that?
7 I mean, what -- what does that term mean, false/positive?

8 A. False/positive could be showing arousal when, when
9 they weren't actually aroused. But it could also mean that
10 they were identified as a pedophile when they weren't a
11 pedophile.

12 MR. FALK: And, Your Honor, I believe I have no
13 further questions.

14 THE COURT: All right, sir. Ms. Shaw?

15 MS. SHAW: Thank you, Your Honor.

16 **Re-cross Examination by Ms. Shaw:**

17 Q. Dr. Gehle, when was the Witt, Conroy first published?

18 A. 2009.

19 Q. Okay. And when was the last time it was updated?

20 A. I think, 2009. I don't think that it has been
21 updated.

22 Q. Okay. So it hasn't been updated in approximately
23 eleven years. Are you aware of developments in
24 standardizing the real child voices and Marshall sets?

25 A. Am I aware of?

1 Q. Of developments and practices of standardizing the
2 real child voices and Marshall sets?

3 A. I'm not aware that there have been updates and I
4 haven't seen any research to say that there have been.

5 Q. Okay. What was the most recent article that you read
6 regarding the PPG?

7 A. The most recent article I read?

8 Q. Mmm, hmm.

9 A. I remember looking at a 2020, article. I know I've
10 looked at something from 2019.

11 Q. Okay. Do you remember what those article said?

12 A. Well, one article was by some people from MUSC and
13 some collaborating with other professionals that talked
14 about the problems with standardization. And, in that, it
15 said that they were working on standardizing the real child
16 voices set but there were no published references. So I
17 know in 2019 there was not any research done on that
18 instrument ---

19 Q. Okay. And, in fact ---

20 A. --- that had been published.

21 Q. And, in fact, that collaboration was between
22 international users of the test, is that correct? That was
23 an intent to establish consistency internationally in the
24 use of the PPG, was it not?

25 A. I -- I know that there were authors from Canada and

1 from the United States and it was just talking about the
2 problems with standardization or the lack of
3 standardization.

4 Q. And you realize that in Canada the Canadian
5 authorities are permitted to use child pornography when
6 they administer the PPG, correct?

7 A. That's my understanding.

8 Q. But in the United States, they are not?

9 A. That's correct.

10 Q. Okay. Are you aware of any sets that are used in the
11 United States other than the Marshall and the real child
12 voices sets?

13 A. I know the Monarch which is a different system, than
14 the Limestone.

15 Q. No. I'm talking specifically about the Limestone?

16 A. Well, I'm going to answer your question. The Monarch
17 which is a different system than the Limestone, uses
18 different stimulants sets.

19 Q. That wasn't the system that was used here, correct?

20 A. No. The stimulus sets can be used with any system.

21 Q. Well, are you aware of any specific studies within the
22 -- well, actually let me back up. What system does MUSC
23 use?

24 A. Limestone from my understanding.

25 Q. Okay. Are you aware of any stimulus sets other than

1 real child voices and the Marshall protocols that are used
2 with the Limestone Technology?

3 A. I don't know.

4 Q. You don't, okay. So you're not aware of any other
5 sets that that could be used other than those two?

6 A. I think that they could use any set. They can make up
7 their own set. They could, it might not have a name. I'm
8 sure that there are a variety. I know when I see in
9 evaluations that come from MUSC are those two stimulus
10 sets, typically.

11 Q. Okay. So they only use real child voices and the
12 Marshall as far as you know?

13 A. As far as I know, yes.

14 Q. Okay. Now, are you trained to administer PPG?

15 A. No.

16 Q. Do you have any specific expertise in using the PPG
17 and administering it?

18 A. No.

19 Q. Have you ever published any articles concerning the
20 use of the PPG and its reliability?

21 A. No.

22 Q. Okay. Now, you were talking earlier about the
23 stimulus sets and how they're broken down. Have you ever
24 heard the stimulus sets yourself, personally?

25 A. Yes.

1 Q. Okay. So they're kind of disturbing, aren't they? So
2 have you heard coercive stimulus sets ---

3 COURT REPORTER: I'm sorry.

4 Q. Have you heard the coercive stimulus sets for
5 prepubescent females?

6 A. Yeah. I sat down and listened to the whole stimulus
7 set at one point.

8 Q. Okay. And, in fact, DMH has a PPG machine, isn't it
9 true?

10 A. We did at one point. I don't know if we still have it.

11 Q. Were you aware that WellPath has a PPG?

12 A. Yes.

13 Q. Are you aware that they use it?

14 A. Yes.

15 Q. And in the field of psychology, testing protocols for
16 sexually violent predator evaluations are not standardized,
17 are they? Like meaning, you must use specific techniques
18 and specific standardized test.

19 A. That's correct.

20 Q. Okay. So, basically, if an evaluator feels that a
21 particular test could be useful in making a determination
22 of pre-commitment context it's within that evaluator's
23 discretion, right?

24 A. I don't know how to answer that.

25 Q. Well, it's yes or no. Can you use whatever test you

1 feel are most appropriate for this scenario?

2 A. I mean, I would say yes and no. So I am governed by
3 my supervisors of the Department of Mental Health. I am
4 limited by what the Department of Mental Health will
5 purchase in terms of testing materials. I mean, there are
6 a variety of limitations in that way.

7 Q. Well, I mean, even if your boss wouldn't approve it,
8 would you have the right to say I think we should use this
9 test? Would that be within your professional discretion,
10 regardless, of whether it would be allowed or not?

11 A. Well, ethically, I have to use things that are valid
12 and reliable and for the purpose and better use in the
13 right way.

14 Q. Well, things you think that are valid and reliable?

15 A. It's not just, you know, what my opinion is. It would
16 have to be found to be valid and reliable research.

17 Q. Well, if you're not trained, how can you say that this
18 is not valid and reliable?

19 A. Because I read a lot of research.

20 Q. Okay. Now, are you aware of the 2019 meta-data
21 project which indicates that there is a .92 reliability
22 factor in reproducing results from that pedophilic
23 disorder, are you aware that?

24 A. In what study?

25 Q. It was a meta-data study, I believe, out of Washington

1 State?

2 A. I don't actually know what ---

3 Q. You're not aware of it?

4 A. --- you're talking about.

5 Q. That's fine. Now, you said that this test is
6 extremely intrusive, are you aware how it's administered?
7 Have you ever seen one done?

8 A. No.

9 Q. Okay. So how do you know that?

10 A. Because I've read the protocol in terms of how it's
11 described in the literature and talk to people who have
12 taken it. I've heard Dr. Gottfried testifies about how it is
13 administered.

14 Q. Okay. So you are aware there is, in fact, a protocol
15 and a standard of procedure for administering this test?

16 A. Well, I've heard her testify.

17 Q. Well, have you ever read it?

18 A. No.

19 Q. Do you know what's in it?

20 A. I'm not aware that there is a protocol.

21 Q. Okay. Well, I mean, you just said you read articles
22 about the protocols and you heard Dr. Gottfried ---

23 A. About description of how the test is administered.

24 Q. So PPG testing is very regularly used in the context
25 of therapy, correct?

M. Gehle- Redirect Examination by Mr. Falk

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1 A. I don't know how regularly it is used.

2 Q. Okay. Would you disagree that -- and you say you've
3 heard the coercive female child scenario, right? Familiar
4 with what's said?

5 A. I've -- I've heard it once.

6 Q. Would you agree that, that scenario would accurately
7 describe an adult male either raping or attempting to rape
8 a small female child?

9 A. I couldn't say.

10 Q. Well, you heard it, right?

11 A. It's been too long for me to say that, specifically.

12 Q. When did you hear it last?

13 A. It's been a couple of years.

14 Q. Okay.

15 MS. SHAW: I have nothing further, Your Honor.

16 THE COURT: Anything else, Mr. Falk?

17 **Redirect Examination by Mr. Falk:**

18 Q. There was some mention on cross-examination about the
19 Monarch, what is that?

20 A. The Monarch is another PPG system that's used. It's a
21 company that produces the hardware and software.

22 Q. As far as the hardware is it similar?

23 A. It's my understanding it is. I know it's what is used
24 out at the SVP Program.

25 Q. The Monarch is?

1 A. Yes.

2 Q. Okay. And at WellPath the PPG -- is it your
3 understanding -- do they do any pre-commitment evaluations
4 at WellPath?

5 A. No, they do not.

6 Q. So if they're using the PPG at WellPath they're not
7 using it for a pre-commitment evaluation, is that ---

8 A. That's correct.

9 Q. So do you know in what context are they using it at
10 WellPath?

11 A. They use it in certain stages of treatment is my
12 understanding.

13 MR. FALK: No further questions.

14 THE COURT: Anything, Ms. Shaw?

15 MS. SHAW: Just a couple based on the redirect.

16 **Re-cross Examination by Ms. Shaw:**

17 Q. At WellPath isn't it true that when a defender is
18 committed that a PPG is actually done very close to the
19 time he is committed to get a baseline for his arousal
20 patterns?

21 A. That's not ---

22 Q. Isn't that true?

23 A. That's not my understanding.

24 Q. Okay. What is your understanding?

25 A. That it happens in latter stages of treatment.

E. Gottfried- Direct Examination by Ms. Shaw

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1 Q. Were you aware WellPath also uses polygraph at a
2 certain point, isn't that correct?

3 A. Yes.

4 Q. Okay. And do you know when that's used?

5 MR. FALK: Your Honor ---

6 MS. SHAW: Well, you know, I'll withdraw the
7 question. It's beyond the scope of redirect.

8 THE COURT: Okay.

9 MS. SHAW: I have nothing further.

10 THE COURT: Okay. All right. You can step down,
11 ma'am.

12 DR. GEHLE: Thank you.

13 MS. SHAW: Your Honor, the State calls Dr. Emily
14 Gottfried.

15 THE CLERK: Do you swear or affirm that the
16 testimony you give will be the truth, the whole truth,
17 nothing but the truth so help you God?

18 DR. GOTTFRIED: I do.

19 THE CLERK: Thank you.

20 EMILY GOTTFRIED, first being
21 duly sworn, testified as follows:

22 **Direct Examination by Ms. Shaw:**

23 Q. Good afternoon, Dr. Gottfried. Can you tell the
24 court where you are employed and in what capacity?

25 A. Yes. I work at the Medical University of South

1 Carolina. I am an Assistant Professor of Psychiatry and
2 Behavioral Sciences. And I am the Director of Sexual
3 Behaviors Clinic and Lab.

4 Q. And so what are your duties as part of your
5 directorship of the lab?

6 A. So I do all of the administrative duties and then I do
7 most of the evaluations. So I manage our contracts that we
8 have with the South Carolina Attorney General's Office,
9 with the United States Federal Probation, with some
10 juvenile contracts that we have. So I oversee all of the
11 administrative day-to-day. The policies in the lab and
12 then I conduct evaluations and I oversee treatment and
13 provide some of the treatments.

14 Q. Okay. Dr. Gottfried, are you a member of any
15 professional association or research collaborations?

16 A. Yes.

17 Q. And tell us what those are?

18 A. I'm a Clinical Member of the Association for the
19 Treatment of Sexual Abusers. That is the national
20 organization that deals with this line of work. I am on the
21 Executive Committee of the American Psychology and Law
22 Society which is Division 41 of the American Psychological
23 Association. I'm on the Consecutive Board for APA, American
24 Psychological Association Division 12, which is Clinical
25 Psychology Section 9 which is assessment so doing testing.

1 And then other organizations, American Academy of Forensic
2 Sciences, several. And then I'm a member of the
3 International Standardization Group for Research on Penile
4 Plethysmography or PPG and that is the collaboration
5 between the United States, Canada, the UK, and the Czech
6 Republic.

7 Q. Okay. Thank you. Have you published any peer-
8 reviewed articles?

9 A. Yes.

10 Q. And what -- have you presented any at any conferences?

11 A. Yes.

12 Q. Okay. First tell the court please, what peer-reviewed
13 articles you have published concerning the PPG?

14 A. Okay. I have 26 peer-reviewed articles. Concerning
15 the PPG we wrote an article comparing differences and
16 similarities between the use of the PPG in Canada, the
17 United States, and the UK. I, myself, and Dr. Donna Mattix
18 presented to the South Carolina Annual Circuit Court
19 Judicial Conference in 2019 that was in Spartanburg. We
20 talked about science in the courtroom and the use of the
21 PPG. I've written a couple of book chapters about Best
22 Practices in sexual behavior evaluations that included
23 information about the PPG. And then I've given a number of
24 research presentations at national and international
25 conferences. And been invited to speak at universities and

1 state hospitals regarding sexual behavior evaluations.

2 Q. Thank you. And you do -- well, you request PPG's in
3 both your private practice and your work for the Attorney
4 General's Office, correct?

5 A. Yes. For Sexual Behavior Clinic and Lab all adult men
6 who come to us for evaluation, I order a PPG on them.

7 Q. Okay. And just for purposes of clarity of the record,
8 can you describe what kinds of men you treat in this
9 context?

10 A. For specific, for sexual behavior and treatment?

11 Q. Yes.

12 A. Currently right now it's just men who are being
13 supervised by United States Federal Probation after they've
14 been released from federal prison for sexual offenses. So I
15 do their treatment and risk assessment for their Federal
16 Probation Officer to determine the level of risk and what
17 kind of treatment they need. I oversee the treatment
18 providers and then there's a couple that I provide
19 individual treatment for them.

20 Q. Okay. And you have been with MUSC for the majority of
21 your professional career, correct?

22 A. That's correct. I started in 2015.

23 Q. Okay. And you are licensed in South Carolina?

24 A. Correct.

25 Q. Are you licensed anywhere else?

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1 A. Georgia, as well.

2 Q. Okay. Thank you. And since you began with MUSC in
3 2015, how many PPG's have you requested or ordered over
4 time?

5 A. About forty-five, I would say.

6 Q. Okay. And how many of those were interpretable?

7 A. That I -- that I don't know.

8 Q. Okay. Well, how did you become involved in this
9 particular case?

10 A. Your office reached out to the Sexual Behaviors Clinic
11 and Lab at MUSC to request a second opinion evaluation for
12 pre-commitment SVP commitment hearing evaluation.

13 Q. Okay. And how many SVP pre-commitment evaluations
14 have you performed as part of your duties?

15 A. I've been referred twenty-two pre-commitment, five of
16 those are still pending or in various stages of undergoing
17 an evaluation.

18 Q. Okay. And when you do one of these pre-commitment
19 evaluations, you do comprehensive evaluations, correct?

20 A. Yes.

21 Q. And tell me what that consist of?

22 A. So you never want to just rely on one data point. So
23 we want to do a comprehensive evaluation where we're
24 looking at a lot of collateral information. So police
25 reports, victim statements, mental health records, prison

1 records. We want to assess for the full wide range of
2 psychological or psychiatric conditions. So I administer a
3 battery of testing and then physiological measures of male
4 sexual arousal which is the PPG, questionnaires related to
5 sexual behavior, and then I do a comprehensive clinical
6 interview. It's five to six hours where I'm assessing, you
7 know, a developmental history, potential psychiatric
8 conditions, their sexual history, and all of this
9 information that I'm collecting through the test as well.

10 Q. Okay. Thank you. Are you trained to administer PPG?

11 A. Yes.

12 Q. Okay. And what certifications do you have as a result
13 of your training?

14 A. So I am a Limestone Technology Certified Clinical
15 Analyst.

16 Q. Okay. And you don't use the other testing software
17 that was referenced by Dr. Gehle, do you?

18 A. We don't use the Monarch System. I think the hardware
19 comes with software too. But, no, we use the Limestone
20 Technologies.

21 Q. And so does the Sexual Behaviors Clinic and Lab have
22 any certification concerning PPG?

23 A. Yes. We're certified by Limestone Technologies as a
24 clinical and research laboratory. The research
25 certification is the highest level possible of

1 certification.

2 Q. Okay. And so why is the PPG part of the behavioral
3 labs protocols?

4 A. So we know from the literature that sexual arousal to
5 non-consensual abusive illegal things is a strong predictor
6 of sexual recidivism. We also know that men undergoing
7 these kind of evaluations understandably are not that
8 forthcoming about what they're sexually aroused by. So we
9 need to try to assess that in multiple ways. So we want to
10 ask them what they're aroused by. We want to try to look for
11 patterns in their offense history. And then we want to try
12 to measure it in a physiological way because we know that
13 it's unlikely that most of the men we see come in and say
14 I'm sexually aroused by children. And because it's a
15 strong predictor or associated with sexual recidivism
16 that's important to look at.

17 Q. So what is the PPG? Describe it for me?

18 A. So it's a physiological measure of male sexual arousal
19 where the examinee, is an adult man, and they're presented
20 with a variety of stimuli and then we are comparing their
21 responses. We're looking at changes in the circumference
22 of the penis and we're comparing it to their arousal, two
23 consenting adults trials. Also looking at neutral stimuli
24 that have nothing sexual about them. We want to see if
25 they demonstrate a preference to the abuse of stimuli. So

1 in this case it might be children, but in another case it
2 might be rape or something like that.

3 Q. Okay. And has PPG actually been peer-reviewed?

4 A. Yeah. It's been subject to numerous studies. It's
5 been around since 1950. It's been subjected to both the
6 sexual offending literature and the general sexual
7 literature as well.

8 Q. And so you describe that what the PPG measures is the
9 physiological response of a male, um, a man in responds to
10 certain stimuli sets, right?

11 A. Correct.

12 Q. Okay. So, basically, does he get an erection or does
13 he not?

14 A. Correct.

15 Q. Okay. How does it work?

16 A. So the examinee takes what's called a string gauge.
17 So this is a really thin, it kind of looks like this, but
18 it's made very thin. It's circular. It's made out of
19 Indian galahad. And they are in a private room by
20 themselves. And so they put that on their penis. They're
21 then covered up. They sit in a private room by themselves
22 where they are presented with auditories so they're hearing
23 the stimuli and they're also looking at still images and we
24 are comparing their arousal to the consenting adult trials
25 to the deviant or the abusive or illegal stimuli.

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1 Q. Okay. And when a person is in the room is there a
2 climate control to the room?

3 A. Yes.

4 Q. Okay. Where are they positioned? Are they standing?
5 Are they seated? Somewhere else?

6 A. So they sit in our comfortable lab chair, it's
7 reclines. And so, I mean, each one is done the same the
8 way. So we have a standard protocol that we use, it's
9 about eight or nine pages that the tech goes through every
10 single time. So the room is climate controlled. The
11 humidity and the temperature are measured and controlled.
12 Before you can administer a PPG test the gauged that's used
13 is calibrated, by a 5-step calibration. You can not start
14 a test until it's been calibrated. And so we do the test
15 the same way for each person.

16 Q. Okay. And in the room is soundproof, right?

17 A. Correct.

18 Q. There's nobody observing individual who's undergoing
19 the test?

20 A. Correct. The tech can see them from, from the chin
21 up.

22 Q. Okay. So their genitals is not exposed?

23 A. But there's ---

24 Q. They're not naked or anything like that?

25 A. Correct. They are covered up and they are in the room

1 by themselves.

2 Q. Okay. Now, tell me about the calibration procedure?

3 A. So as I mentioned before a test can be administered
4 the gauge has to be calibrated. So it's calibrated several
5 times using a 5-step calibrated system. And what that
6 means is we have gauges of different sizes. So we have the
7 person use a flexible ruler and measure themselves
8 privately before the test begins so then we select the
9 circumference of the gauge and before we start the test or
10 give it to the person it's calibrated on a cone to make
11 sure that, you know, if it's a 70 mm circumference gauge
12 that when you stretch it to 80, when you stretch it to 90
13 it's picking up the measurements. And so before you can
14 even start a test it has to be calibrated correctly because
15 they're really sensitive. Sometimes the gauges don't work
16 or don't calibrated correctly so in that way, in that case
17 it wouldn't allow us to start a test so we'd have to get a
18 new gauge and calibrate it that way.

19 Q. Okay. And can you tell me about -- well, actually, is
20 the individual undergoing the test required to arouse
21 themselves in any point?

22 A. No. So that would kind of make the test to be over.
23 So they're instructed not to touch themselves, not to touch
24 the gauge. The gauge is very sensitive so not only when I'm
25 doing the interpretation would I be able to see that, but

1 the tech who is sitting in front of the computer manually
2 pressing each trial to start would be able to see if they
3 were messing with the gauge or touching the gauge. So
4 before we start each trial they have to, due to master,
5 return back to the baseline, so a flaccid penis. So if
6 they were self stimulating themselves that would ruin the
7 test.

8 Q. Okay. Now, what other quality controls does the lab
9 use?

10 A. So everybody who is involved in PPG testing or
11 administration, is certified. They've completed a training
12 on it. PPG's are done in exactly the same way. We follow
13 the printed protocol. They're interpretive the same way.
14 The temperatures is controlled. The calibration is
15 controlled. There are countermeasures so the percent has a
16 respiration strap so we can see if they're holding their
17 breath, if they're breathing really shallow or really fast.
18 We can see if they're moving. They're sitting on a pad and
19 so we can see if the person is flexing, maybe trying to
20 have an erection when there isn't one there, if someone is
21 squirming, and so we have all of these control measures.
22 We also have the technician who is administering the test
23 will randomly ask the person to briefly describe the story
24 that they heard to try to make sure that they're paying
25 attention. We have them do a self rating so they rate on a

1 scale of 1 to 5, with 5 being very sexually arousing to 1
2 being very disgusting, how sexually aroused they were. So
3 all of these are controls in place to look at the test
4 validity.

5 Q. And can you tell me what avoidance is?

6 A. Yes. So sometimes people try to either create arousal
7 that isn't there or suppress arousal. They might do that by
8 squirming or flexing. They might also do that with mental
9 suppression. So thinking of baseball or trying not to pay
10 attention and so that's why we have those countermeasures
11 in place to try to determine if they were paying attention,
12 if they were trying to avoid arousal or create arousal that
13 wasn't actually there.

14 Q. Now, what is Limestone's cut off's score, their
15 minimum cutoff score in terms of something that's
16 clinically interpretable?

17 COURT REPORTER: I'm sorry, clinically what?

18 Q. Clinically interpretable?

19 A. So Limestone doesn't have a clinical cut score and so
20 basically - and that is what we're working on the
21 International Standardization Group, is trying to
22 standardize that between labs - and so what makes it
23 difficult is if our colleagues in Canada are using the PPG
24 to measure treatment progress then you would interpret
25 something smaller, like smaller millimeter of change. And

1 we would interpret for an evaluation such as the sexually
2 violent predator. So we use the most conservative cut
3 score out of all of the labs that I'm familiar with and
4 those in the International Standardization Group.

5 Q. Okay. Can you talk about what the, what the
6 conservative cut scores actually means just in a way a
7 layperson like myself could understand?

8 A. Yes. So we want to really minimize any
9 false/positives. And so false/positives, if you look at the
10 literature, are pretty unlikely when it comes to the PPG.
11 So it's much more likely that you're gonna miss arousal
12 that was there than for somebody becoming aroused by
13 something they have no arousal to. And so with any test
14 you have to balance what's called specificity and
15 sensitivity. The true positives and the true negatives.
16 And for that I like to think of, like a Covid test example.
17 So you have to think what is, you know, more dangerous. So
18 would you rather somebody test positive for Covid when they
19 don't actually have it and then that person has to
20 quarantined for ten days versus they test negative but they
21 actually have Covid and then you tell them they can, you
22 know, go out and live their lives and they're actually
23 spreading Covid. And so we do the opposite. We want to,
24 because all test - no tests are perfectly, sensitive or
25 specific you have to balance those - and so in my lab we

1 choose a conservative cut score because we would rather
2 miss somebody on the PPG. We would rather say okay this
3 person does not look like they are aroused by children on
4 the PPG when they actually are because we don't use it as a
5 sole data point. We use other measures. And so a
6 false/positive meaning that they've showed sexual arousal
7 to children when they actually didn't have it would be more
8 damaging than missing somebody who did have it and that is
9 why is just one data point that we use.

10 Q. Okay. So, basically, you don't want to label someone
11 as a pedophile if, in fact, they really are not?

12 A. Well, we would never label somebody as a pedophile or
13 having pedophilic disorder just based on the PPG. So in
14 order to have pedophilic disorder you have to have
15 fantasies, urges, behaviors over a course of at least six
16 months or longer so the PPG is one data point. So if
17 somebody has offended against multiple prepubescent
18 children, if they're showing arousal in the lab, if the
19 offense behaviors suggest that they offended because they
20 were sexually aroused by children, those are things that
21 are going to give you more data. But you would never have
22 somebody who showed arousal to children on the PPG and then
23 say that they met diagnostic criteria for a disorder.

24 Q. Okay. So this is just one data point in a very large
25 group of data that you collect from every person you

1 evaluated?

2 A. Correct.

3 Q. Okay. Now, you previously talked about the ATSA, can
4 you just remind the court what that is?

5 A. Yeah. ATSA is the Association for the Treatment of
6 Sexual Abusers. It's the national organization that deals
7 with this kind of work. So the treatment and evaluation of
8 people convicted are charged with sexual offenses or
9 otherwise sexually inappropriate behavior.

10 Q. Okay. And you are, in fact, a fellow of this
11 organization, correct?

12 A. Not a fellow, I am a clinical ---

13 Q. I'm sorry?

14 A. Not a fellow, I am a clinical member of ATSA.

15 Q. Okay. So ATSA publishes practices guidelines for this
16 type of case, correct?

17 A. Yes, they do.

18 Q. Okay. And what are those guidelines?

19 A. So they have us practice guidelines that when you are
20 member you have to follow, you should follow their ethical
21 and practice guidelines and you can get sanction by ATSA
22 for going against their guidelines.

23 Q. Okay. And what do the ATSA practice guidelines say
24 about the PPG?

25 A. So ATSA supports the responsible use of the PPG and

1 sexual behavior evaluations and sexual behavior treatments.
2 And responsible use means that you're following the
3 protocol. You're interpreting it in a standardized manner.
4 You're not using it as the sole data point to look at risk,
5 release recommendations, diagnoses. So it can be useful
6 for those decisions but your responsible use would be just
7 using that as the only data point.

8 Q. Okay. And you heard Dr. Gehle testify about what's
9 contained in the Witt and Conroy book, correct?

10 A. Yes.

11 Q. Is that data current?

12 A. So that is the most recent Best Practices Book by that
13 publisher. It's from 2009. But so they -- in their
14 recommendations not to use the PPG they're citing an
15 article from Bill Marshall from 2006. However, so that book
16 was published in 2009. In 2014, Bill Marshall published an
17 article that was much more supportive of PPG. There's also
18 been a lot newer research since 2009 including this 2019
19 meta-analysis that included data from thirty to fifty
20 studies with like over 10,000 men that's peered a lot of
21 the issues that have arose in the PPG research.

22 Q. Okay. Now, what is the DSM-IV?

23 A. So that the Diagnostic and Statistical Manual. We're
24 on the Fifth Addition that was published by the American
25 Psychiatric Association in 2013. And that's the

1 manual that psychiatrist, psychologist, anyone licensed and
2 able to diagnose mental illnesses, that's the book that
3 they use with all of the criteria for each mental illness.

4 Q. Okay. And does DSM-IV contain any information for or
5 against using the PPG?

6 A. Yes.

7 Q. What does it say?

8 A. It's say under the paraphilic disorders section and
9 specifically in the pedophilic disorder section it says
10 that the PPG can be useful in diagnosing that condition.

11 Q. So it can be useful but again just one data point?

12 A. Yes. I don't have the exact quote but it is in the
13 DSM-IV and it's supportive.

14 Q. Okay. Now, let's narrow it down because there are
15 many types of sex offenders, correct? There's men who rape
16 adult women. There's men who rape teenage girls. There's
17 men who rape male children, female children, both, right?

18 A. Yes.

19 Q. Okay. Now, specifically with respect to men who are
20 sexually attracted to prepubescent females such as Mr.
21 Hyman, is there any research in the field that's current
22 that would suggest an increase or decrease reliability of
23 the PPG in relation to that particular population?

24 A. Yes. The PPG has been shown to be most reliable when
25 you're looking at men with sexual interest in children. So

1 there used to be, but there still is, some criticism about
2 the PPG and that some studies you had men who had sexually
3 offended against children and didn't show arousal to
4 children on the PPG. But the problem with that is, is that
5 people sexually offend against children for multiple
6 reasons, not always because they're sexually aroused by
7 prepubescent children, it could be variance, like, social,
8 it could be a range of other factors. And so you wouldn't
9 expect everybody who offended against a child to be
10 sexually aroused to children. And so that is what we're
11 seeing on the PPG. And then -- so when you're comparing
12 them to men who have adult victims, the PPG has shown to be
13 more reliable in differentiating men who have sexual
14 arousal to children from men who do not.

15 Q. Okay. And can you describe what the 'D' number is in
16 relation to different populations?

17 A. Sorry, the 'D' number?

18 Q. I'm sorry, the 'R' number, I think? It's the
19 correlative number in terms of consistency?

20 A. Oh, I -- yeah. Okay. So 'R' is like a person or
21 person's correlation where it's looking at the strength of
22 a relationship between two things. Zero would be either no
23 relationship. One would be pretty much the same exact
24 thing. And then looking at Cohen's D that is how you look
25 at the standardized ways of -- so when you have studies

1 that compared data from lots of different studies so this
2 2019 meta-analysis that I referred to that had almost
3 10,000 men in the sample you need a way to compare research
4 across different studies. And so Cohen's D is a
5 standardized way to look at mean differences between the
6 two studies.

7 Q. And, in fact, there are different numbers that have
8 been correlated to different categories of sex offenders,
9 correct?

10 A. Correct.

11 Q. And what is the number that has been correlated with
12 particularly pedophilic interest?

13 A. Well, it isn't just the number that's correlated. So
14 in this 2019 meta-analysis that included fifty-three
15 samples of almost 9,500 men it was comparing different
16 kinds of men's. So there were men who had sexually offended
17 against children. Men who had not sexually offended against
18 children. Men who had never been arrested before. Men who
19 recidivated or had a new sexual offense. Those who didn't.
20 And so when you're comparing men who have sexual offenses
21 against children from men who have never offended we're
22 seeing giant 'D' scores so standardized differences between
23 those groups of looking at their reactions to the child
24 stimuli on PPG's.

25 Q. Okay. Now, in layman's terms what does that mean?

1 A. It shows that the PPG when they looked at all
2 different kinds of stimuli set, they looked at audio only,
3 video, the slide plus audio, they were looking to see men
4 who had offended against children compared to all other
5 groups, showed really robust differences much greater
6 arousal to the child scenarios than the other groups they
7 were compared to.

8 Q. Okay. Now, you heard Dr. Gehle talking about that the
9 test/retest reliability in with the PPG, is "very poor".
10 Can you address that?

11 A. I can't because I, I'm sure there are studies but I
12 don't know which studies she's referring to that's looking
13 specifically at tests/retest reliability. There are some
14 studies that are looking at like treatment outcomes and
15 that somebody who went through treatments show differences
16 on the PPG, but that's like the reason that you give the
17 PPG to see if you give somebody like arousal management
18 therapy. So they have sexual interest in children and your
19 teaching them techniques to, kind of, control that arousal.
20 So then you want to give them a PPG and see in the lab can
21 they control that arousal. So that would be differences
22 because you're looking at treatment outcomes. But specific
23 test/retest reliability I'm not familiar which study she's
24 talking about. There's certainly articles, older articles,
25 about the PPG that talk about problems with

1 standardization, problems with using different sets and
2 things like that, but specific to test/retest I'm not sure.
3 I mean, internal consistency is a type of reliability and
4 that's how well something is measuring unknown contract. So
5 when you look at studies that ask men and women
6 physiological sexual studies like what are you aroused by
7 and they would give self-report. The PPG is really
8 strongly correlated with self-report so that would be
9 another Hippa reliability but I'm not familiar on the top
10 of my head with the test/retest literature.

11 Q. Okay. So you just mentioned that they're different
12 types of stimulus sets, would the Limestone Technologies
13 and we're not talking about the Monarch at this point, with
14 the Limestone what stimulus sets are used?

15 A. So with Lime, every, every lab that purchases the
16 Limestone hardware comes with the real child voices.

17 Q. Mmm, hmm.

18 Q. So if you purchase that test it comes with the real
19 child voices. Now, at the Sexual Behavior Clinic and Lab
20 we also use the Marshall's because again we don't want to
21 rely on one data point. We want to measure. We want to do
22 a multi-method assessment where we're measuring the same
23 thing in multiple different ways so that's one reason why
24 we use the Marshall. The Marshall has also been around a
25 lot longer and it's two different modalities. So the

1 Marshall stimuli set is a monotone male voice describing
2 sexual situations, whereas, the real child voices you hear
3 actors on a sound stage. There's one trial that takes
4 place in a bar and you hear glasses clinking, you hear
5 children's voices, and then you also see the slides. And
6 the 2019 meta-analysis showed that the slide plus audio was
7 the best modality in those fifty-three studies that they
8 looked at. And so we use both for all of those reasons.

9 Q. Okay. Now, is that standard in the practice?

10 A. To use more than one?

11 Q. To use at least one if not two?

12 A. It is standard to measure, like you wouldn't want to
13 give just one pedophilic trial. You'd want to do several
14 pedophilic trials. But standard to give multiple sets, I'm
15 not sure.

16 Q. Okay. All right. So what is specificity and what is
17 sensitivity?

18 A. So sensitivity is what I mentioned that's true
19 positive. So sensitivity is having a condition and the
20 test showing that they have a condition. So for Covid
21 sensitivity is that they have Covid and they test positive.
22 Whereas, specificity, is a true negative. They don't have
23 the condition and the test is showing they don't have it.
24 So they do not have Covid and then the Covid test is
25 negative.

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1 Q. Okay. Thank you. Now, how many labs currently use
2 the real child voices protocols or stimulus sets, excuse
3 me?

4 A. So that is not hundred percent because just because a
5 lab purchase the Limestone system with the real child
6 voices that doesn't necessarily mean that they're using the
7 real child voices. So it's between fifty and hundred labs
8 use that the stimuli set and then the Minnesota,
9 California, and New York, Illinois, and Missouri Sexually
10 Violent Predator Programs use the real child voices stimuli
11 set.

12 Q. Okay. And how many programs or labs, if you know, use
13 the Marshall?

14 A. That I don't, I don't know.

15 Q. Okay.

16 A. Because the Marshall does not come standard with the
17 Limestone set.

18 Q. Okay. Now, you mentioned earlier the 2014 article by
19 Mr. Marshall, correct ---

20 A. Yes.

21 Q. --- Dr. Marshall, actually, and he invented that set,
22 right?

23 A. Yes. He made it.

24 Q. Okay. And so can you just tell the court a little bit
25 about what it says?

1 A. Yes. So in the 2014 article that Bill Marshall wrote
2 he discusses some of the issues with standardization, but
3 he notes, "despite these reservations phallometry or penile
4 plethysmographys remains the best approach to establishing
5 a sex offender sexual interest and so long as the results
6 and data are interpreted with caution they can usefully
7 contribute to risk assessment and defining targets for
8 treatment." He also noted that despite the limitations
9 that he noted is that it's possible to integrate data
10 across, across sites. And he said, "what this integration
11 reveals is that the results of child molesters appear
12 reasonably consistent in showing that some but far from all
13 of these offenders display deviant arousal that requires
14 treatment intervention. Deviant interest displayed by child
15 molesters is also a moderate predictor of future risk to
16 re-offend so the value of fellow metric assessments with
17 these offenders appears to be clear."

18 Q. All right. And that was 2014 and in the seven years
19 since that article was published, what is your opinion --
20 in the seven years since that article was published what is
21 your opinion regarding the ongoing research in the field
22 into the reliability of the PPG?

23 A. The research has been increasing so if you talk about
24 Best Practices the 2019 Best Practices Book about sexually
25 violent predators evaluations there is a chapter in there

1 by Joseph Plode (ph) is about utility of penile
2 plethysmography specifically in sexually violent predator
3 evaluations. As I mentioned this 2019 meta-analysis that
4 really took care of a lot of the problems that have arisen
5 so he looked at, those authors looked at all of the
6 modalities, they looked at different groups, they looked
7 for recidivists, it's a really great study. And so that
8 really I think took, took the field where it needed to be
9 headed. And, I mean, and we're working on this
10 international standardization which is difficult because
11 other countries can use child pornography and so just
12 because United States does not have a medical exception to
13 their child pornography laws doesn't mean that Canada wants
14 to stop what's working well for them. So that's kind of the
15 issue that we've had in this international standardization
16 group, but really still working on it and that's some of
17 the things that we see with it.

18 Q. Okay. And the final question, based on your
19 experience in the field, your experience in administering
20 and interpreting these test, all of the research that you
21 have contributed and reviewed, is it your opinion that PPG
22 is a reliable indicator of pedophilic interest in sexually
23 violent predator evaluations?

24 A. Yeah. Believing it certainly can be is why I use it
25 as one data point. I would never do something that I

1 thought was unethical. So as I mentioned sexual interest
2 in children as measured by the PPG is a strong respecter
3 for recidivism. Never the only thing that we want to do.
4 I don't base any of my decision solely on it, but it's
5 definitely a useful data point especially when somebody
6 does not, is not forthcoming with their sexual interest or
7 arousal in children.

8 Q. Thank you.

9 MS. SHAW: I have nothing further, Your Honor.

10 THE COURT: Okay. Mr. Falk?

11 **Cross-Examination by Mr. Falk:**

12 Q. You published any peer-reviewed studies which address
13 the validity and reliability of the real child voices
14 stimulus set?

15 A. So I have -- working on a couple of studies. None
16 have been published in peer-reviewed articles to date. But
17 about four or five of them have been peer-reviewed
18 abstracts where they were reviewed by scientific committees
19 and invited for presentation at national, international
20 research conferences.

21 Q. What was the result of the presentations?

22 A. I can go through them. So the one that we're writing
23 up for publication right now at MUSC is we were comparing
24 the Marshall and the RCV set. So these were men who
25 underwent evaluations at MUSC and they had to have had at

1 least some of the child scenarios on the Marshall. So we
2 were comparing that to their able assessment so their
3 visual reaction time assessment which looks at sexual
4 interest in children and we found that the results of the
5 Marshall and RCV were really consistent with one another.
6 We also found that the RCV were more likely to be valid. So
7 if somebody is going to have a valid test it was more
8 likely to be the RCV than the Marshall. Our colleagues in
9 Canada compared the real child voices set to their sexual
10 behavior clinics stimuli that they made in which showed as
11 nude children, so child pornography, and they had both a
12 community sample and a clinical sample. The clinical
13 sample were men who recorded sexual interest in children
14 and were seeking treatment for that. Where the community
15 sample were people who had never been arrested for sexual
16 offense and were not reporting that and showed that both
17 sets, the child pornography set and the real child voices
18 sets were able to differentiate or discriminate between the
19 clinical and the control group. And that they both did a
20 good job with specificity and sensitivity of identifying
21 the differences between those men. So that was presented at
22 the American Academy of Forensic Sciences and the
23 International Association, International Association for
24 Sex Research so that's just not sex offenders it's like all
25 of sex research, the one that I was talking about for MUSC

1 that has been presented at the American Psychology and Law
2 Society Conference. And then I am presenting more of those
3 results this year at the Association for the Treatment of
4 Sexual Abusers. And so that is being written up for peer-
5 review but it's not published yet. It's only been peer-
6 reviewed in terms of scientific conferences or
7 organizations.

8 Q. And was it your testimony that you give the PPG test
9 to all men who you're evaluating as sexually violent
10 predators?

11 A. Yes. I order it for all of them for sexually violent
12 predators for federal probation. So for any man that comes
13 to the Sexual Behaviors Clinic and Lab I want to do a PPG
14 on them. I order a PPG, we just don't do it on juveniles.

15 Q. Can you complete a sexually violent predator
16 evaluation without conducting a PPG?

17 A. I have. I prefer not to. So it's a data point like
18 all of the datapoints that I have that I want. I want to
19 see the results of the PPG. There have been cases where
20 people do not give their consent and then we don't force
21 them to do anything. The Attorney Generals's Office then
22 we'll let the court know that the person isn't cooperating
23 or something that they have not completed the evaluation
24 and see what the court wants to do. So there have been,
25 maybe just one, maybe one or two, where I completed the

1 evaluation. But the case that I'm thinking of this person
2 had a lot of victims, a lot of consistent data points, and
3 so, although, the PPG would've been, I don't know if it
4 would've been useful or not because he didn't take one, but
5 there was a lot of data in that case already.

6 Q. And you said that you're certified by Limestone
7 Technologies?

8 A. Correct.

9 Q. Is there any independent agency that certified your
10 PPG lab?

11 A. No. I don't know, like I said, I don't know what
12 Monarch does. I don't know what the other companies do.
13 But to have the Limestone system I think you do have to be
14 certified so we've all gone through certification and
15 they'd come and looked at our lab and all of our outfits
16 and things like that. So I'm not sure if there's other
17 certifications available.

18 Q. So the certification, you said that all of your tech's
19 are certified that's just also, again, certified by
20 Limestone, is that correct?

21 A. Correct.

22 Q. The study about the reliability, this meta-study that
23 you were talking about, were all of the, were all of the
24 labs using the real child voices stimulus sets?

25 A. No. So the problem with the PPG literature it's

1 something that I've been emailing authors's regularly now,
2 is that they'll describe, like, they'll say the PPG stimuli
3 were a male monotone voice were, you know, you heard
4 children but they don't actually identified what the set is
5 so it might be Monarch, it might be Marshall, so I've taken
6 to now when something gets published I emailed the author
7 and say, hey, what set was this. Because they don't write
8 in their methods for some reason I think that's strange.
9 Ian McPhail was the lead author on the 2019 meta-analysis
10 and I have had conversations with him and he got those
11 fifty-three studies, he got those almost 9,500 men's data
12 but he didn't know where it all came from. He just knew
13 like the modality because they don't list them in the
14 methods section. So certainly not all of those people had
15 those sets.

16 COURT REPORTER: And who was that, I'm sorry?

17 A. Ian McPhail, M-c-P-h-a-i-l.

18 COURT REPORTER: Thank you.

19 Q. When you're doing a real trial voices stimulus set, is
20 it accurate to say that there's really three variables
21 involved being the sex, the age, and the level of coercion?

22 A. Yes. I mean, there are ---

23 Q. Well, how would you wanna describe that third
24 category? I mean, sex is clear.

25 A. Mmm, hmm.

1 Q. I mean, gender is clear. Age is clear. What you
2 wanna -- how do you wanna describe that third category?

3 A. You have contents because some of them are neutral so
4 it isn't sexual it all. It's like describing going on a
5 fishing trip or buying a chair so I wouldn't say level
6 coercion for them, but like the content I'd say.

7 Q. When you're talking about the content you mean whether
8 or not -- so if you are - - and you have a stimulus set
9 that has, that is purported to make a distinction for
10 prepubescent female coercive, is that correct?

11 A. Yes.

12 Q. How can your test determine whether or not the person
13 responding to the story that is being told regardless of
14 the age of the victim or the sex of the victim, I mean, how
15 do you know that the person is responding to the age and
16 not just the story?

17 A. Well, so most of the real child voices that the person
18 actually says how old they are so their prime with that
19 age. Their primed with the slides, the images of somebody
20 that age. And, I mean, we're looking for a pattering,
21 right. So we're trying to compare their arousal to
22 consenting adults to their arousal of abuse of stimuli's.
23 So if I had somebody who is aroused by a consenting adult
24 and then one child stimuli, I would, that would be a
25 smaller data point than somebody who is aroused by multiple

1 child ---

2 Q. Well, when you're ---

3 A. --- stimuli.

4 Q. When you're hearing this auditory's scenario, is that
5 a way to describe it?

6 A. Yes.

7 Q. How do you know that the person is making some type of
8 recognition that it's a 10-year-old versus just recognizing
9 the story that's being told to him?

10 A. I think that's what I answered. So the children in
11 the scenario they say their age and then you see the images
12 that's the same age of the child. And then when you look
13 at the studies that are comparing people who have no sex
14 offenses to people who have a stake and sexual interest in
15 children and is able to differentiate between those two
16 groups. I think that is also supportive of that. So not
17 only are they primed with the image and they hear the age,
18 but then when we look at it in studies people who are not,
19 who report not to be sexually aroused by children are not
20 showing arousal to those scenarios. Whereas, people who
21 came in for treatment for sexual arousal in children, are.

22 Q. And how does your lab check whether or not you're
23 making a false/positive?

24 A. So you asked me this before. So unless -- there
25 really isn't a way to check a false/positive, right. So

1 that is why it's just used as one data point and then it's
2 also why we use a very conservative cut score. Now, if
3 somebody says I'm sexually aroused by children and then the
4 PPG shows their sexually aroused by children that's
5 consistent. But if somebody says I'm not aroused by
6 children and the PPG shows that they are, we want to look
7 at, like I said, if multiple of those trials are
8 consistent, if it's consistent with offense behavior, we
9 wanna look at multiple data points. So there's really no
10 way of knowing if that is a false/positive which is why we
11 balance our specificity and sensitivity as such to really
12 eliminate false/positive as much as we can.

13 Q. The cut score, what is the cut score?

14 A. So the cut score is how you can tell if a test is
15 clinically significant arousal or not. So is it a valid
16 test? So is there millimeter of change from the baseline
17 where they started, flaccid penis. You want it to be over
18 a particular cut score millimeters of change before you
19 say, like, okay that is arousal.

20 Q. Which one do you use? What cut score do you use?

21 A. So they recommend doing at least ten percent of a full
22 erection which would be 2.5 mm. We use 5 mm. Our
23 colleagues in Canada use 1 mm. But I will point out that
24 Canada does not have sexually violent predator act so
25 they're using it a lot for treatment. And so that is why

1 they want smaller millimeter change because they want to
2 look at treatment progress. Whereas, these are much more
3 high-stakes and we want to be as conservative as we can.

4 Q. So you said a percentage of full erection, does that
5 mean that you or the people taking the test have been
6 somehow aroused to the full erection and that girth is
7 measured?

8 A. No. So that's based on the research studies where
9 they're looking at - it's a formula where you looking at
10 the denominator, not really sure, it's a mathematical
11 formula - and if you look at the literature they say it
12 should be at least ten percent of a full erection which the
13 literature suggests is around 2.5 mm of change.

14 MR. FALK: No further questions.

15 THE COURT: Anything else, Ms. Shaw?

16 MS. SHAW: No, Your Honor, I don't have anything
17 further.

18 THE COURT: Okay. Thank you, doctor. You can step
19 down. All right. Any further argument, counsel?

20 MS. SHAW: Your Honor, it's Mr. Falk's motion.

21 MR. FALK: Your Honor, we can accept that there
22 has been studies about the use of the PPG test, but my
23 concern is the use of the real child voices stimulus set
24 that they're using as part of Limestone. And to date have
25 not heard of any peer-reviewed study showing the validity

1 and reliability of that specific stimulus set. So when
2 you're making this sort of meta-analysis, the different
3 labs doing different studies - this is what Dr. Gehle was
4 talking about it's hard to really reach any strong
5 conclusions. And the fact that they're certified by the
6 manufacturer is not necessarily the same as being certified
7 by some kind of independent agency. I mean, the guy who
8 invented the equipment and they said yeah you're using the
9 way I want it used. But that shouldn't necessarily mean
10 that it's being used correctly. And, again, I mean, my
11 focus is, basically, there's no peer-reviewed study on the
12 real child voices stimulus set and until there is I think
13 that this is a high-stakes evaluation and I do not think
14 that it meets that prong in the test.

15 THE COURT: Ms. Shaw?

16 MS. SHAW: Your Honor, I most, respectfully,
17 disagree with counsel. You heard Dr. Gehle testify -- you
18 heard Dr. Gehle testify about that there is no reliability,
19 there's no consistency, but the fact of the matter she's
20 never been trained in this technology. She's not familiar
21 with the most recent updates in the literature. She is not
22 familiar with Dr. Marshall's 2014 article. She was not
23 able to identify any of the information in 2019 article.
24 She's not certified. She doesn't use the test. And,
25 basically, she does not know what she's talking about when

1 it comes to the test. She says she doesn't like it because
2 it's so unreliable but she doesn't know that, in fact, it's
3 unreliable. If she actually had the training then she
4 would have much more authority to speak on the matter. You
5 heard Dr. Gottfried testifies. She's done at least forty of
6 these. She does them in all contexts. There is considerable
7 literature which suggest that the real child voices and the
8 Marshall sets are, in fact, reliable. The data itself is
9 very promising and as you heard Dr. Gottfried is going to
10 presenting this year and the coming year once the data as
11 all been compiled for her most recent study to gain further
12 support in the community. Obviously, Mr. Falk is doing his
13 job. It's a very damning test for his client because it
14 shows considerable arousal to the child coercive scenarios.
15 It is only one data point, though. And as you heard Dr.
16 Gottfried testify that's only part of her analysis. She
17 does independent testing of her own. She does standardized
18 testing. She does clinical interview of several hours. And
19 she has, I'm sorry, she has the individual, in fact,
20 complete different psychological test, the PAI, and the
21 MESA (ph) is another one. So it's only one piece of the
22 picture. It's a very important piece, but it's only one
23 piece and she would never or no ethical psychologist would
24 diagnose Mr. Hyman or any defender with a pedophilic
25 disorder without many, many data points to choose from. And

1 Your Honor may recall if you've had a chance to review the
2 reports, both doctors, Gehle and Gottfried, diagnosed Mr.
3 Hyman with pedophilic disorder. So regardless of the PPG,
4 both of them came to the same conclusion even though their
5 ultimate beliefs about the risk for recidivism were
6 different. So simply because the PPG shows very specific
7 arousal patterns from Mr. Hyman doesn't mean it's
8 unreliable it just means that it's not favorable evidence
9 to him. And I don't believe in this case it would be more
10 prejudicial than probative because it shows a specific
11 ongoing arousal patterns to children and that's why we're
12 here. The question of whether it's reliable I believe has
13 been answered and I believe that answer in the affirmative
14 based on the testimony Your Honor heard. And at the end of
15 the day, it's a question of, you know, does it meet that
16 basic threshold? I believe it does. Once it meets that
17 basic threshold, it comes in and then the jury can give it
18 whatever weight they want. I'm sure counsel will most ably
19 argue that it shouldn't be considered. But at this point I
20 believe that the counsel standard has been met and that it
21 should be permitted to be testified to.

22 THE COURT: Yes, sir?

23 MR. FALK: Really it -- Ms. Shaw made an excellent
24 point I think for myself. I mean, my expert is going to
25 testify consistent with her report. She's going to say

1 that there's that same attraction. So the PPG test is not
2 gonna really add anything other than be extremely
3 prejudicial evidence. It'd be like, you know, a gory crime
4 scene photos. I mean, nobody is gonna contest that, you
5 know, the person died, but you don't necessarily are going
6 to allow the jury to see extremely gory photographs. I
7 think this a perfect example of a 403 type of thing where
8 prejudicial, the probative value is outweighed by the
9 prejudicial effect because it's, it's not being offered,
10 probative value against anything that might witness is
11 saying. My witness is agreeing that there is that, that's
12 that attraction. But if they see those PPG test they're
13 gonna wind up committing him.

14 THE COURT: Do you want to address that?

15 MS. SHAW: Yes, sir, Your Honor, I will. Both
16 experts ultimately diagnosed Mr. Hyman with pedophilic
17 disorder, but Dr. Gehle did it based on historical
18 behavior. DSM-IV says, "there must be a sexual attraction,
19 excuse me, to prepubescent children which has caused
20 considerable distress or illegal behavior which has
21 occurred for longer than, six months or longer." Mr.
22 Hyman's offending behaviors span from based on what he
23 reported to Dr. Gottfried from his childhood years when he
24 reported that he offended his sister, to his early twenties
25 when he offended, ah, I believe, it was four little girls

1 that he was charged with, but he was convicted of two. And
2 then, again, to his forties when he was convicted of
3 molesting several more children. I mean, this is a very
4 long-term behavioral pattern. That's why Dr. Gehle
5 diagnosed him with pedophilic disorder. The question
6 before the court today is does Mr. Hyman still have this
7 disorder? It is six years after he was sent to SCDC when
8 he was 41 years old, I'm sorry, five years, and he's 46
9 years old right now. We need to know today is he still
10 attracted to children and that PPG shows that he is. So I
11 was submit to the court that it is highly relevant to show
12 the current arousal pattern, not just historic, but current
13 pattern and that's what the jury needs to know.

14 THE COURT: All right. Mr. Falk, I certainly
15 understand your concern about the results of the test, but
16 in this particular case I'm going to find that the
17 relevance outweighs, the probative value outweighs the
18 prejudice so I'm going to allow the PPG test results to
19 come in by way of your witness, Ms. Shaw.

20 MS. SHAW: Thank you, Your Honor.

21 THE COURT: Now, we had an issue about the
22 indictments that you raised earlier? Your concern about --
23 -

24 MR. FALK: Yes, Your Honor. I mean, the State
25 only has to prove ---

1 THE COURT: You don't need to argue, um, I'm not
2 gonna let those indictments in.

3 MR. FALK: Okay. Thank you.

4 MS. SHAW: So, Your Honor, are you ---

5 THE COURT: The sentencing sheet's, no problem.
6 But just not -- I don't think the indictments, you know, he
7 isn't -- he wasn't convicted of what -- they're just
8 allegations and I don't think there's been nothing to prove
9 that he necessarily did what he was of alleged to have done
10 in the indictments. So he pled to something less, I
11 understand, is that correct, Mr. Falk?

12 MR. FALK: Thank you, Your Honor.

13 THE COURT: He pled to something less that's in the
14 indictments, correct? Well, maybe that's the wrong way to
15 word ---

16 MR. FALK: Well, maybe not but ---

17 MS. SHAW: Your Honor, he pled to a lesser
18 included for his 1996 convictions as well as the lewd act
19 charge which was, it was a reduced charge and he pled to I
20 think CSC, III which is one of his indicted charges in 2016
21 as well as lewd act on a minor under 16 with offender over
22 14. I don't believe he was actually charged with that. He
23 was charged in 2016 with four counts of CSC, III. And just
24 for purposes of preserving the record because I am sure
25 they will be an appeal, I am requesting that the

1 indictments come in because the statute does not require us
2 to present on the evidence of convictions, but it also
3 requires us to present evidence of offenses and offenses
4 are not defined in the statute to the only convictions.
5 They include all manner of offenses charged or convicted.

6 THE COURT: I understand that.

7 MS. SHAW: Thank you.

8 THE COURT: I'm gonna standby my ruling. I'm not
9 gonna allow them in.

10 MR. FALK: Thank you, Your Honor.

11 MS. SHAW: Thank you, Your Honor. I will, I
12 guess, talk to the clerk tomorrow morning and get certified
13 copies of just the sentencing she's because these are
14 actually double-sided. So I will speak to Ms. Kayla Hyman
15 tomorrow morning before we start. And I will explain to
16 her and see if I can get her to make a copy of just that.

17 THE COURT: Okay. And then we can have them
18 marked, I think, pre-marked.

19 MS. SHAW: I'm sure we can get it done tomorrow.

20 THE COURT: Is that everything, counsel?

21 MS. SHAW: Not from me, Your Honor.

22 THE COURT: Anything else, Mr. Falk?

23 MR. FALK: My client was talking to me for a
24 minute. So you were just asking was there anything else?

25 THE COURT: Yeah. I was just asking is there

1 anything else?

2 MR. FALK: No, Your Honor.

3 THE COURT: Okay. All right. Counsel, we, again,
4 we'll try to get cranked up the as close to 9 o'clock as we
5 possibly can. The jury is in, as you know at 8:45 so if
6 we've gotten everything done, we'll hit the ground running,
7 hopefully.

8 (Whereupon, court is adjourned for the day)

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1 **Tuesday, June 8, 2021**

2 _____ (WHEREAS, this matter was scheduled for a trial, the
3 defendant appeared along with his attorney of record. The
4 proceedings began at 9:08 a.m.)

5 THE COURT: All right. Counsel, y'all ready for
6 the jury?

7 MS. SHAW: Yes, sir.

8 THE COURT: Bring in the jury.

9 (Whereupon, the jury enters the courtroom at 9:10 a.m.)

10 THE COURT: Mr. Abbott, if you'll take this first
11 seat, sir, if you'll step down and have one of these seats,
12 please, sir. Okay. And Ms. Mathieu?

13 MS. MATHIEU: Yes, sir.

14 THE COURT: If you'll stay in one of the back seats
15 where you are now at all times. Ms. Graham, if you'll come
16 up here in this seat please. All right. Madam, clerk,
17 will you swear the jury, please.

18 THE CLERK: Raise your right hand. You shall well
19 and truly try the issues joined in this case between the
20 plaintiff and the defendant in a true verdict render
21 according to the law and evidence so help you God?

22 (Whereupon, all the jurors took the oath)

23 THE COURT: You may be seated. Mr. Abbott, you'll
24 always take the seat throughout the trial. Ms. Mathieu,
25 you'll always seat in one of those two chairs at the back,

1 always. Thank you, ma'am. Okay.

2 **Judge's Instructions:**

3 All right. Ladies and gentlemen, we're about to begin
4 the trial of the Matter of the Care and Treatment of Andy
5 Eugene Hyman. Before we start I want to give you a few
6 instructions concerning the process that we'll be going
7 through the next day or so. What I'm telling you now are
8 not anything to do with the law or a charge of the law of
9 the case. That will be done at the conclusion of the trial.
10 I want to explain, like I said, the procedure so you'll
11 have a better understanding of what's going on throughout
12 the trial.

13 Now, you both, you all have been selected as fair and
14 impartial jurors and it's your purpose to find and
15 determine the facts. You are the sole judge of the facts.
16 If it anytime I make any comment during this trial
17 regarding the facts you must disregard anything that I say.
18 You are to determine the facts from the testimony you hear
19 and any other evidence that is presented. You should not be
20 influenced by any opinions or statements you may have heard
21 outside this courtroom. It is especially important that you
22 perform your duty in determining the facts diligently and
23 conscientiously because ordinarily there is no way to
24 correct an erroneous determination of the facts. When you
25 comply with your oath to impartially determine the facts of

1 this case you'll have fulfill your duty as jurors and no
2 one will have the right to criticize your verdict.

3 On the other hand and with equal emphasis the same law
4 that makes you the judge of the facts makes me the judge of
5 the law. The law is given by the court as the only law that
6 you may consider. You must accept and follow it even though
7 you may not agree with that. I cannot tell you what the
8 facts are and you cannot disagree with me about what the
9 law is or what the law should be. Your job is to take the
10 law as I give it to you and apply it to the facts as you
11 find them from the testimony of the witnesses and any other
12 evidence that is introduced during the trial.

13 After doing that you will render your verdict under
14 the solemn oath that you just took as jurors.

15 Until I advise you to begin your deliberations you
16 must not discuss this case with anyone as I caution you
17 yesterday, including your fellow jurors, family members,
18 friends, spouses, girlfriends, boyfriends, anyone that's
19 involved in this case, you do not discuss it with anyone.
20 The only time you will do that, as I told you earlier, will
21 be when you begin your deliberations at the conclusion of
22 the trial. And you're not too try to do any research or try
23 to do any comments our contact with anybody, again, face-
24 to-face, by telephone, email, text, blogs or any other
25 method of communication. You may not use a computer, cell

1 phone or other electronic device with communication
2 capabilities at any time while in the courtroom or during
3 your deliberations, during breaks or even overnight. If
4 during your breaks, for meals, or overnight, if necessary
5 you may use these devices. However, you may not at any
6 time use these devices to get or send information about the
7 case. This includes trying to get information about a
8 particular party involved, a witness, an attorney, a court
9 officer, anything such as that, anything whatsoever to do
10 with this case, you're not to try to do any research to
11 find out anything. Your decision will be made purely and
12 simply from what you hear in this courtroom during the
13 course of the trial.

14 Now, I don't think there will be any publicity
15 concerning this trial, but if there were to be do not
16 consider any newspaper articles, you don't read those. If
17 they were happen to be something on the TV news, you ignore
18 that and don't pay attention to it. You just shut off the
19 TV, shut off the radio, put down the paper and just don't
20 pay attention to anything except, again, what you hear in
21 this courtroom.

22 Now, after the case is submitted to you, you must
23 discuss it only in the jury room as I said earlier with
24 your fellow jurors. The attorneys and parties in this case
25 know that they're not to talk to you at all. They're not to

1 make any comments and see you except what they present in
2 court. If you see them in the hallway during a break or
3 something and they don't speak to you it's not because
4 they're being unfriendly or don't want to talk to it's
5 because I've told them not to. We don't want to raise any
6 type of appearance of impropriety in the course of this,
7 this trial.

8 Now, it's important that you keep an open mind and not
9 decide any issue in the case until all of the evidence has
10 been presented, the parties have made their closing
11 arguments, and I have instructed you on the law in this
12 case.

13 Now, in just a few moments the attorney for the State
14 will make what is called an opening statement. The
15 attorney will explain to you the issues in this case or at
16 least what the attorney thinks the issues are in this case.
17 The attorney for the respondent will also make an opening
18 statement. What the attorneys tell you during their opening
19 statements is not evidence in this case. It is only their
20 contention as to what the issues are. The evidence in this
21 case will be presented to you by the testimony of sworn
22 witnesses from this witness stand and any other exhibits
23 that may be introduced into evidence.

24 Now, from time to time during the course of the trial,
25 you may hear one of the attorney say, Your Honor, I have a

1 question that we need to pose to the court or a matter of
2 law that we need to discuss. Sometimes we can do this at
3 the bench outside of your earshot, but sometimes I find it
4 necessary that I may have to excuse you from the courtroom
5 and so we can discuss these issues. And the reason we do
6 that is in discussing the issues of law the facts come up
7 sometimes and if I made a comment on the facts and you were
8 hear that, as I told you earlier, it wouldn't be proper.
9 You're not -- I'm not to make comments on the facts, but we
10 have to address the facts sometimes when discussing issues
11 of the law. So that might be necessary to have you leave
12 the courtroom. And we try not to do this anymore often than
13 we have to, but sometimes it is absolutely necessary and we
14 try not to inconvenience you anymore than your already
15 being inconvenience, I'm sure you feel anyway.

16 All right. Now, in determining what the facts are in
17 this case, you must decide whether or not the testimony of
18 the witnesses is believable. It will be my responsibility
19 to rule as a matter of law as to whether certain testimony
20 is admissible. But once the testimony is admitted whether
21 or not you believe it is solely for you to determine. In
22 deciding whether to believe a witness you have the right to
23 consider whether the witness has an interest in the result
24 of the trial. Whether the witness's prejudice toward either
25 the plaintiff or the respondent or the State or the

1 respondent. The opportunity for the witness to have seen
2 the matters and things about which the witness may testify
3 and the way the witness actually acts on the witness stand.

4 You have a right to consider anything that is in the
5 record that will help you evaluate the testimony of the
6 witnesses. That means it is your duty to pay close
7 attention to these witnesses, to observe the witnesses, to
8 listen to the witnesses, and to pay close attention to the
9 attorneys and to the court. Don't let your thoughts
10 wander. But pay attention to the testimony so that at the
11 end of the try you'll be able to determine what the facts
12 are to apply the law to those facts and render a verdict.

13 Mr. Foreman, Mr. Abbott, I appointed you as foreperson
14 that's why I've got you in that seat. It is your duty to be
15 the one who presides in jury room. You'll also be the
16 spokesperson for all of the other jurors and then you'll be
17 the one at the conclusion of the trial and when a verdict
18 is render to indicate what that is and sign it, but I'll
19 explain that a little bit later. But during the course of
20 the trial you are the spokesperson for the jury and you'll
21 preside in the actual jury room.

22 Now, I - I do permit note taking. Some judges do and
23 some judges don't. If you wish to make some notes or have
24 pad and paper during the course of the trial I have no
25 problem with you doing that. The only problem with taking

1 notes is sometimes when you're busy writing down something
2 taking a note you might miss something during the course of
3 the testimony. And if somebody does take notes, the one
4 taking notes the notes in his memory is no better than
5 anybody else who's just remembering it and not taking any
6 notes. But I do allow it if you want to do so.

7 All right. Now, counsel, is there anything that you
8 object to that I've said to the jury at this time?

9 MS. SHAW: No, Your Honor.

10 MR. FALK: No, Your Honor.

11 THE COURT: Are you ready for your opening
12 statement?

13 MS. SHAW: Yes, sir, I am.

14 THE COURT: Okay.

15 MS. SHAW: Madam Court Reporter, will you be able
16 to hear me here?

17 COURT REPORTER: Yeah.

18 **Opening Statement- Ms. Shaw:**

19 Good morning, ladies and gentlemen. My name is
20 Suzanne Shaw. I am an Assistant Attorney General for the
21 State of South Carolina. I work in the Sexually Violent
22 Predator Unit in Columbia and we are here this week to try
23 the Matter of the Care and Treatment of Andy Eugene Hyman,
24 who is seated at counsel's table to my right.

25 Before I go into my opening, I'm actually going to

1 apologize to you. For starters, I'm naturally a very soft-
2 spoken person. We had argument yesterday and I was
3 repeatedly told to speak up. I will do my very best to
4 speak up with you, but if any time you cannot hear me, by
5 all means just please raise your hand, I'll be happy to
6 repeat whatever question I asked or I'll be happy to repeat
7 whatever arguments I've made, okay.

8 (Whereupon, the jurors nod their heads)

9 Awesome. Secondly, I'm going to secondarily apologize
10 to you because I'm partially deaf in my left ear. You will
11 see me during the course of this trial cocked my head.
12 It's not a cue to you. It's not any sort of telegraphing.
13 It's, basically, I need to make sure I heard exactly what
14 the witness said, okay.

15 (Whereupon, the jurors nod their heads)

16 Great. So, now, as I said we're here to try the
17 Matter of Andy Eugene Hyman. This is a civil commitment
18 case. Mr. Hyman has been convicted of multiple sexually
19 violent offenses under the SVPA. What we are seeking his a
20 long term commitment for control care and treatment at a
21 secure facility located in Columbia. And, now, I don't
22 know if any of y'all have ever sat on a jury before, but
23 every story has a theme to it. The theme in this matter is
24 that of information. The question is, who has the most
25 information and which information do you believe?

1 Now, before we go into what the information actually
2 is, I'm gonna tell you a little bit about the Sexually
3 Violent Predator Act. It was passed in 1998. And it does
4 provide for the civil commitment of individuals who have
5 been convicted for certain sexual violent offenses. The
6 offenses which are enumerated in the act apply to a very
7 small subset of offenders and this program is reserved for,
8 basically, the worst of the worst. In the course of
9 evaluating people for commitment there have been since
10 1998, there been approximately 10,000 individuals reviewed
11 under the act. Only 369, I believe, have been actually
12 committed. It's a very, very small number of a very select
13 group of people, okay. So this is not the State seeking to
14 throw every person who's been convicted of a sex offense
15 into a commitment facility. This is reserved for very,
16 very small group of especially dangerous predators.

17 Now, under the statute, I am required to prove to you
18 under criminal standard because if this man is committed,
19 it does involve a significant deprivation of his liberty
20 rights. He served his time. We are not seeking to punish
21 him and this is a civil action. It's not criminal. But I'm
22 required to prove to you the facts of this case under
23 criminal standard.

24 The first question you have to answer in which I must
25 prove is has Mr. Hyman been convicted of a sexually violent

1 offense as enumerated under the law? There's very little
2 dispute he has. He has four convictions for criminal sexual
3 conduct in the second degree, criminal sexual conduct in
4 the third degree, and two convictions for a lewd act on a
5 minor. That's number one.

6 Number two, I have to prove to you through expert
7 testimony that Mr. Hyman does, in fact, suffer from a
8 mental abnormality or personality disorder which affects
9 his ability to control his behavior and which it makes him
10 likely to re-offend. This is one element, but they are
11 many several parts to it. The way you are going to come to
12 that decision is you will hear testimony from doctors,
13 Gehle from the Department of Mental Health and Dr.
14 Gottfried from the Medical University of South Carolina.
15 Dr. Gehle will be testifying on behalf of Mr. Hyman. Dr.
16 Gottfried will be testifying on behalf of the State. And
17 if you agree at the end of this case, Mr. Hyman will be
18 transported from the Florence County Detention Center where
19 he is currently housed to the secure facility at WellPath
20 in Columbia and he will remain there on an indefinite
21 basis.

22 So that being said, and having that information in
23 your hand at this point, what are the qualifying
24 convictions? What I just told you. Multiple criminal
25 sexual conduct with minors and lewd act. So the facts of

1 those underlying convictions are graphic. They're going to
2 be troubling to you. You cannot let your personal distaste
3 for what this man has done color your judgment of whether
4 he has a mental abnormality that makes him likely to re-
5 offend. You're the ultimate judge of the facts and this
6 rest entirely in your hands.

7 So I'm gonna give you some very basic details about
8 what he's done and just go into this understanding that
9 these are bare facts. In 1997 Mr. Hyman was convicted of
10 two counts. He was originally charged with four counts, but
11 he was convicted of two counts, one of criminal sexual
12 conduct in the second degree with a minor, one count of
13 lewd act. There were three victims alleged in those
14 offenses, only two were convicted and he was sentenced and
15 he served his time. The bare facts are that Mr. Hyman was
16 alleged to have fondled, touched the breast of, touch the
17 vaginal areas of, perform cunnilingus on and forced a
18 female child to perform fellatio on him. Those are the
19 allegations. There's, obviously, going to be some dispute
20 about that. All of his victims were ages six and eight.

21 Now, after he was released from his incarceration for
22 those offenses, Mr. Hyman return to the community. He got
23 married. He had two children. He was living a sensibly
24 normal life, but during that time, as he disclosed he Dr.
25 Gottfried, he was, in fact, using semi-legal images of

1 young female children, semi-clothed to feed his mental
2 abnormality. He wasn't charged again until 2016. On that
3 occasion he was charged with four counts of criminal sexual
4 conduct in the third degree against three additional
5 victims. All female children. All between the ages of five
6 and nine. In those offenses he was alleged to have fondled
7 them, again, and to have touched them inappropriately,
8 though there is no reported of those incidences that he
9 attempted to penetrate them with his penis. He was, again,
10 sentenced. He received ten years. And he has completed his
11 sentence as of today. So that's why we're here. The SVPA
12 provides for a mechanism 270 days before an inmate in SCDC
13 is released for multiple tiers of review before we get to
14 where we are today. I'm gonna tell you a little bit about
15 that so you'll have more about the procedural background of
16 this kind of the case.

17 So, when an individual with the qualifying criminal
18 offense comes up for release they are sent or their file is
19 sent to what's called a multi-disciplinary team at the
20 South Carolina Department of Corrections. It's a group of
21 people within the organization and they review the file,
22 they review the facts, and they make a recommendation
23 whether to refer the case forward. In this case, that
24 happened.

25 The next level of review it's called the Prosecutors

1 Review Committee. There's a committee of three and they
2 also review the file, they review the facts, and they make
3 a determination whether the case should be referred on.
4 That also happened in this case.

5 After the case is referred on it get sent to my office
6 where either myself or my colleague Mr. Runyon, who's not
7 here, we are required, we have no discretion in this, we
8 are required to file a petition for commitment under the
9 SVPA. Once that petition is filed, an initial probable
10 cause determination is made by a judge, such as Judge
11 Henderson, and an order for probable cause is issued. If
12 the offender has been released to the community by that
13 point he gets picked up. If he's still at SCDC he stays
14 there.

15 And then after all of that is done, we have what's
16 called a probable cause hearing. A probable cause hearing
17 is argument between counsel because this is a quasi
18 criminal matter so Mr. Hyman is entitled to counsel. He
19 gets appointed under the office of the indigent defense.
20 And it's an argument between counsel as to whether an order
21 for an evaluation should be issued. The order for an
22 evaluation, if it is issued, then gets sent to the
23 Department of Mental health along with the offenders file
24 and any subsequent information they may request. In this
25 case, that happened. The file was sent to DMH, Dr. Marie

1 Gehle was assigned to review the file and conducted an
2 evaluation and she did that.

3 Now, once an evaluation is conducted by the DMH
4 expert, both sides have the opportunity to review it. It
5 gets sent to my office, we send it to the defense counsel,
6 and if anybody doesn't like the opinion they have the right
7 to get a second opinion. That also happened in this case.

8 Dr. Gehle reviewed Mr. Hyman's file. She concluded he
9 was, in fact, a pedophile. But she concluded that his
10 mental abnormality did not make him likely to re-offend.
11 When our office received that report, I was like, hmm, I
12 don't know, there might be something more to this, we would
13 like a second opinion. And so we contracted with MUSC to
14 have Dr. Gottfried review the file again and do her own
15 independent evaluation and she did.

16 Dr. Godfrey came to the conclusion, as well, that Mr.
17 Hyman is, in fact, a pedophile, except her conclusion was
18 that he is likely to re-offend. The question is why? Why
19 would two well-qualified experts, who both have extensive
20 experience in this field, come to two radically different
21 conclusions. One which dramatically effects a man's
22 liberty interest and the other which recommends that he be
23 released to the community ---

24 MR. FALK: Your Honor, May I approach?

25 THE COURT: Yes, sir. Okay.

1 (Whereupon, a bench conference was held on the record)

2 MR. FALK: I mean, she's going pretty far into talking
3 about the facts that are not in evidence yet. And, I mean,
4 this is maybe a very accurate closing argument, but this is
5 beyond the scope of what a proper opening argument is.

6 THE COURT: You are pretty detailed. You need to
7 be more general ---

8 MS. SHAW: I can do that.

9 THE COURT: I agree with Mr. Falk, be more general
10 so we can get started.

11 MR. FALK: And one other point ---

12 MS. SHAW: Your Honor, I'm almost done anyway.

13 MR. FALK: And one other point, and I'm gonna have
14 to go and address this one, but I want you to instruct the
15 State not to refer to me as a public defender, I don't want
16 that.

17 MS. SHAW: How's that going to prejudice the jury?
18 He's entitled to counsel and it's through OID.

19 MR. FALK: "He's entitled to competent counsel" I
20 think sometimes jurors can draw a negative implication of
21 public defenders and that they always get the guilty
22 people. I just don't want further reference to that.

23 THE COURT: Yeah. I mean, just use the attorney
24 for the respondent.

25 MS. SHAW: That's fine, Your Honor. I mean, I

1 don't -- I mean, that's by virtual of the argument itself
2 saying OID is incompetent, but certainly that is not the
3 case here. I think through the presentation, the jury will
4 see that Mr. Falk is quite a competent attorney.

5 THE COURT: I know. But, I mean, there's no sense
6 referring to him ---

7 MR. FALK: That's what I think.

8 THE COURT: --- about anything other than just he's
9 the attorney for the respondent.

10 MR. FALK: Thank you.

11 MS. SHAW: Well, I have nothing more to say about
12 that anyway.

13 (Whereupon, we go back on the record for the jury)

14 I'm apologize, Ladies and gentlemen. So, where was I?
15 The second opinion, right. So we have two experts who come
16 to radically different conclusions about what should happen
17 with Mr. Hyman. You will hear testimony from both of them
18 and it will be up to you to decide who to believe and who,
19 and whose testimony to give more weight to. You will hear
20 certain testimony in this matter that will make you
21 uncomfortable. I exhort you do not shy away from it. It's
22 very important information. Everything that is going to be
23 said in this courtroom will need to be factored into what
24 your ultimate decisions are.

25 So, getting back to the final issue in this case, Mr.

1 Hyman has been convicted of sexually violent offenses, we
2 know that. We know that both experts have determined that
3 he suffers from pedophilic disorder. The question that you
4 ultimately must answer is whether he is likely to re-
5 offend? And that is what the evidence is going to tell you
6 and I would submit to you that, yes, in fact, he is likely
7 to re-offend and, yes, he does need to be committed for
8 long-term control care and treatment at WellPath.

9 I thank you for your attention and I thank you for
10 your service.

11 THE COURT: Mr. Falk?

12 MR. FALK: Your Honor? Opposing Counsel?

13 **Opening Statement- Mr. Falk:**

14 Ladies and gentlemen of the jury, I'm gonna have a
15 lot more to talk to you about at the end of this case. I
16 just wanted to sort of give you a little bit of who I am. I
17 have a private practice in Charleston, South Carolina. And
18 I have a contract to represent the people who are in this
19 situation, who are accused like Mr. Hyman is. And so I do
20 a lot of these cases up and down the state.

21 Now, I believe that at the end of this case the court
22 is going to instruct you on what the elements are, what the
23 State has got to prove beyond a reasonable doubt. And I
24 really think this is going to come down to whether or not
25 the State can prove to you beyond a reasonable doubt that

1 there is a likelihood that he would re-offend. I do not
2 think that we're gonna find a lot of contested testimony. I
3 don't think there's gonna be much dispute that Mr. Hyman
4 has some personality defects, mental abnormality.

5 But the issue is whether or not he fits in the class
6 of people who are considered the worst of the worst and
7 whether or not it's likelihood to re-offend. Because,
8 certainly, this program is not designed to put everybody
9 away treatment. It's not, it's not necessary. The question
10 at the end of the day is whether or not there's going to be
11 a likelihood to re-offend? I think you're going to hear
12 testimony which may be will make you wonder about what the
13 word "likely" means. It's gonna be something that I
14 believe the court is gonna instruct you on and that you're
15 really gonna have to reach her own opinion on.

16 This case is going to go very quickly and it's gonna
17 have huge implications for my client because it's gonna
18 have implication on what's going to happen to him next. So
19 I really want you to focus and listen to the testimony.
20 But what I don't want you to do is to get overwhelmed by
21 the facts of the crimes that he was convicted of because
22 that's gonna be very, it's gonna be very easy to kind of
23 waddle in all of that information and really get you upset
24 and really get you mad and I'm afraid that it's gonna put
25 you in a position that you're going to want to punish him

1 further and that is absolutely not your job. The system is
2 not designed to punish people, but it certainly can have
3 that effect to punishing people. And that's gonna -- it's
4 really gonna be your job. Y'all are kind of like the
5 gatekeepers here to make sure that the system is gonna work
6 the way it's intended to.

7 Now, I ask - I ask judge to ask you some questions
8 during the voir dire when we were down in the jury assembly
9 room. And I was just trying, with some of those questions,
10 I was trying to sort of weed out the people who I thought
11 were going to sort of having a knee jerk response to
12 hearing the allegations that he was charged with. And I
13 think, you know, we've got a pretty good group here and I
14 think we've got a group that, from based on your responses
15 down there, I think you can be open-minded and not be just
16 overwhelmed by some of this testimony I believe you're
17 going to hear and really focus on the fact that whether or
18 not it's likely that Mr. Hyman will commit a crime of
19 sexual violence in the future. I think that once you
20 carefully consider the testimony and also considering the
21 burden of proof here it's not just that the State's gotta
22 be a little bit more persuasive than Mr. Hyman's case, its
23 gotta be a lot more persuasive and that's gonna be
24 something that you're going to need to weigh because this
25 is a matter of serious personal, you know, deprivation of

1 his personal liberties is what's gonna happen. He's gonna
2 be confined, I believe, as the State said for - I'm not
3 sure if you use the term indeterminate or indefinite period
4 of time - I'm not sure which term she used, but he's gonna
5 be there and he's gonna be confined and that's gonna be a
6 secured facility and that's why you have to be pretty clear
7 that you think that the State has proven their case beyond
8 a reasonable doubt, and not just a little bit more.

9 So at the end of the day I'm hoping that y'all will
10 give us your attention. I'm hoping that you remain open-
11 minded and not be swayed by some of the emotions that
12 probably are gonna come up in this case. And I think at
13 the end of the day, you're going to realize that the State
14 is unable to prove their case beyond a reasonable doubt and
15 the State is unable to prove that Mr. Hyman is likely to
16 re-offend.

17 Thank you.

18 THE COURT: Ms. Shaw, you may call your first
19 witness?

20 MS. SHAW: Thank you. Your Honor. The State
21 calls Dr. Emily Gottfried.

22 THE COURT: The clerk will swear the witness.

23 THE CLERK: Do you swear or affirm that the
24 testimony you give in this case will be the truth, the
25 whole truth, nothing but the truth so help you God?

1 DR. GOTTFRIED: I do.

2 THE CLERK: Thank you. Have a seat.

3 DR. EMILY GOTTFRIED, first being
4 duly sworn, testified as follows:

5 **Direct Examination by Ms. Shaw:**

6 Q. Good morning, Dr. Gottfried.

7 A. Good morning.

8 Q. Would you please state your name and spell it for the
9 record?

10 A. Yes. Dr. Emily Gottfried, G-o-t-t-f-r-i-e-d.

11 Q. Okay. And by whom are you employed and in what
12 capacity?

13 A. I work at the Medical University of South Carolina in
14 Charleston. I am an Assistant Professor of Psychiatry in
15 Behavioral Sciences and I service as the Director of our
16 Sexual Behavior Clinic and Lab.

17 Q. Okay. And when did you started at MUSC?

18 A. I was hired in 2015.

19 Q. Okay. And before that did you have any other
20 experience?

21 A. Yes.

22 Q. And what was that?

23 A. So I obtained my license in psychology in 2015, but
24 before that while I was training since approximately 2007,
25 I worked for the Federal Bureau of Prisons working with

1 people who have been charged or convicted of crimes. I
2 worked at multiple state's forensic hospitals. Florida
3 State Hospital, South Western State Hospital. I worked
4 with Florida State University Police Department. I also
5 did my pre-doctoral clinical psychology internship in
6 forensic psychology through the Department of State
7 Hospitals in California where I worked at Patton State
8 Hospital which is a maximum-security forensic hospital.
9 And then I did my Postdoctoral Fellowship in Forensic
10 Psychology at Georgia Regents University in Partnership
11 with East Central Regional Hospital in Augusta, Georgia.

12 Q. Okay. Now, in order to be employed by MUSC you're
13 required to have certain, in your capacity, you're required
14 to have certain education background and experience,
15 correct?

16 A. Correct.

17 Q. And so where did you do your undergraduate?

18 A. I went to San Diego State in San Diego, California
19 where studied psychology.

20 Q. Okay. You obtain a Bachelor of Arts or Science?

21 A. A Bachelor of Arts.

22 Q. Okay. And where did you do your graduate work and what
23 degrees did you obtain?

24 A. After I graduated from San Diego State I went to
25 Columbia University in New York City where I obtained a

1 Master of Arts Degree in Psychology. I then went to Florida
2 State University in Tallahassee, Florida where I obtained a
3 Masters of Science Degree in Clinical Psychology and then a
4 PhD or a Doctorate in Clinical Psychology, as well.

5 Q. Okay. And with your postdoctoral fellowships and
6 internships what specialization were you obtaining while
7 you were doing that work?

8 A. So I was primarily specializing in both assessment and
9 forensic psychology which is in the capacity that I work
10 assessing criminal defendants for the justice system. So
11 people who were charged with or convicted of offenses
12 looking at things such as, are they competent to stand
13 trial or other issues related to mental illness and then a
14 large part of my focus was own risk assessment specifically
15 sexual violent risk assessment.

16 Q. Okay. And as part of your employment with MUSC you
17 are required to be licensed in the State of South Carolina,
18 correct?

19 A. That is correct.

20 Q. And are you licensed in any other state's currently?

21 A. I'm also licensed in Clinical Psychology in Georgia.

22 Q. Okay. Now, how long have you held your South Carolina
23 license?

24 A. I've obtained both licenses in 2015.

25 Q. Okay. And have you been working as a clinical and

1 forensic psychologist with concentration in sex offender
2 evaluations continuously since becoming licensed?

3 A. Yes.

4 Q. And have you pursued any other specialized experience
5 or research studies in the course of your employment?

6 A. Yes. I conduct research primarily on sexual behavior
7 in the assessment of sexual behavior. So I authored
8 numerous peer-reviewed publications and book chapters given
9 presentations of scientific meetings. We have to complete
10 continuing education to maintain our licenses. So I go to a
11 lot of professional conferences and trainings and that I
12 give those as well in my capacity.

13 Q. Okay. So, specifically, can you talk about some of
14 your publications that are peer-reviewed and what you have
15 to do with sex offenders?

16 A. Certainly. So at MUSC in the sexual behaviors clinic
17 and lab we maintain a clinical database of people that we
18 evaluate. So we turn to that database and ask a lot of
19 specific research questions regarding personality factors,
20 substance use, particular mental illnesses. Also, the
21 physiological assessment of male sexual arousal and female
22 sexual arousal, we do a lot in that area as well seeing how
23 we can physiologically assess someone's sexual arousal that
24 is not just by asking them. So, I'm in a International
25 Standardization Research Group for physiological

1 measurement of male sexual arousal. I say that's what I
2 give more and I am invited pretty regularly to give
3 lectures on that through professional organizations,
4 universities, and state hospitals across the United States
5 and Canada.

6 Q. Okay. And can you briefly describe the types of
7 presentation that you routinely give?

8 A. They vary. So frequently I'm asked to give an
9 evaluations on comprehensive evaluations of sexual behavior
10 to include physiological measurement of male sexual
11 arousal. I say that's what I give most often when I'm
12 invited by other universities and hospitals to speak. But
13 then I also regularly present on my own research findings
14 from the data that we have at MUSC and then international
15 collaborations with Canada, the Czech Republic, and the UK
16 on physiologically assessing male sexual arousal.

17 Q. Okay. And are you also a member of any professional
18 associations?

19 A. Yes.

20 Q. And what are they?

21 A. I am a member of several. So some of them include the
22 Association for the Treatment of Sexual Abusers. That's
23 the national organization for this line of work of people
24 who both evaluate and/or treat people who have been charged
25 with or convicted of sexual offenses or otherwise engaged

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1 in inappropriate sexual behavior for the local chapter of
2 the Association for the Treatment of Sexual Abuser here in
3 South Carolina. I'm on the executive board. I'm the
4 secretary of that division. For the American Psychological
5 Association I serve on the executive board of the Division
6 41 so that's American Psychology and Law Society. I also
7 serve on the executive board of the Part of Clinical
8 Psychology of the APA looking at testing and assessment.
9 I'm a member of the American Academy of Forensic Sciences
10 and Society for Personalities Assessment, and several other
11 ones.

12 Q. Okay. So you also teach at MUSC, correct?

13 A. I do.

14 Q. Okay. And do you oversee fellows and other young
15 psychologist or medical students who are pursuing secondary
16 studies?

17 A. Yes, all of those.

18 Q. Okay. And you train people, in fact, on how to do
19 these sorts of evaluations?

20 A. That's correct.

21 Q. Okay. And as part of your evaluations, how many have
22 you done in total?

23 A. Evaluations pursuant to Sexually Violent Predators Act
24 or evaluations total?

25 Q. Yes. The SVPA, specifically, and then I'll ask you

1 some other questions about in total?

2 A. I've had about thirty-seven cases referred to me for
3 Sexually Violent Predator Act. Some of those about twenty-
4 two of those were for pre-commitment's. So the person was
5 having a trial to see if they met the criteria to go into
6 the program and then the rest of them were what's called
7 annual reviews. So when they are going through treatment
8 and thinking they're making progress there would be another
9 proceeding to see if they're, if they've gotten better.

10 Q. Okay. Now, you just don't perform evaluations on the
11 SVPA, correct?

12 A. Correct.

13 Q. Okay. What other types evaluations, specific to sex
14 offenders, do you perform?

15 A. So in the Sexual Behaviors Clinic and Lab I have a
16 contract with United States Federal probation. So when
17 people are released from federal - from federal prison,
18 excuse me, for sexual offenses they are sent to our clinic
19 and lab where I evaluate them to look at their level of
20 risk and their treatment needs. And then oversee the
21 treatment program for federal probationers and I provide
22 some individual treatments. I evaluate and sometimes give
23 treatment to people who are preferred by licensing boards.
24 So nurses, physicians, massage therapists, who have some
25 kind of sexual boundary violation. I do evaluations for

1 private attorneys when somebody is charged with an offense
2 for their trial to do an evaluation to see what's going on
3 with them or if they have an illness that they need
4 treatment for. I evaluate juveniles for the Family Court
5 when they've been charged with inappropriate sexual
6 behavior. So kind of the spectrum of inappropriate or
7 illegal sexual behaviors.

8 Q. Okay. And you do evaluations for both prosecution side
9 and defense, correct?

10 A. Correct.

11 Q. Okay. And how many have you done in total since 2015?

12 A. That I don't know. I do probably at least twelve a
13 year, sexual behavioral evaluations, in addition, to the
14 other kinds of risk assessments that I do. It really
15 depends. So some months all do three or four and sometimes
16 I'll go a couple of months without doing that particular
17 case. So I would say around twelve a year or more.

18 Q. Okay. And you're compensated for these evaluations,
19 correct?

20 A. MUSC is compensated.

21 Q. Okay. And your opinion is not affected by that
22 compensation at all, is it?

23 A. Correct. I get paid my salary, regardless.

24 Q. Okay. So what, if you know, is the percentage of
25 recommendations in SVP specific cases for commitment versus

1 non-commitment?

2 A. So I split those numbers up between whether it's a
3 pre-commitment. So this kind of case where the State is
4 looking to put someone in versus in a annual review where
5 the person is looking to come out, for pre-commitment it's
6 about 58% of those cases that are referred to me for second
7 opinions. So I only do second opinions for the Attorney
8 General's Office. About 58% of those, it was my opinion
9 that the person met the criteria lead out in the statute to
10 be a sexually violent predator so then the other 41%, 42%
11 it was my opinion that they did not meet.

12 Q. Okay. And have you ever testified in a commitment
13 proceeding before?

14 A. Yes.

15 Q. Okay. Approximately, how many times?

16 A. About thirteen or fourteen times pursuant to Sexually
17 Violent Predator Act. I'd have to count if you want me to
18 split it up between pre-commitment and annual review?

19 Q. I'd say let's just ask, how many times have you
20 testified as an expert in total?

21 A. So just for SVP it's been thirteen or fourteen but
22 then all the other testimony I do is, is on top of that.

23 Q. All right. And have you -- you've been qualified in
24 South Carolina?

25 A. Correct.

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1 Q. Okay.

2 MS. SHAW: Your Honor, at this time based on that
3 foundation I would offer Dr. Emily Gottfried as an expert
4 in clinical psychology, forensic psychology and,
5 specifically, in sex offender evaluations.

6 MR. FALK: No objection.

7 THE COURT: Okay. All right. I will find her
8 qualified as an expert in clinical psychology, forensic
9 psychology and sex offender evaluations. Before you
10 question her let me explain to the jury. I have now
11 qualified Dr. Gottfried as an expert. Normally, when a
12 witness testifies they're not allowed to give an opinion
13 about something. They normally have to just testify purely
14 on the facts, what they may be saw, heard, smell and
15 whatever, something of that nature. However, once somebody
16 is qualified as an expert they are permitted to give their
17 opinion in areas in which, within which they have been
18 qualified as an expert. So now that I have qualified Dr.
19 Gottfried as an expert in the area of clinical psychology,
20 forensic psychology, and sex offender evaluations, she can
21 give opinion testimony in that particular area. That does
22 not mean you have to accept her testimony or the opinion
23 that she gives you, but it's evidence for you to use as you
24 see fit. Okay. You may proceed.

25 MS. SHAW: Thank you, Your Honor.

1 Q. All right. Dr. Gottfried, are you familiar with in
2 Andy Eugene Hyman?

3 A. Yes.

4 Q. Okay. How are you familiar with him?

5 A. So he was referred to the MUSC Sexual Behaviors Clinic
6 and Lab by your office, the Attorney General's Office, for
7 a second opinion regarding pre-commitment for the Sexual
8 Violent Predator Act.

9 Q. Okay. So describe what you do when you are requested
10 to render a second opinion in an SVP case?

11 A. So frequently it's first a file review to review all
12 of the file information and review the prior psychological
13 reports to see if it looks like there's additional data
14 that might be needed to render an opinion. So frequently
15 I'm asked to first review the file. If I believe that
16 there's more to be done for the evaluation then I have a
17 conversation with the Attorney General's Office. Then your
18 office sends me all of the collateral information in the
19 case. So that would be things like police reports,
20 documents from the sheriff's department, prison records,
21 mental health records, victim/witness statement, and things
22 like that. So I review all of those documents. Then I
23 scheduled three days for the examinee to come into the lab
24 where I conduct psychological testing, physiological
25 testing, and then do a comprehensive clinical interview

1 that's typically four to five hours where I am assessing
2 all the way from their developmental history to present
3 functioning, looking at the broad spectrum of psychiatric
4 or mental illnesses and also personality functioning and
5 sexual behavior and offending history.

6 Q. Okay. Now, as part of the information packet that you
7 received, are you also usually provided given that your
8 giving a second opinion with the pre-commitment evaluation
9 authored by the Department of Mental Health's expert?

10 A. Yes.

11 Q. Okay. And you review that in conjunction with all of
12 the other information?

13 A. Correct.

14 Q. Okay. Now, did you receive that kind of information
15 for this case?

16 A. Yes, I did.

17 Q. All right. Now, can you tell the jury about the
18 information that you received, particularized information
19 from Mr. Hyman?

20 A. Yes. So I reviewed incident reports and witness
21 statements from both police departments and sheriff's
22 departments. I reviewed the arrest warrants, affidavits,
23 indictments from General Sessions Courts. I reviewed the
24 forensic interviews of the victims. I looked at his prison
25 records, criminal history reports, and prior evaluation

1 that he had.

2 Q. Okay. And were you able to review this before you met
3 with Mr. Hyman?

4 A. Yes. I review everything and then when I'm writing the
5 report I'm summarizing it again, reviewing again, also
6 going over it with the examinee so I review it multiple
7 times.

8 Q. Okay. And you actually met with Mr. Hyman on more
9 than one occasion in this case, is that correct?

10 A. Yes. I typically meet with them on three separate
11 dates.

12 Q. Okay. And did that happen in this case?

13 A. Yes.

14 Q. How much time did you spend with Mr. Hyman?

15 A. Altogether between the time of him taking assessment
16 measures and going over the consent form and undergoing the
17 clinical interview with me it was about fourteen and half
18 hours total over, across three days.

19 Q. Okay. And did you conduct any additional collateral
20 interviews in addition to the record review in your
21 meetings with Mr. Hyman?

22 A. I just contacted one of the attorneys at South
23 Carolina Department of Probation and Parole and Pardon to
24 find out if upon his release if Mr. Hyman would have any
25 supervision requirements once he got out of prison.

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1 Q. Okay. And what information did you learn from that
2 interview?

3 A. That he wouldn't have supervision once that time had
4 expired which I believe it had, it was in February 2021,
5 but that he would be on GPS monitoring upon his release.

6 Q. And would he be required to register as a sex
7 offender?

8 A. Yes.

9 Q. Okay. So just the GPS monitoring and registration are
10 the only requirements of Mr. Hyman if he's released to the
11 community?

12 A. That is what I was told by South Carolina PPP.

13 Q. Okay. Now, you read the sentencing sheets and the
14 associated documents, correct?

15 A. Yes. Those were part of information provided by your
16 office for me to review.

17 Q. Okay. Does Mr. Hyman have any convictions for sexual
18 offenses?

19 A. Yes.

20 Q. And what are they?

21 A. In 1997 he pled guilty to criminal sexual conduct in
22 the second degree and lewd act. And in 2016 he pled guilty
23 to criminal sexual conduct with a minor in the third degree
24 and commit/attempt lewd act victim under sixteen years old.

25 Q. Okay. And all of his offenses were criminal sexual

1 conduct with a minor, correct?

2 A. I believe, to my knowledge, my review of the 1997
3 sentencing sheet said that he pled guilty to criminal
4 sexual conduct second-degree, but the original charges all
5 said with a minor. But I'm not sure on the sheet that that
6 was what was hand written to.

7 Q. Okay. Well, I'm going to show you the documents that
8 have been pre-marked as State's 1 and 2, and would you
9 please identify them for the jury?

10 A. Yes. So the first one is from 1997. The date is July
11 31, 1997 and it says, "Andy, now comes the defendant, Andy
12 Eugene Hyman, in open court and please guilty to CSC, II,
13 lewd act.

14 Q. Okay. And what to the other documents and State's 1
15 say?

16 A. So for, I believe, this is for the lewd act. It says
17 he was sentenced to fifteen years which was suspended with
18 probation for five years. And then on the CSC, II degree,
19 he was committed to the Department of Corrections Youthful
20 Offender Division for indeterminate period of time not to
21 exceed six years and it says the defendant is to be entered
22 into sex offender program.

23 Q. And do you know how much he served for that offense or
24 for those offenses?

25 A. I believe he served four years.

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1 Q. And State's Exhibit 2, can you please identify and
2 tell the jury what is contained in that document?

3 A. Yes. This is a sentenced sheet from the court of
4 General Sessions in Florence. It says that he pled guilty
5 to criminal sexual conduct with a minor third degree,
6 commit/attempt lewd act victim under sixteen years and
7 actor over fourteen years. For a negotiated sentence and
8 then handwritten it says ten years placement on central
9 registry of child abuse/neglect.

10 Q. Okay. Thank you.

11 MS. SHAW: Your Honor, I'd move these documents
12 into evidence at this time.

13 MR. FALK: Can I be heard?

14 THE COURT: Yes, sir.

15 MR. FALK: Your Honor, we have no objection to the
16 documents related to the 2016 conviction, what is listed in
17 the State's petition as being a qualifying conviction and
18 certainly we have no problem with that going back. I think
19 the -- may I approach the bench?

20 THE COURT: Yes, sir.

21 (Whereupon, a bench conference was held on the record)

22 MR. FALK: They only need to prove the one that's
23 identified in their petition as being the qualifying
24 conviction. The '96 it's a pre-act conviction. There's
25 already been testimony about it. By sending it back there

1 it's only, putting undue emphasis on it that they've
2 already testimony of it. I don't know why that second
3 exhibit has to go back if it's not part of the State's
4 proof and it's just redundant.

5 MS. SHAW: Your Honor, number one, it's admissible
6 under the hearsay exception as a certified criminal record
7 so it can be admitted. Number two, the jury has the right
8 to know every single conviction and the sentences for which
9 Mr. Hyman was convicted. And, by the way, this is the
10 original qualifying conviction. This is what the petition
11 is, in part, based on. It's based on the ---

12 MR. FALK: No, it's not. I've read the petition
13 and it's not listed as the qualifying conviction.

14 MS. SHAW: It is listed under the qualifying
15 convictions. It's either the primary or the additional
16 sexual offenses. They're in. I mean, they're entitled to
17 have all of this information about what he was convicted of
18 and the sentences. Just because it's prejudicial to Mr.
19 Falk's client doesn't mean it shouldn't go in.

20 MR. FALK: I've read the petition that's listed as
21 subparagraph or in Section in D as other convictions and it
22 puts undue emphasis on it.

23 (Whereupon, we go back on the record for the jury)

24 THE COURT: Okay. All right. I'm going to
25 overruled the objection. I'm going to allow the

1 convictions from 1997, I believe it was, to be admitted
2 into evidence as well.

3 MS. SHAW: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Whereupon, the 1997 Indictment and Sentencing Sheet has
6 been marked and entered into evidence as State's Exhibit
7 No. 1)

8 (Whereupon, the 2006 Sentencing Sheet has been marked and
9 entered into evidence as State's Exhibit No. 2)

10 Q. All right. So when you met with Mr. Hyman what was
11 his demeanor on each of the three occasions?

12 A. He was alert. He was generally cooperative. He
13 appeared to be guarded, anxious, a little bit defensive
14 when discussing his sexual behavior and his legal history.
15 Yeah, that was his general demeanor.

16 Q. Okay. So when you met with him were you able to
17 explain the purpose of the interview and why he was there?

18 A. Yes. So on the first day they go over our pretty
19 detailed consent form. It's six or seven pages depending
20 on how it gets printed. And it kinda goes over every
21 potential test that the person may be asked to take, what
22 goes into the evaluation. They read each section of it.
23 There given an opportunity to ask questions. They then
24 initial each part of it and then sign it with a witness and
25 then on each subsequent day of the evaluation they look at

1 that consent form again given the opportunity to ask
2 question and then sign a rereading of it on each day.

3 Q. Okay. So Mr. Hyman signed the consent form each time
4 he was at your office?

5 A. Correct.

6 Q. Okay. Now, describe his overall appearance and affect
7 when you met with him?

8 A. So he was alert. Generally cooperative. He wore
9 eyeglasses. May be some hygiene issues from being at the
10 jail, he was scratching himself. He spoke at a normal rate
11 and tone of speech. His outward emotional expression was
12 appropriate. His mood was normal.

13 Q. Okay. So nothing really remarkable?

14 A. No.

15 Q. Now, can you give the jury a brief recitation of Mr.
16 Hyman's relevant personal history as it relates to your
17 evaluation?

18 A. Yes. So we collected lot of personal history. Just to
19 go over some of it briefly, he reported that he was raised
20 by his biological parents. That he had no family history of
21 mental illness, although, he reported his father might've
22 had a problem with alcohol. He was raised with two sisters
23 who were approximately four and eight years younger than
24 him. He reported being both physically and sexually abused
25 during his youth. He was in special education in school. He

1 graduated with a certificate. And then later got his GED
2 when he was in prison. He reported some youth conduct
3 problems to include some fire settings, some fighting,
4 stealing little things. He worked in construction. Truck
5 welding. At a grocery store. He did not leave home until
6 he was about thirty years old. He reported at the time of
7 my evaluation that he had been married for fifteen years
8 but that they had been separated since his most recent
9 arrest. At the time of my evaluation he had a 14-year-old
10 son and a 12-year-old daughter and that he had no current
11 medical conditions.

12 Q. And does any of that personal history particularly
13 relevant to your evaluation?

14 A. I think that all of the information that I collect is
15 relevant so, yes.

16 Q. All right. Now, Mr. Hyman doesn't have any current
17 medical conditions, does he?

18 A. Correct. He does not.

19 Q. All right. And he doesn't have much of a substance
20 abuse history either, does he?

21 A. He reported some alcohol use. Didn't endorse or report
22 any problems or symptoms related to that. Some cannabis
23 use. When he was in prison he said that he was huffing a
24 substance that he called I think he called ASAP and he said
25 it was, like WD-40. He used it for a couple of months, but

1 then saw the effects it had on other inmates so he stopped
2 using that. Aside from the cravings when he first stopped
3 he said he didn't have any problems related to that.

4 Q. Okay. And he didn't report to you that he was under
5 the influence of substances or that was the cause of his
6 sexual re-offending, did he?

7 A. He did not.

8 Q. Okay. Now, describe his sexual offending history and
9 if you would I'd like to go through all of the information
10 you were able to get from him during your interview in
11 chronological order just for purposes of clarity? So if
12 you could start when he was a juvenile and move forward
13 that would be good.

14 A. During the course of my evaluation in addition to the
15 detected offenses that he was arrested for, he also
16 reported some inappropriate sexual behaviors starting
17 during his youth. So I believe he said when he was around
18 12-years-old he exposed himself to one of his, no, excuse
19 me, when he was fifteen or 16- years-old he exposed himself
20 to a female cousin who was 12-years-old. He said that that
21 occurred four or five times. He said that he sexually
22 touched both of his sisters when he was eighteen or
23 nineteen years old which would have put their ages at
24 approximately ten and fourteen or eleven and 15-years-old
25 depending on when that occurred. So that's kind of what he

1 noted from earlier. And then when he was twenty-one in
2 1996 it was reported to the police that he had sexually
3 offended against three victims who two of them were 6-
4 years-old and one of them was 8-years-old. So the 8-year-
5 old victim and one of the 6-year-old victims reported that
6 Mr. Hyman put his penis in their mouth's, held their
7 vagina's open and put part of his penis in and played with
8 their butts. And then the other 6-year-old child reported
9 that he had fondled her. So when I do these evaluations I
10 then go over these details with the examinee's in detail
11 because I want to find out why they offended and what they
12 understand about it now. So during my evaluation he said
13 that he fondled two of the girls. He would get them to
14 grab his penis. That he may have rubbed his penis down
15 there in their genital area but he never, he said he never
16 put his it in them which I took to mean that he never
17 penetrated them. When I asked him about the report that
18 they said that he played with there butt he said I might
19 have. He said that the victims were his neighbor and her
20 cousin so the neighbors cousin. And then the third victim
21 was the neighbor's sister so also his neighbor. He said
22 that he hadn't done anything with her, but later in the
23 evaluation he said that he had seen her naked, that he had
24 talked her into taking her clothes off and the reason for
25 that he said just to see her and then said that he got

1 scared somebody might come outside and see what I was doing
2 in the shed. He said he talked his victims into engaging
3 in these behaviors with him. Told him not to tell anybody
4 and if they did he would get in trouble. He said that he
5 offended against one of the victims seven or eight times
6 and the other one maybe five times. And then in reviewing
7 the Department of Mental Health report, their expert, he
8 told Dr. Gehle from her report that he touched them and he
9 got them to touch him. That he never had sex with them,
10 but he rubbed his private on their private is what I noted
11 that he told her.

12 Q. Okay. And what about his -- well, actually, while he
13 was in SCDC for that offense, did he have any sort of sex
14 offender treatment?

15 A. Yes. So - so for that when he was convicted of two of
16 the four he had been charged with in that. And he told me
17 that he did five or six months I think he said, at most,
18 five or six months at most of their treatment program, but
19 he had to stop because he got transferred to, he said,
20 another yard which I took to mean another prison.

21 Q. Okay. And when he was released from SCDC the first
22 time did he, in fact, report to you that he engaged in
23 outpatient sex offender treatment?

24 A. Yes. He was court ordered, he said, to attend
25 treatment. So he said that he went to one program in the

1 community in approximately 2000, but he ended up getting
2 kicked out because he had to go to work and he couldn't get
3 in touch with them. He said that he completed another
4 program that was about six months in duration. When I asked
5 him to kind of recount what he had learned in that program,
6 he said that he didn't really learn anything and couldn't
7 really remember what had been covered.

8 Q. Okay. Did he tell you when that program was
9 completed?

10 A. He did not. He told me that he was court ordered to
11 receive it in the community in, approximately, 2000, but I
12 don't know what year that was completed.

13 Q. Okay. Now, what did he report to you about the
14 interim period between when he was released from SCDC and
15 when he was rearrested in 2016 offenses, did he report
16 anything of significance regarding his sexual ---

17 A. Well, during that time he got married. He had
18 children. But he reported seeking out semi-nude or
19 sexualize images of young children. I believe he said that
20 their ages were eight to 14-years-old and, basically, he
21 was looking on the Internet at little girls and bras and
22 panties. He said that was between the age of thirty to
23 thirty-three and he engaged in that behavior, he said, a
24 couple of times.

25 Q. Okay. And now at age forty-one in 2016, what

1 happened?

2 A. So it was reported to the authorities in November of
3 2015 that three victims who were five, seven, 8-years-old
4 reported that he took their hands and put their hands on
5 his penis and then -- sorry, it was one 5-year-old victim
6 and one 8-year-old victim and then another person related
7 to him reported to the police that she had heard her 8-
8 year-old cousin yelling and screaming after they had taken
9 a shower with him and she was alone in a room with him. So
10 when he was interviewed by police he said they were playing
11 around and that he did not make them grab his penis. Over
12 the course of the investigation he said that he ended up
13 touching one of those children who is his 8-year-old niece.
14 He said he touched her twice on the outside of her vagina
15 without clothes on and talked her, talked her into touching
16 him on the penis. When I discussed this during my
17 evaluation he said that he offended, sexually offended
18 against his niece, but not the other two victims.
19 Regarding his niece he said he fondled her, felt her chest,
20 her private area, her butt. He said he was rubbing his
21 penis on her, but never put his penis inside of her. He
22 said that he offended against her four to five times and
23 then later in the evaluation he reported that he performed
24 oral sex on her and that he got her to put her mouth on his
25 penis as well.

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1 Q. Okay. Now, Mr. Hyman doesn't have -- and he was
2 charged, obviously, and has been in SCDC since that, right?

3 A. Yeah. He was charged with four sexual offenses and
4 convicted on the two of them.

5 Q. Okay. And he doesn't have any sort of nonsexual
6 offending history, does he? Like, you know, robbery armed
7 with, anything like that?

8 A. That's correct. His criminal history report indicates
9 just those sexual offenses.

10 Q. Okay. Now, tell the jury why is an offender's
11 offending history and the details of it relevant to a
12 question of future risk?

13 A. So we're looking at patterns in behavior. So we want
14 to know does this person have a mental disorder that is
15 related to their offending. So people offend for lots of
16 different reasons. It might not just be that that they are
17 sexually aroused by children. So we're kind of looking at
18 patterns of behavior to see if there is a diagnosis. Also,
19 you can look at past offenses because we know that prior
20 behavior is the best predictor of future behavior. And so
21 we're looking at what people did in the past and that way
22 we can talk about the likelihood of them acting on that
23 again. And if that were acted on again kind of try to
24 estimate like what might happen, who the victims might be,
25 a level of violence if there were to be violence.

1 Q. Okay. Now, is this particularly relevant for people
2 who molest children?

3 A. I would say is relevant in all cases that I do. For
4 people who molest children you're looking at the ages that
5 they're molesting because in order to be diagnosed with a
6 disorder related to sexual arousal in children they have to
7 be prepubescent so they cannot have enter puberty yet. So
8 you want to look at victim characteristics. You want to
9 look at what the victim said happened to them. Look and
10 see what the examinee told police. What they tell you. So
11 you're kind of looking for a pattern and all of these
12 evaluations.

13 Q. Okay. And -- because not everybody who offends against
14 children is a pedophile, correct?

15 A. Correct.

16 Q. Okay. So in this instance, what did that pattern of
17 behavior over time tell you?

18 A. Regarding his diagnosis or

19 Q. Well, regarding the potential diagnoses that you would
20 be looking for?

21 A. So I noted from the collateral information about his
22 offenses and my interview with him and testing that I
23 conducted with him that he had this pattern of at least
24 inappropriate sexual behaviors to illegal sexual behaviors
25 with prepubescent female children since he was about

1 fifteen or 16-years-old. So exposing himself to his
2 cousin. Sexually touching his sisters when, at least, one
3 of them was probably prepubescent. Looking at sexualized
4 images of children, offending against four, I believe,
5 prepubescent children under the age of ten multiple times.
6 He said that he started fantasizing about prepubescent
7 female children at approximately at the age of eighteen to,
8 he said at my evaluation which was in February of this
9 year, he said that he stopped fantasizing about
10 prepubescent children about five and half years ago.

11 Q. Okay. So at that point, what diagnoses were you
12 considering either to rule in or rule out?

13 A. So the first diagnosis that I would consider in a case
14 like this would be pedophilic disorder which is intense and
15 persistent sexual arousal to prepubescent children. And,
16 again, prepubescent children are children who are not yet
17 in puberty. So they don't have breast buds. They don't
18 have here on their sex organs. They are, they look like
19 young children.

20 Q. Okay. And that is a DSM-5 diagnosis, correct?

21 A. Correct.

22 Q. Okay. And can you tell the jury what the DSM-5 is?

23 A. Yeah. That's just a book that psychiatrist,
24 psychologist, anybody who's licensed to diagnosed mental
25 illnesses, it's the book that we use that list the criteria

1 of how somebody meets or does not meet for a mental
2 illness.

3 Q. Okay. Can you please tell the jury what the criteria
4 for a diagnosis of pedophilic disorder are as per the DSM-
5 5?

6 A. Yeah. So very, generally, it's a period of six months
7 or longer where the person experiences intense sexual
8 fantasies, urges, behaviors related to sexual activity with
9 prepubescent children. In order for somebody to be
10 diagnosed with that illness they have to be at least 16-
11 years-old.

12 Q. Okay. And does Mr. Hyman meet the criteria?

13 A. Yes. So he reported fantasies. He reported engaging in
14 the behaviors. He reported engaging in behaviors because
15 he was sexually aroused by those children. And testing
16 that I administered suggested that he was currently aroused
17 ---

18 Q. Okay.

19 A. --- to prepubescent children.

20 Q. So, notwithstanding, the diagnosis as part of your
21 evaluation process you dig deep, correct?

22 A. Correct.

23 Q. Okay. And why is that?

24 A. Well, these are, in my opinion, comprehensive
25 evaluations. So per the statute you're looking to see if

1 the person has a mental abnormality or personality
2 disorder. And so you don't want to just look at sexual
3 behavior disorders, you want to look at the spectrum of
4 mental illnesses and also you want to try, if you can, to
5 figure out kind of the cause or the reason that somebody
6 was engaging in those offenses because that's going to give
7 you some insight, hopefully, into their risk to re-offend.
8 So you want to collect as much data as you can because as I
9 believe you mentioned or Mr. Falk mentioned in opening
10 these are really important. So on the one hand you're
11 balancing public safety if the person were to get out and
12 re-offend, but you're also balancing that this person has
13 already served time in prison and if they were need to be
14 committed for treatment they would be committed. So these
15 are big decisions where you want to incorporate as much
16 data as you can to make a sound scientific decision.

17 Q. Okay. So in addition to the record review in your
18 interview with Mr. Hyman, did you conduct any standardized
19 testing?

20 A. Yes. In the Sexual Behaviors Clinic and Lab we have a
21 standard battery that we give all adult men who come in for
22 an evaluation.

23 Q. Okay. And can you go through each one of those
24 battery, sorry, can you go through each one of the battery
25 of tests that you administer and tell the jury what it

1 looks for and what it test for and what your or what Mr.
2 Hyman's results were on each of those standardized tests?
3 A. Yes. So just kind of generally, I give some tests
4 that are on a computer where the person answers them
5 themselves. I give some tests that are sexual behavior
6 questionnaire because some research shows that some people
7 are more likely to be forthcoming or truthful in their
8 responses when there in a room by themselves answering on
9 the computer. And sometimes people are more willing to
10 share that information face-to-face in an interview so I
11 want to access the same information in multiple different
12 ways. So some tests that he does on the computer, some
13 tests that are administered to him, some test that I
14 actually rate him on and, then incorporate those data with
15 the interview. So the first test that he took was the
16 Minnesota Multiphasic Personality Inventory Version 3. So
17 if you've heard of the MMPI, it's a personality test that's
18 looking at psychological symptoms, personality functioning,
19 and it's also looking at how valid the test administration
20 is. So test like that look at to see if the person is
21 paying attention. So are the answering questions that are
22 similar in a similar way. It's also looking to see if the
23 person it seems like they were defensive maybe they were
24 trying to paint themselves in an overly positive light or
25 see if they were, you know, like, they were faking bad,

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1 like, they were saying everything was wrong with them. So
2 that's another reason why I give a lot of test because I
3 want to look out how valid those are. So for the MMPI he
4 produced a valid test. So he was paying attention and it
5 looked like his answers were reasonably forthcoming. And
6 there was really nothing that significant on that test. He
7 reported having life satisfaction. He reported some
8 presecutory thoughts which are thoughts that other people
9 are out to get you or seek to harm you. And when I talked
10 to him about that during the follow-up interview he
11 reported that maybe that was related to he thought that two
12 of his victims had lied on him and the mom had lied on him
13 so maybe he was answering questions about that. And he also
14 reported that he had engaged in problematic impulsive
15 behavior. So that's pretty much what I took from that MMPI.

16 Q. What -- did you administer any other test?

17 A. Yes. So the next test that he took was the substance
18 abuse subtle screening inventory. And so I want to get
19 somewhat of a read on the person's history of substance use
20 problems. Substances do not make people commit sex
21 offenses, but if somebody has that history and they have a
22 history of using substance that could make them, that could
23 contribute to their risk later because, you know, you're
24 unambitious might be down, things like that. So this test
25 indicated that there was a low probability that he has or

1 has had a substance use disorder.

2 Q. Okay. The Personality Assessment Inventory?

3 A. So the Personality Assessment Inventory is a similar
4 to the first test that I talked about, the MMPI. This
5 looks at symptoms of mental illnesses, but also looks more
6 at internal personal functioning so how you function in
7 relationships with other people. This test suggested that
8 he may have tried to portray himself in an overly favorable
9 light. Maybe didn't want to admit some minor fault that
10 most people will admit to. His responses suggested that he
11 probably is pretty stressed out. That he might be having
12 some difficulties with stress in his life. It also looks at
13 someone's motivation for his treatment in general not
14 specific to sex offender treatment. And his responses
15 suggested that he acknowledges the need to make some
16 changes, that he has a positive attitude towards the
17 prospect of personal change.

18 Q. Okay. And the last test that you performed?

19 A. So the last one that he took himself on the computer
20 was the Multidimensional Inventory of Development Sex and
21 Aggression or the MIDSA. So this test is a pretty long
22 test about sexual behavior and it encompasses, it has the
23 same questions that I'm then going to talk to him about
24 during the clinical interview as well. So you've got a lot
25 of information from this test. Things that were

1 particularly relevant that I got from Mr. Hyman is that his
2 validity scales indicated that he might've been reluctant
3 to admit having undesirable negative reactions on how he
4 responds to things. And he might've been responding to
5 some of the test questions in a way to kinda make himself
6 look more positive. He reported that he had had sexual
7 contact with three or more children. The test results
8 suggested that he was we reporting little interest in
9 sexual contact with adults. He reported that in his
10 defending he was not seeking out companionship or intimacy
11 with the children. He reported of the sexual conduct with
12 the children that included both grade school and teenaged
13 girls, that included touching, fondling, kissing,
14 cunnilingus of the victims. So performing oral sex on a
15 female victim and then fellatio by the victim. So having a
16 victim perform oral sex on him. He said that the sexual
17 conduct with children that he had it was people that he was
18 friendly with, neighbors, relatives, his siblings. And
19 when I went over the test results with him in the follow-up
20 interview that's when he talked about sexually touching his
21 sisters. Let's see, he said that he had encouraged a
22 victim to comply with money and/or gifts. And so during
23 the follow-up interview he said that he had made one of his
24 victims I believe twenty dollars. And it kinda looks that
25 he reported some feelings of sexual inadequacy with adults,

1 worried about his own sexual functioning, or worrying about
2 being able to find an adult partner.

3 Q. Okay. Now, you said you also performed two scored, I
4 would say, protocols, can you tell the jury about those?

5 A. Actually four.

6 Q. Four?

7 A. So ---

8 Q. Okay. Well, let's start with the Hare on psychopathy
9 PCL-R?

10 A. So I wanted to score, in my standard and battery I
11 always score examinees on a psychopathy checklist. So
12 that's looking at the number of characteristics the person
13 has related to being a psychopath. And so a psychopath is
14 a personality contractor disorder characterization that
15 includes impulsiveness, lack of remorse, pathological
16 lying, kind of this impulsive lifestyle lack of empathy,
17 things like that. So to score that you use information
18 that you got from the interview with the person as well as
19 a lot of collateral information and based on my scoring of
20 that instrument Mr. Hyman does not have very many
21 characteristics at all associated with psychopathy so it is
22 my opinion that he is not a psychopath.

23 Q. Okay. And can you talk about the SVR-20?

24 A. Yes. So the SVR-20 is the Sexual Violence Risk-20,
25 it's the second version of that. And so that is structured

1 professional judgment and what that means is they're
2 instruments where they take all of the research or the
3 literature related to risk factors for somebody to re-
4 offend. And so it's kind of a way to scientifically
5 structure your thought process when you're looking at risk
6 factors to see how many of the risk factors that are known
7 in the literature the person sitting in front of you also
8 has.

9 Q. Okay. And how did Mr. Hyman score on the SVR-20?

10 A. So I noted that he had history of problems with sexual
11 deviations. So he has this pretty consistent sexual
12 arousal of prepubescent children. He has sexual health
13 problems so he reported a lot of sexual preoccupation
14 during his offending. Being the victim of child abuse is
15 one of the risk factors so I noted that he reported having
16 been physically and sexually abused during childhood. He
17 has a history of problems with chronic sexual offending so
18 he offended against his victims multiple times across many
19 years, per his report, of when it started and the number of
20 times he engaged in those behaviors. He also has some
21 psychological coercion in sex offending so it appears that
22 he groomed some of his victims. He gave at least one of
23 them money or talked them into going along with the
24 behavior rather than like physically forcing them. He also
25 he had a probation violation before which suggest that he

1 might have some or, at least, a history of negative
2 attitudes about supervision.

3 Q. Okay. Thank you. And I misspoke you also scored him
4 on the Static-99 and the Static-2002R, correct?

5 A. Correct.

6 Q. All right. So tell the jury what those test look for,
7 how often are they used, what type of things they will show
8 you in terms of an evaluation?

9 A. So the Static Risk Assessment Instruments are looking
10 at risk factors that are called Static and what that really
11 just means are things that you can't treat. So the
12 presence of a male victim is a static risk factor. So if
13 somebody had offended against a boy even though I can treat
14 them so they would never have another male victim, you
15 can't treat them and go back and change that. So is looking
16 at kind of unchangeable factors and the way that they
17 identify these factors is they go and perform studies or
18 look at data on tens of thousands of men who have been
19 arrested for sex offenses and then look to see who re-
20 offended and then look to see what characteristics kind of
21 who are in common between the people who re-offended. And
22 so these instruments don't tell you anything about the
23 person sitting in front of you. And the way that I kind of
24 like to equate to is like a life insurance example. So
25 when you apply for life insurance they're going to get a

1 lot of information from you. They're not going to know if
2 you're going, if you're at risk or if you're going to die
3 early, but they're gonna look to see how many of the risk
4 factors that are associated with heart attack or early
5 deaths you have. So if you're a race car driver, if you
6 got a lot of speeding tickets, if you smoke, if you have
7 high blood pressure, you know, the more of those risk
8 factors that you have they're going to charge you more and
9 your premiums are going to be higher because you're at risk
10 for earlier death than someone who doesn't those risk
11 factors. And that's kind of what the static instruments are
12 looking at so nothing specific to Mr. Hyman or anyone it's
13 looking at like the number characteristics they have in
14 regards to those static unchangeable risk factors.

15 Q. Okay. And how did you score Mr. Hyman on the Static-
16 99?

17 A. So on the, so there's two is the 99R and the 2002R.
18 There related to each other, but they look at slightly
19 different factors. So on the Static-99R I scored him a 2,
20 and the Static-2002R, he had a score of 4.

21 Q. And what percentage likelihood of recidivation do each
22 of those scores carry with them?

23 A. So a score of 2 on the Static-99 is 5.6%. So if you
24 look at like the range of area it's about 4.8% to 6.5%. So
25 when you're looking at people in these studies someone with

1 a score of 2 that would mean if you look at a hundred sex
2 offenders, forty would have a lower score the Mr. Hyman
3 did; eighteen would have the same score; forty-three would
4 have a higher score; and, that's when you round the numbers
5 to make them correct.

6 Q. Okay. And Dr. Gehle also administered the Statics, in
7 fact, those are administered in all of these types of
8 evaluations, correct?

9 A. Correct.

10 Q. Okay. And what did Dr. Gehle score Mr. Hyman on the
11 Statics?

12 A. On the 99R, I believe she gave him a score of 1. And
13 on the 2002R she gave him a score of 4 as well.

14 Q. Okay. And all four of these evaluations would place
15 Mr. Hyman squarely within the average rate of recidivism,
16 correct?

17 A. Correct. So his 2002 score was a little bit higher.
18 So if you look at those hundred sex offenders, fifty-six
19 would have a lower score than he did; fifteen would have
20 the same score; and, twenty-nine would have a higher score.
21 But both of those are in the average risk category for the
22 static risk factors.

23 Q. Okay. And just for purposes of clarity what is the
24 score ranges that a person could get on both of these
25 measures?

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1 A. So on the Static-99 the scores range from -3 to 12,
2 and on the 2002 it ranges from -2 to 14.

3 Q. Okay. Thank you. Now, the statics, though, only
4 taken into account detected and convicted offenses,
5 correct?

6 A. They look at charges as well but, yes, only things
7 that were brought to law enforcement's attention.

8 Q. Okay. And can you tell the jury a little bit about
9 the statistics surrounding the actual reporting of sex
10 offenses?

11 A. I mean, the literature, the research suggest sexual
12 offenses are the least likely to be reported of all crimes.
13 If you look at survey data the estimates are around only
14 about thirty percent of all sex offenses are actually
15 reported to authorities.

16 Q. Okay. So, in fact, the statics potentially
17 underestimate the risk for recidivism?

18 A. Potentially, because it's only looking at things that
19 people knew about. So even if somebody tells you that I
20 was offending against someone else, unless they were, at
21 least, charged with it you don't factor that into their
22 static score.

23 Q. Okay. And Mr. Hyman's uncharged offenses that he
24 disclosed to you, you didn't factor those in, did you?

25 A. Correct.

1 Q. Okay. Now, in addition to the scored measures and the
2 computerized testing, did you perform any physiological
3 measures of sexual arousal on Mr. Hyman?

4 MR. FALK: Objection, Your Honor. May I approach?

5 THE COURT: Yes, sir.

6 (Whereupon, a bench conference was held on the record)

7 MR. FALK: I just need to make a record that I'm
8 preserving my objection ---

9 THE COURT: Okay, with you?

10 MR. FALK: --- because we know where this is
11 going.

12 MS. SHAW: Yeah.

13 THE COURT: Okay. Madam Court Reporter, yesterday
14 we had a hearing concerning this PPG testing. Mr. Falk,
15 you know, entered an objection and I want to make sure the
16 record is clear that he has proposed that objection again
17 this morning, but I have overruled it.

18 MS. SHAW: Thank you, Your Honor.

19 (Whereupon, we go back on the record for the jury)

20 Q. Okay. So Dr. Gottfried, you perform the PPG, correct?

21 A. Yes.

22 Q. Okay. Can you tell the jury what the PPG is and what
23 it looks for?

24 A. Yes. So PPG stands for penile photoplethysmography.
25 It is an objective physiological measure of male sexual

1 arousal. So it's the goal standard of looking at adult
2 males sexual arousal. And so the reason that a test like
3 this is useful is because in these kinds of evaluations
4 people have understandable motivation for not been very
5 forthcoming about what they are currently sexual aroused
6 by. And why that's important is because the research
7 suggests that having sexual interest in children as
8 measured by this test is a strong predictor or risk factor
9 for future sexual offending. So that's why it's important.
10 And what it does is the person sits in a room by
11 themselves, they put a little gauge, a little strain gauge
12 on their penis and then they are presented with mostly
13 auditory so they're listening to sexual scenarios between
14 an adult man and a variety of other stimuli. So they hear
15 consenting sexual experience between consenting adults,
16 sexual experiences between the adult man and infant
17 children, prepubescent children, teenage children, and then
18 that can range from persuasive where the person was
19 persuading the person into engaging in those sexual
20 behaviors, all the way to a coercive violence, where
21 they're forcing them. And then you are comparing their
22 sexual arousal to the illegal non-consenting sexual stimuli
23 with their arousal to the trials featuring consenting
24 sexual experience between adults. They're also given some
25 neutral trials where they're not about sex stuff at all

1 just to make sure that they're not showing arousal to the
2 ones that are not sexual.

3 Q. Okay. Thank you. Now, there's some controversy
4 surrounding the PPG, can you speak to that and discuss
5 specifically about the liability factors when it comes to
6 people who have engaged in sex offenses against
7 prepubescent children?

8 A. Yes. So different labs ---

9 MR. FALK: Your Honor, May I ---

10 (Whereupon, a bench conference was held off the record)

11 MR. FALK: Can I have just a moment here?

12 MS. SHAW: I can't hear you.

13 MR. FALK: I'm asking for a moment.

14 THE COURT: He's asking for a moment.

15 MS. SHAW: Okay.

16 MR. FALK: Isn't she now bolstering her own
17 testimony?

18 MS. SHAW: No. Your Honor, this is right for
19 cross-examination and I'm sure Mr. Falk will ---

20 MR. FALK: I haven't ---

21 MS. SHAW: --- cross-examine her on that.

22 MR. FALK: Well, then that's right for redirect,
23 but she is now bolstering this test.

24 MS. SHAW: No, I'm not. I'm asking, I'm asking
25 her to go into why it's reliable when it comes to these

1 guys, non-sex offenders in general.

2 MR. FALK: It's not being contested yet that's
3 through reliability. And she's already made her record
4 about the, during the proffer, I mean, so she's now
5 bolstering her own ---

6 THE COURT: Yeah, I intend to agree. I mean, if he
7 raises an issue with it you can certainly come back and
8 address it. Because I'm sure his witness is gonna ---

9 MS. SHAW: I'm sure.

10 THE COURT: --- tear it down. So, you know, if you
11 had to even recall your witness you could. But I'd just
12 get to the results right now.

13 MR. FALK: Thank you.

14 THE COURT: If he questioned it then, you certainly
15 can redirect or challenge it.

16 MS. SHAW: If Your Honor would prefer me to do it
17 that way, I will.

18 (Whereupon, we go back on the record for the jury)

19 Q. We'll get into the reliability questions later. So
20 for right now can you just tell the jury what Mr. Hyman's
21 responses were, whether they were interpretable, and if
22 they were, what they revealed about his sexual preferences
23 ---

24 A. Yes.

25 Q. --- currently?

1 A. When you look at all of the test data so he was
2 administered two separate sets that had a number of trials.
3 If you look at altogether, on both sets, he had clinically
4 significant arousal which means he demonstrated arousal
5 that was interpretable. And the literature research would
6 suggest that it demonstrates arousal. So it was big enough
7 millimeters of change from where he started at baseline
8 with a flaccid penis to levels of arousal. And so he
9 showed clinically significant arousal to scenarios
10 featuring sexual violence against a prepubescent female
11 child, coercion against a prepubescent female child, sexual
12 violence against a pubescent or adolescent of child in
13 puberty. Three scenarios featuring consensual sexual
14 activity with an adult woman. Two scenarios featuring
15 coercion against a prepubescent female child, coercion
16 against an adult man, coercion against an adult woman. Two
17 scenarios featuring persuasion against a prepubescent
18 female child and sexual activity with a male infant.

19 Q. Okay. And can you tell us what his strongest
20 responses were on two particular stimuli, like his most
21 clinically significant responses?

22 A. So two on the first set of trials, those stimuli set
23 his maximum arousal was to a scenario featuring sexual
24 violence against a prepubescent female child. And then for
25 the second set of trials, his maximum arousal was to a

1 scenario featuring coercion against a female prepubescent
2 child.

3 Q. Okay. And that is consistent with his actual
4 offending history, is it not?

5 A. Yes. He offended against prepubescent female children.

6 Q. Okay. Now, can you talk to the jury about dynamic
7 risk factors? Tell them what they are and which ones
8 particularly apply to Mr. Hyman?

9 A. Yes. So where as I mentioned the static risk factors
10 which are things that are unchanging about a person,
11 dynamic risk factors are things that could be targeted in
12 treatment. So those are things like substance use, sexual
13 interest in children, things that we can treat. So when you
14 are doing risk assessments you don't want to just look at
15 the static factors or just look that the dynamic factors
16 you want to put it all together because there's different
17 instruments that measure different things. That's one of
18 the reasons that I discussed using the Sexual Violence Risk
19 Assessment-20, that SVR-20 because that's looking at a wide
20 range of risk factors in addition to those static ones that
21 we've already discussed.

22 Q. Okay. And does Mr. Hyman currently have any dynamic
23 risk factors?

24 A. Yes.

25 Q. What are they?

1 A. So in addition to the ones that I've already talked
2 about so he as a sexual deviation so he's sexually aroused
3 by children. He has demonstrated sexual preoccupation. He
4 has chronic sex offending, grooming behaviors, negative
5 attitudes towards supervision, pretty poor insight into his
6 need for management and treatment of his pedophilic
7 disorder or his sexual arousal in children, and he has a
8 history of sexual re-offending.

9 Q. Okay. Thank you. Now, what are protective factors?

10 A. You would think about them in a couple of different
11 ways. So protective factors could simply be the absence of
12 some of the risk factors that we know of are things that
13 actually the studies demonstrate like if this person has a
14 factor that could prevent them from re-offending it would
15 protect them from that.

16 Q. Okay. And so does Mr. Hyman have any protective
17 factors?

18 A. So when you look at his criminal history he only has
19 sex offenses. And so whether that's protective or not I
20 think is subject to what study you read. So he really is
21 limited in his offending history to just offending against
22 children. Now, if he was committing a lot of crimes that
23 could suggest that he really disregard the rules of society
24 and things like that so that could make him risky. But I
25 don't know necessarily that just having sex offenses is

1 protective for committing new sex offenses.

2 Q. Did he identify any community supports that felt would
3 be beneficial to him if he were released?

4 A. Yeah, I mean, he talked about his relationship with
5 his mom, his family. He mentioned an aunt.

6 Q. Okay. Do you know if the mom and the aunt are aware
7 of his sex offending history?

8 A. When I talked to him I kinda go through the semi-
9 structured interview where I want someone to kind of
10 demonstrate their own appreciation for their potential risk
11 so like his insight into what he's done before and why he
12 did it and one of the questions that I asked is who have
13 you told about your offending behavior that can help you in
14 the future? And he indicated that he hadn't really told
15 anybody about it.

16 Q. Okay. Now, did you talk to Mr. Hyman about his future
17 plans if he were to be released to the community?

18 A. Yes.

19 Q. And what did he say to you?

20 A. So he's planning to go to the Jumpstart Ministry in
21 Spartanburg. He was not aware at the time of my evaluation
22 how long he would be there. He said I don't know how long
23 the program is. He noted that they help you find a job.
24 He wanted to find a church to get into. Find an old car to
25 tinker with. Get a job. He wanted to help his mom and his

1 aunt to work around their houses. Pretty much those things.

2 Q. Okay. Did he indicate to you whether he had any plan
3 to attend sex offender treatment?

4 A. He said that he didn't. He did not have plans to
5 attend, but that if he started to have those thoughts again
6 he would attend. And so I asked him how that was different
7 from him re-offending in 2015 when he started having those
8 thoughts about his niece and he said well at that time he
9 wasn't really thinking about it.

10 Q. Okay. Now, did he had any plans not to re-offend?
11 Did he articulate to you any sort of procedures, for lack
12 of a better word, or things he would do to prevent himself
13 from offending against children in the future?

14 A. It was my opinion that he did not have realistic plans
15 to prevent that. So he, basically, said like I'm not gonna
16 think about it. But we know that suppressing those
17 thoughts isn't, it hasn't shown to be helpful in people and
18 preventing themselves from re-offending especially somebody
19 who has the disorder that Mr. Hyman has. So he sexually
20 aroused by prepubescent children. He's acted on that
21 arousal. He currently has that arousal. So just kind of
22 suppressing that and avoiding those feelings typically is
23 not enough. So he also said that he's gonna think about
24 like that he wouldn't never get to see his children again.
25 He'd go to prison for a long time. But I have some

1 questions about that because when he re-offended sexually
2 in 2015 he was married and had children and he had already
3 been to prison. So it wasn't like that he didn't know that
4 he could get in trouble for it. So it's hard to see what
5 the difference would be because he had already been
6 punished. In prison. Got out. Got married and had kids.
7 Had all of that to lose and still re-offended.

8 Q. Okay. And in Dr. Gehle's evaluation, did she use any
9 other either standardized testing measures or scored
10 measures other than the statics that you're aware of?

11 A. Based on my review of her report she use the Static-99
12 and the Static 2002, just those two.

13 Q. Okay. Thank you. She didn't use the PPG, did she?

14 A. No.

15 Q. Okay. Now, based on all of the information you had,
16 your clinical interview, the documents, PPG results, the
17 scores, the statics, the Hare, the MIDSA, the SVR-20, PAI,
18 the MMPI-3, and the SASS, based on all of that information,
19 did you reach any conclusions about whether Mr. Hyman is
20 likely to re-offend?

21 A. Yes.

22 Q. And what were those conclusions?

23 A. So it is my opinion that he is likely to re-offend.
24 He has this disorder where he's sexually aroused by
25 children. He's fantasize about prepubescent children. He's

1 acted on the disorder. Despite intervention when he was
2 arrested and receive some treatment and was released to the
3 community, he still acted on those urges. So when you put
4 it all together it is my opinion that he is likely to re-
5 offend based on his disorder.

6 Q. Okay. Do you believe that he has serious difficulty
7 controlling his impulses to molest children?

8 A. Yes.

9 Q. Okay. Do you believe that his predisposition poses a
10 menace to the health and safety of others if he's not
11 committed for long-term control care and treatment?

12 A. Yes. Based on my opinion that he's at risk likely to
13 re-offend I think that that poses danger to public safety.

14 Q. Okay. And are your use of all of the measures that you
15 employed, which I won't go through again, is your use of
16 all of these different measures standard practice within
17 your field?

18 A. Yes.

19 Q. Okay. Are they generally accepted methods that are
20 used and reasonably relied upon by experts in your field?

21 A. Yes.

22 Q. Okay. And it's also standard practice and to review
23 the evaluations of another psychologist if there is any,
24 correct?

25 A. Yes.

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1 Q. Okay. And did you draw all of your conclusions to
2 within a reasonable degree of psychological certainty?

3 A. Yes.

4 Q. Okay. Thank you very much.

5 MS. SHAW: I have nothing further, Your Honor.

6 THE COURT: All right. Let's take a short break
7 now. Ladies and gentlemen, I've cautioned you and I'll
8 cautioned you each time we leave, please do not discuss any
9 of the testimony that's been presented so far. And as I
10 said earlier don't discuss this case at all amongst
11 yourselves when you go back to the jury room. If you'll
12 let the bailiff know whenever everybody's had a chance to
13 go to the restroom and is comfortable to come back I'd
14 appreciate it so. Take a break now. Everybody remained
15 seated by the jury goes out.

16 (Whereupon, the jury exits the courtroom at 10:49 a.m.)

17 THE COURT: All right. Let's take a short break.
18 Dr. Gottfried, you cannot discuss anything with anybody
19 during the break.

20 DR. GOTTFRIED: Yes, sir.

21 THE COURT: Thank you.

22 (Whereupon, the court takes a short recess)

23 THE COURT: Bring the jury in.

24 (Whereupon, the jury enters the courtroom at 11:09 a.m.)

25 THE COURT: You can be seated. All right, Mr.

1 Falk?

2 **Cross-Examination by Mr. Falk:**

3 Q. Dr. Gottfried, you said you do concentration
4 evaluations, is that ---

5 A. Comprehensive evaluations.

6 Q. Comprehensive evaluations, does that mean -- I thought
7 you said that was the concentration of your forensic
8 practice evaluations, is that correct?

9 A. Forensic evaluations is the concentration of my
10 practice. I think maybe I was talking about my training was
11 in concentration and risk assessment, things like that but,
12 yes.

13 Q. But you've testified in other cases other than
14 sexually violent predator cases, is that correct?

15 A. Correct.

16 Q. You testify in fit to stand trial cases?

17 A. Correct.

18 Q. Okay. And you testify in federal court on these
19 probation issues?

20 A. I've never been called. I do it for US Probation, but
21 I have not been called for court.

22 Q. So does like pretrial services come and talk to you
23 about that is that who you're pertaining to?

24 A. No. I don't do anything pretrial, it's all post
25 conviction once ---

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1 Q. No, I mean ---

2 A. --- somebody gets out.

3 Q. Oh, okay, I see. I see. Okay.

4 A. So when somebody has served a sentence for a federal
5 sex offense they're released from prison, they come to us
6 for a risk assessment and treatment planning, and then we
7 offer them the treatment services as well.

8 Q. I see. I see.

9 A. But I don't -- to date I have not gone to court on one
10 of those.

11 Q. Okay. And so you have testified in court on sex
12 offender pre-commitment evaluations, how many times?

13 A. Okay. Thirteen times total for SVP, but let me look
14 for pre-commitment, eight times.

15 Q. Okay. And there were twenty-two times that you
16 testified on behalf of the State in a pre-commitment
17 evaluation, is that correct? No, no, no, excuse me, let me
18 take that back. You rendered an opinion -- let me whine
19 this back a little bit. You said something about thirty-
20 seven times and twenty-two times, so was it thirty-seven
21 times you are asked to give an opinion in a pre-commitment
22 evaluation?

23 A. Twenty-two times I was asked to give an opinion in a
24 pre-commitment. Thirty-seven total annual and pre-
25 commitment have been referred to me.

1 Q. I see. Okay. So it's twenty-two times you were asked
2 to give an opinion and you said fifty-eight percent of the
3 time you disagreed with the opinion from the Department of
4 Mental Health?

5 A. Correct. On pre-commitment, not including the ones
6 that are pending, so out of these -- so twenty-two cases
7 were referred to me for pre-commitment, on ten of them I
8 disagreed with the DMH evaluator. On seven I agreed. And
9 then five the opinions are still pending. And so my math
10 is that if you're not including the ones who are pending I
11 disagreed with the DMH fifty-eight percent of the time.

12 Q. Okay. And you only do a pre-commitment evaluation
13 after somebody else from DMH has already rendered an
14 opinion, is that correct?

15 A. Yes. So I have, the lab has a contract with the South
16 Carolina Attorney Generals's Office to be there independent
17 expert. So if they want someone else to look at the case
18 that's when they come to us. We never do the initial one
19 that, to my understanding, is always the Department of
20 Mental Health in South Carolina.

21 Q. But of all the cases that come to you they are always
22 an second opinions?

23 A. Correct. We never do the initial.

24 Q. Okay. And they only get second, they only seek second
25 opinions, I mean, the State would only -- and when you're

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1 giving second opinions it's only because the Department of
2 Mental Health said that the person did not meet criteria,
3 is that correct?

4 A. Yes. I only do second opinions for the Attorney
5 General's Office who I guess I don't know if you would say
6 prosecute the case. So if the Department of Mental Health
7 said that the person it was their opinion they were
8 sexually violent predators then they wouldn't, I'd say,
9 need or want a second opinion.

10 Q. Okay. And how much did you say that MUSC receives for
11 these opinions?

12 A. Currently, not for the opinions, for the evaluation
13 which includes, you know, collateral record review, all the
14 testing, the PPG, the lab time, the writing the report, the
15 one day of testimony, right now it is \$5,600 for all of
16 that.

17 Q. Okay. And that's all part of MUSC's budget and you're
18 paid out of MUSC's budget, is that correct?

19 A. Right. I don't get that check. He goes to MUSC and --
20 -

21 Q. Right.

22 A. --- reportedly that's some of them money they used to
23 pay my salary.

24 Q. Sure. Now, you have never been retained by defense
25 counsel -- you've never testified in a SVP action that was

1 contested where you were testifying on behalf of the
2 respondent, is that correct?

3 A. Only one that I can think of and I'm not even sure if
4 this is what you're asking. So there was one case in
5 Charleston my opinion was the same as the DMH evaluator, it
6 was a release hearing. And the DMH evaluator asked if I
7 would go to court because she had a conflict.

8 Q. I see.

9 A. So I testified that it was my opinion that person
10 should be released. We had the same opinion. So,
11 typically, I wouldn't have testified, but she asked me to
12 go because I live in Charleston. So I guess the one time I
13 have done that if that's what you're asking me.

14 Q. Yeah. I was trying to get at how many times you're
15 really testifying on behalf of a respondent in one of these
16 proceedings.

17 A. So we have the contract with the Attorney General's
18 Office. So in an SVP case a respondent's attorney has
19 never asked me to take a look at the case. So I do that
20 for private attorneys and other kinds of cases, but on
21 these I'm not sure based on our contract I don't know if
22 we're allowed to take responding cases, but no respondent's
23 attorneys ever asked me to give a second opinion.

24 Q. Because I thought in response to one of Ms. Shaw's
25 questions you said you also represented defense counsel I

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1 was just trying to sort through what that was?

2 A. Not for SVP.

3 Q. Oh.

4 A. I think we were discussing the different kinds of
5 evaluations that we do in the clinic and lab. So SVP
6 things for defense attorneys, but not for SVP for people
7 who are just being charged who haven't been convicted yet.

8 Q. I see. And let me just sort of go through your
9 evaluation process. So you, the test, this batteries of
10 tests that you gave, the MMPI, the PAI, you do the testing
11 kind of first and then, talk with him?

12 A. So I go to the consent form with him first. That's
13 the first thing that we do in every case. And so we've kind
14 of changed things back and forth across the years. We used
15 to start with the PPG, but I like to meet with the person
16 first and I have a tech who administers the PPG while I
17 interpret it. So we scheduled day one as the testing day
18 where they come in and they take the measures on the
19 computer. So I meet with them first and go over the
20 consent form. They have an opportunity to answer/ask
21 questions. And then they do the testing, but I am
22 administering the testing and so I am the one setting them
23 up on the computer and things like that.

24 Q. And you said something about fourteen and a half
25 hours, how much of that time was while he was on the

1 computer and you would just monitoring it? I mean, is that
2 inclusive of the fourteen and half hours?

3 A. Oh, yes. So, I mean, that includes all the time he
4 was physically at MUSC. So he was at MUSC on February 8,
5 2021. So for four hours and forty minutes we went over the
6 consent form and he did the testing. So I don't have it --
7 if you want to know how long because these consent form is
8 typically twenty to thirty minutes because it's a lot for
9 them to read. I could give you that exact number ---

10 Q. No, that's fine ---

11 A. --- if you're looking for that.

12 Q. I was just trying to get ---

13 A. So four hours and forty minutes we went over the
14 consent form. He did the testing. And then we met for one
15 hour and five minutes to start the clinical interview. On
16 2/11, he went back over the consent form. He took the PPG.
17 He had a break for lunch. That was four hours and thirty
18 minutes. And then on February 22nd, I met with him to
19 finish the clinical interview and that was four hours and
20 fifteen minutes for a total that he was at MUSC of fourteen
21 hours and thirty minutes of ---

22 Q. And how long did it take for him to do the PPG test?

23 A. So he was at MUSC for four hours and thirty minutes.

24 Q. So if it's the same consent form, thirty, like four
25 hours on the test?

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1 A. No. So he just goes over a rereading on the consent
2 form. So the first day they're there they go over all five,
3 six, or seven pages of it. The second time they come
4 they're given an opportunity - they're given a consent
5 form, they can look at it as much as they want and then the
6 rereading is just one page so that would've been less. But
7 if you want the exact times I have them on tech notes and
8 things like that.

9 Q. I think I'd be curious how much time he was actually
10 taking the PPG test?

11 A. Let's see, after he signed the consent form, went to
12 the restroom, he went into the PPG exam room at 10:35. And
13 so he wasn't taking the test then, the gauges needed to be
14 calibrated. So it looks like the test actually started at
15 11:00 a.m. ---

16 Q. No, I just kinda want to know of the date that he was
17 at MUSC, how much of that was devoted to administering or
18 getting him ready to take the PPG test?

19 A. Okay. So he entered the PPG room at 10:35.

20 Q. Okay.

21 A. The test itself the first set that started ---

22 Q. Well, can we just -- just to move it along, when did
23 he leave ---

24 MS. SHAW: Objection, Your Honor. He -- she's
25 trying ---

1 THE COURT: Yes, she's trying to answer the
2 question ---

3 MS. SHAW: --- to answer the question.

4 THE COURT: Go ahead and answer the question as
5 you're trying to.

6 A. Thank you. So he started the first test at 11:00 a.m.
7 That test ended at 12:33 p.m. There was a break for lunch
8 from 12:33 p.m. to 13:30 or 1:30 p.m. He started the next
9 set at 1:37 and then he ended that at 15:23 which is 3:23,
10 15:23, yeah. And then he left the building 15:40.

11 Q. I'm terrible with military time. So how much time was
12 devoted to the test?

13 A. So he started the test at ---

14 Q. So it's an hour and a half the first time, roughly?

15 A. Yes. So for the first that it was 11 to 12:33. And
16 then the second set was 12:37 to 15:23, no, 13:37 to 15:23
17 so about two hours.

18 Q. Okay. So that's where we get about three and a half
19 hours for the test?

20 A. Yes.

21 MR. FALK: If I can approach the witness?

22 THE COURT: Yes, sir.

23 Q. If you'd look at that, that's the sentencing sheet for
24 2016?

25 A. Yes.

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1 Q. Did you -- I mean, and you looked that -- that's what
2 you looked at when you were reviewing his documents, is
3 that correct?

4 A. It's one of the documents I reviewed.

5 Q. Right. But, I mean, you looked at that while
6 reviewing the documents?

7 A. Yes, I did.

8 Q. And does it -- that shows one conviction for CSC, III,
9 is that correct?

10 A. I think that there was a question about -- so it says
11 CSC with a minor, third-degree and then the (-)
12 commit/attempt lewd act. And I had a conversation with the
13 attorney who I believe looked at other records and said
14 that those were two separate charges that had been
15 convicted. But it is confusing with the dash (-) versus
16 something like a semicolon or a colon.

17 Q. So when you would do in your opinion you were going on
18 your knowledge that that was two charges, is that correct?

19 A. Yes. So I clarified and then I also had a bunch of
20 other documents so when he entered prison it listed what he
21 was there for, the indictments, talked to the attorney.
22 So, especially the '97 convictions, different documents had
23 different information. So clarifying those with the
24 Attorney General's Office of which ones he was actually
25 convicted on, yes.

1 Q. And you looked at the forensic interviews, did you
2 not?

3 A. I did.

4 Q. And did they play a role in your analysis here in
5 reaching your opinion?

6 A. They were all data points of what the victims said to
7 the forensic interviewer, what was said to the police, what
8 he said to me, yes.

9 Q. Because there were discrepancies between the forensic
10 interviews and some of the allegations, is that accurate?

11 A. I believe you if you say there were. I don't think I
12 noted that in my report, but if you tell me what
13 discrepancy you're talking about I could be more clear on
14 that.

15 Q. I've got the interviews, do you want me to pull them
16 for you?

17 A. I summarize them in my report. So if you tell me
18 which one you're, like initials or dates.

19 MR. FALK: Your Honor, could we approach for a
20 minute?

21 THE COURT: Yes, sir.

22 (Whereupon, a bench conference was held on the record)

23 MR. FALK: I just want to tread lightly here
24 because I think some victims are here in the courtroom. I
25 need to identify these people. I want to know maybe if we

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1 can agree how we're gonna refer to them. I'm just -- out
2 of abundance of caution and getting people upset because he
3 had four, four people who were interviewed. I think the
4 mother of two of them is probably sitting in the courtroom.
5 How do you want to go forward with that?

6 MS. SHAW: I mean, if they're refer to it all,
7 they should be referred to by their initials. I mean,
8 that's ---

9 MR. FALK: That's fine.

10 MS. SHAW: But the question really is were not
11 here to re-litigate whether he molested these kids so why
12 are we going into the discrepancies between their
13 statements at all because he pled out. He was convicted of
14 these offenses. And so just because there are differing,
15 well, actually they're some differing statements, but not
16 much so why even bother to go into that? It's not
17 relevant.

18 THE COURT: Well, I'll let him go into it, but we
19 can identify the victim ---

20 MR. FALK: Well, he said ---

21 THE COURT: --- as victim one, victim two, victim
22 three, or initials would be fine.

23 MS. SHAW: I think initials will probably be best
24 just so we can clarify exactly who he's talking about for
25 the doctor, but I think there should be strongly limited

1 because it's not relevant.

2 MR. FALK: Well, I think the jury can determine
3 what's relevant here. If these are different, having a
4 different account of what happened.

5 MS. SHAW: Your Honor, they're children.

6 THE COURT: Yeah.

7 MS. SHAW: They're children. I mean, they're going
8 to not necessarily always say the exact same thing. It's
9 not a question of whether they told the truth or not, it's
10 already been valid.

11 THE COURT: Yeah, it has.

12 MS. SHAW: He's already been adjudicated.

13 MR. FALK: He was adjudicated because he pled
14 guilty. It's not adjudicated because we were in a
15 courtroom.

16 MS. SHAW: And we're not here to re-litigate the
17 question.

18 THE COURT: Yeah, I mean ---

19 MR. FALK: I think it's relevant to her opinion.

20 MS. SHAW: I strongly disagree. He was convicted.
21 That's what she took into account. She didn't make any
22 decisions or recommendations based on the specificity. She
23 made the recommendations based on the nature of the
24 allegations and what he actually admitted to doing to her
25 and also the age of the victims. And they're all female

1 under the age of ten. That's all that really needs to be
2 considered.

3 THE COURT: I'm gonna let her -- I'll let you go
4 into it.

5 MR. FALK: Sure.

6 THE COURT: Just don't belabor around it because I
7 think she can explain herself pretty well.

8 MS. SHAW: Thank you, judge.

9 (Whereupon, we go back on the record for the jury)

10 Q. Well, maybe this is my best question here, when you
11 are -- from the statements of the victim that would be
12 described as A.C. and H.C.?

13 A. Yes.

14 Q. Did both of them say that there was any skin to skin
15 contact?

16 A. My summary of the forensic interviews of those
17 particular victims stated that someone related to the
18 respondent was forced to ---

19 Q. No, just for themselves -- I was just asking if there
20 was, if A.C. or H.C. ever said that they were exposed to
21 skin to skin contact?

22 A. I don't know if it was in the forensic interview, but
23 I think that when it was reported to police I think they
24 said that they, that Mr. Hyman took their hands and put it
25 on his genitals over his clothing.

1 Q. Over his clothing.

2 A. But I'm not sure if that's from the forensic interview
3 or the police report but....

4 Q. Okay. And there was a, sort of, a summary of the
5 allegations at the beginning of the forensic interview so
6 if you would just look at the -- well, let me just pull it
7 for you.

8 MS. SHAW: Your Honor, just for purposes of
9 clarity of the record could Mr. Falk identify -- do I need
10 to speak up?

11 COURT REPORTER: (Indicates yes by hand gesture)

12 MS. SHAW: Could Mr. Falk just identify which
13 forensic interviews he's talking about, the dates, just so
14 we know and so the jury knows exactly what time frame he's
15 talking about and which set of events ---

16 THE COURT: Yeah, he can do.

17 MS. SHAW: Thank you.

18 MR. FALK: May I approach the witness?

19 THE COURT: Yes, sir.

20 Q. This was supplied to me from the Attorney General's
21 Office as part of the MDT package, did you have that
22 document?

23 A. Yes. I believe the one I have is redacted, but either
24 way I would have identified it so

25 Q. Okay. And so what does it appear to be the date on

1 that?

2 MS. SHAW: Your Honor, would Mr. Falk just
3 identify the document ---

4 MR. FALK: I was trying to do that.

5 MS. SHAW: Okay. I have not idea what it is.

6 Q. Okay.

7 A. The date ---

8 Q. What is the date --

9 MR. FALK: I'll show it to opposing counsel.

10 MS. SHAW: I've seen that before, Your Honor.

11 Q. This shows a date of service on the top?

12 A. December 3, 2015.

13 Q. All right. And then they're two peoples names that
14 are highlighted, but if you could just refer, we're just
15 gonna refer to the initials there?

16 A. A.C. and H.C. are the initials.

17 Q. Okay. And I had asked you about whether either of
18 those people, whether either of those victims there,
19 indicated there was any skin to skin contact - that's the
20 forensic interview that I was talking about - about whether
21 or not there was skin to skin contact?

22 A. Can I look over and see if ---

23 Q. Absolutely.

24 A. No. Both victim said that it was on top of his
25 clothes.

1 Q. Okay. And there's a brief summary at the top of that
2 and I'm not, you know, I'm not trying to do hearsay here,
3 but there's a brief summary which appears to be by A.C. and
4 H.C.'s parent?

5 A. Yes.

6 Q. Do you see what I'm talking about?

7 A. Yes.

8 Q. Is that summary of the allegations consistent with
9 their statement?

10 A. No. The parent asked one of the children if she saw
11 Mr. Hyman's pee pee and the child said, yes. And she asked
12 what it looked like and the child said it was nasty and
13 ugly. The other child denied seeing his pee pee. And then
14 the other child said that she was sitting at the computer,
15 Mr. Hyman grabbed her hand and rubbed it on his pee pee
16 through his shorts. And then when the children were
17 interviewed, I believe, they, one said it was on top of his
18 clothes and the other said that she didn't see it.

19 Q. Okay. There was something about rubbing on the arm,
20 wasn't there?

21 A. By one of the children or by the mom?

22 Q. By the mother?

23 MS. SHAW: Your Honor, I'm just gonna continue to
24 renew objections, is that what the mother said is not
25 relevant to what he was eventually charged with. And the

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1 children both clearly disclosed in that document that he
2 touched them and placed their hands on his genitals. What
3 more details are required at this point?

4 THE COURT: So what's your objection?

5 MS. SHAW: The objection is both relevancy and
6 it's clear that Mr. Falk is trying to cast out on the
7 children's statements and as I said before in my objection,
8 we're not here to re-litigate that question.

9 THE COURT: Yeah. I mean, we're not here to re-
10 litigate it, Mr. Falk.

11 MR. FALK: This is my last question. I mean,
12 obviously, they can go in to depth of the underlying facts
13 of the allegation, I think this is somewhat ---

14 THE COURT: But it's clear that there were
15 convictions, you know, but ---

16 MR. FALK: All right. I'll withdraw ---

17 THE COURT: --- if this is your last question ---

18 MR. FALK: I'll withdraw the question.

19 THE COURT: Okay.

20 Q. Let me just ask you a little bit about the consent
21 form. What are they advised as if they don't cooperate?

22 A. So on the consent form it says they have the right to
23 not finish any test, completing any test that they can
24 revoke their consent for the entire evaluation. That's all
25 that is advised on the consent form.

1 Q. Okay.

2 A. That they have the right to withdraw their consent at
3 any time.

4 Q. Are they advised of the consequences if they were to
5 withdraw their consent?

6 A. When somebody talks about withdrawing their consent or
7 not wanting to consent to a certain part of it, I tell them
8 what the next step is that our clinic does. But I don't,
9 if they don't want to do it they don't do it. If they
10 don't sign ---

11 Q. And what do you tell them?

12 A. I tell them, so these are the standard parts of the
13 evaluation so if there's something that you don't want to
14 do -- honestly, first, I asked them if they want to talk to
15 their attorney. So make sure they had an opportunity to
16 talk to their attorney. Once they're clear that they don't
17 want to participate or don't want to a certain part I let
18 them know that these are parts of my evaluation so I need
19 to let the Attorney General's Office know that you don't
20 want to participate and then I send them back to wherever
21 they came from and then I wait to see what the Attorney
22 General's Office wants us to do, but that's on our end. If
23 they don't want to sign it or they don't want to do it we
24 don't hold them down and make them do it.

25 Q. But that's all the information you give them is that

1 your going to tell the Attorney General that then see
2 what's next?

3 A. Yes. I mean, there have been times where they say,
4 well, what happens? And I say I have seen sometimes,
5 typically, they tell the court that the person is not
6 participating and then sometimes the court might tell them
7 to, but I have given more information. It really just
8 depends on how much they ask for, I guess.

9 Q. One of the test that you gave was the S-A-S-S-I or the
10 SASS?

11 A. The SASS.

12 Q. The SASS?

13 A. Mmm, hmm.

14 Q. And that is a test for substance abuse?

15 A. Yes. It's looking at the probability that someone has
16 or has had a substance use disorder. It's a pretty face
17 valid test which means you can kind of tell that the
18 questions are asking what they're asking about it, it's
19 asking about substance use.

20 Q. Why do you ask that? I mean, how does that play a
21 role in a sex offender pre-commitment evaluation?

22 A. So I testified about this a little bit. So we know
23 that substances do not make people commit crimes, do not
24 make people engage in sexual behaviors that they would
25 never engage in before. But if somebody has a disorder

1 related to sexual arousal to children, for instance, we
2 know that using substances kind of increase their risk
3 because the substances can lower your inhibitions so that
4 could be a risk factor. So I like to see kind of their
5 status on substance use in relation to these kinds of
6 evaluations. It's one data point that I assess for.

7 Q. Is it fair to say it has some relationship to impulse
8 control?

9 A. So impulse control can be measured multiple different
10 ways. So there's behavioral like there's a test that
11 sometimes we previously gave where we looked at attention
12 and impulsivity, but that impulsivity was like pressing the
13 space bar on a computer every time you saw a particular
14 letter. So that would be like one type of impulsivity.
15 There's lifestyle impulsivity ---

16 Q. Let me speak to lifestyle impulsivity, is that, you
17 know, is there a correlation between people who have
18 substance abuse problems and lifestyle impulsivity?

19 A. There certainly could be. I don't think you would say
20 every case, but impulsivity and substances are both kind of
21 externalizing things so potentially.

22 Q. They correlate, I mean, is there a correlation?

23 A. I believe there is a relationship. I don't think
24 everyone with substance use issues are impulsive, but it
25 wouldn't surprise me if there was a relationship between

1 the two.

2 Q. And just let me go back. You spent an hour with him.
3 He did four an half hour of testing. Then you did an hour
4 -- did you review the results of the testing before you
5 started asking him questions for that next hour?

6 A. No. So he did the testing and then we started the
7 first hour and five minutes of the clinical interview where
8 I assessed his developmental history and things like that.
9 It takes me a little while to interpret each of the test so
10 I did not go over the results with him until he came back.
11 So he did the testing on 8th of February. I went over the
12 results with him on the 22nd of February. So not only did
13 I not have the test interpreted to go over the results, but
14 I also, he had not taken the PPG yet and I wanted to go
15 over all the test results with him.

16 Q. So all of these test that you use, you use that as a
17 way to help structure your clinical interview at the end,
18 is that fair?

19 A. Not structure.

20 Q. Oh, okay.

21 A. Because I do a standardized interview.

22 Q. Well, so how do you use them? How do you use the
23 results as part of your interview?

24 A. I don't use them as part of my interview. So they're
25 part of my overall evaluation. So you don't want to just

1 rely on what someone is saying. So you want to try to
2 objectively measure things and do things in a multi-method
3 way of assessment. So not only ask them about their sexual
4 behaviors, but give them questionnaires on my computer
5 because research shows sometimes they're more forthcoming
6 in that. But then at the end of the interview I also go
7 over there test results with them to see if they agree,
8 disagree, maybe they fell asleep or hit a lot of wrong
9 buttons. I want to give them an opportunity to say I don't
10 think that's what I meant or I think something was wrong
11 and go over all of their results with them. But I don't
12 know that I would say it plays a role in my clinical
13 interview, the overall evaluation.

14 Q. Well, what role did the PAI play in your final
15 opinion?

16 A. So for the PAI I'm looking at their self-report of
17 psychological symptoms. I'm looking at how valid the
18 administration of the test was. I'm also looking at
19 interpersonal factors. Some of those things could be
20 related to diagnoses so you would never diagnose somebody
21 based on one's psychological test, but they're all data
22 points that I'm putting together. So something specific on
23 the PAI, I don't think I could pinpoint one result that I
24 said, okay, this makes or breaks the decision. It's
25 putting all of the data together trying to get a full

1 picture of the person.

2 Q. Well, I think I have notes, you said the PAI is for
3 interpersonal functioning, is that accurate?

4 A. It's one thing that looks at, yes.

5 Q. And he was the -- one of your results I thought you
6 said he appeared stressed out?

7 A. Yes. He self-reported some of the questions assessing
8 current stress.

9 Q. And a couple of times you'd indicated that he, I
10 think, on the PAI you said, you said something about him
11 being overly favorable?

12 A. Yes. So the validity scales on the PAI suggested that
13 he was, he may have been answering questions in a way to
14 paint himself in an overly favorable light.

15 Q. And you also have the same concerns at th MM, MIDSA?

16 A. The MIDSA, yes. But the MMPI, no.

17 Q. That's what I meant was the MM, was it MMDISA or

18 A. The MMPI-3---

19 Q. No, not the MMPI.

20 A. The MIDSA?

21 Q. Yeah.

22 A. The MIDSA had some validity concerns, yes.

23 Q. Okay. But you would agree that he was candid with you
24 during that interview, would you not?

25 A. I think that he was anxious and a little bit defensive

1 during the interview. I think like upon the discussion and
2 giving him some of the test results and asking him about
3 some of the reported offense behaviors, I think that he was
4 more forthcoming than other people that I evaluated in
5 comparison. But I think that he may be didn't know the
6 right thing to say or that made him anxious when talking
7 about his sexual behavior and his offense history.

8 Q. But he revealed to you stuff that was not shed, that
9 did not appear in his offense history, is that not correct?

10 A. That's correct. Some of it was to testing. So this
11 stuff about sexually touching his sisters and he reported
12 that on the MIDSA and then when I reviewed the results with
13 him and said why didn't you check the box family member
14 that's when he reported that.

15 Q. And on the Static-99, at a Level II, that's a 5.6%
16 chance of re-offending?

17 A. Let's see. So it's not a 5.6% chance. The number is
18 accurate, but when you're looking at other people from the
19 studies with the same score, they was 5.6.

20 Q. Okay.

21 A. So the Static doesn't tell you anything about the
22 individual just people who have similar characteristics on
23 that measure.

24 Q. But then - but then the Static also has another
25 comparing factor, right, as being likely as routine sex

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1 offenders to re-offend? He has a 1.0, sometimes they get a
2 1.3?

3 A. Oh, you're talking about like a relative risk ratio?

4 Q. Relative risk ratio.

5 A. So 2 is the average score on that measure.

6 Q. Okay.

7 A. So, yes, he is that the average risk on the Static-
8 99R.

9 Q. Okay.

10 MR. FALK: Your Honor, I have no further
11 questions.

12 THE COURT: Okay. Redirect?

13 MS. SHAW: Let me check my notes real quick. One
14 moment, Your Honor.

15 **Redirect Examination by Ms. Shaw:**

16 Q. My only question, Dr. Gottfried, is if you ever had
17 been approached by the defense bar to conduct an evaluation
18 in this context, is it possible that you would've done one?

19 A. Yes. I'm not sure with the contract, if like, we're
20 not allowed to take those cases, that I don't know. But if
21 I was allowed to take them I definitely would. There would
22 be no reason why I wouldn't no one has asked me so I've
23 never looked into that.

24 Q. Okay. Thank you.

25 MS. SHAW: That's all.

1 THE COURT: Anything else, Mr. Falk?

2 MR. FALK: No redirect. Nothing, Your Honor.

3 THE COURT: Okay. All right. You can step down,
4 Dr. Gottfried.

5 DR. GOTTFRIED: Thank you.

6 THE COURT: Thank you. You may call your next
7 witness?

8 MS. SHAW: Your Honor, we are preserving Dr.
9 Gottfried's recall based on the testimony of Dr. Gehle.
10 However, the State rest at this time.

11 THE COURT: Okay. All right. Thank you, ma'am.
12 Mr. Falk?

13 MR. FALK: Your Honor, I have a motion to make out
14 of the presence of the jury.

15 THE COURT: Okay. All right. All right. Mr.
16 Foreman, Ladies and gentlemen, if you would retire to the
17 jury room. This is one of those moments where a legal
18 matter is being presented to the court and I don't want to
19 make any comment that may influence you in any way. We'll
20 call you right back in.

21 (Whereupon, the jury exits the courtroom at 11:47 a.m.)

22 THE COURT: All right, Mr. Falk?

23 MR. FALK: Your Honor, at this time we would move
24 for a directed verdict.

25 THE COURT: Okay.

1 MR. FALK: And just to summarize my argument, the
2 State's witness, I mean, we would agree that there's two
3 components here. There is the mental abnormality and then
4 there's the likelihood to re-offend. I believe the State
5 has failed to make an adequate case unlikely to re-offend.
6 Although, their witness testified in her opinion that he
7 was likely. The only sort of concrete information that was
8 provided to this jury that he was 5., that there was a 5.6%
9 chance that he scored on the Static-99, that same score
10 would re-offend. She also testified that he - that he was
11 as likely to re-offend as a routine sex offender as the
12 State made in their argument, in their opening argument
13 that this is not a program for routine sex offenders it's
14 for the worst of the worst. So on the basis of failure to
15 prove likelihood to re-offend we would move for a directed
16 verdict.

17 THE COURT: Okay. Ms. Shaw?

18 MS. SHAW: Thank you, Your Honor. Most
19 respectfully to counsel, I would disagree completely. Not
20 only did the testimony indicate he was at average risk on
21 the Static which is only one data point on a comprehensive
22 evaluation. We also have the testimony concerning the PPG
23 which he showed various strong sexual arousal to coercive
24 prepubescent children scenarios on multiple different
25 trials, we have that. We have his offending history. And,

1 yes, this program is for the worst of the worst and it's my
2 firm belief that Mr. Hyman qualifies along with the worst
3 of the worst. So at minimum, this a question for the jury
4 to answer. It's a question of fact whether they believe
5 Dr. Gottfried's testimony. We also have Mr. Hyman, in
6 addition to disclosing and admitting to his previously
7 convicted offenses. We have new information that was not
8 even presented to Dr. Gehle. He didn't admit that he
9 molested his sisters to her. He didn't admit to her that
10 he exposed himself to a cousin. He didn't admit that he
11 was using what could only be described as quasi child porn
12 in his thirties before he re-offend it again. So at a very
13 minimum, the jury needs to answer this question. It is not
14 for summary judgment or directed verdict at this time and I
15 would respectfully request that the court denies it.

16 THE COURT: Okay.

17 MR. FALK: Just one other point, I don't recall
18 any testimony and I may have missed it from Dr. Gottfried
19 that PPG said anything as to likelihood to re-offend. I
20 thought that testimony was mostly about the mental
21 abnormality or personality defect. I don't know if the
22 testimony regarding PPG had anything to do with the
23 likelihood to re-offend.

24 MS. SHAW: Your Honor, Mr. Hyman reported that he
25 last experience sexual arousal to prepubescent children

1 five years ago, that's what he said. PPG proved,
2 otherwise. That as February of this year he's getting
3 erections when he's presented with coercive situations
4 involving five-year-old children and that indicates a
5 strong likelihood to re-offend, in part, based on that
6 information that's what led Dr. Gottfried to her
7 conclusion. That he's experienced current sexual arousal
8 to prepubescent children based on the results of the PPG.

9 THE COURT: Okay. All right, counsel, I am
10 satisfied that this is a question for the jury. Therefore,
11 I am going to deny the motion for a directed verdict at
12 this time.

13 MR. FALK: Are we going to lunch?

14 THE COURT: Well, I don't know that's what I'm
15 trying to decide whether to go to lunch or take testimony
16 for an hour.

17 MR. FALK: Well, if we do that ---

18 THE COURT: But I hate to break up the witness so
19 that's the only problem with that.

20 MR. FALK: It's your court, obviously, but lunch
21 sounds good and then ---

22 MS. SHAW: Well, actually, Mr. Falk, perhaps we
23 should approach the bench with the question that you asked
24 me yesterday.

25 (Whereupon, a bench conference was held on the record)

1 MR. FALK: What are you doing for tomorrow? What
2 are we doing for tomorrow? Do you have a commitment?

3 THE COURT: I don't know. I'm trying to find out
4 now. I had to call my wife during that last break to see
5 what has developed. You've got Dr. Gehle?

6 MR. FALK: Mmm, hmm.

7 THE COURT: Anybody else?

8 MR. FALK: He has to take the stand so he's take
9 the stand but I don't think I'll be long.

10 THE COURT: Dr. Gehle will take what?

11 MR. FALK: About the same.

12 THE COURT: The worse, say two hours?

13 MR. FALK: Of the direct, I don't think it would
14 take more than forty-five minutes, just as long as the
15 cross is going to take.

16 THE COURT: well, the thing to be, is to go to
17 lunch. In two hours and he testifies, I don't know if
18 you're going to need to recall but I'm willing to work
19 late, late and knock it out and I can ask the jury if they
20 want to work.

21 MR. FALK: While don't we get feedback - feedback
22 from the jury, I guess, you know, my stomach grumbles about
23 the same time.

24 THE COURT: Yeah. We'll got to lunch now. Because
25 I don't like to break up, you know, ---

1 MS. SHAW: I agree.

2 THE COURT: --- direct and cross. So, I mean, this
3 is probably a good time to go.

4 MS. SHAW: And my cross for Dr. Gehle is not going
5 to be that long. I mean, my theory in this case is
6 information and I'm just gonna say what information did you
7 have? Did you know this? Did you know that?

8 THE COURT: Yeah. Yeah. I think we can finish
9 today.

10 MS. SHAW: I do too.

11 THE COURT: Do y'all opposed to working past five?

12 MS. SHAW: Your Honor, I work all night sometimes.
13 It's fine with me.

14 THE COURT: Yeah, because I'm up in the air about
15 what, if they're going to transfer my mom tomorrow or
16 Friday. I'm trying to get them to wait until Friday, but I
17 haven't heard anything from anybody yet so.

18 MR. FALK: Now, this does pose a possibility of
19 somebody else being able to receive the verdict, if you can
20 get -- all I'm saying is I don't want them to be, when we
21 get to that deliberations point, if they're, you know, want
22 them to have an adequate time to ---

23 THE COURT: Oh, yeah. I'm not gonna - I'm not
24 gonna push them.

25 MR. FALK: Yeah, that was my only point.

1 THE COURT: I'm gonna let them make the decision if
2 they want to work late, you know?

3 MR. FALK: Yeah.

4 MS. SHAW: Do you want to call them in and ask
5 them before we break for lunch? I think that might be a
6 good idea.

7 THE COURT: Well ---

8 MR. FALK: Why don't give them a short lunch.

9 THE COURT: I keep thinking where to go in
10 Florence. Do you say about an hour?

11 THE CLERK: You can't really get a short lunch in
12 Florence at this time, I mean, you need at least an hour.

13 THE COURT: Can they do it in an hour? Can they
14 get lunch?

15 THE CLERK: Maybe an hour and fifteen.

16 THE COURT: Okay. We'll give them an hour and
17 fifteen. So it's 12, we can tell them be back at 1:15.
18 Why don't we do that? We'll break for lunch and then ---

19 MR. FALK: Thank you.

20 THE COURT: And I'll, at some point, I'll try to
21 find out from them what their desire is, you know.

22 MS. SHAW: Okay.

23 THE COURT: If they don't wanna work I'm not gonna
24 make them so....

25 MS. SHAW: Thank you.

1 THE COURT: Bring the jury in for me, please.

2 (Whereupon, the jury enters the courtroom at 11:54 a.m.)

3 THE COURT: You may be seated. Ladies and
4 gentlemen, don't get too comfortable because we decided
5 that for purposes of the trial this is probably the best
6 time to break for lunch. Because the next witness would be
7 somewhat lengthy just like Dr. Gottfried was and I don't
8 like to break up the direct examination and the cross-
9 examination. So in order to be able to not to have to do
10 that I think we'll go to lunch now. It's 12 o'clock, any
11 reason why you can't be back by 1:15? Does anybody know?
12 I don't know about getting lunch around here, but y'all do
13 so. Any problem with that, do you think Mr. Foreman, being
14 back by 1:15 p.m.?

15 MR. FOREMAN: (Gesture of indicating no)

16 THE COURT: Okay. All right. We're going to break
17 now for lunch. The back at one 1:15 and we'll get started
18 back this afternoon. Thank you. Everybody remained
19 seated while the jury goes out. Again, do not discuss the
20 case, Ladies and gentlemen, while you're on lunch break.

21 (Whereupon, the jury exits the courtroom at 11:56 p.m.)

22 THE COURT: Okay. All right. We'll be back at
23 1:15 to get started. Anything before we go to lunch?

24 MS. SHAW: No, Your Honor.

25 MR. FALK: No, Your Honor.

1 THE COURT: Okay. All right. Thank you.

2 (Whereupon, the court takes a recess for lunch)

3 (Whereupon, the court goes back on the record at 1:23 p.m.)

4 THE COURT: Is everybody ready for the jury? Bring
5 them in please, sir.

6 (Whereupon, the jury enters the courtroom at 1:24 p.m.)

7 THE COURT: Be seated. I hope y'all had a nice
8 lunch. I hope y'all made it in before the rain. The rain
9 caught a couple of us before we got back but, anyway.
10 Okay. All right, Mr. Falk, you may proceed?

11 MR. FALK: Yes, Your Honor, we'd like to call
12 Marie Gehle to the stand.

13 THE COURT: All right.

14 THE CLERK: Do you swear or affirm that the
15 testimony you give will be the truth, the whole truth,
16 nothing but the truth so help you God?

17 DR. GEHLE: I do.

18 THE CLERK: Thank you.

19 MR. FALK: Are you ready?

20 THE COURT: Yes, sir.

21 DR. MARIE GEHLE, first being
22 duly sworn, testified as follows:

23 **Direct Examination by Mr. Falk:**

24 Q. Dr. Gehle, could you please tell us your, where you're
25 currently working?

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1 A. I work for the South Carolina Department of Mental
2 Health.

3 Q. What are your responsibilities there?

4 A. I work for the forensic evaluation service and I'm a
5 chief psychologist and I do pre-commitment evaluations
6 under the SVP Act.

7 Q. What is chief psychologist mean?

8 A. It's just a state title that's given to psychologist
9 in the Department of Mental Health.

10 Q. Okay. And where did you work before that?

11 A. Before that I did a Postdoctoral Fellowship at East
12 Central Regional Hospital in Augusta, Georgia doing
13 forensic evaluations.

14 Q. All right. So how long have you been at the South
15 Carolina Department of Mental Health?

16 A. Eleven years.

17 Q. Okay. And you said that you're doing sexually violent
18 predator evaluations?

19 A. That's correct.

20 Q. And you only do, right now, you're only doing what we
21 would call a pre-commitment evaluations, is that correct?

22 A. That's correct. I did a couple of annual review
23 evaluations over the past year just supervising some
24 postdoctoral fellows in doing those evaluations, but,
25 typically, the only evaluations that I conduct at the

1 Department of Mental Health are pre-commitment evaluations.

2 Q. And so how long have you kind of only been doing these
3 pre-commitment evaluations?

4 A. Since 2012.

5 Q. All right. And do you have a feel for how many that
6 you've done?

7 A. I've done it over 200 pre-commitment evaluations, I
8 think it's about 210 of those. And then I've done about I
9 think 80, 85 annual review evaluations under the Sexually
10 Violent Predator Act. So it's about close to 300
11 evaluations.

12 Q. How many do you have right now that are open?

13 A. How many -- okay, so in addition to those 300, I have
14 I believe nine open cases. I know I just got assigned four
15 cases yesterday.

16 Q. Okay.

17 A. So I think that takes it to nine.

18 Q. All right. And so most of your day-to-day activities
19 while you're at the Department of Mental Health is devoted
20 to doing these pre-commitment evaluations, is that correct?

21 A. Almost my entire day-to-day activities, yes.

22 Q. What other -- what kind of educational criteria --
23 where did you go to -- what's educational background?

24 A. I have a Bachelors Degree in Psychology from Ohio
25 Northern University. I have a Masters in Psychology from

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1 Xavier University in Cincinnati, Ohio and I have a
2 Doctorate from Xavier University and it's all in Clinical
3 Psychology.

4 Q. And did you do any -- you said you did a Postdoctoral
5 Fellowship in Augusta, is that correct?

6 A. Yes.

7 Q. And did you do any other work in other states?

8 A. Yes. I did a pre-doctoral internship as part of my
9 training program in Washington State at their Sexually
10 Violent Predator Commitment Program. I did treatment there.
11 I also did forensic evaluations for competency criminal
12 responsibility and risk assessments there in Washington
13 State.

14 Q. Are there any doctrine -- are there any PhD programs
15 in Forensics Psychology that you're aware of?

16 A. I know of one or two, but the American Psychological
17 Association wants psychologist, clinical psychologist to be
18 trained as generalist. So some of those forensic programs
19 it's my understanding that all the forensic doctoral
20 programs are not licensed or accredited, I should say,
21 accredited by the American Psychological Association. So if
22 you go to an accredited, unaccredited program it makes it
23 harder to get licensed when you go to the state level.

24 Q. And where are you licensed?

25 A. I'm licensed to practice in Georgia and in South

1 Carolina.

2 Q. Okay. And just again what is the difference between a
3 clinical psychologist and a forensic psychologist?

4 A. Well, a clinical psychologist is an application of
5 clinical principal, scientific principles of psychology. We
6 do things like treating patients, diagnosing, evaluating,
7 assessing, testing, things like that. And then forensic
8 psychology is just a clinical psychologist who applies
9 those skills to matters of the court or to legal
10 proceedings.

11 Q. And so do you have a clinical practice also?

12 A. I do some private practice work where I do therapy
13 with children, adolescents, and adults.

14 Q. Okay. And are you a member of any organizations
15 related to psychology?

16 A. Yes. I'm a member of APLS. I'm a member ---

17 Q. APLS?

18 A. Sorry, American Psychology and Law Society. I'm a
19 member of the Sex Offender Civil Commitment Program
20 network, call it SOCCPN. Those are the primary things that
21 I've been a member of.

22 Q. Okay. So psychology and law that's kind of forensic,
23 right?

24 A. Yes.

25 Q. Okay. Are you a member of the A-T-S-A?

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1 A. ATSA?

2 Q. ATSA, yeah.

3 A. No, I'm not.

4 Q. Why is that?

5 A. Well, that's primarily a treatment group and that's
6 not something that I do. I don't do treatment with sex
7 offenders in my day-to-day practice.

8 Q. Okay.

9 MR. FALK: At this time I would ask the court to
10 recognize Dr. Gehle as an expert in the field of forensic
11 psychology and sexually violent predator evaluations?

12 THE COURT: Any objection?

13 MS. SHAW: Your Honor, I have no objection of her
14 being a qualified in those two areas, but perhaps Your
15 Honor would like a sidebar before I do this. I do have a
16 couple of specific questions that I would like to ask her.

17 THE COURT: All right.

18 (Whereupon, a bench conference was held on the record)

19 MS. SHAW: Your Honor, I'm fine with her being
20 qualified as an expert, but not in the PPG and I just want
21 to ask her if she's ever done a PPG, if she knows what it
22 is.

23 THE COURT: He's not offering her as an expert in
24 PPG.

25 MR. FALK: No.

1 THE COURT: He just said forensic psychology.

2 MS. SHAW: No. But she's going to be testifying
3 about it.

4 MR. FALK: Why don't we wait until she testifies?

5 MS. SHAW: Because she's gonna say the same thing
6 that she said yesterday which was, basically, she doesn't
7 know enough about it. She's gonna form an opinion. She's
8 going to say it to the jury. It's gonna potentially poison
9 them and she doesn't know what she's talking about when it
10 comes to the PPG. So I just want to ---

11 THE COURT: So you object to her being qualified,
12 basically, as an expert?

13 MS. SHAW: Based on her - I'm not objecting to her
14 being qualified as an expert, but I want the jury to hear
15 that she's never done a PPG, doesn't know what's going on,
16 and have that in front of them before he starts asking
17 about it. I mean, it goes to her expertise in the field as
18 it relates to the particular evaluations and techniques.

19 THE COURT: I mean, sounds it should be addressed
20 in cross-examination. I mean, you can't have your cake and
21 eat it too. I can't, I mean, I find it hard to qualify
22 her. I mean, you don't object to that, but then yet you
23 do.

24 MS. SHAW: Only in that limited context.

25 THE COURT: I understand that, but, I mean, still

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1 in doing that it's sort of shades your agreement to let her
2 even being qualified.

3 MS. SHAW: Well, Your Honor, I've used her myself
4 so I really can object to her qualifying, for her being
5 qualified. I'll cross-examine her on that.

6 THE COURT: Yeah, I think you should. Let her do
7 it by cross-examination.

8 MS. SHAW: All right.

9 (Whereupon, we go back on the record for the jury)

10 THE COURT: All right. I'm going to find that Dr.
11 Gehle is qualified in the area as an expert in the area of
12 forensic psychology and sexually violent predator
13 evaluations. Ladies and gentlemen, as I explained to you
14 earlier, normally a witness cannot provide an opinion. As
15 I've explained now that she has been qualified as an expert
16 she can offer an opinion. Again, the testimony that she
17 presents and the opinion she gives doesn't mean you have to
18 accept it. It's up to you to decide how you want to use
19 her opinion in your deliberations, okay.

20 Q. Dr. Gehle, at the beginning of -- during the opening
21 arguments I believe the State referred to SVP Program as
22 being reserved for the worst of the worst. Is that a
23 sentiment that you would agree to?

24 A. Yes. And the statute refers to an extremely dangerous
25 group of offenders that's who is targeted by the law.

1 Q. And so does everybody who commits a sexually violent
2 offense need to be in the SVP Program?

3 A. It would be my opinion that they do not.

4 Q. In your opinion, what would make somebody the worst of
5 the worst?

6 A. To have a high risk to re-offend. To have a mental
7 abnormality or personality disorder that was predisposing.
8 To have particularly egregious offenses.

9 Q. And why don't you kind of go through what your
10 evaluation process is, I mean, how do you go about -- let
11 me back up. Did you have an opportunity to evaluate Mr.
12 Hyman?

13 A. I did.

14 Q. All right. Why don't you kind of walk us through how
15 that process works for you?

16 A. Well, the first step is I get a file of information, I
17 review that. That has things like the petition that was
18 filed by the State. It has legal documents such as
19 warrants, indictments, sentencing sheets, police reports,
20 witness statements, there were forensic interviews of the
21 victims. There's just a lot of records about, you know,
22 what happened and the criminal history of the person. I
23 get a criminal history report. I'll request any mental
24 health records that may exist. I will request records that
25 I didn't receive that I'll know exist, like, indictments or

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1 sentencing sheets that I know should exist and they're not
2 in the file. So I take all that information and review
3 that and then I sit down and interview the person. I do a
4 standardize interview. It's very comprehensive. It ask
5 questions about everything from, you know, from birth until
6 now. Their legal history. Their sexual history. Their
7 relationship history. Medical and mental health substance
8 use. Childhood history. Family history. Their plans for
9 the future. Things that they've learned in treatment if
10 they had that. Things like that. And I take all of that
11 information that they give me, all the information that I
12 get from the records, and I write a report and submit that
13 to the Attorney General's Office.

14 Q. So tell me this, how much time is spent like at the
15 record review part of reviewing the case file documents on
16 average?

17 A. All of these cases they, typically, take a week, two
18 weeks, I would say on average to complete. So without
19 including a day of interviewing and record review, but
20 you're reviewing the records the whole time that your
21 writing reports. So it's, they're pretty extensive. Some
22 cases will take longer. I would say that this one took,
23 you know, at least a week or, you know, sixty hours, four
24 to sixty hours, is what I'd guess.

25 Q. And you said you did a structured interview, what does

1 that mean?

2 A. I did the same type of interview with everybody that I
3 evaluate. Has, um, you know, a standard list of questions.
4 It's comprehensive enough to, you know, to answer whether
5 they have a mental abnormality or a personality disorder
6 and to assess for risk.

7 Q. Is it sort of the standard template? I mean, is it
8 structure, does everybody recognize the same type of
9 structured interview?

10 A. Well, people's interviews differ slightly, but we are
11 all assessing the same sorts of things. Some people use the
12 template that I use and some people don't.

13 Q. And, obviously, you have to -- do you ever -- are the
14 people you're interviewing always candid with you?

15 A. Not always.

16 Q. So when you're interviewing people what kind of, in
17 your process when you're reaching your conclusion, how do
18 you factor in the fact that you might not be getting
19 accurate information?

20 A. I rely heavily on the records.

21 Q. Okay. And then you did an evaluation for Mr. Hyman
22 and you found that he does suffer from mental abnormality
23 personality defect, is that correct?

24 A. I diagnosed him with a mental abnormality, yes.

25 Q. Okay. And what was that?

1 A. Pedophilic disorder. Sexually attracted to females.
2 Non-exclusive type.

3 Q. Okay. And what information did you need in order to
4 reach that conclusion?

5 A. Well, I needed a history of his sexual arousal
6 patterns really what he's acted on. So his criminal history
7 provides information that he meets criteria for that. He's
8 acted on that arousal towards prepubescent children over at
9 least a period of six months.

10 Q. So his offense pattern certainly led you to that part
11 of your conclusion, is that right?

12 A. Yes.

13 Q. Okay. Would you be surprised -- and you were here
14 when you heard Dr. Gottfried testified about the PPG test,
15 is that correct?

16 A. That's correct.

17 Q. Were you surprised by any of those results?

18 A. No.

19 Q. How about some of the other testing that was
20 conducted, there was, are you familiar with the MMPI?

21 A. Yes.

22 Q. And what is that test?

23 A. It's a true and false self-report measure that
24 assesses for a variety of condition or I don't know if
25 they're, they're not necessarily assessing for a diagnosis,

1 but patterns of responding.

2 Q. Well, why don't you use that test?

3 A. I do use it at times. I use it when I have questions
4 about somebody's personality and it's been difficult in the
5 interview to get a clear assessment of their personality
6 and come to a conclusion as to whether they have a
7 personality disorder and what type of personality disorder
8 it is. If I have questions like that then I will use the
9 test.

10 Q. And are you familiar with the SASS, S-A-S-S-I?

11 A. Yes.

12 Q. And what's your understanding of that test?

13 A. It's a test screening for whether somebody has
14 substance abuse issues.

15 Q. Was there anything in his offenses for you to indicate
16 that he had substance abuse issues?

17 A. No.

18 Q. Why did you not do that kind of test in this case?

19 A. Well, I didn't find any history of substance abuse
20 issues. He denied problems with substance use in the
21 interview.

22 Q. Did his criminal record reflect any arrest or ---

23 A. No, it did not.

24 Q. The PAI, are you familiar with that test?

25 A. Yes.

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1 Q. Have you ever administer that?

2 A. So, typically, psychologists use the MMPI or the PAI,
3 I haven't seen testing reports where both are used. I know
4 that it was in this case, but I haven't seen that
5 previously. I, typically, use the MMPI that's what I was
6 trained on in graduate school. That's the one that I
7 prefer.

8 Q. But do they, basically, sort of probe for the same
9 type of information?

10 A. Yes, it's very similar information.

11 Q. Now, I know that you've use the Hare in the past, is
12 that correct?

13 A. I haven't used it in the sexually violent predator
14 case, no.

15 Q. Are you familiar with that exam?

16 A. Yes.

17 Q. Okay. And can you explain how that exam works?

18 A. So that's an interview guide and it's a record review
19 process and your rating the person on certain personality
20 characteristics based on what they tell you in the
21 interview and based on the record review. Then you're
22 adding up the scores in determining whether somebody meets
23 criteria of a psychopath.

24 Q. So that's sort of a compilation of your opinions based
25 on what he's already said. It's not, he's not answering

1 twenty questions yes or no, is that correct?

2 A. That's correct.

3 Q. And why did you not use that in this case?

4 A. Well, when I met with Mr. Hyman his personality was
5 very normal. He was very adaptive. I didn't see any
6 characterological impairment that would indicate
7 psychopathy or any other personality disorder.

8 Q. And then there's Static-99?

9 A. Correct.

10 Q. And the Hare, the PAI, the MMPI, do they really, is it
11 safe to say there more about identifying a personality ---

12 MS. SHAW: Your Honor, I'm going to object to this
13 method of questioning. We had the same objection yesterday
14 with counsel, counsel is leading the witness. It's not
15 appropriate on direct.

16 THE COURT: Please don't lead the witness, Mr.
17 Falk. Just ask her direct questions.

18 Q. Of those test, the MMPI, the SASS, the PAI, MIDSA and
19 the Hare, what are those provide useful information about
20 likelihood to re-offend?

21 A. Okay. So that was a lot of -- the MMPI doesn't have
22 any clear association with re-offending in the literature.
23 The Hare psychopathy checklist revised the PCLR. That does
24 have some relationship with recidivism if the person is a
25 psychopath which Mr. Hyman is not. What other test, did

1 you say? I'm sorry.

2 Q. The SASS?

3 A. The SASS again has no relationship with sexual
4 recidivism with re-offending.

5 Q. And the PAI?

6 A. The PAI may be helpful if you have questions about the
7 person's personality and whether they have mental health
8 symptoms, things like that. But it has no association with
9 sexual recidivism.

10 Q. What tests do you use when you want to sort of focus
11 in on the issue of, the likelihood to re-offend?

12 A. Well, the two test that almost all evaluators use and
13 especially the Static-99R, but it's the Static-99R and the
14 Static-2002R, almost all evaluators use the Static-99R and
15 then most also use the 2002R.

16 Q. And what do they tell you? I mean, what are they
17 designed to tell you?

18 A. They're designed to give you a recidivism estimate and
19 to compare the person you're evaluating to a group of,
20 large group of sex offenders, a large group of sex
21 offenders and their research samples.

22 Q. And is recidivism similar to the idea of likelihood to
23 re-offend?

24 A. Yes. Recidivism is just re-offending.

25 Q. Okay.

1 A. Yes.

2 Q. And you gave him a score of a 1 on the Static-99, is
3 that correct?

4 A. That's correct.

5 Q. And you were here when Dr. Gottfried testified and you
6 saw -- did you hear the same thing I did, what did she
7 score him on the Static-99?

8 A. She scored him a 2.

9 Q. Have you had any chance to consider whether or not a 1
10 or 2 is more accurate evaluation?

11 A. Yes. I think the scores actually a 2, because when I
12 scored a 1 I did not have the sentencing sheets from 1997.
13 I had requested those, but they didn't, I did not get them
14 and I didn't have the indictments. I also requested those
15 and didn't get those. And so when I looked at prior sex
16 offenses I believe that he had one prior charge and one
17 prior conviction, but I looked at the sentencing sheet and
18 he was convicted of two offenses in 1997. So that would
19 give him one additional point.

20 Q. So that would make him a 2?

21 A. That's correct.

22 Q. And you heard Dr. Gottfried testified that when you're
23 talking about the percentages on the Static-99 that comes
24 to a percentage of 5.6, is that correct?

25 MS. SHAW: Objection, Your Honor. He's continuing

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1 leading. He can't give the witness the answers he wants to
2 hear.

3 THE COURT: All right. Please Mr. Falk, do not,
4 do not leave the witness.

5 Q. What did Dr. Gottfried testify his percentage was?

6 A. I don't know exactly what she said, but I know that on
7 the Static-99R a score of 2 correlates to a recidivism
8 estimate of 5.6%.

9 Q. Okay.

10 A. I think 5 years.

11 Q. And does that also have some relative recidivism
12 estimate associated with that?

13 A. Well, the relative recidivism rates for a 2 it is the
14 same. So the relatively recidivism rate is the same as the
15 average sex offender because the average sex offender
16 scores at a 2 on the Static-99. The same score as Mr.
17 Hyman.

18 Q. Do you have any access to information or opinions on
19 what the average recidivism rate is for sex offender?

20 A. Yes. The average recidivism rate for a sex offender
21 is around 10%.

22 Q. Okay. We were talking about the convictions, if I
23 could approach?

24 THE COURT: Yes, sir.

25 Q. That's a sentencing sheet for his conviction from

1 2016?

2 A. Yes.

3 Q. And what do you see that he was convicted of?

4 A. He was convicted of criminal sexual conduct with a
5 minor in the third degree.

6 Q. And there's also some other language on that line, is
7 there not?

8 A. Yes.

9 Q. And what is that language?

10 A. There is a dash (-) and it says commit/attempt lewd
11 act (victim under 16 years and actor over 14 years).

12 Q. How long have you been practicing, I think you told
13 me, you've been doing sex offender evaluations for how long
14 in the State of South Carolina?

15 A. Since 2009, so eleven years, twelve years.

16 Q. And as part of your ability -- do you try and stay --
17 do you make any efforts to read any current literature in
18 the field?

19 A. Yes.

20 Q. And do you make any efforts to a be abreast with any
21 changes in the law?

22 A. Yes.

23 Q. Are you aware of any changes in the law that would
24 relate to a charge of lewd act on a minor?

25 A. Yes.

1 Q. And what is that?

2 A. Well, in 2012, lewd act upon a minor was removed from
3 the current statute and it was renamed criminal sexual
4 conduct with a minor in the third degree. So, essentially,
5 you can't be charged with the lewd act after it was removed
6 in 2012.

7 Q. So your understanding that's -- so was he convicted of
8 one thing or two things or five things on that sentencing
9 sheet?

10 A. He was convicted of one thing.

11 Q. Okay. When you looked at the dynamic risk factors,
12 what did you find as being one of the ones, excuse me, let
13 me back up. What are the dynamic risk factors? What, in
14 general, are they?

15 A. Dynamic risk factors are factors that have been found
16 in research to be related to recidivism. So if you have, if
17 these things are present in your history or your current
18 functioning it means that you, you know, you are at a
19 higher risk to re-offend.

20 Q. And what is the relationship between looking at
21 dynamic risk factors and looking at somebody's score on the
22 Static-99?

23 A. Well, that's actually a very complicated question
24 because there's not been a lot of good research to say how
25 much, if any, incremental validity meaning does this help

1 explain something beyond the Static scores? So a baseline
2 re-offending rate estimate would be from the Static. We're
3 not sure if you have one dynamic risk factors or ten risk
4 factors or somewhere in between there how much it adds to
5 your likelihood to re-offend. There hasn't been good
6 research on that.

7 Q. What are the dynamic risk factors you considered in
8 this case?

9 A. So I consider dynamic risk factors that come from a
10 large meta-analysis. That was published by a Dr. Mann and
11 other authors and there's a list of them that they found in
12 multiple studies when they collated all of that research,
13 they found a list of factors that were related to sexual
14 re-offending and they include: sexual preoccupation, sexual
15 preference for prepubescent or pubescent children,
16 sexualized violence, multiple paraphilias, offense reported
17 attitudes, emotional concurrence of children, lack of
18 emotionally intimate relationship with adults, lifestyle
19 impulsiveness, poor problem-solving, resistance to rules in
20 supervision, grievance, and hostility, and; negative and
21 social influences. Those factors are not exactly as they
22 sound because they all have, they all have definitions in
23 the literature or there's guides into what you're looking
24 for. So some of them are not as face valid as a sound.

25 Q. Which ones did you find that are relevant to your

1 diagnosis or Mr. Hyman?

2 A. Well, I found that of those risk factors he has a
3 sexual preference for prepubescent children.

4 Q. Did you consider whether or not he had a
5 preoccupation?

6 A. I did consider that because he told me that he was
7 preoccupied when I asked him directly, but that's one of
8 those factors that's not exactly face valid. They're not
9 looking at necessarily just the frequency of how often you
10 think about sex or even how often you're having sex. It's
11 more about the quality of the sexual relationships. Are
12 you having a lot of impersonal sex? Are you, you know,
13 directing most of your sexual activity to someone other
14 than a romantic partner? Do you define yourself in terms
15 of your sexuality? Those kinds of things are what they're
16 talking about when they ask or with that risk factor of
17 sexual preoccupation.

18 Q. And why did you find that sexual preoccupation did not
19 apply to Mr. Hyman?

20 A. For those reasons. So he - he did not seem to be
21 dominated by his sexuality. It didn't, it wasn't on his
22 mind all the time. It wasn't the way he defined himself. He
23 didn't use it as like self-medication or his coping and
24 most of his sexual activity was directed towards his wife,
25 his romantic partner at the time.

1 Q. And how about deviant sexual interest, that was one of
2 the dynamic risk factors, is that correct?

3 A. That's not one of them that I listed.

4 Q. No, but is that one that's considered?

5 A. Well, it's -- deviant sexual interest is a very broad
6 ---

7 Q. Okay.

8 A. --- category and so this is breaking it up more than
9 that. So in terms of deviant sexual interest on this list
10 would be the sexual preference for prepubescent children
11 and sexualized violence and then multiple paraphilias would
12 also speak to that.

13 Q. Okay. And was there one that's related to attitudes
14 toward supervision?

15 A. Yes. Resistance to rules and supervision.

16 Q. And how is that used as a dynamic risk factor? What
17 does -- you said they don't always, not what they sound in
18 face value, what does that mean?

19 A. So resistance to rules and supervision, so the way
20 it's defined is you're looking at people who have, have
21 problems with authority, who have conduct problems and
22 oppositional attitudes and behaviors from childhood into
23 adulthood, and kind of don't think that the rules apply to
24 them would be a way to summarize it and they violate
25 probation and parole, things like that.

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1 Q. And did you find anything in his record that he had a
2 parole violation or probation violation?

3 A. No.

4 Q. Did you find anything his record regarding conduct
5 while at SCDC?

6 A. Yes.

7 Q. And was that not an indication of resistant to
8 supervision and rules?

9 A. Not necessarily. Because you're looking more at an
10 attitude and probation violations so - and the definition
11 of that risk factor they don't include things like prison
12 infractions. So that's what I found from his prison
13 history was a few infractions.

14 Q. How many probation violations would be relevant in
15 order for you to consider that as a dynamic risk factor for
16 somebody?

17 A. One could be relevant. Certainly the more of
18 violations you have the more that risk factor applies to
19 the person. It's also that attitude, though. So did they
20 violate probation, you know, may be making a mistake, not
21 understanding the registry rules, or did they think the
22 rules didn't apply to them and they were doing what they
23 want, you know, did they make legitimate mistake or an
24 error or was it intentional.

25 Q. Are you aware of what Jumpstart is?

1 A. Yes.

2 Q. And did you have any discussion regarding Jumpstart
3 with Mr. Hyman?

4 A. Yes.

5 MR. FALK: Your Honor, May I approach?

6 THE COURT: Yes, sir.

7 MR. FALK: May I approach you?

8 THE COURT: Oh, I'm sorry, I thought you meant her.
9 Okay.

10 (Whereupon, a bench conference was held on the record)

11 MR. FALK: I believe if I ask her if he can get
12 sex offender treatment at Jumpstart she's gonna say yes and
13 I want to clear that questions with you before I ask it.

14 MS. SHAW: Your Honor said no discussion about it.

15 THE COURT: Yeah, I ruled yesterday about any
16 outside treatment or whatever. I didn't want to confuse the
17 jury.

18 MR. FALK: Okay.

19 THE COURT: Because treatment is not really the
20 issue you here.

21 MR. FALK: Then can we -- then at some time of the
22 day I want to proffer that testimony.

23 MS. SHAW: That's already been excluded.

24 THE COURT: Yeah. I mean, you proffered it
25 yesterday, didn't you?

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1 MR. FALK: Nope. That's what I thought, but then
2 I thought you told me I had to renew it that's why I'm
3 here.

4 THE COURT: Well, I said you can renew your
5 objection, yeah, outside the presence of the jury, at some
6 point.

7 MR. FALK: Okay.

8 THE COURT: When we take a break you can certainly
9 put on the record ---

10 MR. FALK: That's what I thinking ---

11 THE COURT: You know, sure, you can put it on the
12 record.

13 MR. FALK: I misunderstood what you said, okay.

14 THE COURT: Yeah. Yeah.

15 (Whereupon, we go back on the record for the jury)

16 Q. So let me go back to risk to re-offend, you gave an
17 opinion that he suffered from a personality disorder,
18 mental abnormality?

19 A. Mental abnormality.

20 Q. Okay. And that's one -- that is -- and that's one of
21 the things you're looking for, is that correct?

22 A. Correct.

23 Q. And what is your opinion about likelihood to a re-
24 offend?

25 A. My opinion is that he's, he's not likely to re-offend.

1 Q. And your opinion that he's not likely to re-offend,
2 how does that, how does that relate to your opinion that he
3 does not meet the qualifications for it?

4 A. Well, he's been convicted of sexually violent
5 offenses. He has a mental abnormality that's related to
6 sexual offending. But you also have to have a likelihood
7 so such a degree as opposed to a menace to the health and
8 safety of others and it's my opinion that he doesn't met
9 that part of the criteria, the SVP.

10 Q. And when they say, I believe you said, when we're
11 talking about the relative risk, you said something about
12 leaving you, what was your response about his relative risk
13 compared to other sex offenders?

14 A. His risk is the same as the average sex offender. So
15 in the large research sample when they looked at thousands
16 of sex offenders the most common score on the instrument
17 was a score of 2 and that's the same score as him.

18 Q. Okay. I should, may be, have discussed this at the
19 beginning, now you're testifying today on behalf of Mr.
20 Hyman, is that correct?

21 A. That's correct.

22 Q. You've testified on behalf of the State on other
23 occasions, is that correct?

24 A. Yes. Many times.

25 Q. And the reason why

1 MR. FALK: Your Honor, I believe I have no further
2 questions.

3 THE COURT: All right. Thank you, sir. Ladies and
4 gentlemen, do you need a break or are you just ready to
5 move forward?

6 (Whereupon, gesture was made to move forward)

7 THE COURT: Ms. Shaw?

8 **Cross-Examination by Ms. Shaw:**

9 Q. Good afternoon, Dr. Gehle?

10 A. Afternoon.

11 Q. Ladies and gentlemen, can you hear me over here?

12 (Whereupon, gesture was made they could)

13 Q. Okay. Madam Court reporter?

14 COURT REPORTER: Yes.

15 THE COURT: Be sure to speak up.

16 MS. SHAW: I will do so, Your Honor. Thank you.

17 Q. So Dr. Gehle, you met with Mr. Hyman on one occasion,
18 correct?

19 A. That's correct.

20 Q. Okay. How long did you interview him for?

21 A. I believe it was about three hours and twenty minutes.

22 Q. Okay. Great. Now, you did a records review in
23 addition to the interview with Mr. Hyman, right?

24 A. That's correct.

25 Q. And you had access to all of the same documents,

1 except for that indictment sheet, that she did, right?

2 A. I don't know if I had access to all the same records.

3 I know one thing that I noticed in her report was she
4 didn't have an NCIC or a National Criminal Information
5 Center rap sheet ---

6 Q. You did, though?

7 A. I did. And she used a Sled Catch Report. I did not
8 have that. I've never even heard of that document so ---

9 Q. Okay.

10 A. --- didn't have that. But I didn't do a side-by-side
11 comparison of what records she had and what records I had.

12 Q. Okay. Would you say the information you both had in
13 front of you was consistent?

14 A. Again, I didn't do a side-by-side comparison.

15 Q. Well, you got her report ---

16 A. They are typically consistent in these cases.

17 Q. Well, you read her report, right?

18 A. I looked over it, yeah.

19 Q. Okay. Now, you heard the testimony from this morning,
20 right?

21 A. Yes.

22 Q. And you heard about all of the additional tests that
23 Dr. Gottfried performed that you did not?

24 A. That's correct.

25 Q. Okay. And you've used those test in the past, right?

1 A. Not all of them.

2 Q. Which ones haven't you used?

3 A. Well, it would be easier if you asked me which ones I
4 have used.

5 Q. Well, you said already on direct that you use the MPI,
6 MMPI, right?

7 A. That's correct.

8 Q. You've used the PAI ---

9 A. No.

10 Q. --- but you prefer not to?

11 A. No, I haven't used the PAI.

12 Q. So you're changing your testimony to say you've never
13 used it?

14 A. I don't believe that I testified that I have used the
15 PAI.

16 Q. Okay. Did you use the MIDSA?

17 A. No.

18 Q. Are you trained to use the MIDSA?

19 A. I have actually never even heard of that test until
20 today or, I'm sorry, not until today, but until I received
21 an email about it asking me about it in preparation for
22 this case so maybe a couple weeks ago. I've never heard of
23 that test.

24 Q. All right. So you've been doing these evaluations for
25 eleven years yet you've never used the MIDSA?

1 A. Yes. And I actually asked all of my colleagues and
2 they have never heard of the test either.

3 Q. Interesting.

4 A. Yes.

5 Q. You also didn't use the Hare Psychopathy Checklist,
6 right?

7 A. That's correct.

8 Q. Okay. You didn't use the SASS?

9 A. That's correct.

10 Q. Have you ever used the SASS?

11 A. Yes.

12 Q. Okay. And you didn't use the Sexual Violence SVR-20,
13 did you?

14 A. That's correct.

15 Q. Okay. You heard, well you documented on page 6 --
16 well, actually, I'm gonna back up. Would you disagree that
17 having as many of data points as possible in your
18 evaluation of someone has been convicted of multiple sexual
19 offenses against prepubescent children, little girls,
20 having as much data about that person would be important?

21 A. Having data is important.

22 Q. Okay. Thank you. Now, you noted on page 6 of your
23 report, and if you need refer to it by all means, please,
24 do so.

25 A. I will.

1 Q. You noted that Mr. Hyman, in fact, admitted he was
2 sexually preoccupied when he engaged in his offending
3 behaviors both in 1997 and, again, 2015? Do you see that
4 quote?

5 A. I just want to make sure that he said it at both
6 times.

7 Q. I don't think he actually differentiate it. He said
8 he was thinking about it all the time.

9 A. Okay.

10 Q. Is that in your report?

11 A. I'm sorry, what exactly is the question?

12 Q. Is Mr. Hyman's admission that he was sexually
13 preoccupied with children and sex in general, on page 6 of
14 your report?

15 A. Okay. I asked him if he was sexually preoccupied in
16 the interview and he said I would have to say, yeah,
17 because look at what I did. And he said that sex was on
18 his mind frequently around the time he committed the
19 offenses.

20 Q. Okay. No, thank you. That's all I ask for the quote.

21 MR. FALK: Your Honor, can she be entitled to
22 answer the question, finish her answer?

23 MS. SHAW: That was the quote I was looking for,
24 Your Honor.

25 THE COURT: I'll let her if she wants to complete

1 her answer. Go ahead.

2 MS. SHAW: Okay.

3 THE COURT: Okay.

4 Q. Now, on page 14 and you have your report, you say he's
5 not sexually preoccupied?

6 A. That's correct.

7 Q. So even though he admitted to you that he was thinking
8 about sex and little kids the whole time while he was
9 offending, you say that's not a risk factor for him?

10 A. Okay. I want to clarify that he didn't tell me that
11 he was thinking about kids the entire time or that he was
12 saying that he was sexually preoccupied with kids. And,
13 again, I think I explained in my testimony how that
14 question that I asked him even though it uses the same
15 words "sexually preoccupied" it's not the way that is
16 defined in the research and that dynamic risk factor.
17 They're looking at that word a little bit differently.

18 Q. Okay. Well, Mr. Hyman is a fairly plainspoken man,
19 right? Meaning, he doesn't use big fancy words? He's not
20 a lawyer? He's not a psychologist? He's kind of your
21 average guy, right?

22 A. I guess so.

23 Q. Okay. So he's not gonna say, "Well, I was thinking
24 about children the whole time." He would just say like a
25 plain man would, "Look what I done." And you would not

1 disagree that his only criminal offenses are related to
2 children, right?

3 A. His only criminal offenses are related to children,
4 correct.

5 Q. Okay. Thank you. Now, when you discussed his
6 offending patterns with him, he, in fact, only admitted to
7 four victims, right? I believe that's also on page 6 if
8 you need to refer to your work.

9 Q. So what was the question?

10 A. Well, when you interviewed him he only, in fact,
11 admitted to molesting four children, not the six that he's
12 actually been accused of molesting?

13 A. That's correct.

14 Q. Okay. And did you take him at his word when he said
15 that he didn't molest the other two just because he hasn't
16 been convicted of it?

17 A. Yes. He told me that he hadn't and he had been
18 convicted of that.

19 Q. Okay. And in your practice because we work together
20 all the time, we've read multiple reports, you, in fact, do
21 not take offenses that haven't been convicted into account
22 when you formulate your opinions, isn't that correct?

23 A. Well, I look at it as they're innocent until proven
24 guilty, unless, they tell me that they've committed that or
25 the court has been proven, prove that or they plead guilty

1 ---

2 Q. Okay.

3 A. --- That's correct.

4 Q. All right. Now, you have -- you said you scanned Dr.
5 Gottfried's report and did you read it with any detail?

6 A. I don't know. I don't know how to answer that. Did I
7 read it with any detail.

8 Q. Did you read every page?

9 A. I don't think so, no.

10 Q. Well, did you hear her testifying this morning?

11 A. Yes.

12 Q. Okay. Did you hear her testified that Mr. Hyman told
13 her that he had exposed himself to a female cousin when she
14 was roughly twelve and he was about fifteen, did you hear
15 her say that?

16 A. No, I don't remember her saying that, specifically.

17 Q. Okay. Did you hear her say that Mr. Hyman admitted to
18 her that he had touched his two sisters inappropriately
19 when he was approximately eighteen or nineteen years old --
20 -

21 A. Yes.

22 Q. --- did you hear her say that?

23 A. Yes.

24 Q. Did he admit that to you?

25 A. No.

1 Q. Okay. Did you hear her testify that Mr. Hyman had
2 been looking at quasi pornographic images of little girls
3 when he was in his thirties after he was released from his
4 first incarceration in order to satisfy his sexual needs,
5 did you hear her say that?

6 A. I heard you say that this morning, but I don't
7 remember her saying that, specifically.

8 Q. Well, did you hear her say that he admitted to her
9 that he was looking at pictures of little girls in bras and
10 bathing suits?

11 A. No, I don't. Again, ---

12 Q. You didn't ---

13 A. --- when I was listening to the testimony I was also
14 looking at my own notes, looking at my report so ---

15 Q. So you weren't listening carefully to Dr. Gottfried?

16 A. That's correct.

17 Q. Okay. Well, I'll represent to you those are the exact
18 thing she said this morning. If you had, had that
19 information, if Mr. Hyman had disclosed that to you, would
20 that have, in any way, moderated your opinion or change
21 your ultimate conclusion about his risk? They're
22 admissions. He doesn't have to be convicted. He would've
23 told you himself.

24 A. Okay.

25 Q. Would that changed your opinion?

1 A. It still wouldn't change his Static scores so it
2 probably wouldn't change my overall opinion, no.

3 Q. Okay. Because you rely solely on that Static, right?

4 A. I don't rely solely on the Static, no.

5 Q. Well, no, I mean, in terms of the actuarial measures
6 it's only one you rely on, right?

7 A. I relied on the two actuarial measures, yes.

8 Q. Okay. Now, in your own report, at page 6, it says
9 that you asked Mr. Hyman if he had any sexual contact with
10 family members and he denied it. Do you see that?

11 A. Yes.

12 Q. So he lied to you.

13 A. Apparently.

14 Q. Okay. He also denied the use of child based I won't
15 use -- well, I will say this, he admitted that he attempted
16 to view child pornography, but was unable to access it,
17 right, it's also on page 6?

18 A. Yes. I believe he told me that, yes.

19 Q. Okay. So had you heard that he was looking at
20 photographs of little girls in bras and bikinis in his
21 thirties in conjunction with his admission that he had been
22 looking or attempting to seek kiddie porn would that have
23 changed any of your conclusions?

24 A. It all speaks to his diagnosis of pedophilic disorder
25 which is accounted for.

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1 Q. Okay. And, in fact, he admitted previously had
2 fantasies of masturbation to little girls, right?

3 A. Yes.

4 Q. Okay. Now, do you recall in your report regarding his
5 2015 offense where you document what the child reported
6 that he did, is that, she said that he put his hand on her,
7 I'm sorry, he put her hand on his penis over his clothes
8 and she told him to stop, but he wouldn't do that. Do you
9 recall writing that in your report?

10 A. That's not exactly what I wrote in my report, no.

11 Q. Would you like to read the quote?

12 A. Well, I think that you just said that the victim said
13 that, she did that?

14 Q. Mmm, hmm.

15 A. Is that correct?

16 Q. The victim reported that she told him to stop, but he
17 wouldn't. Is that true?

18 A. So when I wrote my report was actually it was his
19 daughter was reporting this about this victim. So she was
20 reporting what she apparently observed. So it wasn't the
21 victim directly.

22 MS. SHAW: Your Honor, May I go grab Dr.
23 Gottfried's or Dr. Gehle's report?

24 THE COURT: Certainly.

25 MS. SHAW: Thank you.

1 Q. If you look at the bottom of page 9, last paragraph,
2 your report says, "A.C. disclosed she was sitting at the
3 computer when Mr. Hyman took her hand and put it on his
4 penis on top of his clothing. He "rubbed her hand on his
5 penis and she told him to stop." It was noted, she stated
6 she would not stop or he would not stop.

7 A. Yes, you're correct.

8 Q. Okay. Thank you. Now, during the December interview
9 with Mr. Hyman, didn't he, in fact, admit showering with
10 the victim knowing as S.C. and talking her into touching
11 his penis?

12 A. Yes.

13 Q. Okay. He also admitted fondling his niece?

14 A. That's the same person.

15 Q. Yes. Okay. Good. So -- and I actually misspoke,
16 yes, it is ---

17 THE COURT: Speak up.

18 Q. And so he admitted he talked her into fondling him and
19 he did it to her as well?

20 A. That's correct.

21 Q. Okay. Yet, he denies that he needs any sort of sex
22 offender treatment at this time, doesn't he?

23 A. That's correct.

24 Q. Okay. And that's despite having had sex offender
25 treatment when he was first incarcerated?

1 A. Correct.

2 Q. That's despite having sex offender treatment when he
3 was released to the community?

4 A. That's correct.

5 Q. And that's despite the fact that he re-offended and
6 after he had all that treatment?

7 A. That's correct.

8 Q. Okay. Now, in fact, he denied he was at any risk to
9 re-offend, didn't he?

10 A. Yes, that was his opinion.

11 Q. All right. Now, as part of your evaluation you want
12 to know why these people offended, right? Why they did
13 what they did?

14 A. It's nice to -- yes.

15 Q. All right. So I'm going to refer to you to page 6 of
16 your report about the middle of the fourth paragraph, the
17 one real long paragraph, and I'm gonna read you a quote
18 directly, well, actually I'm going to ask you to read a
19 quote directly from Mr. Hyman and it starts with the line
20 that says "consent, he said."

21 A. I'll have to find this.

22 Q. Yeah, no. Take your time please.

23 A. Can you say that one more time, it starts with what?

24 Q. The line -- the line is about halfway through that
25 paragraph may be a little more than half or a little less

1 than halfway and it starts with the word "consent, he said"
2 and then it begins the quote.

3 THE COURT: If you need to point it out to her, Ms.
4 Shaw, you may approach the witness.

5 A. Please do.

6 MS. SHAW: I'll be happy too. Sure, Your Honor.
7 I don't want her using my marked up copy.

8 THE COURT: No. You can point it out on hers.

9 A. Okay. You want me to read that quote?

10 Q. If you would please read that quote and tell me what
11 you had asked him right before that?

12 A. Okay. "I really don't know it's like I said I ain't
13 never had sex with none of them. It's just a way for me to
14 get off or something like that. He would be the easy way
15 instead of trying to find somebody." There weren't too
16 many people tricking or what you call it." And that was in
17 response to asking why he engaged in sexual acts with
18 prepubescent girls instead of individuals who were of the
19 age of consent.

20 Q. So, basically, he has a sexual attraction to little
21 girls and he committed his crimes as crimes of opportunity,
22 they were there. I'm attracted to them. I'm going to
23 touch them. Right?

24 A. That's a way to interpret it, yes.

25 Q. Okay. Thank you. Now, getting to the dynamic risk

1 factors, we've already gone over the Statics. I'm not
2 gonna waste the jury's time with more that. You and Dr.
3 Gottfried, I mean, your report says 1, but you discussed
4 that he's a 2 on the Static-99 and a 4 on the 2002R, right?

5 A. That's correct.

6 Q. That's the same as Dr. Gottfried, right?

7 A. That's correct.

8 Q. Okay. And you both diagnosed Mr. Hyman with pedophilic
9 disorder, right?

10 A. Yes.

11 Q. Okay. But you feel he's not a risk ---

12 THE COURT: Speak up a little bit. The last
13 witness needs to be able to hear you. She's far away.

14 MS. SHAW: I'm sorry, Ladies and gentlemen.

15 THE COURT: The last juror not witness, I'm sorry.

16 MS. SHAW: I'm sorry.

17 Q. But so based on his dynamic risk factors and the
18 relatively average rate of likelihood to recidivate from
19 the Statics you felt that he was not a risk, right?

20 A. I feel like he is not likely, that's my opinion.

21 Q. Okay. So dynamic risk factors, number one is deviant
22 sexual interest, he's got it, right? No question about
23 that? He sexually attracted to little children, is that
24 normal?

25 A. Excuse me?

1 Q. He is sexually attracted to little children, is that
2 normal?

3 A. No.

4 Q. Okay. That would qualify as deviant sexual interest,
5 in fact?

6 A. Yes. It means he meets criteria for pedophilic
7 disorder.

8 Q. Okay. And he admits he was constantly thinking about
9 sex at the time he offended, it was a crime of opportunity,
10 yet you don't think he has a sexual preoccupation even
11 though he admitted that he did?

12 A. Again, the definitions are different from just, just a
13 general sort of everyday use of sexual preoccupation that
14 in terms of what they're looking for in the research.

15 Q. Okay.

16 A. And how they defined it.

17 Q. All right.

18 A. So his definit -- what he described did not, did not
19 meet or satisfied that definition.

20 Q. Okay. And you said poor coping is one of the twelve
21 empirically supported dynamic risk factors, right?

22 A. Yes, I believe so.

23 Q. Okay. And Mr. Hyman who, in fact, reported to you
24 that he was very dissatisfied with his sexual relationship
25 with his wife at the time he committed his second set of

1 offenses, isn't that correct?

2 A. Yeah. He said that -- that's true.

3 Q. Okay. And sexualize coping is, in fact, part of that
4 risk factor?

5 A. Okay. So let me back up, so poor coping is not one of
6 the empirically supported. It's one that is promising so
7 it was found in some of the research, but it wasn't found
8 to be as universal as the other risk factors. Sexualize
9 coping is another risk factor that's look at, that again,
10 didn't, didn't meet that highest threshold as being really
11 empirically supported by the research.

12 Q. Okay. But it's one of those strongly correlated
13 things like callousness, Machiavellianism, things like
14 that?

15 A. Yes. It's a promising risk factor, yes.

16 Q. Okay.

17 A. Not yet fully supported by the research.

18 Q. Okay. Well, is poor problem-solving fully supported
19 by the research?

20 A. Yes.

21 Q. Okay. So if Mr. Hyman didn't want to re-offend and
22 had the ability to prevent himself from re-offending,
23 wouldn't a problem-solving technique if he was dissatisfied
24 with his sexual relationship with his wife need to go out
25 and either find a new relationship or obtain the services

1 of a lady of the night?

2 A. What's your -- what's your question?

3 Q. Wouldn't that be a way to solve the problem without
4 re-offending against children? He's unhappy with his sex
5 life with his wife, not everybody goes out and molest
6 little kids?

7 A. That's correct.

8 Q. Okay. So that would be a problem-solving issue for
9 him, right?

10 A. I'm not sure exactly what you mean it would be a
11 problem-solving issue. Certainly, if he was unsatisfied
12 with his sexual relationship with his wife, having sex with
13 another adult female would be a much better to solve a
14 problem than to have sex with a child.

15 Q. Okay. And -- but, historically, he hasn't been able
16 to exercise that based on his history? He wants to have
17 sex, instead of going out and getting a willing adult
18 partner, which he's actually admitted he cheated on his
19 wife three times, do you recall that? It's in your report.

20 A. I believe so.

21 Q. Okay. So instead of going out and getting himself a
22 willing adult partner, he instead chose to molest his
23 niece?

24 A. Correct.

25 Q. Would that being example of poor problem-solving

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1 and/or potentially sexualize coping?

2 A. Not as defined in the research, no.

3 Q. Okay. And let me make sure I haven't forgotten
4 anything. No, I think I'm done. Thank you, Dr. Gehle.

5 THE COURT: Mr. Falk?

6 MR. FALK: I need to approach?

7 THE COURT: Okay.

8 (Whereupon, a bench conference was held on the record)

9 MR. FALK: I believe I'm being a little hamstrung
10 whether or not he can testify that he can get treatment if
11 he goes to Jumpstart and here's my reasoning: First of
12 all, she asked him whether or not he thinks he needs
13 treatment.

14 MS. SHAW: I haven't asked him anything.

15 MR. FALK: She asked -- she brought up the subject
16 of him needing treatment.

17 THE COURT: Yeah.

18 MR. FALK: She brought it up.

19 THE COURT: She did, yeah.

20 MR. FALK: Also, during Dr. Gottfried's direct
21 testimony ---

22 MS. SHAW: I didn't -- I brought up the fact that
23 he's had treatment and he still recidivated. I didn't ask
24 her if I think, if she thinks he needs treatment.

25 MR. FALK: That was the question.

1 MS. SHAW: No, it was not.

2 MR. FALK: She said he still doesn't think he
3 needs treatment. We can go get the record.

4 THE COURT: Yeah.

5 MS. SHAW: Well, no. I'm asking her about a quote
6 from her report. He says he doesn't need treatment. That's
7 what he said. I'm not asking her if she thinks he needs
8 treatment. I'm not going to ask her that.

9 THE COURT: I mean, it didn't -- I think it was his
10 quote that he told her he didn't need treatment.

11 MR. FALK: Okay. But so -- and there was
12 testimony from Dr. Gottfried that he got outpatient
13 treatment while he was on parole, on probation.

14 MS. SHAW: It's a fact.

15 MR. FALK: Okay. So why ---

16 MS. SHAW: He recidivated after he got the
17 treatment.

18 MR. FALK: So why can't I ask ---

19 MS. SHAW: Those are facts ---

20 MR. FALK: --- her whether or not he can get
21 treatment at Jumpstart?

22 MS. SHAW: Because it's not relevant to the
23 question. The jury's got to answer it.

24 THE COURT: Yeah, I mean, the fact that he had
25 treatment as part of his probation before.

1 MR. FALK: But if she's bringing up the fact that
2 he said he doesn't need treatment -- are we making a record
3 here. I just want to make sure this is all here because I
4 think this is all ---

5 MS. SHAW: Your Honor, it's not part of the things
6 that I have to prove under the statute. Mr. Falk, I'm
7 sure, would like it to be and I'm sure that's gonna be the
8 bases for his appeal.

9 MR. FALK: Then why did ask him -- why did you ask
10 him to confirm that statement?

11 MS. SHAW: I didn't ask him to confirm anything. I
12 asked her to confirm what he said.

13 MR. FALK: Well, she brought his -- she brought
14 that issue up.

15 MS. SHAW: And that goes directly to the question
16 whether he's likely to re-offend. He's had treatment in
17 the past and yet he still looking at kiddie porn and he
18 still molested those other kids in 2015. It's directly
19 relevant to the question of likely. And I'm asking her if
20 that's what he said. If he still feels that he doesn't
21 need treatment despite all of that information.

22 THE COURT: Yeah.

23 MS. SHAW: You know, it's not a question of
24 whether he can get treatment on the inside or the outside
25 that's not the question the jury has gotta answer.

1 THE COURT: I agree with that. And that's not what
2 they've got find. Again, I just think it'll confuse the
3 jury if we start saying and talking about outpatient and
4 that's not the issue. You know, I'll let you make an
5 objection, whatever you want to on the record, but I'm not
6 gonna let you go into that. I just don't think it's
7 appropriate.

8 MS. SHAW: Thank you, Your Honor.

9 MR. FALK: But I just -- she just has to be able
10 to answer that one question on ---

11 MS. SHAW: Which one question?

12 MR. FALK: Whether or not she's aware that they
13 offer treatment at Jumpstart?

14 MS. SHAW: That's, again, not relevant. Whether
15 Jumpstart offers treatment or not ---

16 MR. FALK: I'm making a ---

17 MS. SHAW: --- that's not the question.

18 MR. FALK: I'm making a proffer. I'm ---

19 MS. SHAW: I mean, if you want to make a proffer,
20 then make it outside the presence of the jury.

21 MR. FALK: That's what a proffer is.

22 THE COURT: Yeah.

23 MS. SHAW: But that's -- it's not relevant.

24 THE COURT: I mean, you can make a proffer. I
25 mean, a proffer is a proffer. You can make a proffer ---

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1 MR. FALK: That's all I'm asking.

2 THE COURT: But the jury won't hear it so....

3 MR. FALK: Yeah, that's what I'm saying. I just
4 want to ask -- I need that opportunity with that person on
5 the stand to ask that one question.

6 THE COURT: And I can rule it's not relevant, you
7 know, the jury is not to hear it.

8 MS. SHAW: Okay.

9 THE COURT: When you come back out, yeah.

10 MR. FALK: Thank you.

11 THE COURT: Do you want to do that now or do you
12 want to let the jury go out?

13 MR. FALK: Well, um ---

14 THE COURT: You got something else to ask, first?

15 MS. SHAW: I'm done, Your Honor.

16 THE COURT: You're done.

17 MR. FALK: I'm just trying to think.

18 THE COURT: Sure.

19 MR. FALK: No, I'm not gonna redirect. I just
20 want that one question.

21 THE COURT: Okay. I'll ask them to step out. All
22 right. Mr. Foreman, Ladies and gentlemen, we've got one of
23 those legal issues that we need to take up on the record
24 outside of your presence. So I'm gonna ask that you retire
25 to the jury room for just a brief period of time while we

1 resolve this matter. Again, don't discussed the case while
2 you're back in the jury room. I know you get tired of me
3 saying that, but I have to remind you. (Whereupon, the
4 jury exits the courtroom at 2:31 p.m.)

5 THE COURT: All right. Mr. Falk?

6 MR. FALK: Madam Court reporter, could you hear
7 us? Was that all being recorded?

8 COURT REPORTER: For my -- for me, but I have it,
9 yes. But that's only for me. But, I mean, I can -- but
10 that was only for me.

11 MR. FALK: That's what I wanted to know ---

12 COURT REPORTER: I have it. If that's what he's
13 was talking about, I have it.

14 MR. FALK: So we can -- that can become part of
15 the record?

16 THE COURT: Yeah ---

17 COURT REPORTER: Do you want me to make it part of
18 the record?

19 THE COURT: Yeah, you can make it part of the
20 record.

21 MR. FALK: That's ---

22 COURT REPORTER: I'll make a note of that.

23 THE COURT: She'll make it part of the record.

24 COURT REPORTER: Okay. Which -- that bench
25 conference should be part of the record?

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1 THE COURT: Yeah, the last bench conference if
2 you'll just mark that. Make a notation.

3 COURT REPORTER: Thank you. I'll do that.
4 (Whereupon, proffer testimony was taken of Dr. Gehle)

5 MR. FALK: Dr. Gehle, I asked you before and you
6 said you were familiar with Jumpstart?

7 DR. GEHLE: Yes.

8 MR. FALK: Okay. Are you aware whether or not
9 they offer sex offender treatment there?

10 DR. GEHLE: It's my understanding that they do.

11 MR. FALK: That was my question. Thank you.

12 THE COURT: Okay.

13 MS. SHAW: I really don't have any response to
14 that. I don't think it's necessary for purposes of this
15 trial.

16 THE COURT: Right. All right. It's been
17 proffered. I'm not going to allow that question to be
18 asked in the presence of the jury. I don't find that it's
19 relevant to the question before the jury at this point in
20 time.

21 MR. FALK: Thank you.

22 THE COURT: You certainly -- the record is
23 preserved for you.

24 MR. FALK: And so I'm gonna call him next when the
25 jury comes in.

1 THE COURT: Okay.

2 MR. FALK: But could I have a few minutes to talk
3 to him?

4 THE COURT: Sure. Go ahead and talk. Do you need
5 to go somewhere private?

6 MR. FALK: No.

7 THE COURT: Just stand at ease for a few minutes.

8 MS. SHAW: I was gonna say I can step out so you
9 can have -- just so there's no appearance of propriety, I'm
10 happy to step out, Your Honor.

11 THE COURT: That'd be fine. And I'll step out
12 myself as well.

13 DR. GEHLE: Am I done?

14 THE COURT: Well ---

15 DR. GEHLE: Or, no, I'm not?

16 THE COURT: --- I'm gonna let you step down after
17 the jury comes back in, okay?

18 DR. GEHLE: Okay. All right. Thank you.

19 (Whereupon, the judge takes a short recess)

20 THE COURT: Okay.

21 MR. FALK: I am gonna ask Dr. Gehle one last
22 question that's legal.

23 THE COURT: Sure.

24 MR. FALK: Not on proffer, on the record.

25 THE COURT: Okay. All right. You ready, then?

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1 MR. FALK: And there's one other thing. So were
2 all of our bench conferences on the record?

3 COURT REPORTER: They are, but they aren't.

4 MR. FALK: Okay. Is there any, any objection to
5 making sure that all of the bench conferences are on the
6 record?

7 MS. SHAW: No. I think for purposes of clarity of
8 the record because I'm sure there's going to be an appeal
9 in this matter, I think it would be appropriate. It's an
10 interesting question of law which my boss can argue.

11 THE COURT: Okay. All right. Madam Court
12 Reporter, I'll instructed you to have all sidebars made
13 part of the official record.

14 MR. FALK: We have, as you know, very difficult
15 issue preservation rules in this state.

16 THE COURT: Oh, I know. Okay. Bring the jury in.
17 (Whereupon, the jury enters the courtroom at 2:45 p.m.)

18 THE COURT: You may be seated. Mr. Falk?

19 **Redirect Examination by Mr. Falk:**

20 Q. Dr. Gehle, during cross-examination, Ms. Shaw calls
21 your attention to some factual issues, have you heard
22 anything from either cross-examination or any other
23 testimony today that changes your opinion in this case?

24 A. No.

25 Q. And so can you say to a reasonable degree of certainty

1 in the field of forensic psychology whether or not Mr.
2 Hyman meets the criteria for commitment in the Sexually
3 Violent Predator Program?

4 A. He does not meet the criteria of an SVP in my opinion.

5 Q. Thank you.

6 MR. FALK: No further questions.

7 THE COURT: Okay.

8 MS. SHAW: I have no redirect or re-cross, Your
9 Honor.

10 THE COURT: All right. You can step down, Dr.
11 Gehle.

12 DR. GEHLE: Thank you.

13 THE COURT: All right. You may call your next
14 witness.

15 MR. FALK: I'd call the respondent, Mr. Hyman, to
16 the stand.

17 THE COURT: Come around, Mr. Hyman, and be sworn.

18 THE CLERK: Raise your right hand. Do you swear or
19 affirm that the testimony you give in the case will be the
20 truth, the whole truth, nothing but the truth so help you
21 God?

22 MR. HYMAN: Yes, ma'am.

23 THE CLERK: Thank you. You can have seat.

24 ANDY HYMAN, first being
25 duly sworn, testified as follows:

1 **Direct Examination by Mr. Falk:**

2 Q. You ready, Mr. Hyman?

3 A. Yes, sir.

4 THE COURT: Speak up now, please, sir.

5 A. Okay.

6 Q. Just say something. Just say your name so I can hear
7 if you're loud enough.

8 A. My name is Andy Hyman.

9 Q. Okay. Mr. Hyman, when you were at the, when you were
10 convicted in 2016, what facility did you go to?

11 A. I went to Evans Correctional Institute.

12 Q. Okay. And can you tell me what that yard is like?

13 A. That yard is kind of rough. I done had a knife pulled
14 on me. I been in a scene of a riot and they chasing some
15 men, I got in the middle of it, I had to jump in the shower
16 to get away from them. I'm done seeing people get stabbed.
17 People beat down for their canteen. And it's tough. I
18 mean, it's rough in there.

19 Q. Can you tell me, do you know what a character dorm is?

20 A. Yes, sir. It's a place that if you been good for a
21 certain amount of time they will put you in because you
22 don't cause no trouble.

23 Q. And do they have one at Evans?

24 A. Yes, sir, they did.

25 Q. And did you spend any -- were you able to be

1 transferred to the character dorm?

2 A. Yes. I've been transfer to the character dorm.

3 Q. How much of your time at Evans were you in the
4 character dorm?

5 A. For, I want to say, about two and half years.

6 Q. Okay. What kind of stuff -- did you have any jobs
7 while you were in Evans?

8 A. Yeah, I had a job. I had, Inmate Representative
9 Committee over the dorm ---

10 Q. I'm sorry, what was that?

11 A. Inmate Representative Committee.

12 Q. Okay.

13 A. I was over the dorm. I represented all the inmates
14 that was in the character dorm, the dorm I was in. I also
15 had a job in maintenance and I was teaching in a Jumpstart
16 class.

17 Q. And what is Jumpstart?

18 A. It's a class that try to helps you deal with like
19 everyday problems and stuff you might be going through.

20 Q. Okay. Did you take any types of classes while you are
21 at....

22 A. Yes, sir. Yeah, I took the Jumpstart Class.

23 Q. Well, tell me -- be a little bit more specific, what
24 do the classes cover?

25 A. It's a Christian base class that cover certain topics

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1 about how you, um, life need to be dealt with or go through
2 life. Then we have a discussion like what somebody go
3 through during the day and then have another discussion how
4 the person may handle, handle it. Then I said, we read
5 through the stuff ---

6 Q. What kind of stuff are you reading?

7 A. It's a booklet they give us. They want us to read out
8 of it and then read our comments from what we think from
9 what we read in the book.

10 Q. Did you say it was Christian based?

11 A. It's Christian base.

12 Q. What evidence of it being Christian base is there?
13 Why do you say that?

14 A. It's a - a lot of it had to do with the Bible.

15 Q. Okay.

16 A. Some of the stuff you have to look up is in the Bible.

17 Q. All right. And so kind of just a little bit more
18 detail, what types of stuff did y'all talk about?

19 A. We talked about, ah, I can't remember what it all was,
20 it's been so long ago. But we talked about, like, stuff
21 going on in our lives. It talked about, ah, stuff that how
22 to handle stuff. It talked about, ah ---

23 Q. Well, all right, what did you get out of?

24 A. I got out a whole lot of learning. It taught me a
25 lot. It taught me if I have problems I can go seek help.

1 And then I won't have to deal with them alone. It taught me
2 that sometimes being in a group, it can help you to do
3 things.

4 Q. You mean being in the group of other people to talk
5 about it?

6 A. Be in group of, a group of other people to talk to.
7 It taught me how to be a leader because our table leader
8 left and I had to take over his position. It taught me how
9 to deal with every day things. Things be happening to you.
10 Things, certain thing that happened on the yard, you don't
11 got no control with it, it teaches you how to deal with
12 stuff like that because then you might get locked down. The
13 whole yard might get locked down. Instead of getting angry
14 and mad about it, it teach you how to stay calm and control
15 and not lash out.

16 Q. Did they call that anger management?

17 A. Well, they did -- they do teach anger management too,
18 but I wasn't in that class.

19 Q. Okay. And so what else, what else did you learn? Did
20 it change you?

21 A. Yes, it really did change me. It's, ah, -- after -- I
22 mean, I was so bad, one time I felt so bad, and it taught
23 me how to deal with the troubles that I had. It taught me
24 how to change my life around. And like I said not to do,
25 ah, like not to get in trouble, not to do stuff like that.

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1 Q. So you were convicted in 1996, is that right?

2 A. Yes, sir, I was.

3 Q. Is there anything you would want to say to the victims
4 from that '96?

5 A. Yeah, about the victims, yeah, I would like to
6 apologize. I know I caused them a bunch of emotional pain.
7 And it's really eat'in me alive cause for what I did. I
8 really am sorry. And I want to ask for forgiveness. And
9 even though they might not offer it to me. But I would
10 tell them I'm really sorry for what I did to cause that
11 emotional pain that they went through. And I'm really
12 sorry, I mean, that they had to go through it.

13 Q. Did you learn anything at prison that helped you
14 understand the emotional pain that you caused?

15 A. You talking about, ah, this time or the last ---

16 Q. Any time?

17 A. Yeah, we learned some stuff. It taught me that --
18 well, from what I was told, we got to own up to, for what
19 we did. We got to commit. We got to ask for forgiveness.
20 We got to ask, I mean, even though we might not seek it,
21 but we ask for. Then it taught us that we cannot dwell,
22 dwell on it. We've got to put -- we got to deal with it
23 and the way to deal with it is to put it in the Lord's
24 hands and let the Lord take care of it for you.

25 Q. And in 2016 you pled guilty, is that right?

1 A. Yes, sir.

2 Q. Why did you plead guilty?

3 A. Because I know I did wrong and I didn't like myself
4 for what I did and it really felt bad and I knew I had to
5 make a change. If I wouldn't never tell the truth and do
6 what I did I know I wouldn't never be able to change my
7 life around.

8 Q. Well, did you do anything wrong with A.C. and H.C.?

9 A. A.C. hand hit the outside of my pants. That was the
10 only thing that happened. I did not rub her hand on ---

11 MS. SHAW: Your Honor, I need to object to this
12 because this is a question, I mean, as we said before this
13 is not really a gangway whether he was convicted or charged
14 with. The conviction stand for what they are. And this is
15 not, this is not appropriate.

16 THE COURT: I agree. I mean, the conviction speak
17 for themselves. We don't need to -- we're not re-litigating
18 the criminal case itself so I sustain your objection.

19 MS. SHAW: Thank you, Your Honor.

20 Q. Did you -- how about your niece?

21 A. Well, everything they said I'm telling the honest
22 truth that what I did.

23 Q. And what was that?

24 A. I fondled her. I got her to fondle me. I got her to
25 put her mouth on my penis. I rub my penis on her vagina

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1 and her butt and I even put my mouth on her vagina.

2 Q. What do you want to say to your niece?

3 A. I would like to tell my niece I really sorry for what
4 I did. I know I cause her a lot of pain and I wish I could
5 take it back and I really very sorry for what I did and, I
6 mean, it's killing me inside right now. I mean, it hurt so
7 bad. I hurt her. I didn't want to, but I did.

8 Q. How can this jury be given some assurance that's not
9 gonna happen again?

10 A. I -- I ---

11 Q. Well, take a second. Take a second.

12 A. I made a mistake. In the statement I made it caused a
13 lot of pain. When I got locked up my son got emotional, he
14 just wouldn't adapt anything. He had to go to counseling.
15 While he was in school he got picked on for what I did. A
16 teacher picked on him so bad he wanted to kill himself.
17 Because a teacher would not quit picking on. They had to
18 move him out of class. I done -- I done -- I done the
19 trouble. If somebody want to pick on me I would not care,
20 but please don't, please don't trouble my son. I mean, it
21 hurt me so bad. I know I'm not going to never thing, I
22 mean, it cause my family, it cause my family too much pain
23 and I don't want them to go through that pain no more. The
24 thought of my son, he want to kill himself, it too much. I
25 mean, I cannot deal, deal with it. I mean ---

1 Q. Why were you not thinking about your son before you
2 touched your niece?

3 A. No, sir.

4 Q. Why not?

5 A. It just wasn't registering, I mean, I just didn't
6 think about the trouble I could get in. And another thing
7 about getting caught, I'm really glad I did because once I
8 did, went to prison, my life changed around. I know we all
9 have fantasies. I mean, all I want to do is go to church
10 that's all I been wanting to do while I was in there.

11 Q. Are you going to go to Jumpstart? Was there some talk
12 about that?

13 A. Yes. I have been accepted in Jumpstart.

14 Q. And what is your understanding ---

15 MS. SHAW: Objection, Your Honor. This is the
16 exact same issues we discussed before.

17 MR. FALK: No, it's not. I'm not gonna talk about
18 that. His plans for the future.

19 THE COURT: Okay. Be careful.

20 MR. FALK: Yes, sir.

21 THE COURT: Be careful.

22 Q. What's your understanding of Jumpstart is?

23 A. Jumpstart is a Christian base organization that helps
24 you get control of your life and help you find a job, and
25 we connect with the life on the outside.

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1 Q. So Jumpstart -- so they're going to help -- so
2 Jumpstart is going to provide you with a place to live, is
3 that right?

4 A. It's gonna find me a place to live and they even
5 thought of offering, find me a job.

6 Q. Okay. So you're gonna have some of those needs --
7 they're gonna help you get back on your feet by helping you
8 find employment ---

9 A. Yeah.

10 Q. --- and providing you with some type of transitional
11 place to live?

12 A. Yes.

13 Q. And what's your understanding -- are other people at
14 Jumpstart, are they gonna have -- are other people out
15 there have offenses like yours?

16 A. Yes.

17 Q. Okay.

18 A. And I plan on, when I go and I finish sentence, I plan
19 on living in Spartanburg. I don't plan on coming back
20 nowhere else.

21 Q. Why is that?

22 A. Because I'm really kind of scared to go back to
23 Johnsonville. I scared I might be lied upon. And I might
24 not even do noth'in and it might just take one phone call,
25 I be back arrested again.

1 Q. Do you think you have an attraction to prepubescent
2 little girls?

3 A. Yeah. I say in the past, yeah. But, now, I do not
4 even think about it.

5 Q. How can you convince us -- what would you say to the
6 jury about why it's not going to happen again in your
7 future?

8 A. I will not put myself in that situation. I would not
9 be alone around no little kids. I would not, ah, even if I
10 thought about something, I would seek help right then and
11 there. I would tell somebody about it. As I said, once I
12 start thinking about it, I know it's wrong and I will seek
13 help from right then and there.

14 MR. FALK: No further questions.

15 THE COURT: Ms. Shaw?

16 MS. SHAW: Yes, sir. Thank you.

17 **Cross-Examination by Ms. Shaw:**

18 Q. So, Mr. Hyman?

19 A. Mmm, hmm.

20 Q. You stated that as of 2016 when you were convicted of
21 molesting your niece, you stated you need to make a change
22 and you knew that?

23 A. Yeah, I knew that.

24 Q. Well, they offer sex offender treatment in the prison,
25 did you take advantage of that?

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1 A. They didn't have it at that prison I was that.

2 Q. Did you requested?

3 A. I mean, I could have -- I could not requested because
4 I -- I did requested because I didn't think I could get it
5 because it wasn't at that prison, it at only certain
6 prisons.

7 Q. But the fact of the matter is you never even asked,
8 isn't that true?

9 A. No.

10 Q. Okay. Now, you said you don't want to hurt anybody
11 else ever again?

12 A. Never again.

13 Q. You said that back in the early 2000's when you were
14 released from prison the first time, didn't you?

15 A. I can't recall. I tell you the truth I do not know.

16 Q. Okay. Was that how you felt once you got out you were
17 a free man once again you were, like, I'm never gonna hurt
18 another little girl?

19 A. I probably say I did, but I don't feel like that.

20 THE COURT: Speak up a little bit.

21 A. I probably did feel like that.

22 Q. Okay. Yet, you try to access child pornography when
23 you were in the community and you looked at little girls in
24 bras and bathing suits during that time, isn't that true?

25 A. Yes.

1 Q. And then in 2015, you re-offended against your niece
2 this time, isn't that true?

3 A. Yes.

4 Q. You're a man of faith, right?

5 A. I am, now. I really wasn't back then.

6 Q. Really? You grew up in the church community, didn't
7 you?

8 A. Yes, I did.

9 Q. Okay.

10 A. I mean, off and on.

11 Q. Well, before you were incarcerated the first time you
12 were a church going man?

13 A. I was at one time, but then I ended up quitting the
14 church.

15 Q. And when you got out in 2000 you went back to church,
16 right?

17 A. Yeah. Like I said I went back to church, but I ended
18 up quitting. I stopped going to church.

19 Q. And at the Jumpstart program in the prison, you said
20 that they taught you that if you were presented with a
21 situation that you should just leave it in the Lord's
22 hands, right?

23 A. No. It said if you presented with the problem just to
24 keep from dwelling on it put it in the Lord's hand.

25 Q. Well, does the Bible say is okay to molest little

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1 girls?

2 A. No.

3 Q. Do you think about that when you look at a little
4 girl?

5 A. Not, now.

6 Q. Then how come you got an erection in response to a
7 scenario that portrayed an older man such as yourself
8 raping a little girl?

9 A. From what I did from taking that scene, you supposed
10 to be totally still and I was scratching so bad, itching, I
11 guess, I got a rash. I was itching between my chest.

12 Q. So you got an erection from an itch?

13 A. I was scratching between my legs and it caused a rise
14 -- I did not get, what do you call it, sexually, I was not
15 sexually excited to none of that stuff.

16 Q. So you expect this jury to believe that you got an
17 erection in response to an itch?

18 A. I was scratching between my legs and I wasn't jacking
19 off or noth'in. Like I said, you supposed to be still and
20 I went up to scratch my legs and stuff it would pull, pull
21 on the rope and stuff like that. I offered -- I told them
22 what was going on. I offered to take the test again. I said
23 I wanted to take the test again. I wanted -- I would take
24 the lie detector test to prove I was not sexually attracted
25 to none of that stuff.

1 Q. So is it your testimony that you got erections in
2 response to multiple coercive scenarios against both male
3 and female children and that the only reason that there was
4 any response shown was because you were itching?

5 A. Well, I told them when they put that thing on, it
6 slipped off my penis and went over the head. I said well -
7 --

8 Q. Did you tell anybody about that?

9 A. I told them about that. Because they calibrated it
10 for -- how can you calibrate something you didn't even know
11 about.

12 Q. All right. I got nothing further from this witness,
13 Your Honor.

14 THE COURT: Okay. Anything else, Mr. Falk?

15 MR. FALK: Your Honor, May I approach, again.

16 THE COURT: Yes.

17 (Whereupon, a bench conference was held on the record)

18 MR. FALK: Her first question or her second
19 question challenged him about he did not seek sex offender
20 treatment while in prison. I have to be able to ask him if
21 he would get it if you went to Jumpstart.

22 MS. SHAW: No, absolutely not.

23 THE COURT: How -- how is that ---

24 MR. FALK: She's allowing the jury to draw this
25 notion that he doesn't want to get sex offender treatment.

1 MS. SHAW: Well, he's already said he doesn't want
2 to get it. He said that to both experts.

3 THE COURT: I mean, it still doesn't -- and if you
4 want ask him the question, do you want sex offender
5 treatment now? But that's something I will let you ask.

6 MR. FALK: Okay.

7 THE COURT: I don't want you to say anything about
8 Jumpstart and they offer it. Just if you want to counter
9 that question that she asked, would you go -- do you want
10 sex offender treatment now? I don't have a problem with
11 that. But limit it to that.

12 MS. SHAW: That's fine, Your Honor.

13 THE COURT: Yeah.

14 MS. SHAW: One question and only that question.

15 MR. FALK: Well, he got sex, he was offered sex
16 offender treatment on the outside before.

17 MS. SHAW: And he took it and he still re-
18 molested. Not re-molested, but he molested four new, three
19 or four new children.

20 THE COURT: I mean, I stand by what I said. You
21 can ask him, you know, if he -- that follows up better to
22 her question than anything else. I don't want to get into
23 anything about Jumpstart offers it and you can have
24 treatment there. I mean, he's already talked about if he'd
25 go to Jumpstart. He hadn't gotten into that.

1 MR. FALK: That's fine. That's fine. That's
2 fine. But I can ask if he wants treatment?

3 MS. SHAW: Yeah. Thank you, Your Honor.

4 THE COURT: Or if he feels like he needs it. Come
5 back. Wait a minute. I guess, you need to ask him does he
6 want treatment and will he accept treatment if it's
7 offered, somewhere to that effect. Because he said he
8 didn't want it so.... I don't know what his response would
9 be now.

10 MS. SHAW: As long as there's no reference in the
11 question to outpatient.

12 THE COURT: Yeah. Yeah. And he understands that.

13 MS. SHAW: Okay. Thank you, Your Honor.

14 (Whereupon, the court goes back on the record for the jury)

15 MR. FALK: No further questions.

16 THE COURT: All right. Mr. Hyman, you can step
17 down, sir.

18 MR. FALK: Your Honor, at this time we'd rest.

19 THE COURT: All right. Ms. Shaw, do you have
20 anything in reply?

21 MS. SHAW: No, Your Honor, I do not. I'm ready to
22 close whenever Your Honor is.

23 THE COURT: All right. Thank you. Approach the
24 bench, counsel for just a second.

25 (Whereupon, a bench conference was held on the record)

1 THE COURT: Okay. You, obviously, need a little
2 bit of time ---

3 MS. SHAW: I don't.

4 THE COURT: --- to formulate your ---

5 MR. FALK: I would like a little bit of time.

6 THE COURT: Sure. And I need to go back over the
7 charges. Did you see her request charge?

8 MS. SHAW: Yes.

9 THE COURT: And I'm gonna read mine too so. I
10 mean, yours covers a lot of what I would. It's just a
11 little bit different so....

12 MS. SHAW: It's the standard one that we've always
13 used. Mr. Falk has seen it a hundred times so, I mean ---

14 MR. FALK: I would like to know how you're gonna
15 charge.

16 THE COURT: Yeah. Yeah. And I'll -- we'll go back
17 in the back and I may print off some of mine too and see
18 what we're looking at. That will give y'all time to get
19 together.

20 MS. SHAW: Sure.

21 MR. FALK: Okay.

22 THE COURT: Get your thoughts together.

23 MS. SHAW: That's fine.

24 MR. FALK: I need to renew my motion. Well, I'll
25 wait until the jury is out?

1 THE COURT: Yeah. And I'll send them out for a
2 short while. I'll let them know it's gonna be a short
3 while.

4 MS. SHAW: Okay.

5 (Whereupon, the court goes back on the record for the jury)

6 THE COURT: All right. Ladies and gentlemen, the
7 attorneys have completed the presentation of their case.
8 The next steps in the trial of this case are the arguments
9 to the jury by the attorneys and then I'll have to charge
10 you on the law. I do need to give the attorneys a little
11 bit of time to get their thoughts together. I need to go
12 over my charge of the law myself so I'm going to ask you to
13 step back into the jury room. Be patient. It's gonna be a
14 little while before we get back out here, but we'll get
15 back out here and hopefully we can finish this today. So
16 if you would just bear with us and go back and relax or
17 whatever. If you need anything tell the bailiffs what you
18 need, anything to drink, eat or anything, we'll try, we'll
19 try to accommodate you as well as we can. All right.
20 Thank you. Remain seated by the jury goes out. Again, do
21 not discuss the case at this point in time.

22 (Whereupon, the jury exits the courtroom at 3:18 p.m.)

23 THE COURT: All right. Mr. Falk, I understand you
24 have a motion.

25 MR. FALK: Yes, Your Honor. I just wanted to make

1 a record as far as our last bench conference. I had asked
2 the court whether or not I could ask my client if he could
3 get treatment at Jumpstart? And the court said, no,
4 following other line of objections. The court did say that
5 I could ask one question and that is, do you want
6 treatment? That's what we agreed to. I elected not to ask
7 just the one question, if I couldn't then also ask, if he
8 could get treatment at Jumpstart? I just wanted the record
9 to reflect what I believed transpired up there and I want
10 to see if everyone else is on the same page.

11 MS. SHAW: Yes, Your Honor, that's essentially
12 what was said. I think the record, you know, is being
13 dictated verbatim. I think it speaks for itself.

14 THE COURT: Yeah, I think that's, basically, what
15 we ---

16 MR. FALK: I just didn't want, you know, ---

17 THE COURT: --- discussed ---

18 MR. FALK: I just -- because I didn't have -- the
19 reason I didn't ask the one because I couldn't ask both.
20 That being -- that's all.

21 THE COURT: And as I pointed out earlier I just ---

22 MR. FALK: And that's fine. I'm not trying to
23 argue against your ruling.

24 THE COURT: No, I understand that. I just didn't
25 want to, again, didn't want to confuse the jury with

1 regards to treatment at Jumpstart. They understand it's in
2 Spartanburg so put two and two together and figure it's an
3 outpatient type thing so that's the reason for my ruling as
4 well.

5 MR. FALK: And I understand. And, Your Honor, so
6 I'm gonna renew my motion for a directed verdict based on
7 the same arguments I made before.

8 THE COURT: Okay. And I'll rule the same way.
9 I'll respectfully deny your motion for directed verdict. I
10 think this is certainly an issue for the jury.

11 MS. SHAW: Thank you, Your Honor.

12 THE COURT: Okay. Let's -- I'm gonna go back here
13 a minute and look at my charge. Take your time or
14 whatever.

15 MS. SHAW: Your Honor, do you think we will be
16 able to get through closings because mine is going to be
17 about fifteen minutes, maybe eighteen, twenty at the worst.

18 THE COURT: Oh, I think we'll get through. It's
19 only what, 3:15?

20 MS. SHAW: Well, I was gonna say do you want to
21 try and go late and do you want to find out if the jury is
22 willing or to you -- because I don't if we're gonna, if
23 you charge them at 4:30 and they get to the jury room by
24 4:30 I don't know if they're going to be back today. So I
25 just don't know what Your Honor wants to do. I'm good for

1 the entire week, but given the other concerns.

2 THE COURT: I mean, my situation for tomorrow has
3 been resolved so I don't have a problem. So, I mean, I'll
4 leave it in the jury's hands if they want to, you know,
5 come back tomorrow or we charge ahead tonight or whatever.

6 MS. SHAW: Okay. Because I thought is if they're
7 getting tired because they've heard three witnesses now
8 today. They've heard our openings. They've been multiple
9 ins and outs. If it's no longer an issue for Your Honor
10 for tomorrow, it might be better to charge the jury in the
11 morning, get them when their fresh, let them deliberate all
12 day, and come back to us with their decision.

13 MR. FALK: Could we close and charge them?

14 MS. SHAW: I'd rather charge -- I'd rather close
15 and then ---

16 THE COURT: I mean, I hate to quit this early. I
17 mean, ---

18 MS. SHAW: Me too, Your Honor ---

19 MR. FALK: I get that ---

20 MS. SHAW: --- but I just ---

21 MR. FALK: It's your court.

22 THE COURT: Yeah. I'd rather, at least, let's get
23 through with the arguments, closing arguments. I'll see
24 what time it is, question them maybe at that point in time.
25 I just don't know how long it's going to take y'all to

1 close so....

2 MS. SHAW: Like twenty minutes for me.

3 THE COURT: Yeah.

4 MR. FALK: If you don't have a problem with
5 tomorrow, I would really much prefer to have them fresh to
6 charge in the morning.

7 THE COURT: I don't have a problem maybe charging
8 them in the morning.

9 MR. FALK: Yeah, that's fine. That's fine.

10 THE COURT: But get the closing arguments out of
11 the way this afternoon. But, I mean ---

12 MR. FALK: Thank you.

13 THE COURT: I can still, certainly, ask them how
14 tired they are and what they want to do. They may want to
15 come back fresh, you know.

16 MS. SHAW: I think it would -- I think it would be
17 reasonable if Your Honor wanted to do that.

18 THE COURT: Okay. All right.

19 (Whereupon, the court takes a short recess)

20 THE COURT: Bring the jury in.

21 (Whereupon, the jury enters the courtroom at 4:10 p.m.)

22 THE COURT: There's really no need to sit down.
23 Ladies and gentlemen, we have been working while you've
24 been sitting back there, believe it or not. We've been
25 going over a lot of different legal issues. Because of the

1 hour and how long it would take for the attorneys to make
2 their closing arguments and for me to charge the jury, I've
3 decided that it would be better to let y'all come in here
4 fresh tomorrow morning, hear their arguments, hear my
5 charge and then start your deliberations then. I think it
6 would just be better for everybody to have a fresh start.
7 So any reason why everybody can't be back, ready to go by 9
8 o'clock?

9 (Whereupon, the gesture was by the jury it's okay with it)

10 THE COURT: Okay. I'm going to excuse you for the
11 evening. We've got some more work were going to do,
12 getting ready for tomorrow. But we'll be here and try to
13 get started promptly at 9 o'clock so you can go ahead and
14 get the case presented to you for your deliberations, you
15 know, midmorning, I hope anyway. Again, I have to caution
16 you, please don't discuss the case with anybody when you go
17 home tonight, friend, neighbor, spouse, girlfriend,
18 boyfriend. You get a chance to discuss it all you want to
19 tomorrow when you start your deliberations. Any questions?

20 (Whereupon, no jurors responded)

21 THE COURT: Okay. I hope you have a good evening.
22 Thank you. And I'm sorry to have y'all sit back here and
23 bring you to do this, but it's one of the necessary evils
24 of this job.

25 (Whereupon, the jury exits the courtroom at 4:12 p.m.)

1 COURT REPORTER: Are we off the record now?

2 THE COURT: Yeah, we're off the record now.

3 (Whereupon, court is adjourned for the day)

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1 Wednesday, June 9, 2021

2 _____ (WHEREAS, this matter was scheduled for a trial, the
3 defendant appeared along with his attorney of record. The
4 proceedings began at 9:42 a.m.)

5 THE COURT: Counsel, we have gone over the proposed
6 jury charge. I understand you may have some objection, Ms.
7 Shaw, to part of the charge?

8 MS. SHAW: Yes, Your Honor. But for the last few
9 pages we have no objection to the court's changes.
10 However, the statute under South Carolina Code 340-48-30
11 does not break out the elements of proving an SVP case into
12 three elements, it only established two. I understand that
13 the court is of the opinion that the second element is
14 actually two elements in one and has made the decision to,
15 to read it to the jury as such and it's again there's a
16 three element that he's likely to re-offend. Just for
17 purposes of creating a record I do need to object to that
18 since it's not was contained in the statute. That's all I
19 have.

20 THE COURT: Okay. All right. Thank you, ma'am.
21 And I base my decision as you are aware on the Snow case
22 which the Supreme Court broke it down into three elements
23 so....

24 MS. SHAW: Yes, Your Honor, I understand.

25 THE COURT: Okay. Are we ready for the jury?

1 MS. SHAW: Yes, Your Honor.

2 THE COURT: Okay. Bring them in.

3 (Whereupon, the jury enters the courtroom at 9:43 a.m.)

4 THE COURT: All right. Be seated. Ladies and
5 gentlemen I apologize for the delay in getting started this
6 morning, but as often happens we had a couple of matters
7 that came up, legal matters that we had to discuss and iron
8 out before we could proceed with the closing arguments. But
9 we have reached the point in the trial now where the
10 attorneys will be making their closing arguments to you are
11 there summations. The arguments that they will make are
12 not evidence in this case as I pointed out early when they
13 made the opening statements. That was not evidence in the
14 case. What they're going to do is try to help you
15 understand the evidence as they see it and discuss possibly
16 the law that will be applied to that. You should disregard
17 any remark that they make which is not supported by the
18 evidence. You're gonna make the ultimate decision as we'll
19 discuss in a few minutes. But clearly pay attention to
20 their closing arguments or as I call it summation sometimes
21 and be aware any mistake that they make, you know, you can
22 disregard. Remember to apply the evidence as you've heard
23 it from this witness stand to the arguments that they make.
24 All right, Ms. Shaw?

25 MS. SHAW: Thank you, Your Honor. Good morning,

1 again, Ladies and gentlemen, can y'all hear me?

2 (Whereupon, the jury replies yes)

3 MS. SHAW: Great.

4 **Closing Arguments- Ms. Shaw:**

5 As Judge Henderson said now is the closing arguments.
6 It's time for Mr. Falk and myself to give you our final
7 opinions on the evidence you've heard in this case and to
8 make our final arguments to you as to the merits of our
9 positions.

10 Now, you heard at the beginning of this trial that the
11 Sexually Violent Predator Act requires me to prove two
12 elements to you beyond a reasonable doubt. The first
13 element is whether Mr. Hyman has been convicted of a
14 sexually violent offense. The second element is whether he
15 suffers from a mental abnormality that makes him likely to
16 re-offend. That's the key word here, Ladies and gentlemen,
17 is he likely to re-offend? There's really no dispute about
18 whether he's been convicted of a sexually violent offense,
19 he has. He's got convictions for criminal sexual conduct
20 against a minor in the second degree. He's got a
21 conviction of criminal sexual conduct against a minor in
22 the third degree. And he's got a conviction for criminal
23 sexual conduct, excuse me, lewd act against a minor. Those
24 are all enumerated offenses under the act and that element,
25 I would submit to you, has been proved beyond a reasonable

1 doubt.

2 Secondly, he has to have a mental abnormality. Both
3 experts that you've heard from have indicated he does. He
4 has a pedophilic disorder which pre-disposes him to have
5 sexual attraction to children and I would submit to you
6 that that automatically makes him likely to re-offend. But
7 the evidence in this case against him that suggest that
8 he's likely to re-offend is for more damaging. I'm gonna
9 take your through the testimony from both of the doctors
10 and I'm going to remind you that remember the meaning of
11 this case I said this is about information. It's about the
12 quality and amount of information. Not only did Dr.
13 Gottfried do a formal or thorough evaluation, she got more
14 information from Mr. Hyman. She got him to admit that he
15 had, in fact, molested his two sisters at the age of
16 eighteen. She got him to admit that he had exposed himself
17 to his 12-year-old cousin when he was fifteen. He did
18 admit to her that he also attempted to view child
19 pornography. Now, when he couldn't access that he had
20 looked at pictures of semi-nude little girls. They were
21 wearing bras, excuse me, and bathing suits and he use those
22 to satisfy his sexual needs while he was married with two
23 very young children in the house.

24 In 1996 he molested three little girls. He was
25 alleged to have and he was charged and he was convicted and

1 he served his time. He started looking at child
2 pornography immediately after he got out, despite having
3 sex offender treatment in the community.

4 Until such time he could no longer control himself, in
5 2015 he molested three more little girls or was alleged to
6 have happened. He was convicted of those offenses and
7 sentenced to ten years. And now he's asking you to let him
8 go back into the community after he has had no further sex
9 offender treatment and after he recidivism. I would submit
10 to you that based on that information alone without the PPG
11 evidence, which clearly indicates that he has current
12 sexual interest in children, that information with or
13 without the PPG indicates that he is likely to re-offend.

14 But let's go into the PPG. What was he sexually
15 excited by in those scenarios? He was sexually excited by
16 coercive scenarios against prepubescent children. He was
17 sexually excited by coercive scenarios against adults, both
18 men and women. But he was also sexually excited about a
19 scenario in featuring an infant and a male. He got
20 erections to all of those things. That was in February of
21 this year. And I would submit to you that that, in and of
22 itself, is enough to put him in a secured facility for long
23 term care control and treatment. I would submit that has,
24 in fact, got an active interest in small children and if
25 he's released to the community he is very, very lightly to

1 re-offend. There's not a question of if this individual,
2 it's the question of when. And I would submit that
3 evidence in front of you, we have proven beyond a
4 reasonable doubt that Mr. Hyman is, in fact, a sexual
5 violent predator. We're asking you to commit him to
6 Wellpath Facility for a long-term treatment and we thank
7 you.

8 THE COURT: Mr. Falk?

9 MR. FALK: Your Honor?

10 THE COURT: Yes, sir.

11 MR. FALK: I'm sorry, Your Honor, May we approach?
12 May I approach?

13 THE COURT: Yes, sir.

14 (Whereupon, a bench conference was held off the
15 record)

16 MR. FALK: I know what your answer is going to be,
17 just trying to complete the record. She said he needs
18 treatment and I think that that is unfair and the fact that
19 he can testify to the fact that there would be treatment
20 available on the outside.

21 MS. SHAW: I didn't say that. I said that we're
22 asking you to commit him for a long-term treatment. I
23 didn't say anything ---

24 MR. FALK: She said he was outside and he needs --
25 I thought she said -- without -- he's had no treatment or

1 something to that effect.

2 MS. SHAW: He didn't have treatment the second
3 time around.

4 MR. FALK: All I'm trying to do is make my record
5 and I think my motion is to ask for mistrial which I know
6 what your response is going to be, but I'm just trying to
7 make the record.

8 THE COURT: Yes, sir. Okay. I'm not -- well, I'm
9 not gonna declare a mistrial so.... But I understand.
10 You've got it noted for the record.

11 MS. SHAW: Thank you.

12 MR. FALK: Will y'all be able to hear me if I use
13 the podium here?

14 (Whereupon, the jury gestures yes)

15 **Closing Arguments- Mr. Falk:**

16 This is a case with, it's really you would call a
17 battle of the expert witness, that's what this case is
18 about. And as what's said that there is agreement as what
19 the diagnosis was, but there was no disagreement on the
20 issue of the likelihood to re-offend. And really the way
21 to look at that is, there's no agreement about whether or
22 not he fits in this category of the worst of the worst and
23 that's really where I think the differences and that's
24 where the expert's opinion differ.

25 Now, Dr. Gottfried spent a lot of time on this

1 evaluation. I think there was testimony that she spent
2 fourteen and a half hours. However, about four and a half
3 hours were spent, as I believe she testified to and just
4 whatever your recollection is, you know, my recollection is
5 between four and four and half hours she spent with him
6 watching him do some of his testing that was done on the
7 computer. And then there was another four, three and half
8 hours or so of time spent with him doing this PPG exam. So
9 as far as, you know -- and then there were some, you know,
10 time spent doing going over some of the waiver. So, I mean,
11 almost half of the time or more than half the time that she
12 spent doing this examination she wasn't really talking to
13 him. She was going through her standard procedure, her
14 standard battery of tests. And what did these tests really
15 show? Grant it, she gave him this MMPI test and that took
16 time on the computer, but it didn't really create a data
17 point for her. I think she said that she learned nothing
18 new from that, from that test or she learned nothing that
19 was really supported diagnosis of whether or not he was a
20 sexually violent predator. I think she said it may be let
21 her know whether or not, you know, how to interpret his
22 results and how to understand if he was responding to the
23 questions. She gave the SASS test which was the test about
24 whether or not he was a addicted or whether or not he had a
25 chemical addiction problem, you know, a drug problem,

1 alcohol problem. And, you know, it said that he didn't
2 have, he didn't have that. But, of course, Dr. Gehle
3 didn't see anything in the record that would've supported
4 that anyway so that's why probably she didn't give him the
5 SASS test because there was nothing in the record to show
6 that he had any kind of addiction problem. And I submit to
7 you is Dr. Gehle acknowledged in the testimony and that
8 actually the SASS test does at some level show that he is a
9 level of impulse control because, you know, as she said
10 social impulse control, you know, people who fall into
11 those addiction things they sometimes don't have the
12 ability to control their impulses.

13 She was -- I mean, she was familiar with the SASS test,
14 she's familiar with MMPI, she's familiar with the PAI test
15 which Dr. Gehle believes it, basically, gave the same type
16 of information as the MM, as the MMPI. I mean, I think
17 that what Dr. Gottfried said from that is that he appeared
18 to be stressed and that may be he was, he tried to appear
19 to cast himself in an overly favorable light.

20 She did this MIDSA test and Dr. Gehle had never heard
21 of that test and when she talked to the other people at
22 South Carolina Department of Mental Health nobody there was
23 really aware of that test. She did the Hare test which was
24 this Hare and, I mean, the only thing that test did was
25 really show that he was, didn't really have psychopathic

1 tendencies. And kind of what that means is he sort of
2 doesn't have an anti-social attitude. So, I mean, that
3 test didn't do anything as far supporting the diagnosis.

4 She did two more tests the SVP-20 and the PPG and
5 that, basically, confirmed the diagnosis that he had a
6 pedophilic disorder which is the same thing that Dr. Gehle
7 reached that conclusion from just looking at his offense
8 pattern.

9 So, I mean, you get all this testing and you sort of
10 fall under the illusion that it's much more precise but
11 it's a lot of - I don't know if it's window dressing or not
12 but I don't know if it really did anything more, although,
13 it took a long time - whether or not it's a more thorough
14 examination as related to a conclusion as you need to draw.

15 As I said there's really a disagreement regarding
16 recidivism which is, you know, our legal term that means
17 whether or not he's likely to re-offend. Both doctors gave
18 him the Static-99 which I think there was testimony, but
19 that is the standard test that they used to measure whether
20 or not, you know, based on somebody's history whether or
21 not there's a likelihood that they're going to re-offend.
22 The use the Static-99 and they used what's called the
23 Static-2002R. Both doctors use the same test. Both
24 doctors got the same result. He was rated - he was rated
25 an average risk to re-offend. And Dr., I believe, both Dr.

1 Gottfried with Dr. Gehle said that somebody who has a 2,
2 you know, on that Static-99 that means that people who have
3 that same result have a risk to re-offend 5.6% of the time.
4 That was that sort of the auto insurance analysis, I think,
5 that may be she used, you know, sort of the actuary
6 measures that those people have when they have that kind of
7 risk they re-offend. They fit in the group of people like
8 that will re-offend 5.6% of the time. Which, of course,
9 the corollary is that I assume the corollary from that is
10 that people in that group do not re-offend 94.4% of the
11 time.

12 And they also agreed on this thing that's called a
13 relative or risk ratios. And that's when they said that
14 based on his score on the Static-99 his risk to re-offend
15 was the same risk to re-offend as the average sex offender.
16 Dr. Gehle said that she thought that that average risk to
17 re-offend for a sex offender is 10% of the time. So,
18 again, the corollary of that the average risk to, the
19 likelihood of not re-offending must be 90% of the time.

20 Now, this is a reasonable doubt case. And the reason
21 why I believe it's a reasonable doubt case is because
22 they're asking you to remove my client from society and
23 confined him to a secure facility and they're asking you to
24 do that based on Dr. Gottfried's opinion of what he might
25 do in the future. That's why this is an important case.

1 That's why the State has do not kinda prove their case,
2 they have to really prove their case. Because they're
3 asking, they're telling someone they're going to deprive
4 them of their liberty. They're gonna put them someplace
5 based on what they think he might do in the future. What
6 I'm trying to get a feel for, what this 5%, you know, what
7 I want you all to think about is, you know, this risk to
8 re-offend is really what our whole case is about, is
9 whether or not there is a risk to re-offend and I don't
10 know really what the actual risk for him to re-offend is.
11 But if he fits in this category that 5.6% of the time,
12 people in that same kind category, are going to re-offend
13 then let's think about what kind of decisions you might
14 make when there's some kind of risk out there that's 5.6.
15 Let's say trying to conceive of a world of both in the same
16 year, South Carolina and Clemson have first top two rated
17 football teams in the country, okay? And let's say that
18 you are a big fan, you're either a Tiger fan or a Gamecock
19 fan and you are ready to go to the game and you've been
20 looking forward to this for three weeks. And you go to the
21 game then you hear on the radio that based on a chance that
22 there is a 5.6% chance that there's going to be lightning
23 at Williams-Brice Stadium that day, we're gonna cancel the
24 game. That's the kind of, that's the kind of decision that
25 the court is asking you to make, that the State is asking

1 you to make here, about is that enough of a risk in order
2 to put him, to take away his liberty.

3 You can look at it, you know, how would you feel if
4 you had been waiting all year to go to Myrtle Beach and
5 you're gonna have a big crowd out there and they cancelled
6 all the hotels because there's a 5.6 or may be there's a
7 10% chance of hurricane and they just cancel, they shut
8 down Myrtle Beach on a 10% chance of something happening.
9 That's the kind of decision, that's the kind of risk that
10 they want you to make a determination on.

11 Now, I think that there is doubt in this case. Dr.
12 Gehle, if you do the math, I think Dr. Gottfried testify
13 that she's done about twenty-two of these pre-commitment
14 evaluations. I think Dr. Gehle says she done about two
15 hundred and ten. So one expert that has ten times the
16 experience of the other expert in making these evaluations,
17 ten times more. That's a doctor who has a better
18 perception of who's the worst of the worst.

19 Dr. -- and this is what I found also interesting about
20 Dr. Gottfried, she's only looking at cases that the State
21 of South Carolina, that the South Carolina Department of
22 Mental Health has already determined the person is safe to
23 be left at large, and 60% of the time, I think she said 58%
24 of the time so far she decides of the State of South
25 Carolina Mental Health, South Carolina Department of Mental

1 Health is wrong. I don't know after the doctors look at
2 these things the same way. I don't know if Dr. Gottfried
3 has some kind of bias based on may be she's got blinders
4 where when she gets a report she's looking to find out why
5 the State is wrong or whether or not she's looking at this,
6 looking at that on a clean slate. I don't know. I don't
7 know if, I mean, she, obviously, there is some type of
8 remote interest and, you know, financial interest, but I
9 guess Dr. Gottfried probably has the same financial
10 interest and that she's getting paid too, excuse me, Dr.
11 Gehle also has the same financial interest, you know, they
12 get paid to make these decisions.

13 Here's another reason why I think there's some
14 reasonable doubt. I think all of you I would guess that
15 I've got twelve people in front of me in a room here at
16 least one of two of y'all have known some people who have
17 been in the grip of some type of demon in their life and
18 have had wrestling with what to do about some type of
19 demon. Whether it's drugs, whether it's gambling, whether
20 it's booze, you know, whether it's womanizing, whatever it
21 is, everybody's known people who have been in a grip of
22 something like that. And everybody, you know, you can sit
23 there and say why does he not change? What does that
24 person not change? Well, sometimes people just have to hit
25 rock bottom and that takes some type of event in their life

1 that they're going to change.

2 You heard my client testify as to the conversation he
3 had with his son. You heard his, you heard his testimony
4 that his son called him and said, you know, daddy or Papa
5 or whatever it was, the kids at school are picking on me,
6 the teachers are picking on me, it made his life miserable.
7 He said that his life was so miserable that he wanted to
8 commit suicide. Well, may be that's the point and that's
9 what I want you to think about is that may be he'll always
10 have some type of, in the back of his mind, some type of
11 attraction that you and I can't understand. But whether or
12 not he is gonna do it again, whether or not he's hit rock
13 bottom, whether or not he's known the kind of harm that's
14 not only caused is victim but also caused his family, you
15 just have to appreciate it. I think you saw a sincere man
16 break down and explain to you that it's not gonna happen
17 again and why it's not gonna happen again.

18 I'm just saying, you know, in a trial like this is a
19 couple of safety nets. You've heard a couple of times we
20 both been up here, Ms. Shaw and I, have had conversations
21 with the judge about issues and we were arguing points of
22 law. And if the judge has made a mistake in a point of law,
23 well there's a remedy there because Mr. Hyman can appeal.
24 If there's a mistake in appointed law Mr. Hyman can appeal.
25 If I have somehow made some type of, you know, failed to

1 represent him vigorously, Mr. Hyman has got a remedy for
2 that. He can file what's called a, you know, ineffective
3 assistance of counsel type measure.

4 You all are here to make decisions on the facts and
5 what you think the facts are. If you all made a mistake on
6 the facts there is no remedy. So that's why I want you to
7 carefully consider this case and carefully consider whether
8 or not, don't just focus on the fact that you want to do
9 something because you don't understand why Mr. Hyman has
10 this attraction that other people don't have, that's a
11 deviant attraction. It's going to be very easy to sort of
12 focus on that, but what you need to focus on is he the
13 worst of the worst? Is there any real likelihood that he's
14 gonna re-offend based on what he might do in the future?
15 Do you want to take them out of society and put him
16 somewhere based on somebody's opinion of what he might do
17 in the future?

18 I hope y'all will give this case careful
19 consideration. I think once you think about some of the
20 issues, think about the testimony, you'll find that the
21 State has not proven their case beyond reason without.

22 Thank you.

23 THE COURT: Ms. Shaw?

24 **Closing Arguments- Ms. Shaw:**

25 Ladies and gentlemen, this is not a case about a

1 football game or a vacation that make get cancelled because
2 of some small chance for rain or a hurricane. This is a
3 case about whether it's likely that if Mr. Hyman is
4 released to society that there's going to be another little
5 girl that he molests. It's very significant. There's
6 consequences for both him and society and you have to
7 balance that.

8 Mr. Falk just spoke to you about the amount of time
9 Dr. Gottfried had spent with Mr. Hyman. She spent a total
10 of approximately fourteen hours within over three different
11 days. And as you heard her testify, the first day she sat
12 with him for about an hour and a half so she could get a
13 background and kinda get preliminary information. The
14 second day, he did the objective testing and then he did
15 the PPG and she met with him after that for about four and
16 half hours which is considerably longer than Dr. Gehle met
17 with him to go over his test results and that's when she
18 got up that crucial information about him molesting his
19 sisters. That's when she got all that crucial information
20 about him looking at child pornography and when he couldn't
21 access that looking at pictures of scantily little girls
22 online. That's when the good information came out when he
23 was confronted with these test results. That's when he
24 finally started making admissions and that's the
25 information that really leads us to the conclusion that,

1 yes, he is absolutely likely to re-offend.

2 Mr. Falk just went over the different test were
3 administered. The MMPI, the SASS, the PAI, the MIDSA, the
4 Hare, these are all data points. We know Mr. Hyman does not
5 have a substance abuse problem and that's actually a good
6 thing because it informs us better that substances did not
7 drive or contribute to his offending. He was probably sober
8 when he did all of these things which means he was in full
9 control of his faculties. He said he didn't want to re-
10 offend, yet, he did. He cannot control himself, ladies and
11 gentlemen, and that's what you have to assess. Do you
12 believe he can control himself if he's released? I submit
13 to you that answer is no.

14 I've said this before, I'll say it one more time, this
15 case is about quality and quantity of information. The
16 reason all of these tests were done is to get a very clear
17 picture of who and what it is we're dealing with. Mr.
18 Hyman doesn't have anti-social personality disorder. He
19 has pedophilic disorder. Very different and pre-disposes
20 him to molest kids. The Statics, both doctors scored him a
21 2 and 4, but as you heard Dr. Gottfried testify those
22 static measures only take into account charged offenses.
23 We have the information that there are at least three
24 additional victims that were uncharged. Had those
25 additional victims been taken into account in Static, both

1 doctors would've scored him a lot higher.

2 We also know that only about 30% of sex offenses
3 actually get reported. So there may be other victims that
4 we don't even know about that Mr. Hyman has never
5 disclosed. The simple fact is that we don't know. But
6 there's enough information here for you to find beyond a
7 reasonable doubt that he is, in fact, likely to commit
8 another offense. It's not about what he might do, it's
9 about what he's likely to do.

10 And Mr. Falk talked about Dr. Gehle has ten times more
11 experience, she's done about two hundred of these
12 evaluations. I don't know why she didn't do additional
13 testing. She could have. She easily could have. She also
14 could've done a PPG if she have of chosen, but she didn't.
15 Why? That's for you to decide.

16 Mr. Falk also suggested that an individual has to hit
17 rock bottom before they change. That may be true with
18 addiction. That may be true with a gambling problem. That
19 kind of thought process does not apply to a pedophile.
20 Pedophilia is a chronic lifelong condition. It doesn't
21 matter he's hit rock bottom. He's already been to prison
22 twice. It's a question of can he control himself? Not has
23 he heard his family, he has. It's not a question of
24 whether he feels bad about what he's done. I'm sure he
25 does. It's a question of is he gonna seek help if he's

1 released? His history tells us, no, he won't. Because as
2 soon as he was released the first time and after he had
3 finished his first round of sex offender treatment, what
4 did he do? He tried to get kiddie porn. And when he
5 couldn't get that he got the next best thing. And he said
6 to you that, on the stand, that if he started having sexual
7 thoughts about kids he would go get help right away. He
8 won't. He hasn't it done in the past. Why is there any
9 reason to believe he would do it in the future?

10 So is there a real likelihood that he will re-offend?
11 The State's contention is that there is. And we are
12 requesting that you find he is a sexually violent predator.

13 Thank you.

14 **Judge's Charge:**

15 Mr. Foreman and ladies and gentlemen of the jury, it's
16 now my duty as the trial judge and under the Constitution
17 of this State to charge and instruct you on the law which
18 applies to this case. It is your duty as jurors to accept
19 and apply the law as I will now state it to you.

20 The State has brought this case under the Sexually
21 Violent Predator Law of South Carolina. The State seeks the
22 civil commitment of Andy Eugene Hyman, the respondent, for
23 long-term control, care, and treatment in a secure facility
24 administered by the South Carolina Department of Mental
25 Health. This is not a criminal proceeding seeking

1 incarceration, but rather it is a proceeding seeking civil
2 commitment.

3 The State of South Carolina alleges that the
4 respondent, Andy Eugene Hyman, is a sexually violent
5 predator under the law. Respondent denies that he is a
6 sexually violent predator, and the burden of proof is,
7 therefore, on the State of South Carolina to prove by
8 evidence sufficient to satisfy each one of you beyond a
9 reasonable doubt that Mr. Hyman is a sexually violent
10 predator. If the State is unable to meet that burden of
11 proof as to one or more of the elements of this claim, the
12 respondent is entitled to a finding that he is not a
13 sexually violent predator.

14 Ladies and gentlemen, I want to make sure that you
15 understand that Mr. Hyman is not accused of committing a
16 crime in this proceeding. As you heard from the testimony,
17 he did have previous charges for which he was convicted and
18 sentenced by the court. The respondent has now completed
19 his sentence for those charges, and the State is now
20 alleging that Mr. Hyman is a sexually violent predator. The
21 State has the burden of proof in this case, and must prove
22 its case beyond a reasonable doubt. If you find that the
23 State has not met its burden, respondent will be released.
24 If you find that the State has met its burden of proof, and
25 find that the respondent is a sexually violent predator, he

1 will not be released, but rather, will be committed to a
2 secure treatment facility in Columbia.

3 I remind you that, during this trial, you and I have
4 certain duties to perform. As the trial judge, it is my
5 responsibility to preside over the trial of this case, and
6 I also have a duty to rule on the admissibility of the
7 evidence offered during this trial. You are to consider
8 only the competent evidence before you. If there was any
9 testimony order stricken from the record in this case
10 during this trial, you must disregard that testimony. You
11 are to consider only the testimony which has been presented
12 from this witness stand, and any exhibits which have been
13 made a part of the record and any stipulations of counsel.

14 I have the additional duty to charge you the law
15 applicable to this case. As the presiding judge, I am the
16 sole judge of the law of this case, and it is your duty as
17 jurors to accept and apply the law as I now state it to
18 you. If you already have any idea as to what the law is or
19 what the law ought to be and it does not agree with what I
20 now tell you the law is, you must abandon this idea because
21 you are sworn to accept the law and apply the law exactly
22 as I state it to you.

23 In every case tried in this court before a jury, the
24 jury becomes the sole and exclusive judge of the facts in a
25 case. A trial judge cannot intimate, state, comment on, or

1 make any statement to a trial jury about the facts in a
2 case. Since you, the jury, are the sole judge of the facts
3 in this case, you are not to infer from what I have said
4 during the progress of this trial in ruling upon the
5 admissibility of evidence, or otherwise, or anything that I
6 now say during the course of this instructions to you, that
7 I have any opinion about the facts in this case. The law
8 does not allow me to have an opinion about the facts in
9 this case. This is a matter solely for you, the jury, to
10 determine. As jurors, it is your duty to determine the
11 effect, value, weight, and truth of the evidence presented
12 during this trial.

13 Now, you've heard the attorneys make their arguments
14 just now and while arguments that they make are beneficial
15 in every part of a every trial, you should remember the
16 statements made by counsel are not evidence. In presenting
17 arguments, counsel often refer to the evidence. However,
18 you should base your verdict on the evidence as you
19 remember it. Therefore, if there are any conflicts between
20 the recollection of counsel about the evidence and your own
21 recollection, you should rely upon your own understanding
22 of the evidence.

23 Ladies and gentlemen, in most civil cases tried in the
24 Court of Common Pleas, the burden of proving a claim is by
25 what we call the preponderance evidence or the greater

1 weight of the evidence. However, in this type of case under
2 this particular statute, the State's burden is greater than
3 that. Here it must be beyond a reasonable doubt.

4 As I've already stated to you, the State has the
5 burden of proof under the law of this state, according to
6 the sexual violent predator statute, the State must prove
7 its case to the standard of proof beyond a reasonable
8 doubt. If the State fails to meet this high burden, then
9 you must find that Mr. Hyman is not a sexually violent
10 predator.

11 Now, what is reasonable doubt in the law? Proof beyond
12 a reasonable doubt is proof that leaves you firmly
13 convinced that respondent is a sexually violent predator.
14 Ladies and gentlemen, there are very few things in this
15 world that we know without absolute certainty, and in this
16 type of case the law does not require proof that overcomes
17 every possible doubt. If based on your consideration of the
18 evidence, you are firmly convinced that Mr. Hyman is a
19 sexually violent predator then you must return a verdict
20 for the State. If, on the other hand, you think there is a
21 real possibility that he is not a sexually violent
22 predator, you must give him the benefit of the doubt and
23 return a verdict for the respondent. Reasonable doubt may
24 arise from evidence that is in this case or from the lack
25 of evidence in this case. It is up to you, the jury, to

1 determine whether or not a reasonable doubt exist in this
2 case.

3 Now, evidence may be direct or circumstantial. Direct
4 evidence is testimony by a witness about what the witness
5 personally saw, heard or did. Circumstantial evidence is
6 indirect evidence, that is, it is proof of one or more
7 facts from which one can find another fact. You are to
8 consider both direct and circumstantial evidence. The law
9 permits you to give equal weight to both, but it is for you
10 to decide how much weight to give any evidence.

11 In determining what the facts are in this case, you
12 must judge the credibility, which means the believability,
13 of the witnesses and the value of weight to be given to
14 their testimony. You alone must decide the force, effect
15 and accuracy of the testimony. In making this decision
16 there are many things you may, and should, take into
17 consideration such as:

18 (1) The appearance and manner of the witness on
19 the stand, a characteristic often referred to as the
20 demeanor of the witness.

21 (2) Was the witness forthright, or hesitant?

22 (3) Was the witness' testimony consistent, or
23 did it contain discrepancies?

24 (4) What was the ability of the witness to know
25 the facts about which he or she testified?

1 (5) Was there some reason a witness would want
2 to give testimony which would help or hurt one side or the
3 other? In other words, was the witness bias or prejudice?

4 (6) Was the testimony of the witness reasonable
5 when considered in the light of all the evidence in the
6 case and in the light of your own experience and common
7 sense?

8 (7) Was the testimony of the witness
9 corroborated or made stronger by other testimony and
10 evidence, or was it made weaker or impeached by such other
11 testimony and evidence?

12 As jurors please understand you have the right to
13 believe a small portion of a witness' testimony and
14 disregard the larger portion, or vice versa. You may
15 believe all of the witness' testimony, or none. You may
16 believe the testimony of a single witness against that of
17 many witnesses, or the other way around.

18 And, of course, you do not determine the case merely
19 by counting the number of witnesses presented by each side.

20 The fact that testimony is not controverted does not
21 mean you must accepted as valid and undisputed. You still
22 must gauge the credibility of the witness to determine the
23 believability of the facts offered through the testimony.

24 In exercising your mental processes and attempting to
25 decide the accuracy of testimony, the law simply requires

1 that you exercise your good judgment, your common sense,
2 your sense of logic and reason, and your experiences in
3 life. You then apply these attributes to the evidence and
4 apply the law as I am now going to state it to you, and
5 thus arrive at a verdict.

6 Now, during the course of this trial, you have heard
7 testimony from expert witnesses, two expert witnesses. The
8 rules of evidence ordinarily do not permit witnesses to
9 testify to opinions or conclusions as I told you yesterday.
10 Instead, they can testify as to the facts they perceived,
11 such as what they saw, smelled, heard or touched. However,
12 an exception to this rule exist for a witness we can call
13 an "expert witness". A witness who has special knowledge,
14 skill, experience, training, or education in a particular
15 field may state an opinion as to relevant and material
16 matters in which the witness claims to be an expert.

17 In determining the weight to be given to such an
18 opinion, you should likewise consider the qualification and
19 credibility of the expert and the reasons given for the
20 opinion. You must not, excuse me, you are not bound by such
21 opinion. Rather, you should give it to the weight, if any,
22 would you think it deserves.

23 The value and effect of expert testimony is a manner
24 to be solely estimated by you. No opinion of an expert can
25 be accepted, in and of itself, as accurate or reliable, but

1 must be weighed by you and convince your judgment, beyond a
2 reasonable doubt and with the same force and effect as any
3 other fact proved in this case before you can rely upon it.

4 You must consider expert testimony in the same manner
5 as you do any other testimony and give it such weight as
6 you believe it is to be entitled when considered with all
7 the other evidence in this case. Such testimony is given
8 for the purpose of helping you and not for the purpose of
9 controlling your judgment.

10 Now, this is a sexually violent predator case as
11 you've been told numerous times. The elements which the
12 State must prove beyond a reasonable doubt are:

13 1) that the respondent has been convicted of at
14 least one sexually violent offense. I charge you that each
15 of his convictions, one count of criminal sexual conduct
16 with a minor, second degree, one count of criminal sexual
17 conduct with a minor, third-degree, and one count of lewd
18 act on a child under 16, are sexually violent offenses.

19 2) that the respondent suffers from a mental
20 abnormality and/or personality disorder.

21 3) that makes him likely to engage in acts of sexual
22 violence if not confined in a secure facility for long-term
23 control, care, and treatment.

24 Inherent in these three elements is that the State
25 must prove the requirement that the respondents mental

1 abnormality or personality disorder causes him "serious
2 difficulty in controlling his behavior".

3 In other words, the State must prove beyond a
4 reasonable doubt that the individual it seeks to commit
5 suffers from a mental illness which he cannot sufficiently
6 control without the structure and care provided by a mental
7 health facility, and that the illness renders him likely to
8 commit another sexually violent offense.

9 In order for you to better understand the elements of
10 the State's cause of action, I am going to define for you
11 some of the terms that I have just used:

12 1) "mental abnormality" means a mental condition
13 affecting a person's emotional or volitional capacity that
14 pre-disposes the person to commit sexually violent
15 offenses. This mental abnormality or personality disorder
16 must cause Mr. Hyman serious difficulty in controlling his
17 behavior.

18 2) "likely to engage in acts of sexual violence"
19 means the persons propensity to commit acts of sexual
20 violence is of such a degree as to pose a menace to the
21 health and safety of others so that he is dangerous to
22 others.

23 Again, I remind you that the burden of proof is on the
24 State to prove to your satisfaction beyond a reasonable
25 doubt that the respondent has been convicted of a sexually

1 violent offense as I have instructed you, and that he also
2 suffers from a mental abnormality or personality disorder
3 that makes him likely to engage in acts of sexual violence
4 if not confined in a secure facility for long term control,
5 care, and treatment.

6 If the State carries its burden of proof and convinces
7 you beyond a reasonable doubt as to each of the three
8 elements of its cause of action, it is entitled to a
9 finding that Mr. Hyman is a sexually violent predator. If
10 the State does not meet that burden of proof as to one or
11 both, excuse me, as to one or all three of these elements,
12 the respondent is entitled to a finding that he is not a
13 sexually violent predator.

14 Now, Mr. Foreman and ladies and gentlemen of the jury,
15 as you retire to begin your deliberations, I wish to
16 express the hope that each of you will be mindful of the
17 importance of your responsibility. You are not called upon
18 to serve as jurors very often, in the proper performance of
19 your duty requires that each of you free your mind of all
20 improper influences and preconceptions, and weigh the merits
21 of this case fairly and without prejudice.

22 As the presiding officer of this court, I am vitally
23 concerned that whatever verdict you find will be the result
24 of your going into that jury room and confining your
25 consideration to the evidence and the law that you have

1 heard in this courtroom, weighing it fairly and
2 impartially, as I have every confidence you will do.

3 Your verdict in this case cannot be based on sympathy,
4 compassion, prejudice, or emotion or some other
5 consideration not found in the evidence. And remember, your
6 verdict must be unanimous.

7 Now, there are two possible verdicts in this
8 particular case. It will be that you will determine yes,
9 Andy Eugene Hyman, is a sexually violent predator or no,
10 Andy Eugene Hyman is not a sexually violent predator. I
11 have a verdict form that has been prepared that I will
12 submit to you and you'll take back into the jury room, Mr.
13 Foreman. And when the jury has agreed on a verdict, you
14 will fill out the form, sign your name, and knock on the
15 door, and present it to the bailiff and let him know that
16 you have an actual verdict.

17 Now, there may be times while you're making your
18 deliberations that you may have a question that you want to
19 ask the court or some particular juror may have a question,
20 if that's the case you will write it out on a piece of
21 paper, the question for me, Mr. Foreman, give it to the
22 bailiff and he will present it to the court. I will
23 determine whether or not it's something I can or cannot
24 answer. But I will inform you, probably bring you back to
25 the courtroom to explain it to you as foreperson in this

1 particular case.

2 Now, at this time I'm going to ask you to retire to
3 your jury room. Do not begin your deliberations yet. I
4 will have to submit to you the jury verdict form and the
5 exhibits we have, but I have to allow the attorneys to
6 argue any exceptions to what I just told you and see if
7 they have any objection to what I've said. Once I've
8 dispose of that, taking care of that, then we will tell you
9 to begin your deliberations. They will bring you -- when
10 they bring you the verdict form and the exhibits you know
11 that's the time to start your deliberations. Okay. You may
12 retire to your jury room now.

13 (Whereupon, the jury exits the courtroom at 10:29 a.m.)

14 THE COURT: Ms. Mathieu, you're an alternate so at
15 this point in time your services are complete. You will not
16 go back into the jury room to deliberate. You are free to
17 stay in here in the courtroom, hang out and see what the
18 verdict is of your fellow jurors. But your services as an
19 alternate have been completed since everyone else as
20 appeared every day and you did not have to substitute for
21 anybody. So you're welcome to stay if you want to.

22 MS. MATHIEU: Thank you.

23 THE COURT: Any exception to the charge from the
24 State?

25 MS. SHAW: No, Your Honor, nothing more than what

1 I had already put on the record before the jury came in.

2 THE COURT: Okay. Any exceptions?

3 MR. FALK: No, Your Honor. Thank you.

4 THE COURT: All right. We got the exhibits, Madam
5 Court Reporter?

6 COURT REPORTER: Yes, sir.

7 THE COURT: All right. Here are the exhibits and
8 the verdict form, you can tell the Foreman they may begin
9 their deliberations.
10 (Whereupon, the jury begins the deliberations at 10:31
11 a.m.)

12 THE COURT: I understand we have a verdict.

13 MS. SHAW: That is what we are told, Your Honor.

14 THE COURT: Okay. You ready for the jury.

15 MS. SHAW: Yes, sir.

16 THE COURT: Bring them in.

17 (Whereupon, the jury enters the courtroom at 10:53 a.m.)

18 THE COURT: You may be seated. Mr. Foreman, has
19 the jury reached a verdict?

20 MR. FOREMAN: We have, Your Honor.

21 THE COURT: All right. If you'll hand it up to the
22 bailiff and bring it to the clerk please. All right, Madam
23 Clerk, if you would publish the verdict please.

24 **Verdict:**

25 THE CLERK: The State of South Carolina, County of

1 Florence, In the Matter of the Care and Treatment of Andy
2 Eugene Hyman, has the petitioner of the State of South
3 Carolina prove beyond a reasonable doubt that Andy Eugene
4 Hyman is a sexually violent predator under the South
5 Carolina Sexually Violent Predator Act, we the jury
6 unanimously answer the question, yes, Andy Eugene Hyman is
7 a sexually violent predator. Signed foreperson, Michael
8 Abbott.

9 Foreperson and the members of the jury if this is your
10 verdict please raise your right hand?

11 (Whereupon, all jurors raise their right hands)

12 THE CLERK: Thank you.

13 THE COURT: All right. Mr. Foreman, ladies and
14 gentlemen of the jury, your service has now been completed.
15 I want to thank you for the close attention that you pay
16 throughout this trial. Thank you for your willingness to
17 serve. You responded to your summons. I know you didn't
18 come here voluntarily but you'd be surprised at the number
19 of people who try to avoid jury service. You did not do
20 that. You come in and perform their civic duty which is in
21 my opinion the next best, most important thing the military
22 service. This helps our system work. Our system of justice
23 would not work if it were not for jurors. You're the most
24 important part of our system in my opinion. And I do
25 appreciate on behalf of the State of South Carolina and on

1 behalf of Florence County, South Carolina. The verdict
2 that you have given is unanimous and is not to be
3 questioned by anyone whatsoever. I do point out to you that
4 once are discharged in a few minutes you can talk to
5 somebody about this if you want to. If any of the lawyers
6 want to ask you a question or something, you have the right
7 to talk to them, don't hesitate. But if you do not want to
8 talk to them, you don't have to. You don't have to discuss
9 this with anybody. If somebody wants you to discuss it and
10 you don't want to and they keep pressuring you, you just
11 let me know, let the clerk of court know and will deal with
12 that individual. But you have the right if you so desire
13 to speak to people about this. Anyone on the jury have any
14 questions concerning procedures and things that have gone
15 on this week.

16 (Whereupon, none of the jurors responded)

17 THE COURT: Again, I thank you so much for your
18 service and your duties are now complete and you are
19 excused for the remainder of the week.

20 Thank you very much.

21 (Whereupon, the jury exits the courtroom at 10:56 a.m.)

22 THE COURT: Anything from the State?

23 MS. SHAW: No, Your Honor.

24 THE COURT: Anything from the respondent?

25 MR. FALK: No, Your Honor.

1 THE COURT: Okay.

2 MR. FALK: I guess, I'll renew all my motions, but

3

4 MS. SHAW: I'll response accordingly.

5 THE COURT: Any motions that are repeated are
6 denied, continued to be denied. You had submitted a
7 commitment order?

8 MS. SHAW: Yes.

9 THE COURT: It had Judge Brown's name on it, do you
10 want me to just scratch through his name and sign mine?

11 MS. SHAW: I can either -- I can either resubmit
12 it, Your Honor, I have my computer here. I could access
13 our system and then email it to everybody or Your Honor can
14 scratch out and do whatever you think you need to do.

15 MR. FALK: Just scratch it out, I think you need
16 it today.

17 THE COURT: I think I'll -- let me just scratch it
18 out. Let me go back in chambers and get it. I left it back
19 there. Do you want me to give it to you to file it or

20 MS. SHAW: I was gonna say since we're all here
21 and we have our verdict, if we can just get it filed and
22 get copies to take back that would be good for me.

23 THE CLERK: Is that the order you're saying?

24 THE COURT: Yeah. We'll do that so.

25 MS. SHAW: Thank you, Your Honor.

STATE OF SOUTH CAROLINA	)	COURT COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	FOR THE 12 TH JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2020-CP-21-1045
	)	
ANDY EUGENE HYMAN	)	
Respondent,	)	

2021 MAY 28 PM 2:26
 DOUGLAS COUNTY CLERK
 2020 CP 21 1045
 FLORENCE COUNTY, SC

FILED

RESPONDENT'S MOTION IN LIMINE FOR *COUNCIL* HEARING TO ESTABLISH THE ADMISSIBILITY OF OPINION TESTIMONY FROM DR. EMILY GOTTFRIED REGARDING PPG TESTING.

Respondent by and through undersigned counsel moves the court *in limine* to conduct a hearing pursuant Rule 702 SCRE; State v Council, 515 S.E.2d 508 (S.C. 1999); and Watson v Ford Motor Company, 699 S.E.2d 169, SC regarding the admissibility of certain testimony expected to be offered from Petitioner's expert witness, Dr. Emily Gottfried, regarding a penile plethysmograph test ("PPG") Respondent underwent on or about February 11, 2021.. Contemporaneous with the motion, Respondent's Counsel also files a motion *in limine* to exclude this same PPG testimony on separate grounds.

FACTUAL BACKGROUND

On October 28, 2020 the State of South Carolina retained the Sexual Behaviors Clinic (SBCL) Community & Public Safety Psychiatry Division of the Medical University of South Carolina (MUSC) to provide a second opinion of whether Respondent met the statutory criteria for classification as a Sexually Violent Predator. In a report dated March 8, 2021 Dr. Emily Gottfried of MUSC's SBCL opined that Respondent met the criteria for classification as a Sexually Violent Predator as defined by South Carolina's Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48- 10 et seq. In reaching her conclusions Dr. Gottfried relied in part upon the results from the February 11, 2021 PPG results.

ARGUMENT

The PPG measures changes in blood flow to the male sex organ while the test subject views a series of visual and auditory stimulants corresponding to different ages, genders, and scenarios. Certain levels of increased blood flow are associated with arousal. In *re Bilton*, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020). A PPG test is similar to a polygraph examination in that it measures a subject's non-verbal physiological responses to external stimuli as a means of assessing the veracity of a subject's verbal response to the external stimuli. Evidence regarding results from polygraph examinations is routinely excluded. *State v. Pressley*, 290 S.C. 251, 349 S.E.2d 403 (1986). "Evidence regarding the results of a polygraph test or the defendant's willingness or refusal to submit to one is inadmissible." *Id.* at 252, 349 S.E.2d at 404. In *re Robert R.*, 340 S.C. 242, 531 S.E.2d 301 (Ct. App. 2000).

The South Carolina Court of Appeals recently considered the admissibility of PPG test results. In *Re Bilton*, 432 S.C. 157. The Court in *Bilton* addressed a narrower issue regarding admissibility of testimony regarding PPG test results through a witness that did not administer or observe the PPG testing nor review the test's raw data. *Bilton* 432 S.C. at 162. The *Bilton* court held that due process does not allow a testifying expert to be a pipeline for someone else's scientific work to be admitted into evidence without a baseline demonstration of reliability. In *re Bilton*, 432 S.C. at 167. The *Bilton* court recognized that the PPG test *is controversial and has been criticized for a lack of standardization and for being subject to manipulation*. In *re Bilton*, 432 S.C. at 162. Additionally the *Bilton* Court recognized: *with limited exceptions ...courts have "uniformly" declared that PPG test results are "inadmissible as evidence because there are no accepted standards for this test in the scientific community.* *Id.*

Before an expert's testimony can be published to the jury, the Court, if asked, must carry out its gatekeeping role to determine the admissibility of the evidence. In exercising its gatekeeping duties, the Court must make three preliminary findings. First, the Court must find that the subject matter is beyond the ordinary knowledge of the jury. Second, that the proffered expert has acquired the necessary knowledge and skill to qualify as an expert on the subject matter. Third, the Court must evaluate the substance of the testimony and determine whether it is reliable. *Id.*, Watson 699 S.E.2d at 175.

Respondent's challenge to Dr. Gottfried's testimony regarding the PPG centers upon the lack of any proof that PPG testing conducted with both the Marshall and the Real Child Voices (RCV) audio and visual scenarios is reliable. Absent peer reviewed studies attesting to the reliability and standardization of both these stimulus scenario the Court is left with no assurance that the results of Respondent's PPG test are reliable.

Under Rule 702, Council, and Jones, the trial court must determine whether the "underlying science is reliable." Council at 20, 515 S.E.2d at 518. In making this determination, the court should examine "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Id.* Based upon the dicta in the recent opinion in Bilton addressed above, it appears that the South Carolina Court of Appeals is not yet convinced as to the admissibility of properly introduced PPG testimony.

The Virginia Supreme Court held that an expert's report that relied on PPG testing was inadmissible, even at a sentencing hearing. *Billips v. Commonwealth*, 652 S.E.2d 99, 101-02 (2007). The Billips court approached PPG testing with a critical eye:

Advancements in the sciences continually outpace the education of laymen, a category that includes judges, jurors and lawyers not schooled in the particular field under consideration. Consequently, there is a risk that those essential components of the judicial system may gravitate toward uncritical acceptance of any pronouncement that appears to be "scientific," **and the more esoteric the field, the more difficult it becomes for laymen to greet it with skepticism.** That tendency has given rise to frequent complaints of "junk science" in the courts. To guard against that risk, we continue to require a "threshold finding of fact with respect to reliability of the scientific method offered. . . ."

Id. at 101-02 (emphasis added). It is hard to imagine any field more "esoteric" than PPG testing. The court concluded that the PPG "evidence, lacking foundation, was inadmissible in the sentencing proceeding." Id. at 102.

As set forth in Dr Gottfried's report, MUSC used both the Marshall and Real Child Voice (RCV) stimulus sets for Respondent's PPG test. Counsel is informed and believes that there are no peer reviewed studies that validate these specific stimulus sets that MUSC deployed. Moreover there are no studies that compare PPG test results obtained with the RCV stimulus sets and the Limestone equipment with those obtained with other stimulus sets on other PPG machines. Moreover there are no peer reviewed studies showing the effectiveness of these stimulus sets in discriminating sexual responses by men charged with pedophilic sex crimes with those from men with no known sex offense histories or paraphilic interests.

This court should note that in a 2015 article co-authored by William Burke, PhD, R. Gregg Dwyer, MD, EdD and others, the authors stated:

Wide variation exists concerning stimuli types, assessment protocols and means of analyzing and interpreting phallometric results in forensic laboratories in North America. Concerns regarding the lack of standardization in phallometry across sites have been discussed since its creation, however, little improvement has been made. There are challenges in the implementation of standardization within jurisdictions and between countries.

Standardization of Penile Plethysmograph Testing in Assessment of Problematic Sexual Interests. Journal of Sexual Medicine 2015; 12:1853-1854. (Internal citations omitted). This Court should note that R. Gregg Dwyer was formerly associated with MUSC's SBCL and Dr William Burke played a substantial role in the development of the RCV stimulus sets.

Respondent therefore asks that this Court conduct a hearing to establish the reliability of the anticipated PPG testimony from Dr Emily Gottfried regarding Respondent's February 11, 2021 PPG examination.

Respectfully Submitted,

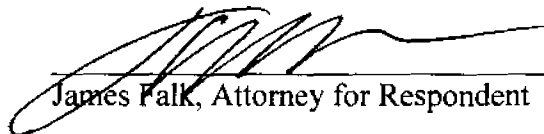


James K. Falk
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Charleston, South Carolina
May 26, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was mailed this 26 day of May, 2021 to Suzanne Shaw, Esquire PO Box 11549 Columbia, SC 29211, and SuzanneShaw@scag.gov.



James Falk, Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 In Re Care and Treatment of)
)
 ANDY EUGENE HYMAN)
 Respondent,)

THE COURT OF COMMON
 PLEAS THE 12th JUDICIAL
 CASE NO. 2020-CP-21-1045

DOUGLAS J. CHARRA
 CLERK OF COURT
 FLORENCE COUNTY, SC

2021 MAY 28 PM 2:26

FILED

RESPONDENT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY REGARDING
 PENILE PLETHYSMOGRAPH (PPG) TESTING

Respondent by and through undersigned counsel moves in limine and pursuant to the 4th, 5th, and 14th Amendments to the United States Constitution, Article 1 Sections 3, 10, and 12 of the South Carolina Constitution and Rules 402 & 403 of the South Carolina Rules of Evidence to exclude all testimony regarding a penile plethysmograph (PPG) test performed upon Respondent. Contemporaneous with this motion, Counsel has also filed a motion asking this Court for a hearing to determine the reliability of the particular PPG test performed on Respondent.

SUMMARY

1. The PPG test constitutes an unwarranted and unreasonable search and seizure of Mr. Hyman and therefore the results should be suppressed.
2. Assuming arguendo that Respondent consented to the seizure, such consent was not fully informed and or obtained through coercion.
3. The use of PPG testing violates Respondents rights against self-incrimination.
4. The stimulus sets used to perform the test were the Burke Real Child Voices (RCV) and Marshall stimulus sets. Respondent is informed and believes that there are either no or insufficient peer reviewed studies validating the use of these stimulus set in conjunction with diagnostic PPG examinations.
5. PPG testing lacks sufficient scientific reliability for use as a diagnostic test in a SVP pre- commitment evaluation.

ARGUMENT

The Compulsory Administration of PPG testing violates Respondent's rights under the 4th, 5th and 14th Amendments to the United States Constitution as well as Article 1 Sections 3, 10, and 12 of the South Carolina Constitution.

PPG testing is an unreasonable search of Respondent's mind and body and an unreasonable invasion of his privacy. Therefore compelling Respondent to subject himself to this intrusion upon this most intimate aspect of his body, constitutes a violation of his rights against unreasonable searches and seizures protected by the 4th Amendment to the United States Constitution and Article 1 Section 10 of the South Carolina Constitution. Moreover, compulsory PPG testing amounts to an unreasonable intrusion upon Respondent's right of privacy as protected by Article 1 Section 10 of the South Carolina Constitution. See State v Forrester, 343 S.C. 637, 341 S.E.2d 837 (S.C. 2001); State v Counts, 431 S.C. 153, 776 S.E.2d 59 (S.C. 2015).

A PPG test is by far the most intrusive procedure or test to which respondents in an SVP commitment proceeding could be subjected. Moreover, not all forensic psychologists and or psychologists include PPG testing as part a SVP pre-commitment evaluation. This court will note that the South Carolina Department of Mental Health, does not subject Respondents to PPG testing as part of pre-commitment evaluations. Counsel is informed and believes that the majority of SVP pre-commitment evaluations are conducted by employees of the South Carolina Department of Mental Health. Dr. Marie Gehle is a Chief Psychologist with SC DMH. Therefore since most of the SVP pre-commitment evaluations in South Carolina are performed without using PPG testing, this Court should not consider that PPG testing is necessary for the performance of an SVP pre-commitment evaluation. Instead the decision to employ PPG testing upon Respondent was the result of Dr. Gottfried's unfettered discretion.

PPG testing requires that a strain gauge be strapped to an individual's genitals and they are then shown visual and auditory stimuli to determine their level of sexual arousal. As noted by the Ninth Circuit Court of Appeals, [PPG testing] is not a run-of-the-mill medical procedure. Plethysmograph testing not only encompasses a physical intrusion but a mental one, involving not only a measure of the subject's genitalia but a probing of his innermost thoughts as well. U.S. v Weber, 451 F.3d 552, 569 (9th Cir 2006).

Substantive due process prohibits the government from invading personal immunities that are "implicit in the concept of ordered liberty" and "so rooted in the traditions and

conscience of our people as to be ranked as fundamental." Rochin v. California, 342 U.S. 165, 169, 172, 72S.Ct. 205, 96 L.Ed. 183 (1952) Courts have addressed whether the non-consensual administration of PPG testing involves a substantive due process violation. See Harrington v. Almy, 977 F.2d 37 (1st Cir 1992) (finding that in a civil rights action a genuine issue of material fact exists whether an employer violates an employees' substantive due process rights by requiring him to submit to PPG testing as a condition of reemployment). U.S. v McLaurin, 731 F.3d 258 (2nd Cir 2013) (requiring a committed sex offender to submit to PPG testing as a condition of community supervision violates offender's due process guarantee); In re Marriage of Parker, 957 P.2d 256 (Wash App Div. 1 2004) (holding that court-ordered PPG testing violated husbands substantive due process rights and outweighed the tests value in protecting the child).

Respondent's status as a convicted sex offender does not strip him of his substantive due process rights. A person, even if convicted of a crime, retains his humanity. He also retains his right to substantive due process, even if it is sharply diminished in many respects. McLaurin 731 F.3d at 261. Although the right against government intrusion upon ones liberty interest is not absolute, any intrusion should be narrowly tailored so that it involves no greater deprivation of liberty than is reasonably necessary to serve the governments goals. See U.S. v Weber 451 F.3d 552, 569 (9th Cir 2006). (Finding that before inmate defendant could be subjected to PPG testing as a condition of supervised release, there must be a showing specific to that particular defendant that PPG testing was reasonably necessary to promote the government's goals).

Subjecting Respondent to PPG testing would implicated his liberty interests. See Bailey v Pataki, 708 F.3d 391, 402 (2nd Cir 2013) (stating that there can be no serious doubt that the liberty interests implicated by mental health treatment involving PPG testing are of a high order); Weber 451 F.3d at 563 (holding that PPG testing implicates a significant liberty interest); Harrington 977 F.2d at 44 (stating that a reasonable fact finder could conclude that requiring PPG testing involves a substantive due process violation). Therefore this Court must consider whether the use of the PPG test is necessary in order to serve the State's interest in evaluating whether Respondent is a sexually violent predator.

Respondent is informed and believes that Dr. Gottfried will disclose to the jury the Respondent's verbal and physiological responses to the evaluation. Although Respondent would have some volitional control over his verbal responses to the evaluation, Respondent would have no control over his physiological responses to the PPG testing. Therefore by subjecting

Respondent to PPG testing this court is forcing him to provide testimony against himself. In the event a jury were to find that Respondent was a sexually violent predator, he would be confined to a secure facility for an indeterminate period of time for long term care, treatment and control.

Since a direct consequence of the disclosure of Respondent's PPG results could result in Respondent's conviction and involuntary commitment as a sexually violent predator, a non-voluntary PPG violates Respondent's right to remain silent and as protected by the 5th Amendment to the United States Constitution and Article 1 Section 12 of the South Carolina Constitution.

Respondent therefore asks that the State and its witnesses be prohibited from all mention of PPG testing in its opening statement, case in chief, and closing argument.

Respectfully Submitted,



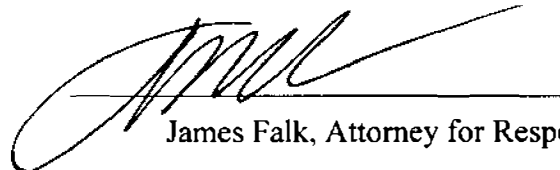
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May 26, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was mailed this 26 day of May 2021 to Suzanne Shaw, Esquire PO Box 11549 Columbia, SC 29211, and SuzanneShaw@scag.gov.



James Falk, Attorney for Respondent

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT
2021 JUN -7) AM 8:57
CASE #: 2020-CP-21-1045

DORIS DOUGLAS O'HARA
IN THE MATTER OF THE CCCP & GS
CARE AND TREATMENT OF FLORENCE COUNTY, SC)
ANDY EUGENE HYMAN,) RETURN TO RESPONDENT'S COUNCIL
HEARING MOTION IN LIMINE
RESPONDENT.)

INTRODUCTION

On February 11, 2021, as part of the standard protocol Medical University of South Carolina's ("MUSC"), Department of Psychiatry and Behavioral Sciences Sexual Behavior Clinic and Lab ("SBCL") uses for forensic psychosexual evaluations, the Respondent consented to, and was administered a Penile Plethysmography examination ("PPG"). The results were interpretable, and indicated that the Respondent experienced clinically significant sexual arousal to the following scenarios; sexual violence, persuasion and coercion against pre-pubescent and pubescent females, coercive scenarios against both adult men and women, consensual sexual activity with adult females, and sexual activity with a male infant.

The testing was administered by an individual technician employed by the SBCL, who is qualified and trained to administer the PPG. The raw data was then reviewed and interpreted by Dr. Gottfried, who has received extensive training and education in the administration and interpretation of the PPG.

These results were considered in the rendering of Dr. Gottfried's opinion and report in the instant matter, and Respondent now seeks to bar all testimony concerning the results of the PPG testing, and/or a Council hearing to determine the threshold admissibility of the testimony. The State submits this Memorandum in Opposition to the Motion to Exclude, and will have Dr.

Gottfried prepared to testify concerning the reliability of the PPG, should the court order a hearing pursuant to State v. Council, 515 S.E.2d 208 (S.C. 1999) and its progeny.

ARGUMENT

THE SVPA PROVIDES A QUALIFIED EXPERT IS “PERMITTED TO HAVE REASONABLE ACCESS TO THE PERSON FOR THE PURPOSE OF THE EXAMINATION,” WHICH NECESSARILY INCLUDES TESTS THE EVALUATOR DEEMS APPROPRIATE TO PROPERLY DETERMINE IF THE PERSON MEETS THE STATUTORY REQUIREMENTS FOR CIVIL COMMITMENT.

The SVPA expressly states “[a]ll examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports.” S.C. Code Ann. § 44-48-90 (C). The SVPA does not define “reasonable access,” and the legislature’s failure to define a term reveals the obvious intent “to leave to medical professionals” the task of determining what access is necessary to complete an evaluation under the SVPA. See Matter of Snow, 425 S.C. 544, 823 S.E.2d 467, 469 (2019) (“The obvious intent in not defining the term [personality disorder] was to leave to medical professionals the task of determining what is—and what is not—a personality disorder.”) Likewise, the medical professionals performing psychosexual evaluations under the SVPA should determine what testing is necessary for a thorough psychosexual evaluation. An expert’s established protocol for completing a psychosexual evaluation is not unreasonable simply because experts may disagree about what protocols to follow in completing a psychosexual evaluation.¹

¹Indeed, given the importance of determining a person’s risk to reoffend sexually, an evaluation based on the results of numerous psychological and/or physiological tests, in addition to a document review and interview, is arguably more reliable than an evaluation based only on a document review, an interview, and one actuarial assessment tool.

The United States Supreme Court has recognized the work of medical experts informs courts and legislatures, which uses those medical sources and authorities in reaching independent determinations. Courts rely on professionals to “use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of persons with mental or psychiatric disorders or disabilities,” and “[s]ociety relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue.” Hall v. Fla., 572 U.S. 701, 710 (2014). The medical expert diagnosis informs the legal determination, but the experts’ views “do not dictate the Court’s decision, yet the Court does not disregard these informed assessments.” *Id.* at 721–22 (2014). *See also*, Kansas v. Crane, 534 U.S. 407, 413 (2002) (“[T]he science of psychiatry ... informs but does not control ultimate legal determinations ...”).

The Supreme Court clarified that even if “the views of medical experts” do not “dictate” a mental condition determination, the determination must be “informed by the medical community’s diagnostic framework,” and reliance “on the most recent (and still current) versions of the leading diagnostic manuals—the DSM–5 and AAIDD–11.” Moore v. Texas, 137 S. Ct. 1039, 1048–49 (2017) (quoting Hall v. Fla., 572 U.S. 701). The Supreme Court concluded in Hall, Florida violated the Eighth Amendment by “disregard[ing] established medical practice,” and “Hall indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide,” but “neither does our precedent license disregard of current medical standards.” Moore 137 S. Ct. at 1048–49.

While Hall deals with the Eighth Amendment, the reasoning is instructive. Medical expert opinions are particularly significant to the SVPA inquiry of whether a sexual offender is likely to reoffend. The SVPA defines “[l]ikely to engage in acts of sexual violence” to mean “the person’s **propensity** to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.” S.C.

Code Ann. §44-48-30 (9) (emphasis added). Therefore, a person's dangerous propensities are the focus of the SVP Act. In re Care & Treatment of Corley, 353 S.C. 202, 577 S.E.2d 451, 453–54 (2003). Respondent cites In Re Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), as authority standing for the proposition that the PPG is either inherently unreliable, and/or is not a test that is permitted to be used in SVP matters. This is factually and legally wrong. Bilton stands solely for the proposition that expert testimony concerning the results of PPG testing may not be elicited as “conduit hearsay”; an expert who relied on the conclusions of another expert in forming an opinion and who did not interpret or review the raw data, may not testify concerning the results of that expert’s testing. The Court of Appeals specifically noted the following “[w]e wish to emphasize that we are not called on to review whether some hypothetical procedure would qualify as a baseline demonstration that Bilton's PPG test results were reliable. We simply hold, as noted above, that due process does not allow a testifying expert to be a pipeline for someone else's scientific work to be admitted into evidence without a baseline demonstration of reliability.” Matter of Bilton, 432 S.C. 157, 167, 851 S.E.2d 442, 446 (Ct. App. 2020), reh'g denied (Dec. 22, 2020). In short, an expert who did not administer or interpret PPG results for a given offender, may not testify concerning the substance or interpretability of those results. Respondent further points to Billips v. Commonwealth, 274 Va. 805, 809, 652 S.E.2d 99, 101 (2007) as support for his position. Reliance on this matter is also misplaced. In addition to being factually distinguishable, in Billips, the Virginia Supreme Court was called upon to answer a question very similar to that answered by the Bilton court – was there a threshold indicator of reliability in the proffered testimony concerning the PPG?

In that matter, the Commonwealth sought to use the results of a PPG examination at a sentencing hearing and a Spencer objection was made concerning reliability of the testing. At the

hearing, the Commonwealth called a licensed clinical social worker and a probation officer to testify concerning the results of the PPG examination. Neither witness was qualified as an expert in the field of Penile Plethysmography, and the circuit court made no threshold finding of fact that the testing was reliable. Billips v. Commonwealth, 274 Va. 805, 809, 652 S.E.2d 99, 101 (2007). In reviewing the decision below, the Supreme Court found that the Court of Appeals, in fact, had shifted the burden from the Commonwealth to the Respondent, requiring him to prove that the results of the testing were unreliable. Billips v. Commonwealth, 48 Va. App. 278, 306–07, 630 S.E.2d 340, 354–55 (2006), rev'd in part, 274 Va. 805, 652 S.E.2d 99 (2007). This was improper in the Supreme Court's eyes, and that is the true basis for reversing the Court of Appeals' decision, in part.

The Court of Appeals held the Spencer rule inapplicable here because a “relaxed standard of admissibility [applies] at sentencing hearings” and concluded that, at the sentencing stage, all that is required is that the proffered evidence bear “some indicia of reliability.” Billips, 48 Va.App. at 300, 305, 630 S.E.2d at 351, 354. The Court of Appeals found such indicia of reliability in the testimony of the probation officer and the licensed clinical social worker who had prepared Billips' presentence report. Neither witness qualified as an expert in the field of plethysmograph testing and the circuit court made no threshold finding of fact that the system was reliable. The Court of Appeals noted that Billips had offered no evidence at the sentencing hearing to support his contention that the plethysmograph testing method was unreliable, and held that no threshold finding of reliability was necessary and that the admission of the evidence was within the circuit court's discretion. We do not agree with the reasoning of the Court of Appeals.

Billips v. Commonwealth, 274 Va. 805, 809, 652 S.E.2d 99, 101 (2007)

The Court went on to conclude that when a Spencer challenge is raised, that there must be testimony from a qualified expert in the field concerning the reliability of the testing, prior to its' admission in evidence.

The Attorney General's Office has the express statutory authority to seek an independent evaluation of Respondent by a qualified expert of its choice. *See* S.C. Code Ann. §44-48-90(D). MUSC's Department of Psychiatry and Behavioral Sciences Sexual Behavior Clinic and Lab (“SBCL”) employs

qualified experts, which provide services to the criminal, civil, and family court systems, other state agencies, and individual or institutional treatment providers. The SBCL evaluations typically include the use of clinical and forensic interviewing, psychological assessment and physiological assessment (to include a PPG), visual reaction time assessment and biochemical laboratory studies through affiliated laboratory support. See (<http://academicdepartments.musc.edu/psychiatry/cpspd/programs/sexual-behaviorsclinic.html>). The SVPA does not enumerate or limit the diagnostic tools evaluators may use to evaluate a person subject to its terms, only that a qualified expert use them in rendering an opinion. In order to fulfill the mandate of the SVPA, the State must be able to rely on qualified medical experts to determine if a person suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined for long-term control, care and treatment. Rather than dictate or limit the parameters of evaluators' protocols, the legislature purposefully did not define "reasonable access," thereby giving mental health professionals the freedom to determine what testing is necessary to form their expert opinions. If the statute is interpreted as imposing limitations on qualified evaluators' protocols, the court ordered evaluator's opinion would be dispositive; however, the legislature provided each party the statutory right to obtain a subsequent independent evaluation. S.C. Code Ann. § 44-48-90(D).

Recidivism is at the heart of the SVPA law, and requires the assistance of the professional medical community in making a legal determination of whether Respondent is a sexually violent predator. Dr. Gottfried is the Director of the SBCL, she is highly experienced in administering and interpreting PPG testing and results, and she is highly qualified to determine what tests are necessary for a thorough psychosexual evaluation. SBCL utilizes the PPG as a component of its standard protocol for evaluating sexual offenders, regardless of who is requesting the evaluation, or the purpose of the evaluation. The SVPA affords Dr. Gottfried, and every other qualified expert, the leeway to determine what tests are

necessary to complete a thorough psychosexual evaluation of Respondent, and determine whether he is likely to re-offend sexually. Accordingly, the State requests this Court deny the motion to bar testimony concerning the PPG as a threshold admissibility matter, and conduct a Council hearing to take testimony from Dr. Gottfried on the matter.

PPG TESTING RESULTS ARE ADMISSIBLE AS EVIDENCE IN A CIVIL COMMITMENT TRIAL, AS THE TECHNOLOGY AND TESTING PROTOCOLS HAVE DEVELOPED TO THE POINT THAT THERE IS SUFFICIENT INDICIA THAT THE EVIDENCE MEETS THE BASELINE STANDARDS FOR RELIABILITY UNDER THE COUNCIL STANDARD

Before expert testimony may be elicited concerning admissibility of evidence related to subject matter which is beyond the ken of the ordinary juror, where there is a challenge to a particular type of evidence, the court must exercise its gatekeeping function to make a preliminary assessment of admissibility. Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174–75 (2010). Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves. Ibid. The admission of expert testimony is governed by Rule 702, S.C.R.E., which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge. Ibid. Under the Watson standard, and its progeny, when there is a challenge to proffered expert evidence, the court must first make the following findings:

- (1) The subject matter is, in fact, beyond the knowledge of an ordinary juror;
- (2) The proffered expert has the knowledge and skill to be qualified as an expert on the subject matter; and
- (3) The substance of the testimony must be reliable.

Id. at 175.

In determining the reliability of the testimony, the court should examine the following factors:

- (1) Publications and peer review of the technique;
- (2) Prior application of the method to the type of evidence involved in the case;
- (3) The quality control procedures used to ensure reliability; and
- (4) The consistency of the method with recognized scientific laws and procedures.

State v. Council, 335 S.C. 1, 515 S.E.2d 508, 518 (1999).

The South Carolina Supreme Court and Court of Appeals have referenced testimony regarding PPG results in analyzing the sufficiency of evidence to support the verdicts in several SVP cases. *See In re Care & Treatment of Tucker*, 353 S.C. 466, 578 S.E.2d 719, 721 (2003) (“Respondent was administered a Penile Plethysmograph (PPG), which is designed to measure sexual responsiveness to a variety of stimuli across gender, age, and sexual activity. The PPG suggested female and male preschoolers (ages two to four years) aroused Respondent .”); *In re the Care and Treatment of Kennedy*, 353 S.C. 394, 578 S.E.2d 27, 38 (Ct. App. 2003) (In support of his argument, Kennedy asserts that because he passed the Penile Plethysmography (PPG) test, which is used to test sexual arousal to children, this was the best evidence that he would not re-offend.”).² In addition, recent case law, reference books and treatises, indicate the PPG now has significant support in the mental health field.³

²In SVPA trials, some circuit courts found the PPG is recognized in the relevant field, and evidence regarding it is admissible as evidence at trial under *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979), and *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999). In two cases, the circuit courts found PPG evidence was inadmissible.

³Like virtually all areas of expertise, mental health experts’ disagreement regarding the validity of particular tests/tools used by a significant number of practitioners to diagnose and/or treat mental health issues goes to the evidence’s weight rather than its admissibility.

1. History of the PPG.

The PPG's history goes back to 1908, when a type of plethysmograph was used to check the effect of certain drugs on the vasomotor reflexes in dogs. Barker, James, and Howell, Robert, The Plethysmograph: A Review of Recent Literature, *Bull Am. Acad. Psychiatry Law*, 20(1): 13-25 (1992). In the 1930s, the medical community began using plethysmograph to assess erectile difficulties. *Id.* Beginning in 1957, Czechoslovakia used the PPG as a method to determine the validity of homosexuality claims by soldiers attempting to avoid military service, and now, it "is a widely recognized means of measuring male sexual arousal to given stimuli." Murphy, L., *et. al.*, Standardization of Penile Plethysmography in Assessment of Problematic Sexual Interests, *J. Sex. Med.* 12(9): 1853-1861 (2015). It "has become a standard objective measure of arousal and is considered by some researchers and clinicians to be essential in the assessment and treatment of male sex offenders and men with paraphilic interests." *Id.*; *see also* Murphy, L., *et. al.*, Assessment of Problematic Sexual Interests with the Penile Plethysmograph: an Overview of Assessment Laboratories, *Current Psychiatry Reports* 17(5):567 (2015) (PPG "is an objective assessment of sexual arousal based on the change in penis circumference and volume due to increased vasocongestion in the penis"); Howes R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, *J. Forensic Res.* 8(6):398 (2017) (PPG is "[p]erhaps the best means of objectively measuring deviant sexual interest").

2. Purpose of the PPG.

The PPG's general purpose is to measure male sexual arousal regardless of how the result is used, including assessing erectile dysfunction, checking function after a prostatectomy, or to determine the efficacy of sexual behavior treatment. The PPG is a physiological measure developed as a tool to assess

physiological patterns of male sexual arousal.⁴ W.T. O'Donohue & D.S. Bromberg (Eds.) *Sexually Violent Predators: A clinical science handbook* pp. 243-254. Cham, Switzerland: Springer, 2019 (Plaud, J.J., The use of penile plethysmography in SVP assessment and treatment decision-making.) As many individuals undergoing sexual behavior evaluations may be motivated to conceal arousal to deviant (i.e., nonconsensual/abusive) stimuli (i.e., sexual arousal to children), having a way to objectively assess this is vital for evaluations of future sexual dangerousness. Specifically, having deviant sexual interests, especially sexual arousal to children, is one of the strongest risk factors associated with sexual recidivism. Mann, R.E., Hanson, R.K., & Thornton, D., Assessing risk for sexual recidivism: Some proposals on the nature of psychologically meaningful risk factors, *Sexual Abuse: A Journal for Research and Treatment*, 22(2), 191-217 (2010); Hanson, R.K. & Morton-Bourgon, K.E., The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies, *Psychological Assessment*, 21(1), 1-21 (2009); Hanson, R.K. & Morton-Bourgon, K.E., The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies, *Journal of Consulting and Clinical Psychology*, 73(6), 1154-1163 (2005); Hanson, R.K. & Bussiere, M.T., Predicting relapse: A meta-analysis of sexual offender recidivism studies, *Journal of Consulting and Clinical Psychology*, 66(2), 348-362 (1998).

⁴There is a significant misconception regarding the PPG process. While the concept of the PPG is uncomfortable to many, the process is designed to protect personal privacy. The strain gauge (a small, rubber -like ring) is calibrated multiple times using licensed software prior to the examinee placing it on his penis. In fact, many PPG software calibration programs will not initiate a PPG test until the gauge has been properly calibrated. The examinee sits by himself in a private room and is presented with various stimuli. The stimuli are typically audio recordings and slides. In the United States, no child pornography is shown to the examinee via slides or video. The circumference of the flaccid penis at the start of each trial is compared to the maximum circumference for the trial. The PPG measures sexual arousal "by recording changes in the erectile tissue surrounding the penis as it becomes filled with blood" as "this is the most basic overt physiological manifestation of sexual arousal in the human male (Plaud, 2019, p. 244).

3. Modern use and acceptance of PPG.

“Phallometric testing is currently used as a diagnostic, treatment planning, and risk management tool in a variety of jurisdictions” Wilson, R.J., The use of phallometric testing in the diagnosis, treatment, and risk management of male adults who have sexually offended, *The Wiley Handbook on the Theories, Assessment & Treatment of Sexual Offending: Volume 2*. (p. 823-849), In L. Craig & M. Rettenberger (Eds.) (2016). The PPG has undergone Federal Drug Administration review, and the FDA has approved several PPG systems, including the Limestone system used by the SBCL. *See* 501(k) Summary–Limestone Technologies, Inc. (https://www.accessdata.fda.gov/cdrh_docs/pdf/5/K052929.pdf). Further, the Medicaid/Medicare regulations provide coverage for PPG tests. *See* Federal Register Volume 72, Number 61, Addendum III and Addendum V (Friday, March 30, 2007) (<https://www.gpo.gov/fdsys/pkg/FR-2007-03-30/html/07-1414.htm>).

Major insurance companies, such as Blue Cross Blue Shield, also recognize the PPG as a medical procedure, and either provide limited coverage, or exclude it from coverage. *See* Blue Cross Blue Shield of Texas, Treatment of Male Sexual Dysfunction, Special Comment on Contract Exclusions (January 7, 2003) (<https://www.bcbstx.com/provider/pdf/medicalpolicies/surgery/717-010.pdf>). The Federal Government’s and major insurance companies’ recognition of the PPG as a valid medical device and procedure amply demonstrates its general acceptance.

4. PPG’s use in the mental health field.

The PPG’s principal purpose in psychosexual sexual offending behavior evaluations is determining an individual’s level of risk to commit future acts of sexual aggression. The PPG measures the extent to which the individual is dominated by sexual arousal to deviant stimuli, and predictions of risk to re-offend “are rendered much more accurate by the inclusion of data from this technique.” Howes, R. J., Measurement of Risk of Sexual Violence Through Phallometric Testing, *Legal Medicine* 11:368-

369 (2009). “Although not universally embraced, there nonetheless remains widespread acceptance and recognition of the value of phallometric assessment,” and it “is certainly an assessment procedure which has come a long way since it was first devised.” Howes R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, *J. Forensic Res.* 8(6):398 (2017).⁵

See also Dean Tong, The Penile Plethysmograph, Abel Assessment for Sexual Interest, and MSI-II: Are They Speaking the Same Language?, *35 Am. J. of Fam. Therapy*, 187, 190 (2007) (“The PPG, when administered properly, represents a direct and objective measurement of a man's level of sexual arousal to normal versus sexualized stimuli. Since there is a strong relationship between an individual's pattern of sexual arousal and the probability that he may or will act upon that arousal, an important first step in gauging one's propensity to sexual deviancy is to obtain an accurate assessment of that person's sexual arousal patterns, which is precisely what the PPG does.”); James M. Peters, Assessment and Treatment of Sex Offenders: What Attorneys Need to Know, *Advocate*, 23 (Dec. 1999) (PPG “is invaluable in the evaluation, treatment and management of known sexual offenders.”).

Further evidence of the PPG’s general acceptance in the mental health community, and perhaps the most compelling evidence, is the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013) (DSM-5), which mental health professionals often refer to as “the bible” for mental health diagnosis purposes. In the section regarding paraphilic disorders, the DSM-5 provides:

The most widely applicable framework for assessing the strength of a paraphilia itself is one in which examinees’ paraphilic sexual fantasies, interest and behaviors are evaluated

⁵Both the polygraph and the PPG measure physical changes, but the PPG differs significantly in that it measures the size of an erection, which is either there or it is not. Unlike the polygraph, during which the examiner prepares and uses questions directly related to the matter under investigation, and makes subjective interpretations of responses as they occur, the PPG technician makes no such interpretation. The PPG results, *i.e.*, the size of the penis erection during certain stimuli, are recorded by the machine with the technician in a separate room. The evaluator then reviews the results and compares the level of arousal to one stimuli set versus another set, which is done by mathematical formula. Experts can disagree about the significance of one arousal over another, but that is no different from any other issue subject to expert opinion.

in relation to their normophilic sexual interests and behaviors. In a clinical interview or on self-administered questionnaires, examinees can be asked whether the paraphilic sexual fantasies, urges or behaviors are weaker than, approximately equal to, or stronger than their normophilic sexual interest sexual interests and behaviors. The same type of **comparison can be, and usually is, employed in psychophysiological measures of sexual interest, such as penile plethymography in males** or viewing time in males and females.

DSM-5 ,p. 686 (emphasis added). It further provides:

Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggest the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. **The most thoroughly researched and longest used of such measures is penile plethysomography**, although sensitivity and specificity of diagnosis may vary from one site to another.

DSM-5, p. 699 (emphasis added). Previous DSM versions did not recognize the PPG, however, by the time the DSM-5 was published in 2013, there was sufficient research indicating the PPG's validity as a tool to measure an individual's sexual interest.

5. Legal acceptance of the PPG.

Courts have also recognized the general acceptance and admissibility of the PPG in sexually violent predator cases. In In re Detention of Halgren, 156 Wash. 2d, 132 P.3d 714 (2006), the Washington Supreme Court found PPG results were admissible as part of the diagnostic process, and the PPG testimony would assist the jury in understanding the expert's sexual deviancy diagnosis. *Id.* at 719. The court further found the issue of the PPG's reliability goes to the weight of the evidence rather than its admissibility *Id.*; *see also* In re Detention of Herrick, 198 Wash. App. 439, 393 P.3d 879, 885 (2017), *aff'd*, 190 Wash. 2d 236, 412 P.3d 293 (2018)(same).

The Illinois appellate court also found PPG evidence was admissible in In re Commitment of Sandry, 367 Ill.App.3d 949, 858 N.E.2d 295 (2006). As to the admissibility of a particular test or methodology, the court stated: "once it is determined that a methodology is generally accepted, it follows that it has achieved a sufficient degree of reliability and validity to cross the threshold of admissibility."

Id. at 309. The court then engaged in an exhaustive analysis of case law (use of PPG mentioned in at least 21 states, including South Carolina), statutes [eleven state statutes] and regulations). *Id.* at 310-313.

The court also discussed numerous academic articles, which it determined provided ample support “to conclude that PPG testing is accepted by a substantial number of experts in this field such that it may be used to support a qualitative assessment of the future dangerousness of an individual.” *Id.* at 309-316. Acknowledging some experts have criticized and rejected PPG testing, the court noted the existence of contrary authority is not dispositive because many people could disagree on the acceptance of any given methodology, but those who accept it may still constitute a significant subset of experts in any given field. *Id.* at 316; *see also State v. Graham*, 275 Kan. 176, 183, 61 P.3d 662, 667 (2003) (some disagreement in the scientific and medical community as to the reliability of a particular test method is a matter affecting the weight of such evidence and not its admissibility; such evidence is admissible if a qualified expert witness testifies the particular test method is reliable and accurate, and it is generally accepted as such by other experts in the field).

The detailed analysis above demonstrates the PPG is a reliable test, is an accepted practice in the field of psychology, and should be admissible at trial.

CONCLUSION

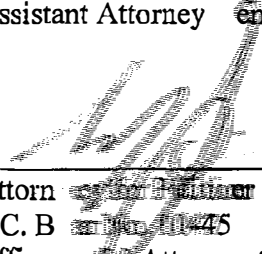
Dr. Gottfried has extensive experience with the PPG, is certified to interpret its results, and she will testify about changes to the test that have significantly increased its reliability. The result of the PPG exam is only one part of the comprehensive psychosexual evaluation, but it is a valuable component. That is particularly so in this case because of the nature of Mr. Hyman’s offending patterns, and his report that he is no longer sexually attracted to children. The results of Mr. Hyman’s PPG examination directly contradict his statements, and reveal clinically significant sexual arousal to children is still an active risk

for him. In terms of his risk to recidivate, this is a primary question to be answered by the jury. As such, the State respectfully requests that the court make a ruling that the results of Mr. Hyman's PPG examination have met the threshold standard of reliability under Watson and Council, and that the testimony should be heard by the jury and given whatever weight and credibility the jury finds most appropriate.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

SUZANNE J. SHAW
Assistant Attorney General



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June 6, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

IN THE MATTER OF THE CARE)
AND TREATMENT OF:)

CIVIL ACTION NO. 2020-CP- 21 - 1045

ANDY EUGENE HYMAN,)

PETITION PURSUANT TO THE
SEXUALLY VIOLENT PREDATOR
ACT

RESPONDENT.)
_____)

2020 APR 16 AM 8:31
DORIS POULOS CHANDLER
CCCP & GS
FLORENCE COUNTY, SC

FILED

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned, and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* (hereafter, the Act).
2. The South Carolina Department of Corrections (hereafter, SCDC), having determined that Respondent, Andy Eugene Hyman, (hereafter, Respondent), had been convicted of at least one Sexually Violent Offense, referred Respondent to the Multi-Disciplinary Team for assessment pursuant to S.C. Code Ann. Section 44-48-40. **Respondent's max-out date from SCDC is currently on or about February 16, 2021.** His SCDC Inmate Number is 242848 and he was born in 1975.
3. The Multi-Disciplinary Team (MDT) on February 20, 2020, determined after assessment that Respondent satisfied the definition of a Sexually Violent Predator as set forth in S.C. Code Ann. Section 44-48-30, and referred Respondent to the Prosecutor's Review Committee for a determination pursuant to S.C. Code Ann. Section 44-48-60 as to whether probable cause exists to believe Respondent is a Sexually Violent Predator (attached as **PETITIONER'S EXHIBIT A**). The assessment of the Multi-Disciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.
4. The Prosecutor's Review Committee (PRC) received the case from the MDT on February 21, 2020, and on March 23, 2020, determined that there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute (**EXHIBIT B**). The Prosecutor's Review Committee bases its determination on the records and reports provided by the Multi-Disciplinary Team including any information provided by the agency that prosecuted the qualifying offense.

5. SCDC records show no indication of military service that would require a separate court order to obtain (EXHIBIT C).
6. The Petitioner now alleges that Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. Section 44-48-30(1), to wit:

QUALIFYING CONVICTIONS (EXHIBIT D):

- A. Types of Conviction: Criminal Sexual Conduct with a minor, 3rd, Lewd Act on a victim under the age of 16
- B. Date of Convictions: On or about September 15, 2016
- C. Trials or Pleas: Guilty Plea
- D. Sentence Received: 10 Years
- E. Original Charges: Criminal Sexual Conduct with a Minor, 3rd (4 counts), Lewd Act on a victim under the age of 16 (4 counts)
- F. Brief Facts:

Victim 1: "Minor 3," 8 year old female acquaintance (family friend)

Victim 2: "Minor 4," 5 year old female acquaintance (family friend)

Victim 3: "Minor 1," 7 year old female acquaintance (daughter)

Victim 4: "Minor 2," 8 year old female acquaintance (niece)

On or about November 27, 2015, law enforcement responded to the residence of victims "Minor 4," and "Minor 3." The victims are sisters and were contacted by the victims' parents. The victims' mother informed law enforcement both her daughters disclosed that Mr. Hyman took their hands and placed them on his private parts. The victims' mother further informed law enforcement that her daughters "Minor 4," and "Minor 3," told her that Mr. Hyman also forced his daughter, "Minor 1," to touch his penis.

Both victim children, "Minor 4," and "Minor 3," had forensic interviews and disclosed they were forced to touch Mr. Hyman's penis and that Mr. Hyman's daughter, victim "Minor 1," was also forced to touch her father's penis.

Victim "Minor 1," also had a forensic interview and disclosed she saw her daddy on top of victim "Minor 2," and that she saw them in the bathroom together. Victim "Minor 1," disclosed her father took a shower with her.

Mr. Hyman was interviewed and he denied touching his daughter, "Minor 1," but did admit they took two showers together when she was younger. Mr. Hyman did admit to touching his niece, "Minor 2," twice and showering with her. He stated he would touch her on the outside of her vagina and would talk her into touching his penis. Mr. Hyman stated he did not force "Minor 3," to touch him but that she did touch him while they were playing.

Mr. Hyman submitted to a polygraph examination on December 15, 2015, and the test results indicated deception. He was specifically asked about whether he had grabbed victim ^{Minor 3,}s" hand and put it on his penis, and whether he rubbed his penis with her hand.

PRIOR SEXUALLY VIOLENT CONVICTIONS (EXHIBIT E):

- A. Type of Conviction: Lewd Act/Committing/Attempting Lewd Act
- B. Date of Conviction: On or about July 31, 1997
- C. Trial or Plea: Guilty Plea
- D. Sentence Received: 15 years suspended, 5 years' probation
- E. Original Charge: Same
- F. Brief Facts:

Victim 1: "Minor 5," 8 year old female acquaintance

Victim 2: "Minor 7," unknown aged female acquaintance

Victim 3: "Minor 6" unknown aged female acquaintance

The victims, "Minor 7," and "Minor 5," indicated that Mr. Hyman put his penis in their mouths and held their vaginas open and put part of his penis in and played with their butts. The victim, Minor 6 stated Mr. Hyman fondled her.

SCDC RECORDS (EXHIBIT F):

- A. Total Disciplinaries: 7
- B. Type of Actions: 2 administrative actions, 1 other action, 5 minor disciplinaries
- C. Description of Offenses: Use of obscene and vulgar language, disrespect, damage/destruction of property, out of place, possession of contraband, stealing, and abuse of privileges
- D. Outcomes: 6 convictions, 1 closed

SEX OFFENDER TREATMENT WHILE AT SCDC (EXHIBIT G):

No record of sex offender treatment on file.

GENERAL NOTES:

Risk factors common to cases of this nature appear to include, but may not be limited to: (1) not related to victim, (2) related to victim, (3) prior sexual conviction, (4) length of sexual offending history 1 to 6 years, (5) multiple acts on a single victim within a single contact event, (6) more than one victim, and (7) victims under the age of 11.

- (a) Sufficient evidence exists or will exist to determine that Respondent

suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, and that the Respondent has serious difficulty in controlling his behavior, or sexual desire impulses.

(b) In support of the State's allegations that the Respondent has a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, the State, in addition to any other evidence which Petitioner may present to the Court hereafter, submits the following for consideration:

i. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Pedophilic Disorder** are (this is being presented on the possibility that additional information about the juvenile convictions can be obtained, which might indicate underage victims):

A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).

B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.

C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A. **(EXHIBIT H).**

ii. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Paraphilic Disorder** are:

A. Any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners **(EXHIBIT I).**

iii. "[P]revious instances of violent behavior are an important

indicator of future violent tendencies.” *Kansas v. Hendricks*, 521 U.S. 346, 358, 117 S. Ct. 2072, 2080 (1997). The Respondent’s instances of violent and non-violent behavior are:

- A. The basis of his 2016 convictions for Criminal Sexual Conduct (CSC), 3rd and Lewd Act with a victim under the age of 16 (**EXHIBIT D**, *supra*);
 - B. The basis of the original charges against him (**EXHIBIT D**);
 - C. The basis of his prior sexual conviction (**EXHIBIT E**);
 - D. The basis of his disciplinary infractions while incarcerated at SCDC (**EXHIBIT F**); and
 - E. The basis of his lack of sex offender treatment while at SCDC (**EXHIBIT G**).
- iv. The facts of the Respondent’s offenses indicate the existence of a mental abnormality in that they could involve recurrent sexual urges, or behaviors that could, depending on further research into his juvenile adjudications, have involved an underage child and possibly occurring over a period of at least six months.

WHEREFORE, Petitioner requests that based on the above information the Court find there is probable cause to believe Respondent, Andy Eugene Hyman, is a Sexually Violent Predator and order:

- 1. Respondent be taken into custody and confined in a secure facility, if he has not already been so confined, such as at SCDC or in a county detention center;
- 2. Respondent be notified by the Court of the opportunity to appear in person at a hearing to contest probable cause as to whether he is a Sexually Violent Predator;
- 3. A hearing to contest probable cause be held within 72 hours after Respondent is taken into custody, but only if he is not already in custody at SCDC or a county detention center as described *supra*;
- 4. Counsel be appointed for Respondent if necessary;
- 5. If probable cause is found at that hearing, that Respondent remain in

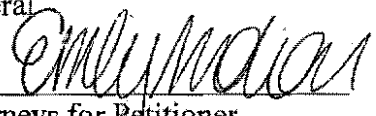
custody and be transferred to an appropriate facility for an evaluation as to whether Respondent is a Sexually Violent Predator;

6. The Court appoint a qualified expert for such an evaluation if probable cause is found;
7. If probable cause is found a trial be held on all issues, and if Respondent is found to be a Sexually Violent Predator that he be committed to the custody of the South Carolina Department of Mental Health for long term control, care, and treatment, until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. Sections 44-48-10 *et seq.*, and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

Emily M. Sordian
Assistant Attorney
General

By: 
Attorneys for Petitioner
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FAX: 803.734-6679
emilysordian@scag.gov

April 6, 2020
Columbia, South Carolina

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

A

SEXUAL PREDATOR REFERRAL FORM

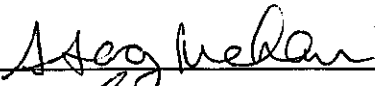
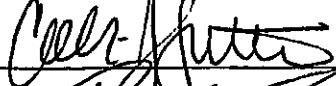
Offender Name: ANDY EUGENE HYMAN		Offender Number: 242848	Jurisdictional Agency: SCDC
Age: 44	County: FLORENCE	Qualifying Offense(s): Guilty Plea: _____ Trial: _____	
Gender: Male	No. of Incarcerations:	Criminal Sexual Conduct w/ Minor-Lewd Act	
Adult 10 years	Parole Eligibility	Max-Out	
Sentence:	Date:	Date: 02/16/2021	
Juvenile	Parole	SFII	
Guidelines:	Release Date:	Date:	

The review of this case is based on the offender's records which include, but are not limited to, the following information: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors. Findings are strictly based on the legal criteria set forth in Section 44-48-30 of the Sexually Violent Predator Act, and are not to be interpreted as a clinical assessment..

VOTES TO REFER/NOT REFER TO PROSECUTOR'S REVIEW COMMITTEE:

YES	NO	ABSTAIN
5	0	0

The following Sexual Predator Multi-Disciplinary Team Members participated in the review process:

	SCDC -- CHAIRPERSON
	SCDPPS
	DMH
	JDG
	ATTORNEY

MULTIDISCIPLINARY TEAM

The offender's records were assessed by the Multidisciplinary Team on February 20, 2020, and based upon that assessment, we find that:

- ☒ The offender satisfies the definition of a sexually violent predator and a review by the Prosecutor Review Committee is warranted.
- ☐ The offender does not satisfy the definition of a sexually violent predator and a review by the Prosecutor Review Committee is not warranted.

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

B

**PROSECUTOR'S REVIEW COMMITTEE
PROBABLE CAUSE DETERMINATION**

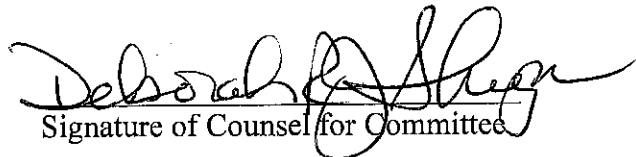
INMATE NAME:	INMATE NUMBER	PRC REVIEW DATE:
ANDY EUGENE HYMAN	242848	MARCH 23, 2020
		MEMBERS PRESENT: Barry Bernstein for Alan Wilson David M. Stumbo via telephone Beebe James via telephone

DATE RECEIVED FROM MULTIDISCIPLINARY TEAM: FEBRUARY 21, 2020

The Multi-Disciplinary Team referred this case to the Prosecutor's Review Committee pursuant to S.C. Code Ann. § 44-48-50, for review to determine whether probable cause exists to believe this person is a sexually violent predator. S.C. Code Ann. § 44-48-60. The Prosecutors Review Committee reviewed all information received from the Multi-Disciplinary Team, including without limitation: documentation of the qualifying offense as well as other sexual assault(s) or criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors.

PROBABLE CAUSE DETERMINATION:

By a vote of 3-0, the Prosecutor's Review Committee found probable cause to believe that this individual has been convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.


Signature of Counsel for Committee

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

C

Monday, February 10, 2020

SUMI200D

SCDC OFFENDER MANAGEMENT SYSTEM

02/10/20

GENERAL OFFENDER PROFILE

C035477

SCDC ID.: 242848
NAME: HYMAN, ANDY EUGENE
OFFENDER TYPE.: ADULT-STRAIGHT SEN
RACE.: W SEX.: M
AGE.: 44 BIRTHDATE.: Minor 4
HEIGHT.: 5 FT 09 IN
WEIGHT.: 261 LBS
EYES.: BROWN HAIR.: BROWN
SKIN.: FAIR BODY.: LARGE
AIMS CATEGORY.:
MILITARY BRAN.:
OCCUPATION.: CONTRACTOR-COMMERCIA
INTELLIGENCE.: AVERAGE INTELL.
READING SCORE.: 7.5 GED.: Y
BIRTHPLACE.: SOUTH CAROLINA
CURRENT ASSIGN: MAINTENANCE
ADMISSION DATE: 09/19/16
PAR ELIG. DATE: 08/27/18
MAXOUT DATE.: 02/16/21

CURRENT LOC.: EVANS
CURRENT STATUS.: INCARCERATED
FBI NUMBER.: 66598FBI
SID NUMBER.:
U.S. CITIZEN.: CITIZEN - NATIVE B
RELIGION.: OTHER CHRISTIAN GR
MARITAL STATUS.: MARRIED
MEDICAL STATUS.:
SOCIAL SECURITY #.:
DRIVERS LIC & STATE.:
SECURITY.: M12 BED TYPE.: F5C0214A
COMMITTING COUNTY.: FLORENCE
SENTENCE.: 01000000 YYNMD00
SENTENCE START DATE.: 12/16/15
MOST SERIOUS OFFENSE: CSC 3RD W/MINOR-LE
SCDC CLASSIFICATION.: VIOLENT
DETAINERS.: YES

VICT/WIT NOTIFICATIONS: YES

OFFENDER PROFILE DISPLAYED...

PF11-QUIT

CLEAR-OMS MENU

PF24-SIGNOFF SYSTEM

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

D

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Andy Eugene Hyman

AKA:

Race: White Sex: M Age: 41

DOB: 1975 SS#

Address: Whitney Lane

City, State, Zip: Johnsonville, SC 29555

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-43 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, David A

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 274 Days☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-21-00744

A/W#: 2015A2110201126

Date of Offense: 10/23/2015

S.C. Code § : 16-03-0655(C)

CDR Code #: 3661

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661

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INDICTMENT/CASE#: 2016-GS-21-00744

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SENTENCE SHEET

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§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

335

WITNESSES

F Turner Florence County Sheriff

DOCKET NO. 2016-GS-21-00744

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONSJUNE TERM 2016**THE STATE**

vs.

ANDY EUGENE HYMAN

David A Richardson

ARREST WARRANT NUMBER

2015A2110201122 2015A2110201123

2015A2110201124

2015A2110201126

ACTION OF GRAND JURY

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE
(4 COUNTS)**Foreperson of Grand Jury
Date:**VERDICT**

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

CRIMINAL SEXUAL CONDUCT WITH A MINOR
THIRD DEGREE
(4 COUNTS)

At a Court of General Sessions, convened on JUNE 9, 2016 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

CDR: 3661 16-03-0655(C)

That Andy Eugene Hyman, being over fourteen years of age, did in Florence County on or about November 27, 2015, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: a seven year old, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: placing the child's hand on his penis, in violation of Section 16-03-0655(C), S. C. Code of Laws, 1976, as amended.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

CDR: 3661 16-03-0655(C)

That Andy Eugene Hyman, being over fourteen years of age, did in Florence County on or about November 27, 2015, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: a five year old, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: placing the child's hand on his penis, in violation of Section 16-03-0655(C), S. C. Code of Laws, 1976, as amended.

COUNT THREE - CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

CDR: 3661 16-03-0655(C)

That Andy Eugene Hyman, being over fourteen years of age, did in Florence County between the dates of march 1, 2014 and August 31, 2014, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: an approximately eight year old, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: rubbing her on the vagina and having her touch his penis, in violation of Section 16-03-0655(C), S. C. Code of Laws, 1976, as amended.

50:2114 9-1116107

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR (4 COUNTS), WITH THE AFORESAID
NAME OF ANDY EUGENE HYMAN SHOWN THEREON:

COUNT FOUR- CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

CDR: 3661 16-03-0655(C)

That Andy Eugene Hyman, being over fourteen years of age, did in Florence County between the dates of October 23, 2015 and October 24, 2015, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: an eight year old, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: placing the child's hand on his penis and touching the child's vagina, in violation of Section 16-03-0655(C), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

60:ZINA 2 - 110127

2015A2110201122

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of
 Florence

 THE STATE
 against

Andy Eugene Hymen

Address: Whitney Lane

Johnsonville, SC 29553-

 Plaintiff: [redacted] Defendant: [redacted]
 Sex: M Race: W Height: 6 Weight: 198

 DOB: 7/1975 Agency ORI #: SC0210050
 Prosecuting Agency: Florence County Sheriff

 Prosecuting Officer: P Turner - 289
 Offense: Sex / Criminal sexual conduct with minor, 3rd

degree - Consent/Attempt Lewd act (victim under
 16 yrs & actor over 14 yrs)

 Offense Code: 166
 Code/Offense Desc: 16-03-0635(C)

This warrant is CERTIFIED FOR SERVICE in the
 County Municipality of

is to be served on the defendant at the
 date with according to the

Date:

A copy of this arrest warrant was delivered to
 defendant Andy Hymen

on 12/17/15

Cpt. [redacted]

RETURN WARRANT TO:

Central Sessions Court

34 S C-E 180 North Inby Street

Florence, SC 295013456

ORIGINAL

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☒ County ☐ Municipality of
 Florence

AFFIDAVIT

Personally appeared before me the undersigned P Turner

being duly sworn, deposes and says that defendant Andy Eugene Hymen

did within this county and state on or about 11/27/2015

 State of South Carolina for commission of ☒ County ☐ Municipality of Florence

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Consent/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

I further state that these are probably cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON NOVEMBER 27, 2015, ACCORDING TO VICTIM'S STATEMENT, THE DEF, ANDY HYMAN, DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT 3RD BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT. VICTIM STATED THE DEF GRABBED HER HAND AND PLACED IT ON HIS PENIS OUTSIDE OF HIS PANTS. DURING A RECORDED STATEMENT, THE DEF ADMITTED VICTIM'S HAND DID TOUCH HIS PENIS WHILE THEY WERE IN THE LIVING ROOM AREA OF HIS RESIDENCE. THE VICTIM WAS 7 YRS OF AGE AT THE TIME OF THE INCIDENT. THE VICTIM WAS INTERVIEWED BY A CERTIFIED FORENSIC INTERVIEWER IN WHICH THE VICTIM DISCLOSED THE INCIDENT. THIS INCIDENT OCCURRED AT WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0217.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of
 Florence

 Affiant's Address: 6719 Friendship Road
 Edinburg, SC 29541-

Affiant's Telephone: (843) 665-2121

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY COMMISSARY OF THE POLICE:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/27/2015 defendant Andy Eugene Hymen

did violate the criminal laws of the State of South Carolina for commission of

☒ County ☐ Municipality of Florence as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Consent/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

Having found probable cause and the above affidavit having been sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before the Court to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his extension, or as soon thereafter as is practicable.

Signed and sworn before me on 12/17/2015

[Signature]

Refunda B. Tammont

Judge Code: 7085

Judge's Address: 6719 Friendship Rd

Edinburg, SC 29541-

Judge's Telephone: (843) 665-6690

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

2015A2110201123

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Florence

THE STATE
against

Andy Eugene Hyman

Address: Whitney Lane

Johnsonville, SC 29535-

Phone: _____ Sex: M Race: W Height: 6 Weight: 198

DOB: 1/9/73 Agency ID #: SC9210009

Prosecuting Agency: Florence County Sheriff

Prosecuting Officer: F Turner - 209

Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

Offense Code: 3551

Code/Ordinance Sec: 16-03-0633(C)

The warrant is CERTIFIED FOR SERVICE in the

☐ County ☐ Municipality of

is, to be arrested and brought before me to be dealt with according to the law.

Date:

A copy of this arrest warrant was delivered to defendant on 12/15/2015.

RETURN WARRANT TO:
General Sessions Court
M S C-B 180 North Ivey Street
Florence, SC 295011456

ORIGINAL

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ORIGINAL

ORIGINAL

15 yrs

☒ County ☐ Municipality of

Florence

AFFIDAVIT

Personally appeared before me the officer F Turner

being duly sworn deposes and says that defendant Andy Eugene Hyman

did violate the criminal laws of the State of South Carolina (in accordance of ☒ County ☐ Municipality of

in the following jurisdiction: Florence

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON NOVEMBER 27, 2015, ACCORDING TO VICTIM'S STATEMENT THE DEF, ANDY HYMAN, DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT 3RD BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT. VICTIM STATED THE DEF GRABBED HER HAND AND PLACED IT ON HIS PANTS OUTSIDE OF HIS PANTS. DURING A RECORDED STATEMENT, THE DEF ADMITTED VICTIM HAND DID TOUCH HIS PANTS WHILE THEY WERE IN THE LIVING ROOM AREA OF HIS RESIDENCE. THE VICTIM WAS 5 YRS OF AGE AT THE TIME OF THE INCIDENT. THE VICTIM WAS INTERVIEWED BY A CERTIFIED FORENSIC INTERVIEWER IN WHICH THE VICTIM DISCLOSED THE INCIDENT. THIS INCIDENT OCCURRED AT 121 WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0627.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Florence

Affiant's Address: 6719 Friendfield Road

Birmingham, SC 29541-

Affiant's Telephone: (843)665-2121

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THE STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/27/2015

defendant Andy Eugene Hyman

did violate the criminal laws of the State of South Carolina (in accordance of

☒ County ☐ Municipality of

Florence

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

Noting said probable cause and the above affidavit having been read before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or as soon thereafter as is practicable.

on 12/15/2015

Signature of Judge

Belinda B Timmons

Judge Code: 7065

Judge's Address: 6719 Friendfield Rd

Birmingham, SC 29541-

Judge's Telephone: (843)665-6690

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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2015A2110201124

STATE OF SOUTH CAROLINA

☒ County☐ Municipality of

Florence

THIS STATE

against

Andy Eugene Hymen

Address: Whitney Lane

Johnsenville, SC 29535

Physical Build: M Race: W Height: 6 Weight: 198

DOB: 1/19/75 Agency ORI #: SC0210905

Prosecuting Agency: Florence County Sheriff

Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under

Offense Code: 3661

Code/Ordinance Book: 16-03-0653(C)

This warrant is RETURNED FOR SERVICE in the

☐ County ☐ Municipality of

If to be arrested and brought before me to be

dealt with according to the law.

Date: 12/17/2015

copy of this warrant was delivered to

on 12/17/2015

RETURN WARRANT TO

General Sessions Court

M & C-E 180 North Ivey Street

Florence, SC 295013455

ORIGINAL

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☒ County☐ Municipality of

AFFIDAVIT

Florence

Personally appeared before me the officer F Turner

being duly sworn depose and say that defendant Andy Eugene Hymen

did within the county and state on or about 3/1/2014

violate the criminal laws of the

State of South Carolina for offense of ☒ County ☐ Municipality of

Florence

in the following particulars: DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs of age over 14 yrs)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

BETWEEN MARCH 2014 AND AUGUST 2014, DEF (ANDY HYMAN) DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT 3RD BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT TOWARD VICTIM. DURING A RECORDED STATEMENT, THE DEF STATED WHILE IN HIS BEDROOM, HE RUBBED VICTIM ON THE OUTSIDE OF HER VAGINA AND COERCED HER INTO TOUCHING HIS PENIS. THE DEF ALSO STATED HE SHOWERED WITH THIS VICTIM PRIOR HIM TOUCHING HER IN HIS BEDROOM. THE DEF STATED HE DOES NOT KNOW THE DATE AND TIME OF THE INCIDENT, BUT ADVISED THE WEATHER WAS WARM AND THE VICTIM WAS IN SCHOOL. THE VICTIM WAS APPROXIMATELY 8 YRS OF AGE AT THE TIME OF THE INCIDENT. THIS INCIDENT OCCURRED AT WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0627.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County☐ Municipality of

Florence

Affiant's Address 6719 Friendfield Road

Birmingham, SC 29541

Affiant's Telephone (843)665-2121

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OR SHERIFF

on or about 3/1/2014

the violate the criminal laws of the State of South Carolina for offense of

☒ County☐ Municipality of

Florence

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16

years of age over 14 yrs)

Having been probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 12/17/2015

Belinda B. Yarnall (J.S.)

Judge's Address 6719 Friendfield Rd

Birmingham, SC 29541

Judge's Telephone (843)665-6600

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

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2015A2110201126

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Florence

This appears
against

Andy Eugene Hyman

Address: Whitney Lane
Johnsonville, SC 29555Phone: _____
Sex: M Race: W Height: 6 Weight: 263
DL State: DL #: _____
DOB: 1975 Agency ORI #: SC0210300Prosecuting Agency: Florence County Sheriff
Prosecuting Officer: F Turner - 209
Offense: Sex / Criminal sexual conduct with minor, 3rd
degree - Consent/Attempt Lewd act (victim underOffense Code: 3661
Code/Ordinance Sec: 16-03-0635(C)This warrant is returned FOR SERVICE in the
☐ County ☐ Municipality ofis to be arrested and brought before me to be
dealt with according to the law.Date: _____
County of _____
City of _____copy of this warrant was delivered to
defendant on 12/27/2015
by _____
Judge's Signature: _____
Judge's Name: _____
Judge's Title: _____RETURN WARRANT TO:
General Sessions Court
M S C-E 180 North Inby Street
Florence, SC 295013436

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☒ County ☐ Municipality of

Florence

AFFIDAVIT

Personally appeared before me the official, F Turner

being duly sworn deposes and says that defendant Andy Eugene Hyman

did violate the criminal laws of the State of South Carolina for offense of

in the following particulars: ☒ County ☐ Municipality of FlorenceDESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Consent/Attempt Lewd act (victim under 16 yrs
& actor over 14 yrs)I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:BETWEEN THE DATES OF OCTOBER 23 AND 24, 2015, THE DEF (ANDY HYMAN) DID COMMIT THE CRIME OF
CRIMINAL SEXUAL CONDUCT 3RD BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT BY
SEXUALLY ASSAULTING THE VICTIM. THE DEF STATED WHILE IN HIS BEDROOM, HE RUBBED VICTIM ON THE
OUTSIDE OF HER VAGINA AND COERCED HER INTO TOUCHING HIS PENIS. THE DEF ALSO STATED HE SHOWERED
WITH THIS VICTIM PRIOR TO HIM TOUCHING HER IN HIS BEDROOM. THE VICTIM WAS 8 YRS OF AGE AT THE
TIME OF THE INCIDENT. THIS INCIDENT OCCURRED AT WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF
FLORENCE CASE NUMBER 2015-11-0627.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Florence

Affiant's Address: 6719 Friendfield Road

Birmingham, SC 29341

Affiant's Telephone: (843) 665-2121

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

it appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/23/2015 defendant Andy Eugene Hyman

did violate the criminal laws of the State of South Carolina for offense of

☒ County ☐ Municipality of Florence) as set forth below:DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Consent/Attempt Lewd act (victim under 16
yrs & actor over 14 yrs)Having found probable cause and the above affidavit sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 12/17/2015Judge's Signature: _____
Judge's Name: Etelinda B. Thompson
Judge's Title: Judge
Judge's Code: 7065

Judge's Address: 6719 Friendfield Rd

Birmingham, SC 29341

Judge's Telephone: (843) 665-6690

County Court ☒ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AGENCY I.D.
SC0210000

INCIDENT REPORT
Florence County Sheriff Office

CASE NUMBER
2015-11-0627

NCID
SIG. EXTD.

EVENT		INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. 11D - Forcible Fending - 16-03-0855				☒ YES ☐ NO	☐ YES ☐ NO	28 (Residence/Home)		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
2.				☐ YES ☐ NO	☐ YES ☐ NO				
3.				☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (RESIDENCE, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE		
VOX HWY, Johnsonville, SC						29555-	40-Personal Weapons (Hands, Flats,		
INCIDENT DATE		IN HR. CLOCK		TO		DATE		IN HR. CLOCK	
11/27/2015		16:10				11/27/2015		19:44	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT		RESIDENT	RACE	SEX	AGE	ETH.	HOME PHONE
C. CRYSTAL		AG		☒ YES ☐ NO	W	F	33	N	
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.			
VOX HWY		Johnsonville		SC	29555-				
VICTIM NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT		RESIDENT	RACE	SEX	AGE	ETH.	HOME PHONE
C. Minor 3		OK		☒ YES ☐ NO	W	F	07	N	
HEIGHT		WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.			
VOX HWY		Johnsonville		SC	29555-				
VEHICLE INJURY (VOT. 9) ☐ YES ☐ NO ☐ EXPLAIN.									
COMPLAINT OF NONVEHICLE INJURY: ☐ YES ☐ NO									
VEHICLE (VOT. 10) ☐ NONE ☐ USING ALCOHOL ☐ DRUGS ☐ TYPE:									
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ CYCLETWHEEL ASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ *J - This Jurisdiction S - State O - Out of State U - Unknown									
☐ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT
☐ RUNAWAY		HYMAN, ANDY EUGENE		W	M	40	N	1975	6'00"
☐ WANTED		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		WEIGHT		HAIR		EYES	
☐ WARRANT				283		BRO - Bro		BRO - Bro	
☐ ARREST		ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
☐ JAIL		WHITNEY LN		Johnsonville		SC	29555-		
☐ SUMMONS		SUBJECT (NO. 1) USING: ALCOHOL ☐ COMPUTER EQUIP. ☐ ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST			
		DRUGS ☐ NONE ☐ TOTAL # ARRESTED 1		11/27/2015 18:19		12/17/2015 12:00			
ON 11-27-2015 I SGT SUMMERSETT RESPONDED TO VOX HWY IN THE COUNTY OF FLORENCE. UPON MY ARRIVAL I SPOKE WITH THE COMPLAINANT CRYSTAL C AND HER HUSBAND MICHAEL C IN REFERENCE TO THEIR (2) DAUGHTERS WHO CAME HOME FROM VISITING A FRIEND'S HOUSE AND ADVISED THE FATHER OF THE FRIEND SEXUALLY ASSAULTED THEM. CRYSTAL ADVISED THAT HER DAUGHTERS Minor 4 C (-2010) AND Minor 3 C (-2008) ADVISED HER THAT A SUBJECT AT WHITNEY LN IN JOHNSONVILLE SC THAT GOES BY THE NAME (ANDY) OR EUGENE HYMAN TOOK THEIR HANDS AND PLACED THEM ON HIS PRIVATE PARTS. CRYSTAL ADVISED THAT HER DAUGHTERS SAID HE HAD PANTS ON DURING THE ASSAULT. I SGT SUMMERSETT CONTACTED INV. TURNER AND ADVISED HER OF THE SITUATION AND SHE ADVISED THAT SHE WOULD BE IN CONTACT WITH CRYSTAL AND MICHAEL C TO SET UP AN INTERVIEW WITH THE CHILDREN. I SGT SUMMERSETT ISSUED HER A CASE#2015-11-0627 ON A CARD AND ADVISED THEM THAT INVESTIGATOR FARRAH TURNER WOULD BE IN CONTACT.									
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
TYPE (GROUP)								TOTAL VALUE	
STOLEN									
DAMAGED									
WOUNDED									
RECOVERED									
STOLEN									
COUNT/FEET									
SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ IN-CLEAR UNDER 18	
☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ IN-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE (V. 1) ☐ DEPENDENT/DEATH		3. ☐ NO PROSECUTION		4. ☐ EXTRADITION DENIED		5. ☐ VICTIM DECLINES COOPERATION		6. ☐ JUVENILE - NO CUSTODY	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
1093 - Sgt. Kevin G. Summersett		11/27/2015		1093		1180 - Sgt. Ryan Huggins		12/04/2015	
						FOLLOW-UP INVESTIGATION OFFICER			
						☐ YES ☐ NO ☐ 1184 - Inv. Farrah Turner		1184	

AGENCY I.D.
SC0210000

SUPPLEMENTAL INCIDENT REPORT
Florence County Sheriff Office

CASE NUMBER

2015-11-0627

NCIC

REQ. EXT'D.

☐ ORIGINAL REPORT ☐ MODIFIED ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE <u>2</u> OF <u>4</u> PAGES	

VICT. SUBJ. I.D. OVERFLOW	COMPLAINANT	NAME (LAST, FIRST, MIDDLE) Minor 4		VICTIM RELATIONSHIP TO SUBJECT OK		RESIDENT S O U	RACE W	SEX F	AGE 05	D.O.B. /2010	ETH N
	VICTIM # <u>2</u>	HEIGHT		WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
	SUBJECT #	ADDRESS FOX HWY		CITY Johnsonville		STATE SC	ZIP CODE 29555		LOCATION NO.	HOME PHONE	EMPLOYER PHONE
	WARRANTY	VICTIM NO. <u>2</u> VEHICLE DAMAGE: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES		☐ TWO-MAN VEHICLE ☐ DETECTIVE/REPLACEMENT ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED			
	EXPLAIN	SUBJECT NO. _____		USING ALCOHOL ☐ DRUGS ☐ TYPE _____		COMPUTER EQUIP. ☐ NONE ☐					

VICT. SUBJ. I.D. OVERFLOW	COMPLAINANT	NAME (LAST, FIRST, MIDDLE) Minor 1		VICTIM RELATIONSHIP TO SUBJECT CH		RESIDENT S O U	RACE W	SEX F	AGE 07	D.O.B. /2010	ETH N
	VICTIM # <u>1</u>	HEIGHT		WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
	SUBJECT #	ADDRESS WHITNEY LN		CITY Johnsonville		STATE SC	ZIP CODE 29555		LOCATION NO.	HOME PHONE	EMPLOYER PHONE
	WARRANTY	VICTIM NO. <u>1</u> VEHICLE DAMAGE: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES		☐ TWO-MAN VEHICLE ☐ DETECTIVE/REPLACEMENT ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED			
	EXPLAIN	SUBJECT NO. _____		USING ALCOHOL ☐ DRUGS ☐ TYPE _____		COMPUTER EQUIP. ☐ NONE ☐					

SUPPLEMENT #3 Deputy Bennett Brown - 1187 12/03/2015 20:17

ON 12-03-2015 AT 5:36 PM I DEPUTY BROWN WAS DISPATCHED TO WHITNEY LN IN JOHNSONVILLE IN REGARDS TO MEETING WITH DSS. WHILE EN ROUTE I SPOKE WITH INVESTIGATOR TURNER WHICH STATED A REPORT HAD ALREADY BEEN FILED IN REGARDS TO THIS. UPON MY ARRIVAL I SPOKE WITH MS KERRI SMITH, A CASE WORKER WITH DSS. MS SMITH REQUESTED I RUN A CRIMINAL HISTORY CHECK ON EUGENE HYMAN W/M -1954 AND MARY HYMAN W/F 1958 IN REGARDS TO CHILD PLACEMENT. I ASKED CENTRAL DISPATCH TO CHECK CRIMINAL HISTORY OF BOTH SUBJECTS AND BOTH CAME BACK CLEAR. THE CHILDREN WERE PLACED WITH THESE SUBJECTS AT DIAMOND BRANCH RD IN JOHNSONVILLE. MS SMITH WAS GIVEN THE CASE NUMBER.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			

VEHICLE SUBJECT	STATUS		TYPE		VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE			SERIAL AND/OR ENGINE APPLIED NO.		STATE	
	☐ RECOVERED	☐ RUN			YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR
	☐ FOUND	☐ BOAT			MAKE		TYPE	
	☐ TOWED	☐ LICENSE PLATE			MODEL		STYLE	COLOR

BRAND NAME		GALLERY	
SECURITY DATE			
MISCELLANEOUS			

PROPERTY EST.	TYPE (GROUP)								TOTAL VALUE	
	STOLEN									
	DAMAGED									
	BURNED									
	RECOVERED									

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ VICTIM DECLINES COOPERATION		☐ JUVENILE - NO CUSTODY	
	REASON FOR EXCEPTIONAL CLEARANCE - 1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY	
	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
	1093 - Sgt. Kevin G. Summersell		11/27/2015		1093		1150 - Sgt. Ryan Huggins		12/04/2015	

FOLLOW-UP INVESTIGATION OFFICER		DATE		UNIT NUMBER	
YES NO 1154 - /rvt. Farrah Turner				1154	

AGENCY I.D.
SC0210000

SUPPLEMENTARY INCIDENT REPORT
Florence County Sheriff Office

CASE NUMBER

2015-11-0627

MC#

DCL DTD

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL SPOILS PROPERTY	PAGE <u>4</u> OF <u>4</u> PAGES
☐ REOPENED REPORT	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

Victim(s), Offender(s), Others Involved

☐ COMPLAINT ☒ VICTIM # <u>4</u> ☐ SUSPECT # ☐ WITNESS ☐ WITNESS ☐ ARREST ☐ JAIL ☐ RECORDS ☐	NAME (LAST, FIRST, MIDDLE) Minor <u>2</u>		VICTIM RELATIONSHIP TO SUSPECT OF		RESIDENT D O W	RACE W	SEX F	AGE 08	D.O.B. Minor 4	ETH N
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL MARK, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
	ADDRESS <u>BARTELL RD</u>		CITY <u>Lake City</u>		STATE <u>SC</u>	ZIP CODE <u>29560</u>	LOCATION NO.	HOME PHONE B E	EMPLOYER PHONE D E	
	☒ VICTIM NO. <u>4</u> VISIBLE INJURY: ☐ NO ☐ YES EXPLAIN:		COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ YES ☒ NONE DRUGS: ☐		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMIT ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED			
	☐ SUSPECT NO. <u> </u> USING ALCOHOL: ☐ YES ☐ NO COMPUTER EQUIP. ☐		DRUGS ☐ TYPE:							

67:2111 8-101012

AGENCY I.D.
SC0210000

SUPPLEMENTARY INCIDENT REPORT
Florence County Sheriff Office

CASE NUMBER
2015-11-0627

REC'D
INQ. INTD.

☐ ORIGINAL
REPORT
☐ MOORE
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 4 PAGES

SUPPLEMENT #9 Inv. Farrah Turner - 1184 12/17/2015 15:20

DURING A FORENSIC INTERVIEW WITH Minor 3 AND Minor 4 , THEY STATED HYMAN'S DAUGHTER Minor 1 WAS ALSO FORCED TO TOUCH HIS PENIS.

Minor 1 HAD A FORENSIC INTERVIEW ON 12/9/15. DURING THE FI SHE STATED HYMAN SHOWERED WITH HER AND HER COUSIN Minor 2 Minor 1 ALSO STATED SHE GOT OUT OF THE SHOWER LEFT THE BATHROOM TO PUT CLOTHES ON. SHE STATED HER HEARD Minor 2 YELLING AND SCREAMING. SHE STATED Minor 2 WAS IN THE BEDROOM WITH HYMAN, HER DAD.

I SCHEDULED A FORENSIC INTERVIEW FOR Minor 2 ON 12/14 AT 300PM.

NARRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTUAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	
1083 - Sgt. Kevin G. Summersett	11/27/2015	1083	1150 - Sgt. Ryan Huggins	12/04/2015		
			FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☒ NO 1184 - Inv. Farrah Turner			1184

Officer Case Notes

Florence County Sheriff Office

Incident Number: 2016-11-0627	Incident Date: 11/27/2015	Incident Time: 19:19	Case Status: CA - Closed by Arrest	Location of Incident: VOX HWY, Johnsonville, SC 29555
Primary Offense: 11D - Forcible Fondling				Statute: 16-03-0555 Attempt/Complete: C - Completed
Reporting Officer: 1093 - Sgt. Kevin G. Summersett			Primary Victim: C Minor 3	

Note Date/Time:	Case Note Officer:	Action Type:	Involvement:	Location:
12/01/2015	1184 - Inv. Farrah Turner	Follow Up	C	CARTER, CRYSTAL
I SPOKE WITH COMPLAINANT CRYSTAL IN REFERENCE TO THE INCIDENT SCHEDULED A FORENSIC INTERVIEW FOR 12/3/15 AT 100PM CRYSTAL STATED SHE IS BEST FRIENDS WITH SUSPECT ANDY HYMAN AND THEIR CHILDREN PLAY TODAY. SHE STATED ON 11/27 AROUND 1230 HRS, SHE TOOK HER CHILDREN OVER TO SUSPECT'S RESIDENCE AT WHITNEY LN, JVILLE SC. SHE STATED WHEN SHE WENT TO PICK HER GIRLS UP AROUND 230PM HER CHILDREN WERE IN THE BATHTUB AT SUSPECT'S RESIDENCE. SHE STATED SUSPECT ANDY STATED THE GIRLS GOT WET SO HE PUT THEM IN THE TUB UNTIL THEIR CLOTHES DRIED. CRYSTAL ADMISED LATER THAT DAY, HER 5 YR OLD DAUGHTER ^{Minor 4} TOLD HER ANDY MADE HER, HER SISTER, AND ^{Minor 1} ANDY'S DAUGHTER TOUCH HIS PRIVATE PART (PENIS). SHE STATED THEIR CLOTHES WERE ON AND ANDY'S CLOTHES WERE ON.				
12/04/2015	1184 - Inv. Farrah Turner	Follow Up	C	CRYSTAL
12/3/15 FI INTERVIEWS WITH SALLY. 12/4/15 I SPOKE WITH ANDY BY PHONE AND HE STATED HE WILL MET AT LEC AFTER HE GETS OFF OF WORK TODAY (11AM).				
12/11/2015	1184 - Inv. Farrah Turner	Follow Up	H	Minor 1
FI FOR ^{Minor 1} BY SALLY 12/9/15 I SPOKE WITH NICOLE FROM THE CARE HOUSE AND SHE ^{Minor 2} ADMISED THERE WAS ANOTHER VICTIM IN MY CASE. SHE STATED ^{Minor 1} DISCLOSED SEXUAL ABUSE AND STATED HER COUSIN ^{Minor 2} ALSO WAS SEXUALLY ASSAULTED BY HER FATHER. 12/10/15 I CONTACTED ^{Minor 2} MOTHER MISTY AT AND LEFT A MESSAGE 12/11/14 I CONTACTED MISTY BY PHONE AND LEFT A MESSAGE. I STATED SHE NEEDED TO CONTACTED IN REFERENCE TO SCHEDULING A FORENSIC INTERVIEW FOR HER DAUGHTER. I CONTACTED NICOLE BY EMAIL AND ASK HER TO SCHEDULED A FORENSIC INTERVIEW.				
12/14/2015	1184 - Inv. Farrah Turner	Follow Up	C	Minor 2
^{Minor 2} FI WAS WITH SALLY. ^{Minor 2} DID NOT DISCLOSE ANY SEXUAL ABUSE DURING THE FI. ^{Minor 2} MOM MISTY STATED ^{Minor 2} WAS REALLY NERVOUS AND ACTING STRANGE.				
12/15/2015	1184 - Inv. Farrah Turner	Follow Up		HYMAN, ANDY EUGENE
ANDY HAD POLYGRAPH WITH SHERIFF BARNES. SHERIFF BARNES ADVISED ANDY DID NOT PASS THE POLYGRAPH. PAPERWORK IN FILE. I SPOKE WITH ANDY AFTER THE POLYGRAPH. WHILE IN THE INTERVIEW ROOM, ANDY WAS READ HIS MIRANDA WARNINGS AND SIGNED THEM. ANDY ADVISED HE NEVER TOUCHED HIS DAUGHTER ^{Minor 1} HE ADVISED HE DID TAKE TWO SHOWERS WITH HER WHEN SHE WAS YOUNGER, BUT HE NEVER TOUCHED HER INAPPROPRIATELY. ^{Minor 2} ANDY STATED HE DID SHOWER WITH HIS NIECE ^{Minor 2} AND TOUCHED HER TWICE. ANDY ADVISED AFTER SHOWERS WITH ^{Minor 2} HE WOULD LOCK THE BEDROOM DOOR AND TOUCH HER ON THE OUTSIDE OF HER VAGINA. HE ALSO STATED HE WOULD TALK HER INTO TOUCHING HIM ON HER PENIS. ANDY STATED THEY ALWAYS SHOWER IN HIS BATHROOM IN HIS BEDROOM.				

Officer Case Notes

Florence County Sheriff Office

Note Date/Time:	Case Note Officer:	Action Type:	Involvement:	Location:
ANDY ADVISED HE DID NOT FORCE NEVER TOUCHED	Minor 2 Minor 4 OR Minor 1	TO TOUCH HIM BUT SHE DID TOUCH HIM WHILE THEY WERE PLAYING. HE STATED HE		
12/17/2016	1184 - Inv. Farrah Turner	Follow Up	HYMAN, ANDY EUGENE	
JUDGE SIGNED 4 ARREST WARRANTS ON ANDY HYMAN.				
ANDY WAS ARRESTED WHILE AT HOME AND TRANSPORTED TO FCDC.				
12/18/2016	1184 - Inv. Farrah Turner	Follow Up	HYMAN, ANDY EUGENE	
BOND WAS SET AT \$75,000.				
VICTIMS NOTIFIED ON 12/17/16 AFTER ANDY WAS ARRESTED.				

63-18111-1117

TO: SHERIFF WILLIAM K. BOONE

FROM: INV. FARRAH TURNER

REFERENCE: CSC 3RD

DATE: 12/29/15

CASE NUMBER: 2015-11-0627

VICTIM: ^{Minor 3} AND ^{Minor 4} ^{Minor 2}

SUSPECT: ANDY HYMAN

CASE CLOSURE: ARREST

ON 11/27/15, SGT SUMMERSETT RESPONDED TO VOX HWY IN THE COUNTY OF FLORENCE. UPON HIS ARRIVAL, I SPOKE WITH THE COMPLAINANT CRYSTAL C AND HIS HUSBAND MICHAEL C IN REFERENCE TO THEIR TWO DAUGHTERS WHO CAME HOME FROM VISITING A FRIEND HOUSE AND ADVISED THE FATHER OF THE FRIEND SEXUALLY ASSAULTED THEM. CRYSTAL ADVISED THAT HER DAUGHTERS ^{Minor 4} (/2010) AND ^{Minor 3} (2008) ADVISED HER THAT A SUBJECT AT WHITNEY LN, JOHNSONVILLE SC THAT GOES BY THE NAME OF ANDY HYMAN TOOK THEIR HANDS AND PLACED THEM ON HIS PRIVATE PARTS. CRYSTAL ADVISED THAT HER DAUGHTERS SAID HE HAD PANTS ON DURING THE ASSAULT. SGT SUMMERSETT CONTACTED ME.

I SPOKE WITH CHRYSTAL IN REFERENCE TO THE INCIDENT.

FORENSIC INTERVIEW WAS SCHEDULED FOR 12/3/15 AT 100PM.

ON 12/3/15, I SPOKE WITH CHRYSTAL CARTER/COMPLAINANT. SHE INFORMED ME OF THE INCIDENT INVOLVING HER TWO DAUGHTERS. SHE STATED SHE MET WITH ANDY AND HIS DAUGHTER ^{Minor 1} AT FRED'S STORE TO GET SOME GARAGE BAGS. ANDY'S DAUGHTER ^{Minor 1} WANTED TO PLAY WITH CRYSTAL'S DAUGHTERS, BUT SHE STATED SHE HAD SOME THINGS TO DO SO SHE DID NOT LET HER COME OVER. CHRYSTAL ADVISED SHE WOULD DROP HER DAUGHTERS OFF FOR A LITTLE WHILE TO PLAY. SHE STATED WHEN SHE GOT TO ANDY'S HOUSE HIS WIFE WAS NOT HOME. SHE STATED NORMALLY ANDY'S WIFE ^{Minor 5} IS HOME BECAUSE SHE DOES NOT GO TO WORK UNTIL 4 PM. CHRYSTAL ADVISED SHE DROPPED HER DAUGHTERS OFF AROUND 1230 AND WENT TO PICK THEM UP ABOUT 230PM. SHE STATED WHEN SHE WENT TO THE HOUSE, HER DAUGHTERS ALONG WITH ANDY'S DAUGHTER WERE IN THE BATHTUB. CHRYSTAL ADVISED ANDY STATED TO HER THE GIRLS WERE IN THE TUB BECAUSE THEIR CLOTHES GOT WET AFTER PLAYING WITH THE WATER HOSE EARLIER. SHE STATED SHE DID NOT FEEL RIGHT ABOUT IT, BUT SHE ACCEPTED HIS REASONING. CRYSTAL ADVISED LATER THAT DAY, ^{Minor 4} WAS COMPLAINING ABOUT HER TOE HURTING AND THEN ASKED TO GET SOME CANDY. CHRYSTAL ADVISED LATER IN THE DAY, ^{Minor 4} STATED ANDY MADE HER, HER SISTER, AND ^{Minor 1}

63-21111-1313

Minor 1 TOUCH HIS PRIVATE PART (PENIS). SHE STATED THEIR CLOTHES AND ANDY'S CLOTHES WERE ON THE ENTIRE TIME.

CHRYSTAL STATED BOTH HER DAUGHTERS ARE ACTING DIFFERENTLY SINCE THE INCIDENT. CHRYSTAL STATED Minor 4 CANNOT SLEEP AND Minor 3 REFUSES TO GO TO PE CLASS BECAUSE THE TEACHER IS MALE AND WILL NOT GO OUTSIDE THE CLASSROOM.

CHRYSTAL ADVISED SHE KNEW ANDY WAS A SEX OFFENDER, BUT SHE DID NOT KNOW THE DETAILS. SHE STATED SHE HAS KNOWN ANDY WAS SEVERAL YEARS AND HE HAS NEVER ACT INAPPROPRIATELY TOWARDS HER OR THE GIRLS.

DURING Minor 4 FORENSIC INTERVIEW, SHE STATED ANDY GOT HER HANDS AND PUT IT ON HIS PEE-PEE. Minor 4 REPORTED THEY WERE OUTSIDE PLAYING AND SHE SQUIRTED HIM WITH THE WATER HOSE AND THEN THEY WENT INSIDE AND "HE DID IT". INTERVIEWER ASKED WHAT WAS THE FIRST THING HE DID WHEN THEY WENT INSIDE SHE SAID "HE GRABBED BY HAND AND PUT IT ON HIS PEE-PEE." INTERVIEWER ASKS IF IT WAS ON TOP OF HIS CLOTHES, UNDER HIS CLOTHES, OR SOMETHING ELSE AND Minor 4 SAID, "UNDER" HIS CLOTHES. WHEN ASKED HOW HER HAND GOT UNDER HIS CLOTHES SHE SAID HE "GRABBED IT AND PUT IT RIGHT THERE." INTERVIEWER SHOWED Minor 4 THE ANATOMICAL DRAWING OF A MALE AND ASKED HER TO POINT TO THE PLACE ANDY MADE HER TOUCH. SHE POINTED TO THE PEE-PEE (PENIS). INTERVIEWER ASKED Minor 4 IF HE PUT HER HAND INSIDE OF CLOTHES OR ON TOP OF HIS CLOTHES. Minor 4 SAID "ON TOP" OF HIS CLOTHES. WHEN ASKED IF HER HAND TOUCHED THE SKIN OF ANDY'S PEE-PEE SHE SAID, "HIS PANTS." Minor 4 DENIED ANDY'S PEE-PEE COMING OUT OF HIS PANTS. INTERVIEWER ASKED WHERE THE INCIDENT HAPPENED AND Minor 4 STATED IN THE MIDDLE OF THE HOUSE. INTERVIEWER WHO SAW ANDY TOUCH HER AND Minor 4 SAID "NOBODY." INTERVIEWER ASKED IF ANDY TOUCHED ANYONE ELSE AND HAIDYN STATED SISSY AND Minor 1 INTERVIEWER ASKED Minor 4 HOW HER MOM FOUND OUT OF WHAT HAPPENED. Minor 4 SAID SHE TOLD HER. WHEN ASKED WHAT MOM SAID, Minor 4 SAID, "MOM CALLED THE COPS."

DURING Minor 3 FORENSIC INTERVIEW WITH SALLY WILLIAMSON, SHE STATED SHE CAME THERE BECAUSE OF MR ANDY. Minor 3 REPORTED SHE WAS ON THE COMPUTER AND HE TOOK HER HAND AND PUT IT ON HIS PEE-PEE. WHEN ASKED IF IT WAS ON TOP OF HIS CLOTHES OR INSIDE HIS CLOTHES, SHE SAID ON TOP. WHEN ASKED WHAT ANDY DID WITH HER HAND WHEN HE PUT IT ON HIS PEE-PEE. SHE SAID "HE RUBBED IT...AND I SAID STOP MR ANDY," SHE STATED HE WOULD NOT STOP. Minor 3 STATED HE DID IT TO THE OTHER GIRLS ALSO. SHE STATED HE DID IT TO HER, THEN Minor 4 AND THEN Minor 1 Minor 3 STATED SHE NEVER SAW ANDY DOING ANYTHING TO THE OTHER GIRLS AND WHEN ASKED HOW SHE KNOWS HE DID IT TO THE OTHER GIRLS SHE STATED BECAUSE HE DID IT TO HER. Minor 3 STATED ANDY DID NOT TOUCH ANY PART OF HER BODY AND SHE DID NOT SEE MR ANDY'S PEE-PEE. Minor 3 DENIED ANY PART OF HER BODY EVER BEING TOUCHED. SHE SAID, "HE PICKED ME UP AND SAW MY UNDERWEAR AND I TOLO HIM TO PUT ME DOWN." WHEN ASKED WHAT SHE WAS WEARING SHE SAID SHORTS AND A T-SHIRT. INTERVIEWER ASKED HOW HE COULD SEE HER UNDERWEAR IF HER SHORTS WERE ON AND Minor 3 EXPLAINED THAT THEY WERE NOT TIGHT SHORTS. SHE STATED HE WOULD PICK HER UP AGAIN AND SAW THEM. SHE STATED SHE WOULD HOLD HER SHORTS, BUT IT PULLED THEM

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AND PULLED THEM. SHE STATED HE SAW HER BUTT (POINTING TO THE ANATOMICAL DRAWING).
 Minor 3 DENIED ANYONE ELSE EVER TOUCHING HER BODY PARTS.

DSS INTAKE WAS CONTACTED. CASE WAS ACCEPTED.

ON 12/4/15, I SPOKE WITH ANDY BY PHONE. HE ADVISED HE WOULD COME TO THE OFFICE AT 1100 HRS WHEN HE LEAVES WORK.

I SPOKE WITH ANDY AT LEC. ANDY ADVISED HE SEEN CHRYSTAL AT FRED. HE STATED HE WENT INSIDE TO GET PLIERS TO WORK ON HIS JEEP. ANDY ADVISED HIS DAUGHTER Minor 1 WANTED TO PLAY WITH Minor 4 AND Minor 3 BUT CHRYSTAL SAID SHE WAS BUSY. HE STATED CHRYSTAL OFFERED TO BRING THE Minor 4 AND Minor 3 TO HIS HOUSE AND THEN DROPPED THEM OFF TO PLAY ABOUT 100PM. ANDY ADVISED Minor 3 WANTED TO PLAY YIPPIE GAMES ON THE COMPUTER THAT IS LOCATED BETWEEN TE LIVING ROOM AND KITCHEN. HE STATED Minor 1 AND Minor 4 WAS IN THE LIVING ROOM PLAYING BY THE COUCH AND Minor 3 WAS STANDING BEHIND/ TO HIS RIGHT WHILE HE PULLED THE GAMES UP.

ANDY STATED HE WAS IN THE LIVING ROOM PLAYING WITH ALL THREE OF THE GIRLS. HE STATED HE WAS STANDING BEHIND THEM AND HAD THEIR HANDS BEHIND THEIR BACKS. HE STATED HE PLAYED WITH THEM ABOUT 2 OR 3 MINUTES. ANDY STATED HE WENT OUTSIDE TO WORK ON HIS JEEP WHILE THE GIRLS WERE INSIDE THE HOUSE. HE STATED HE DID NOT KNOW WHAT THEY WERE DOING INSIDE THE HOUSE. ANDY ADVISED HE KNOWS THE GIRLS PAINTED THEIR NAILS BECAUSE THEY TOLD CHRYSTAL THEY DID. HE REPORTED THE Minor 4 CAME OUTSIDE WITH A SMALL WATER CUP AND STRAYED HIM WITH IT AND Minor 1 HAD A MEASURING CUP OF WATER. ANDY ADVISED THEY WERE TRYING TO WET HIM UP. HE THEN STATED THE GIRLS WANTED TO WASH HIS JEEP AND Minor 3 HAD THE WATER HOSE. ANDY STATED THE GIRLS GOT WET AND STAYED OUTSIDE ABOUT APPROXIMATELY 30 MINUTES BEFORE THEY CAME INSIDE. HE STATED THE GIRLS WANTED TO TAKE A BATH SO HE LET THEM WHILE THEIR CLOTHES WERE DRYING. ANDY ADVISED THE GIRLS WERE SCREAMING SO HE WENT INTO THE BATHROOM. HE STATED Minor 4 TOE WAS BLEEDING SO HE TOOK A PIECE OF TISSUE AND WRAPPED IT AROUND HER TOE. ANDY STATED HE WENT BACK IN THE LIVING ROOM UNTIL CHRYSTAL PULLED UP. HE STATED THE GIRLS STAYED AT HIS HOUSE ABOUT AN HOUR.

ANDY STATED HE ONLY SEES Minor 4 AND Minor 3 A COUPLE TIMES A YEAR. HE STATED THEY WERE ALL PLAYING IN THE LIVING ROOM. HE STATED Minor 4 AND Minor 3 HANDS MIGHT HAVE HIT HIS SIDE OF HIS LEGS WHILE HE HAD THEIR HANDS BEHIND THEIR BACKS. HE STATED HE GRABBED ALL THREE GIRLS BY WRIST AND PULLED TOWARDS HIM. THEY MIGHT HAVE TOUCHED STOMACH OR LEGS. HE STATED HE WAS NOT TRYING TO MAKE THEM GRAB HIS PENIS/BETWEEN HIS LEGS. HE STATED WAS JUST PLAYING AROUND WITH THEM.

ON 12/9/15, I SCHEDULED FORENSIC INTERVIEW FOR Minor 1 FOR 12/11/15 AT 0900 HRS.

ON 12/11/15, Minor 1 HAD HER FI WITH SALLY. DURING THE INTERVIEW, Minor 1 STATED Minor 2 HER COUSIN TOUCHED HER HOO-HA. THE INTERVIEWER ASKED HOW Minor 2 TOUCHED HER HOO-HA AND "SAID "WITH HER FINGERS. SHE ALWAYS DOES IT WITH HER FINGERS." Minor 1 STATED THE LAST TIME IT HAPPENED THEY WERE IN THE BATHTUB TOGETHER. Minor 1 DENIED A GROWNUP EVER

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TOUCHING OR TRYING TO TOUCH ANY OF HER PRIVATE PLACES. INTERVIEWER ASKED ^{Minor 1} IF SHE HAS EVER SEEN SOMEBODY'S PRIVATES AND SHE SAID "MY DADDY... WHEN MY DADDY WAS IN THE BATHTUB" AND THE INTERVIEWER ASKED WHO WAS THERE AND SHE SAID "THREE PEOPLE WAS THERE." ^{Minor 1} STATED ^{Minor 2} "ME AND DADDY." ^{Minor 1} REPORTED ^{Minor 2} "GOT OUT, MY DADDY GOT OUT AND MY DADDY ATTACKED ^{Minor 2} AND HE DID NOT WANT TO LET ME IN THERE. ^{Minor 2} SAID "STOP" TO MY DADDY AND HE KEEP ON GETTING ON HER." INTERVIEWER ASKED HOW HE WAS GETTING ON HER. SHE SAID, "HE KEEP ON LAYING ON HER (AS SHE MOTIONED)... THAT'LL KILL SOMEBODY REALLY. MY DADDY STOPPED AND LET HER GO OUT AND CHANGE." INTERVIEWER ASKED ^{Minor 1} ^{Minor 2} AND HER DADDY CLOTHES WERE ON OR OFF OR SOMETHING ELSE WHEN HE WAS ATTACKING ^{Minor 2} AND SHE SAID SHE THOUGHT BOTH OF THEIR CLOTHES WERE ON (BEHIND CLOSED DOORS). INTERVIEWER ASKED WHAT HER DADDY WAS DOING WHEN HE WAS ON TOP OF ^{Minor 2} AND SHE SAID "LAYING ON HER... I HEARD THAT." ^{Minor 1} STATED THAT SHE WAS OUTSIDE IN THE LIVING ROOM. WHEN ASKED WHO ^{Minor 2} IS SHE INDICATED THAT IT'S HER 8 YEAR OLD COUSIN AND HER MOM'S NAME IS MISTY. INTERVIEWER INQUIRED ABOUT IF THEIR CLOTHES WERE OFF WHEN THEY WERE IN THE BATHTUB. ^{Minor 1} STATED "YES WE HAVE TO TAKE OUR CLOTHES OFF WHEN WE GO IN THE BATHTUB." SHE STATED SHE ONLY TOOK A BATH WITH HER DADDY ONCE. INTERVIEWER ASKED IF SHE SAW HER DADDY'S WEE-WEE AND SHE SAID, "YES." INTERVIEWER ASKED WHAT IT LOOKED LIKE AND ^{Minor 1} STATED "IT LOOKED LONG AS MY BROTHER'S BUT LONGER." ^{Minor 1} STATED HER MOM DID NOT KNOW WHAT HER DADDY ATTACKING ^{Minor 2} OR THE SHOWERS THEY WERE TAKING.

ON 12/11/15, I SPOKE WITH NICOLE FROM THE CARE HOUSE AND SHE STATED ^{Minor 1} DURING INTERVIEW SHE DISCLOSED SEXUAL ABUSE WITH HER COUSIN ^{Minor 2} SHE STATED ^{Minor 2} WAS SEXUALLY ASSAULTED BY HER DADDY.

I CONTACTED MISTY BY PHONE AND LEFT A MESSAGE FOR HER TO CALL IN REFERENCE TO SETTING UP A FORENSIC INTERVIEW FOR ^{Minor 2} I CONTACTED NICOLE AND SCHEDULED A FI FOR 12/14/15.

 ON 12/14/15, DURING ^{Minor 2} FI SHE DID NOT DISCLOSE ANY SEXUAL ABUSE BY ANDY.

AFTER THE FI, I SPOKE WITH MISTY AND SHE STATED ^{Minor 2} WAS VERY UPSET AND ACTING STRANGE.

ON 12/15/15, ANDY HAS A POLYGRAPH WITH SHERIFF BARNES.

SHERIFF BARNES ADVISED ANDY DID NOT PASS THE POLYGRAPH. PAPERWORK IS PLACED IN FILE.

I SPOKE WITH ANDY ABOUT THE POLYGRAPH. WHILE IN THE INTERVIEW ROOM, ANDY WAS READ HIS MIRANDA WARNINGS AND SIGNED THEM.

 ANDY ADVISED HE NEVER TOUCHED HIS DAUGHTER ^{Minor 1} HE ADVISED HE DID TAKE TWO SHOWERS WITH HER WHEN SHE WAS YOUNGER, BUT HE NEVER TOUCH HER INAPPROPRIATELY.

ANDY STATED HE ALSO SHOWERED WITH HIS NIECE ^{Minor 2} AND TOUCHED HER TWICE. HE STATED AFTER SHOWERS WITH ^{Minor 2} HE WOULD LOCK THE BEDROOM DOOR AND TOUCH HER ON THE OUTSIDE OF HER VAGINA WITHOUT CLOTHES ON. HE STATED HE WOULD TALK ^{Minor 2} INTO TOUCHING HIM ON HIS PENIS.

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ANDY STATED HE DID NOT FORCE ^{Minor 3} TO TOUCH HIM, BUT SHE DID TOUCH HIM WHILE THEY WERE PLAYING. HE STATED HE NEVER TOUCHED ^{Minor 1} OR ^{Minor 4} (RECORDED INTERVIEW IN FILE.

ON 12/17/15, JUDGE SIGNED WARRANTS. ANDY WAS ARRESTED FOR 4 COUNTS OF CSC WITH A MINOR ^{3RD} AND TRANSPORTED TO FDCD.

WARRANT 2015A2110201122 READS, "ON NOVEMBER 27, 2015, ACCORDING TO VICTIM'S STATEMENT, THE DEF, ANDY HYMAN, DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT ^{3RD} BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT. VICTIM STATED THE DEF GRABBED HER HAND AND PLACED IT ON HIS PENIS OUTSIDE OF HIS PANTS. DURING A RECORDED STATEMENT, THE DEF ADMITTED VICTIM'S HAND DID TOUCH HIS PENIS WHILE THEY WERE IN THE LIVING ROOM AREA OF HIS RESIDENCE. THE VICTIM WAS 7 YRS OF AGE AT THE TIME OF THE INCIDENT. THE VICTIM WAS INTERVIEWED BY A CERTIFIED FORENSIC INTERVIEWER IN WHICH THE VICTIM DISCLOSED THE INCIDENT. THIS INCIDENT OCCURRED AT WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0627.

WARRANT 2015A2110201123 READS, "ON NOVEMBER 27, 2015, ACCORDING TO VICTIM'S STATEMENT THE DEF, ANDY HYMAN, DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT ^{3RD} BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT. VICTIM STATED THE DEF GRABBED HER HAND AND PLACED IT ON HIS PENIS OUTSIDE OF HIS PANTS. DURING A RECORDED STATEMENT, THE DEF ADMITTED VICTIM HAND DID TOUCH HIS PENIS WHILE THEY WERE IN THE LIVING ROOM AREA OF HIS RESIDENCE. THE VICTIM WAS 5 YRS OF AGE AT THE TIME OF THE INCIDENT. THE VICTIM WAS INTERVIEWED BY A CERTIFIED FORENSIC INTERVIEWER IN WHICH THE VICTIM DISCLOSED THE INCIDENT. THIS INCIDENT OCCURRED AT WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0627.

WARRANT 2015A2110201126 READS, "BETWEEN THE DATES OF OCTOBER 23 AND 24, 2015, THE DEF (ANDY HYMAN) DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT ^{3RD} BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT BY SEXUALLY ASSAULTING THE VICTIM. THE DEF STATED WHILE IN HIS BEDROOM, HE RUBBED VICTIM ON THE OUTSIDE OF HER VAGINA AND COERCED HER INTO TOUCHING HIS PENIS. THE DEF ALSO STATED HE SHOWERED WITH THIS VICTIM PRIOR TO HIM TOUCHING HER IN HIS BEDROOM. THE VICTIM WAS 8 YRS OF AGE AT THE TIME OF THE INCIDENT. THIS INCIDENT OCCURRED AT WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0627.

WARRANT 2015A2110201124 READS, "BETWEEN MARCH 2014 AND AUGUST 2014, DEF (ANDY HYMAN) DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT ^{3RD} BY WILLFULLY AND LEWDLY COMMITTING A LEWD OR LASCIVIOUS ACT TOWARD VICTIM. DURING A RECORDED STATEMENT, THE DEF STATED WHILE IN HIS BEDROOM, HE RUBBED VICTIM ON THE OUTSIDE OF HER VAGINA AND COERCED HER INTO TOUCHING HIS PENIS. THE DEF ALSO STATED HE SHOWERED WITH THIS VICTIM PRIOR HIM TOUCHING HER IN HIS BEDROOM. THE DEF STATED HE DOES NOT KNOW THE DATE AND TIME OF THE INCIDENT, BUT ADVISED THE WEATHER WAS WARM AND THE VICTIM WAS IN SCHOOL. THE VICTIM WAS

01/20/16 2- 1316Z

APPROXIMATELY 8 YRS OF AGE AT THE TIME OF THE INCIDENT. THIS INCIDENT OCCURRED AT
WHITNEY LN, JOHNSONVILLE, SC IN THE COUNTY OF FLORENCE CASE NUMBER 2015-11-0627.

PLEASE CONSIDER THIS CASE CLOSED BY ARREST.

RESPECTFULLY SUBMITTING:

INV. FARRAH TURNER

60:0001 P- 11012

FLORENCE COUNTY SHERIFFS OFFICE
6719 FRIENDFIELD ROAD
EFFINGHAM, SC 29541
843-685-2121

Lafayette Instrument Company
Polygraph Examination Report

Polygraph File: 151202
Exam Date: 12/15/2015
Final Call: DECEPTION INDICATED

Personal Information

Name: Andy Hyman
Date of Birth: [REDACTED] Age: 40

Section 1: Purpose of Examination

The main issue under consideration for the polygraph examination was whether or not the examinee was telling the truth to the pertinent questions listed under Section 3 of this report.

Section 2: Pre-Test Interview

On 12/15/2015, Andy Hyman arrived and voluntarily submitted to a polygraph examination. The following forms were read, completed, and voluntarily signed by the examinee:

- Polygraph Consent and Waiver Form
- Miranda Rights and Waiver

During the pre-test interview, Andy Hyman read the forms and said he understood the forms and signed them agreeing to the test and waiving the rights set forth in the documents. In the opinion of the examiner, Andy Hyman was suitable for polygraph testing. At the conclusion of the pre-test phase of the polygraph examination, the examiner discussed and thoroughly reviewed all the test questions with the examinee. The purpose of this detailed review is to provide the examinee an opportunity to ensure they completely understand the questions before the onset of the testing phase of the examination.

Section 3: In-Test Phase

A Lafayette computerized polygraph system, model LX4000 was used for the collection of polygraph tests (test data). This instrument makes a continuous recording of autonomic responses associated with respiration, electrodermal activity, and cardiovascular functioning. The instrument also includes sensors designed to record peripheral behavior activity and cooperation during the examination. A functionality check prior to the examination confirmed the instrument

101-20111 2- 11112

was in proper working order.

The following pertinent questions were asked during the polygraph examination.

- R5: Did you grab Minor 3 hand and force it on your pants over your pants? No
- R7: On Nov 27th this year, did you force Minor 3's hand to touch your pants area? No
- R10: Did you rub your pants area with Minor 3's hand? No

Section 4: Result

It is the opinion of this examiner Andy Hyman was not being truthful during testing. Global analysis of the physiological data revealed that it was of sufficient interpretable quality to complete a standardized numerical analysis of the test results. Analysis was performed using the following techniques:

<u>Technique</u>	<u>Result</u>
<u>Spot Analysis</u>	<u>Deception Indicated</u>

Section 5: Post-Test Interview

During the post-test phase of the exam, Andy Hyman was informed of the test results.

William C. Barnes
 WILLIAM C. BARNES
 Polygraph Examiner

201-1111 1-11-11



Office (843) 629-0236

1500 Patton Drive

Fax (843) 673-9223

Florence, SC 29501

Forensic Interview Report Form

Date of Service: 12/9/2015

Interviewer: Sally Williamson

Present for Intake: Nicole Morris-CH, Ashley Hyman-mother, McKayla Gorman-intern

Child's Name: Minor 1 **Gender:** Female
Date of Birth: /2008 **Age:** 7 **Race:** Caucasian
School/Grade or Daycare: Johnsonville Elementary - 1st grade
Person Accompanying Child: Mary Hyman-paternal grandmother, Ashley Hyman-mother

Biological Mother: Hyman **Age:** 31
Address: Whitney Lane **Telephone:**
City, State: Johnsonville, SC
Employer: Wal-Mart

Biological Father: Andy Hyman **Age:** 40
Address: Whitney Lane
City, State: Johnsonville, SC
Employer: AA Body Builders

List all individuals currently living in the home with the child, including non-relatives:

Name	Age	Gender	Relationship
Minor 1	7	F	Child interviewed
Mary Hyman	--	F	Paternal grandmother
Eugene Hyman		M	Paternal grandfather
M.G.	15	M	cousin

Referral Source: law enforcement
Law Enforcement Agency: Florence County Sheriff's Office
Investigator: Farrah Turner
Department of Social Services: FCDSS
Did EPC/Relative Placement Occur? ☒ Yes ☐ No

01/09/2016 10:12

interviewed: 12/9/2015

1

MINOR 5

Mother: Minor 5 Hyman

Criminal History	☐ Yes	☒ No
Alcohol/Drug Use/Treatment	☐ Yes	☒ No
Previous/Current Counseling	☐ Yes	☒ No
Psychiatric Hospitalizations	☐ Yes	☒ No
History of Sexual/Domestic Violence	☐ Yes	☒ No

Father: Andy Hyman

Criminal History	☒ Yes	☐ No RSO-details unknown to mother, reportedly
Alcohol/Drug Use/Treatment	☐ Yes	☒ No
Previous/Current Counseling	☐ Yes	☒ No
Psychiatric Hospitalizations	☐ Yes	☒ No
History of Sexual/Domestic Violence	☒ Yes	☐ No SA as a child

Marriage/Separation/Divorce Issues:

Mom and dad married 9 years; still currently together; two children together.

Does child have visitation with non-custodial parent: ☒ Yes ☐ No removed last Thursday

Frequency/Supervision: mom has supervised visits; dad no contact with children

MINOR 7

Has CPS in any county or state ever investigated anything related to this child or his/her parents? (list previous or current CPS investigations)

☒ Yes ☐ No (if yes, include locations, allegations and findings)

Currently for allegations of sexual abuse (of another child/children)...no prior allegations according to the mother; no prior involvement with DSS.

Have any of the children ever been in foster care or relative placement?

☒ Yes ☐ No currently in relative placement with grandparents

MINOR 1

Does the child have a history of any of the following?

YES NO

Minor 1

COMMENTS

Speech/Hearing Difficulties

☒ Yes ☐ No

speech therapy-school

Currently on any medications

☐ Yes ☒ No

Special School Placements

☐ Yes ☒ No

6/13/11 11:11

Minor 4

Minor 1

interviewed: 12/9/2015

2

Currently/Previously in Counseling	☐ Yes	☒ No
Diagnosed developmental delays	☐ Yes	☒ No
Aggressive/Angry Behavior	☐ Yes	☒ No
Diagnosed Hyperactivity	☐ Yes	☒ No
Sleep Disturbances/nightmares	☐ Yes	☒ No
Does child sleep alone?	☒ Yes	☐ No
Bed wetting/Wetting clothes	☐ Yes	☒ No
Diagnosed Depression	☐ Yes	☒ No
Headaches/Stomachaches	☐ Yes	☒ No
Attempts to Hurt Self/Others	☐ Yes	☒ No
Alcohol/Drug Use	☐ Yes	☒ No
Sexual Behaviors/Activity/Abuse	☒ Yes	☐ No
Changes in Eating Habits/Weight	☐ Yes	☒ No
School Problems/Grade Fluctuation	☐ Yes	☒ No
Hurting Animals/Settling Fires	☐ Yes	☒ No
Exposure to Pornography	☐ Yes	☒ No
Running Away	☐ Yes	☒ No
Previous exams and/or interviews for sexual/physical abuse before?	☐ Yes	☒ No

w/brother

see allegations

ALLEGATIONS REPORT

Child was referred in connection with an investigation of sexual abuse of two other children (close in age to ^{Minor 1}). During their forensic interviews, one of the children disclosed that ^{Minor 1} had also been touched inappropriately by Andy (her father).

SOURCE INFORMATION

Name: Andy Hyman Relationship to Child: father
 Age: 40 Race: Caucasian Gender: Male
 see father's information, page 2

The above information was provided by the guardian &/or referral source present on the day of the interview. This information has not been validated by The CARE House staff; and is only intended to provide historical information to assist in conducting the forensic interview.

01/01/12 7:11 12/01/12

Minor 4

Minor 1

interviewed: 12/9/2015

3

THE CARE HOUSE FORENSIC INTERVIEW SUMMARY:

Client Name: Minor 1
 Videotaped: ☒ Yes ☐ No
 Individuals Viewing Interview: none
 Date of Interview(s): 12/9/2015

Summary of Statements by Child:

"The following is a summary of the forensic interview conducted. For complete details, please inquire with The CARE House about policies regarding viewing the CDR or obtaining a copy."

The interviewer entered the room with Minor 1. She stated she is 7 years old and in the 1st grade at Johnsonville Elementary. When asked who she lives with she said Nana, Papa, Mason, Matthew and Andrew because her dad "is sick". At home she indicated that she lives with her dad (Andy), her mama (Ashley) and brother (Andrew "Bubba"). The interviewer assured Minor 1 no matter what they talk about she won't get in any trouble. Interviewer encouraged child to say "I don't know" if she doesn't know the answer to a question, "I don't understand" if she doesn't understand a question and to correct interviewer if she makes a mistake. They practiced using the SC Child First booklet. She informed Minor 1 that she will be making a tape of their talk. Rapport was built by talking about Minor 1's interests.

The interviewer asked Minor 1 why she had to come and talk to her; she said "to skip school". When asked why she's staying with Nana and not her mama and dad she said her dad has the flu. She asked Minor 1 who told her to go to Nana's. Minor 1 said her mama and "I didn't want to get sick". Minor 1 promised to follow the rule of the room and talk about things that are real and true. Interviewer asked what happens at home when she gets into trouble- she said "my mama spanks me" and when asked with what she said "with her hand on my butt...that's the only place". Interviewer introduced the anatomical drawing of a male and female and Minor 1 was able to differentiate herself as a girl. Interviewer pointed to certain areas and asked her to label them -and Minor 1 labeled the girl's body parts as: boobies (breasts), hoo-ha (vagina) and butt. She labeled the male body parts as: tittles (chest) wee-wee (penis) and butt. Interviewer asked Minor 1 what happens when she gets into trouble with her dad. She stated "he spanks me as well" and she indicated he uses the same thing as her mom and sometimes "the thing you kill flies with". Interviewer asked where he spanks her and she said on her butt. Interviewer asked if her clothes are on, off or something else. She said "on." The interviewer talked to Minor 1 about touches that are OK to get, such as hugs kisses and tickles. She reported she gets kisses on the cheek from her mom and Nana and tickles from her mama. Minor 1 reported hits, pinches and spanks are not OK touches to get. She asked Minor 1 to point to the places on a girl's body that no one can touch; she pointed to the butt, boobies and

01:31:44 0-110102

H:

Minor 1

interviewed: 12/9/2015

4

hoo-ha. When asked if she has ever gotten a touch in those places she said ^{Minor 2} touched her hoo-ha. Interviewer asked how ^{Minor 2} touched her hoo-ha and ^{Minor 1} said "with her fingers...she always does it with her fingers". ^{Minor 1} reported the last time it happened they were in the bath tub together. She denied anyone knowing what happened or seeing it. Interviewer encouraged ^{Minor 1} to tell the next time ^{Minor 2} touches her butt, hoo-ha or boobies. ^{Minor 1} denied a grownup ever touching or trying to touch any of her private places. Interviewer asked ^{Minor 1} if she has ever seen somebody's privates and she said "my daddy...when my daddy was in the bathtub" and interviewer asked who was there and she said "...three people was in there" and when asked who was in there she said ^{Minor 2} "me and daddy". The interviewer clarified that all three were in the tub and asked what happened. ^{Minor 1} reported ^{Minor 2} got out...my daddy got out and my daddy attacked ^{Minor 2} and he didn't want to let me in there. ^{Minor 2} said 'stop' to my daddy and he keep on...getting on her". Interviewer asked how he was getting on her. She said "he keep on laying on her (as she motioned)...that'll kill somebody really. My daddy stopped and let her go out and change". Interviewer asked ^{Minor 1} if ^{Minor 2} and her dad's clothes were on or off or something else when he was 'attacking' ^{Minor 2} and she said she thought both of their clothes were on (behind the closed door). Interviewer asked what her daddy was doing when he was on top of ^{Minor 2} and she said "laying on her...I heard that". ^{Minor 1} stated that she was outside in the living room. When asked who ^{Minor 2} is she indicated that it's her 8 year old cousin and her mom's name is "Misty". Interviewer inquired about if their clothes were off when they were in the bathtub. ^{Minor 1} stated yes "we have to take our clothes off when we go in the bathtub". She asked how many times she has taken a bath with dad. She said "once". Interviewer asked if she's talking about the time with ^{Minor 2} and ^{Minor 1} said no and it was a "long time ago". She asked ^{Minor 1} if she saw her daddy's wee-wee and she said yes. When asked what it looked like ^{Minor 1} stated "it looked long as my brother's...but longer". She asked ^{Minor 1} if her mama knew about her taking a bath with dad- she said "no, she wasn't in there". The interviewer asked if her mama was there when daddy attacked ^{Minor 2} and she said yes and she was in the living room. When asked if her mama heard her daddy attacking ^{Minor 2} ^{Minor 1} said no because she was on the computer. ^{Minor 1} denied anyone ever making her touch their privates or seeing a kid touch someone's private.

Interviewer asked ^{Minor 1} to tell her about the last time ^{Minor 3} and ^{Minor 4} came to see her. She explained they told her about something that happened; that someone made them touch their wee-wee. ^{Minor 1} stated she doesn't know about that -"I wasn't there". The interviewer stated they said she was there and asked if she was there. ^{Minor 1} said she doesn't remember and they must've "forgotten I wasn't there". Interviewer stated ^{Minor 3} and ^{Minor 4} said she was there and they were playing on the computer and her dad was there; ^{Minor 1} said "oh yeah that was the day!" She asked ^{Minor 1} if anyone made touch their wee-wees that day. She shook her head no and said "girls don't have wee-wees. When asked if she touched anyone's wee-wee she said "no". Interviewer exited the room briefly. When she returned she reminded ^{Minor 1} that she mentioned earlier about daddy attacking ^{Minor 2} in the bathroom and asked how ^{Minor 2} looked when she came out. ^{Minor 1} said "she was laughing". When asked if she told anyone about what

Minor 4

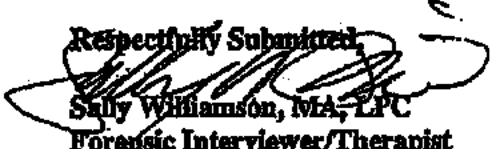
Minor 1

interviewed: 12/9/2015

5

happened ^{Minor 1} then remembered, and corrected herself by saying that her mom was actually at work when that happened. She denied telling ~~men~~ anything about it when she got home. ^{Minor 1} also denied seeing pictures with people with no clothes on or movies with people's privates showing. The interviewer asked after that happened with ^{Minor 2} and dad if he said anything to her about what happened inside; she said no. She asked ^{Minor 1} if anyone told her to keep a secret. She said yes and when asked what she said "like when we go in the bathroom together". Interviewer asked if she could tell her more about going in the bathroom together and why they have to keep it a secret. ^{Minor 1} said "cause we need to keep it a secret and not let any grownups get mad". Interviewer asked who told her that. ^{Minor 1} said "no one. I just figured it out". She denied anyone telling her to keep it a secret and she indicated that she just knows she should. The interviewer encouraged her to scream no, run away and tell if anyone ever touches her privates or tries to get her to touch theirs. She also explained that she should tell if anyone locks a kid in a room again. Interviewer thanked ^{Minor 1} for talking to her and concluded the interview by escorting her out of the room.

Respectfully Submitted,


Sally Williamson, MEd, LPC
Forensic Interviewer/Therapist
The CARE House of the Pee Dee

01:21:11 8-11-2012

Minor 4

Minor 1

interviewed: 12/9/2015

6

Office (843) 629-0236

Fax (843) 673-9223



1500 Patton Drive

Florence, SC 29501

Forensic Interview Report Form

Date of Service: 12/14/2015

Interviewer: Sally Williamson

Present for Intake: Sally Williamson-CH; Farrah Turner-PCSO; Misty Johnson-mother

Child's Name: Minor 2

Gender: female

Date of Birth:

Minor 4

Age: 8

Race: Caucasian

School/Grade or Daycare: Johnsonville Elementary School - 3rd grade

Person Accompanying Child: mom, stepfather

Biological Mother: Misty Johnson

Age: 35

Address: Bartell Rd.

Telephone:

City, State: Lake City, SC 29560

Employer: Raider Station

Biological Father: Joey C

Age: 36

City, State: Sumter, SC

Stepparents/Other Guardians: Parker Johnson

List all individuals currently living in the home with the child, including non-relatives:

Name	Age	Gender	Relationship
Minor 2	8	F	Child interviewed
Misty Johnson	35	F	Mother
Parker Johnson	48	M	Stepfather

Referral Source: law enforcement

Law Enforcement Agency: PCSO

Investigator: Farrah Turner

Department of Social Services: --

Did EPC/Relative Placement Occur? ☐ Yes ☒ No

01/15/16 11:13

C

Minor 2

interviewed: 12/14/2015

1

FAMILY INFORMATION

Mother:

Criminal History	☐ Yes	☐ No
Alcohol/Drug Use/Treatment	☐ Yes	☐ No
Previous/Current Counseling	☐ Yes	☐ No
Psychiatric Hospitalizations	☐ Yes	☐ No
History of Sexual/Domestic Violence	☐ Yes	☐ No

Father:

Criminal History	☐ Yes	☐ No
Alcohol/Drug Use/Treatment	☐ Yes	☐ No
Previous/Current Counseling	☐ Yes	☐ No
Psychiatric Hospitalizations	☐ Yes	☐ No
History of Sexual/Domestic Violence	☐ Yes	☐ No

Marriage/Separation/Divorce Issues: mom and dad were together for two years; father left the mother when child was born; mom and stepfather have been together for 7 yrs; stepfather has been the primary father figure in child's life

Does child have visitation with non-custodial parent: ☒ Yes ☐ No
Frequency/Supervision: every other weekend

CHILD HISTORY OF PHYSICAL/SEXUAL ABUSE OR VIOLENCE

Has CPS in any county or state ever investigated anything related to this child or his/her parents? (list previous or current CPS investigations)

☐ Yes ☒ No (if yes, include locations, allegations and findings)

Have any of the children ever been in foster care or relative placement?

☐ Yes ☒ No

CHILD'S MEDICAL/BEHAVIORAL HISTORY

Does the child have a history of any of the following?

Minor 2, age 8

	YES	NO	COMMENTS
Speech/Hearing Difficulties	☐ Yes	☒ No	
Currently on any medications	☒ Yes	☐ No	allergy medication; topical cream for eczema
Special School Placements	☐ Yes	☒ No	
Currently/Previously in Counseling	☐ Yes	☒ No	
Diagnosed developmental delays	☐ Yes	☒ No	

01/01/11 8:11:12

C

Minor 2

interviewed: 12/14/2015

2

Aggressive/Angry Behavior	☐ Yes	☒ No	
Diagnosed Hyperactivity	☐ Yes	☒ No	
Sleep Disturbances/nightmares	☐ Yes	☒ No	
Does child sleep alone?	☐ Yes	☒ No	sometimes w/mom
Bed wetting/Wetting clothes	☐ Yes	☒ No	
Diagnosed Depression	☐ Yes	☒ No	
Headaches/Stomachaches	☐ Yes	☒ No	
Attempts to Hurt Self/Others	☐ Yes	☒ No	
Alcohol/Drug Use	☐ Yes	☒ No	
Sexual Behaviors/Activity/Abuse	☒ Yes	☐ No	see allegations
Changes in Eating Habits/Weight	☒ Yes	☐ No	overweight
School Problems/Grade Fluctuation	☐ Yes	☒ No	
Hurting Animals/Setting Fires	☐ Yes	☒ No	
Exposure to Pornography	☐ Yes	☒ No	
Running Away	☐ Yes	☒ No	
Previous exams and/or interviews for sexual/physical abuse before?	☐ Yes	☒ No	

CHILD'S HISTORY

Child was referred in connection with an investigation of sexual abuse. Child's cousin (Minor 1) made disclosures of possible sexual abuse involving Minor 2 - and child was referred to be assessed. Child's maternal uncle (Andy Hyman) is reportedly a registered sex offender and has been named in connection with a current child sexual abuse investigation.

CHILD'S HISTORY - REGISTERED SEX OFFENDER

Name: Andy Eugene Hyman Relationship to Child: maternal uncle
 Age: 40 Race: Caucasian Gender: Male
 Criminal History: registered sex offender
 Alcohol/Drug Use: unknown
 Mental Health History: unknown
 Employment: unknown
 Married/Children: married to Ashley Hyman and has two children
 Previous allegations of abuse/perpetration: registered sex offender

The above information was provided by the guardian &/or referral source present on the day of the interview. This information has not been validated by The CARE House staff; and is only intended to provide historical information to assist in conducting the forensic interview.

01/21/11 9-110002

Minor 4

Minor 2

interviewed: 12/14/2015

3

THE CARE HOUSE FORENSIC INTERVIEW SUMMARY:

Client Name: Minor 2

Videotaped: ☒ Yes ☐ No

Individuals Viewing Interview: Farrah Turner-FCSO

Date of Interview(s): 12/14/2015

Summary of Statements by Child:

The following is a summary of the forensic interview conducted. For complete details, please inquire with The CARE House about policies regarding viewing the CDH or obtaining a copy.

Interviewer and Minor 2 entered the room. Minor 2 stated she is 8 years old and in the 3rd grade. When asked, she reported she lives with her mama (Misty) and stepdad (Parker). The interviewer oriented Minor 2 to the room. She explained that she will be making a tape of their talk and that carpet is on the walls for privacy. She shared the concepts of the child saying "I don't know" if she really doesn't know the answer to a question, "I don't understand" if she doesn't understand a word or a question the interviewer asks and to correct the interviewer if she makes a mistake. Interviewer explained the importance of talking about things that are real and true; Minor 2 promised to do so. Rapport was built by talking about her family and her interests.

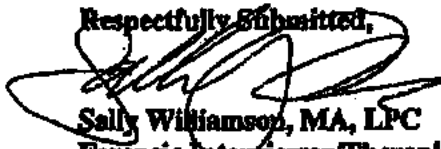
The interviewer asked Minor 2 why she had to come and talk to her today. She said "cause you said you needed to ask me some questions" and "about my family...my aunts and uncles". She asked Minor 2 what she was told about coming today- she said "to tell the truth no matter who it hurts". Minor 2 denied ever being in danger or being unsafe. Interviewer asked Minor 2 to tell her about touches that are OK to get. She said her cousin touched her on the arm and interviewer agreed that was an OK touch. When asked if they are places on a girl's body that aren't OK to touch Minor 2 said "monkies". The interviewer introduced the anatomical drawings of a male and female and asked her to point to the female private parts that no one is allowed to touch. Minor 2 pointed to the girl's monkey (vagina), boobs (breasts) and it was clarified that the butt is also private. Interviewer asked her to do so for the male and she pointed to the willie wanker (penis) and butt. When asked if anyone has ever touched her private places on her body or tried to she said no. Interviewer asked Minor 2 if she takes care of her bath herself and she said yes. She asked if there has ever been a time that a grownup has taken a bath with her; she said "mama" and she clarified that it was when she was younger. Interviewer asked about when she stays at her aunt and uncle's or Nana's house- she said no. Minor 2 denied getting any touches that weren't OK to get except when her and her cousins play fight. When asked if a grownup has ever play fought with her she said her uncle Andy will body slam them on the bed. Minor 2 denied anyone trying to make her touch their privates or trying to touch or look at hers. Interviewer asked what she should do if that happens.

She said she would tell a grownup if that ever happened. The interviewer encouraged her to scream no, run away and tell a grown-up right away if that ever happens.

Interviewer explained that she'd talked to ^{Minor 1} (her cousin) and she told her something that happened when she came to visit. She explained that it had to do with her being in danger and asked ^{Minor 2} if she knew what ^{Minor 1} was talking about; she said no. She stated ^{Minor 1} told her about something that happened in the bathtub. ^{Minor 2} said she doesn't take baths over there because she doesn't have clothes over there. Interviewer asked if she has never taken a bath there and she indicated that, if she does, Andy and Ashley are home. She denied anything happening in the bathroom and denied anything about them taking a bath together. Interviewer asked who is in the bathroom the times she has taken a bath over there. ^{Minor 2} said sometimes ^{Minor 1} and clarified it was only when they were little. Interviewer asked when the last time was that she took a bath there and it was just Andy there- she estimated when she was 7 years old.

The interviewer ^{Minor 2} if a grownup has ever asked her to keep a secret. She said no. Interviewer exited the room briefly. When she returned she asked ^{Minor 2} if she knows anyone that uses drugs and she shook her head no. She denied other safety issues. Interviewer thanked her for talking to her and escorted her out of the room.

Respectfully Submitted,


Sally Williamson, MA, LPC
Forensic Interviewer/Therapist
The CARE House of the Pee Dee

01-03-11 9-11-10182

Minor 4, ^{Minor 2}

interviewed: 12/14/2015

5



Office (843) 629-0236

1500 Patton Drive

Fax (843) 673-9223

Florence, SC 29501

Forensic Interview Report Form

Date of Service: 12/3/2015

Interviewer: Sally Williamson

Present for Intake: Sally Williamson-CH; Parrish Turner-PCSO; Chrystal C -mother

Child's Name: Minor 3 **Gender:** female
Date of Birth: 2008 **Age:** 7 **Race:** Caucasian
School/Grade or Daycare: Johnsonville Elementary School - 1st grade
Person Accompanying Child: mother

Child's Name: Minor 4 **Gender:** female
Date of Birth: 2010 **Age:** 5 **Race:** Caucasian
School/Grade or Daycare: Johnsonville Elementary School - 5K
Person Accompanying Child: mother

Biological Mother: Chrystal C **Age:** 33
Address: Vox Hwy **Telephone:**
City, State: Johnsonville, SC 29555
Employer: none

Biological Father: Michael C **Age:** 33
Address: Vox Hwy **Telephone:**
City, State: Johnsonville, SC 29555
Employer: Springhill by Marriott

List all individuals currently living in the home with the child, including non-relatives:

Name	Age	Gender	Relationship
Minor 3	7	F	Child interviewed
Minor 4	5	F	Child interviewed
Chrystal C	33	F	Mother
Michael C	33	M	Father

Minor 3 Minor 4

Interviewed: 12/3/2015

1

Referral Source: law enforcement
 Law Enforcement Agency: PCSO
 Investigator: Farrah Turner
 Department of Social Services: N/A
 Did EPC/Relative Placement Occur? ☐ Yes ☒ No

Mother: Chrystal

Criminal History	☐ Yes	☒ No
Alcohol/Drug Use/Treatment	☐ Yes	☒ No
Previous/Current Counseling	☐ Yes	☒ No
Psychiatric Hospitalizations	☐ Yes	☒ No
History of Sexual/Domestic Violence	☐ Yes	☒ No

Father: Michael

Criminal History	☐ Yes	☒ No
Alcohol/Drug Use/Treatment	☐ Yes	☒ No
Previous/Current Counseling	☐ Yes	☒ No
Psychiatric Hospitalizations	☐ Yes	☒ No
History of Sexual/Domestic Violence	☐ Yes	☒ No

Marriage/Separation/Divorce Issues: *mom and dad have been together (married) for 10 years; still currently together.*

Does child have visitation with non-custodial parent: ☐ Yes ☐ No *N/A*

Has CPS in any county or state ever investigated anything related to this child or his/her parents? (list previous or current CPS investigations)

☐ Yes ☒ No (if yes, include locations, allegations and findings)

Have any of the children ever been in foster care or relative placement?

☐ Yes ☒ No

Does the child have a history of any of the following?

Minor 3/Minor 4

	YES	NO	COMMENTS
Speech/Hearing Difficulties	☒ Yes	☐ No	Minor 3 speech therapy
Currently on any medications	☒ Yes	☐ No	Minor 3 Ritalin; Zoloft
Special School Placements	☒ Yes	☐ No	Minor 3 speech classes
Currently/Previously in Counseling	☐ Yes	☒ No	Minor 3
Diagnosed developmental delays	☒ Yes	☐ No	Minor 3 (occupational therapy)
Aggressive/Angry Behavior	☐ Yes	☒ No	Minor 3 ADHD
Diagnosed Hyperactivity	☒ Yes	☐ No	Minor 4 since incident
Sleep Disturbances/nightmares	☒ Yes	☐ No	sometimes w/parents
Does child sleep alone?	☐ Yes	☒ No	Minor 4 uses Pull-Ups
Bed wetting/Wetting clothes	☒ Yes	☐ No	takes Zoloft for anxiety
Diagnosed Depression	☐ Yes	☐ No	occasionally
Headaches/Stomachaches	☒ Yes	☐ No	
Attempts to Hurt Self/Others	☐ Yes	☒ No	
Alcohol/Drug Use	☐ Yes	☒ No	
Sexual Behaviors/Activity/Abuse	☒ Yes	☐ No	see allegations
Changes in Eating Habits/Weight	☐ Yes	☒ No	
School Problems/Grade Fluctuation	☒ Yes	☐ No	recent issues in school since incident (Minor 4 especially)
Hurting Animals/Settling Fires	☐ Yes	☒ No	
Exposure to Pornography	☐ Yes	☒ No	
Running Away	☐ Yes	☒ No	
Previous exams and/or interviews for sexual/physical abuse before?	☐ Yes	☒ No	
Other: children are exhibiting some traumatic symptoms since incident.			

Children were referred in connection with an investigation of sexual abuse by an adult male. According to the report, the children went to a family friend's house to stay for a brief period of time. Upon returning, the children disclosed that the suspect made them touch his private parts.

Mom explains that her family has been very close to the suspect's family for a while - as they live in the same town. Mom reports that she took the kids to their house and she went to run some errands. When she returned, she states that all three children (her two children & his daughter - Minor 1 age 7) were in the bathtub together - which she felt was odd. Mom states that the kids reported they walked to the end of the road by themselves (with Minor 1) Minor 4 reportedly hurt her toe & it was cut/bleeding slightly

Minor 4

Minor 3 & Minor 4

interviewed: 12/3/2015

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and she lay down for a nap. Mom states that "Mama...Mr. Andy took his pee-pee and rubbed it up and down my arm" and Minor 3 said "Yeah...Mr. Andy" did something with his pee-pee. One of the girls said "and he did it to ^{Minor 1} too!" Mom called the father immediately and once he arrived they called law enforcement. Mom asked Minor 4 if she saw Andy's pee-pee and she said yes; and she asked what it looked like and child said "it was nasty and ugly." When asked, Minor 3 denied seeing his pee-pee. Once dad came in, the child said she didn't remember. Once encouraged to talk, Minor 3 said she was sitting at the computer and Andy grabbed her hand and rubbed it on his pee-pee through his shorts.

Last known date of alleged perpetrator/child contact: 11/28/2015

Date of disclosure: 11/27/2015

Date of Incident: 11/27/2015

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Name: Andy Eugene Hyman Relationship to Child: family friend
 Age: 40 Race: Caucasian Gender: Male
 Criminal History: registered sex offender
 Alcohol/Drug Use: unknown
 Mental Health History: unknown
 Employment: unknown
 Married/Children: married to Ashley Hyman (wife) and has a 7 yr old child named Minor 1
 Previous allegations of abuse/perpetration: registered sex offender

The above information was provided by the guardian &/or referral source present on the day of the interview. This information has not been validated by The CARE House staff; and is only intended to provide historical information to assist in conducting the forensic interview.

THE CARE HOUSE FORENSIC INTERVIEW SUMMARY:

The following is a summary of the forensic interview conducted. For complete details, please inquire with The CARE House about policies regarding viewing the CDR or obtaining a copy.

Client Name: Minor 4

Videotaped: ☒ Yes ☐ No

Individuals Viewing Interview: Farrah Turner-FCSO

Date of Interview(s): 12/3/2015

Minor 4 entered the room. She stated she is 5 years old and in 5K. Interviewer engaged child in naming the parts on a face, and she was able to do so successfully. When asked she reported she lives with mama (Chrystal), dad (Michael) and sister (Minor 3). Interviewer encouraged child to say "I don't know" if she doesn't know the answer to a

11-2015 0-100007

Minor 4

Minor 3 & Minor 4

interviewed: 12/3/2015

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question, "I don't understand" if she doesn't understand a question and to correct interviewer if she makes a mistake. They practiced using the SC Child First booklet. Rapport was built by talking about her interests.

Interviewer asked why she had to come and talk to her today. ^{Minor 4} said "about Mr. Andy" and "he got my hands and put it on his pee-pee". ^{Minor 4} reported they were outside playing and she squirted him with the water hose and then they went inside and "he did it". Interviewer asked what the first thing was that he did when they went inside she said "he grabbed my hand and put it on his pee-pee". Interviewer asked if it was on top of his clothes, under his clothes or something else and ^{Minor 4} said "under" his clothes. When asked how her hand got under it she said he "grabbed it and put it right there". The interviewer introduced the anatomical drawing of a male and asked her to point to the place Mr. Andy made her touch- she pointed to the pee-pee (penis). She asked ^{Minor 4} if he put her hand inside clothes or on top of his clothes. ^{Minor 4} said "on top" of his clothes. When asked if her hand touched the skin of his pee-pee she said "his pants". She denied seeing his pee-pee or it coming out of his pants. Interviewer asked what part of the house they were in when he put her hand on his pee-pee. She said "in the middle" of the house. She asked ^{Minor 4} who saw him do that and she said "nobody". When asked who was there with her she said "my sister and ^{Minor 1} [redacted]". The interviewer clarified if she touched on top or under his clothes and she said "on top". She asked if he did that to anyone else and ^{Minor 4} "sissy and ^{Minor 1} [redacted]". She stated he grabbed their hands and put them on his pee-pee and sissy said "stop...but, he wouldn't listen". Interviewer asked who he did that to first and she said her, then she thinks he did it to her sister, and then ^{Minor 1} ^{Minor 4} identified the parts on the body that are private, that no one is allowed to touch and labeled them as: boobies (breasts), pee-pee (vagina) and butt. She denied any of those parts being touched on her, her sister or ^{Minor 1} (to her knowledge). The interviewer encouraged ^{Minor 4} to scream no, run away and tell if anyone ever touches or tries to touch those places. She asked ^{Minor 4} how her mom found out about what happened; she said she told her. When asked what mom said, ^{Minor 4} said "she called the cops". ^{Minor 4} denied any grownups ever hurting her or leaving any bruises on her body. She also denied anyone telling her what to say today or how to answer questions. The interviewer exited the room briefly. When she returned she asked where they were when that happened with Mr. Andy- she said at his house. Interviewer thanked her for talking to her and escorted her out.

Client Name: ^{Minor 3} C
 Videotaped: ☒ Yes ☐ No
 Individuals Viewing Interview: Farrah Turner-PCSO
 Date of Interview(s): 12/3/2015

Interviewer and ^{Minor 3} entered the room. She reported she is 7 years old and in the 1st grade. ^{Minor 3} stated she lives with mom (Chrystal), dad (Michael) and sister. The interviewer oriented ^{Minor 3} to the room and assured her that she wasn't in any trouble. ^{Minor 3} promised to talk about things that are real, true and really happened. The

11-2111 9-111102

C ^{Minor 3} & ^{Minor 4} interviewed: 12/3/2015

interviewer shared the concepts of the child saying "I don't know" or "I don't understand" if necessary, and to correct her if she makes a mistake. Rapport was built by talking about her interests.

The interviewer asked Minor 3 why she came to talk to her today. She said "because of Mr. Andy". Minor 3 reported she was on the computer and he took her hand and put it on his pee-pee. When asked if it was on top of his clothes or inside his clothes, she said on top. She asked if it touched the skin of his pee-pee or something else. Minor 3 said "something else" but she was unable to articulate what, exactly, it was. Interviewer introduced the anatomical drawing of a male and asked Minor 3 to point to where he put her hand; she pointed to the pee-pee (penis). When asked what he did with her hand when he put it on his pee-pee she said "he just rubbed it...and I said 'stop Mr. Andy' and he wouldn't stop". Minor 3 said he did it to the other girls, also. She asked who he did it to first- she said "me, then Minor 4 and then Minor 1". The interviewer asked her what she saw when he did it to Minor 4. Minor 3 said she didn't see it. When asked how she knows about it she said "I just know cause he did it to me, Minor 1 and then Minor 4". She denied ever actually seeing Mr. Andy's pee-pee. Interviewer asked if any part of her body was touched. She shook her head no and said "he picked me up and saw my underwear. I told Mr. Andy to quit and put me down!" When asked what she was wearing she said shorts and a t-shirt. The interviewer asked how he could see her underwear if she had shorts on and Minor 3 explained that they weren't tight shorts and he picked her up again and saw them. She said "I hold 'em so he won't see it...but he pulled it and pulled it...he saw this (pointing to butt) I hold it so he won't see it". Interviewer asked what he was pulling on and she said "my pants". Minor 3 denied anyone ever touching or trying to touch her private parts except for Mr. Andy. She said "he was trying to touch that. I think he wanted to look at it and I said no". The interviewer asked which part and she pointed to the butt. When asked how he was trying to touch it she said she didn't know. Interviewer asked Minor 3 where it happened: she said at the computer at Mr. Andy's house. When asked if she saw him make Minor 1 do that she said no she was in the bedroom - and she explained that they each went into the bedroom. She explained that after he did it to her, she told Minor 1 to come with her and they went to the bedroom together - and that Minor 4 was on the computer. Minor 3 denied Mr. Andy saying anything about what he did to her, or about telling. The interviewer exited the room briefly. When she returned, she thanked the child for talking to her and concluded the interview by escorting the child from the room.

Respectfully Submitted,


Sally Williamson, MA, LPC
Forensic Interviewer/Therapist
The CARE House of the Pee Dee

11-03-2015 12:13:03

C Minor 3 & Minor 4

interviewed: 12/3/2015

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Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

E

ARREST WARRANT

E-080108

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
Johnsonville
THE STATE
against

ANDY EUGENE HYMAN

Address: Johnsonville S.C. 29555

Phone: _____ SSN: _____

Sex: M Race: W Height: _____ Weight: _____

DL State: _____ DL#: _____

DOB: 1/25/51 Agency ORI#: _____Prosecuting Agency: Johnsonville S.C. 29555Prosecuting Officer: Det. [Signature]Offense: Child Abuse License Code: _____Code/Ordinance Sec. 16-3-652-16-3-655

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of _____

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant: Andy Eugene Hymanon 2-16-96[Signature]

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Johnsonville

Personally appeared before me the affiant

being duly sworn, deposes and says that defendant

did within this county and state on various dates - 1994 & presentState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

In the following particulars:

DESCRIPTION OF OFFENSE: Defendant did engage in sexual batterywith 3 (minor) children on multiple occasions. Viol S.C. Code

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts: Law 16-3-654/16-3-655On July 12 and July 16, 1996 Complaints were received byJoelle R.D. concerning the actions of the defendant towardsand with three minor females on several occasionsbeginning approx 2 1/2 yrs. ago. Subsequent investigationhas revealed that sexual battery has occurred involvinggirls - 2 age 6 and 1 age 8. The defendant has been #1Sworn to and subscribed before meon July 16, 1996Signature of Affiant [Signature]Affiant's Address c/o Joelle R.D.Affiant's Telephone 396-3500Signature of Issuing Judge [Signature] (L.S.)Judge's Address Johnsonville S.C.Judge's Telephone 396-3500Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of _____

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on various dates defendant Andy Eugene Hyman

did violate the criminal laws of the State of South Carolina (or ordinance of _____)

☐ County/ ☐ Municipality of _____ as set forth below:DESCRIPTION OF OFFENSE: Defendant did commit sexual battery with3 minor females. Viol S.C. Code 16-3-654/16-3-655

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before

me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the

defendant at the time of its execution, or as soon thereafter as is practicable.

[Signature] (L.S.)

Signature of Issuing Judge

Judge's Address Johnsonville S.C. 29555Judge's Telephone 396-2069Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

AFFIDAVIT

Form Approved by
S.A. Attorney General
Jan 20, 1980
SCA-9-BI, Det. Joe Cook who

being duly sworn, deposes and says that defendant

did within this county and state on various dates - 1994 & presentState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

In the following particulars:

DESCRIPTION OF OFFENSE: Defendant did engage in sexual batterywith 3 (minor) children on multiple occasions. Viol S.C. Code

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AGENCY I.D.
SCD 0210400

INCIDENT REPORT

CASE NUMBER

7-15-96

NCIS

NO. EXT.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Criminal Sexual Conduct 1st		☒ YES ☐ NO	☒ YES ☐ NO	Residence		☒ Individual ☐ Business ☐ Fraternal Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Club ☐ Unknown ☐ Other
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPONS
Diamond Branch Rd. Johnsonville SC				29555		
INCIDENT DATE	IN HR. CLOCK	TO	DATE	IN HR. CLOCK	LOCATION NO.	
7-12-96	20:00		7-12-96	23:15	3	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
H Donald Levan				☒ S ☐ O ☐ U	W	M
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
Campbell Rd.		Ridgeville		SC	29472	
VICTIM NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
Minor 5				☒ S ☐ O ☐ U	W	F
AGE		CITY		STATE	ZIP CODE	LOCATION NO.
410		Johnsonville		SC	29555	3
EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
Blu						
VISIBLE INJURY (NOT 1) ☐ YES ☒ NO ☐ EXPLAIN -		Unknown				
VICTIM (NO 1) USING: ALCOHOL ☐ YES ☒ NO ☐ DRUGS ☐ YES ☒ NO ☐ UNK ☐ TYPE						
TWO-MAN VERB ☐ ONE-MAN VERB ☐ DETECTIVE COMPLAINT ☐ OTHER ☐ ALONE ☐ ASSAULT ☐ DATE/TIME OF OFFENSE		7-12-96				
DATE/TIME OF ARREST		7-16-96 16:25				
SUBJECT NO. 1		NAME (LAST, FIRST, MIDDLE)				
HYMAN, Andy Eugene		AGE				
21		DATE OF BIRTH				
7-75		HEIGHT				
600		WEIGHT				
171		HAIR				
Brn		EYES				
Haz		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
Diamond Branch Rd.		Johnsonville		SC	29555	3
SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ DRUGS ☐ YES ☒ NO ☐ UNK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ UNFOUNDED				
TOTAL # ARRESTED		1				
Suspects father called the PD and reported to Sgt.s Cox & Cook that his son, Andy, age 21, had molested the victims by fondling their private parts. On 7-16-96 Melinda Williams, mother of Minor 5 and Minor 6, along with Donald and Dale H parents of Minor 7, came to the PD and made a complaint about the incident. Shortly after they left the suspect and his parents came to the PD and the suspect indicated he wanted to turn himself in. His rights were read to him and he voluntarily gave a written statement indicating he had molested Minor 7 and Minor 5. The girls, Minor 7, Minor 5 and Minor 6 (a witness) were interviewed by Betty Lee and they indicated to her that he put his penis in their mouth (Minor 7 & Minor 5), held their "Cute" (vagina) open and put part of his penis in and played with their butt. The witness, Minor 6 stated he fondled her. DSS notified. Warrant issued and suspect charged with CSC 1st.						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECEIPT LAW ENFORCEMENT AGENCY				
TOTAL VALUE						
TYPE (GROUP)						
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
RECEIVED						
SUBJECT IDENTIFIED		SUBJECT LOCATED		ARRESTED UNDER 18		ARRESTED 18 AND OVER
☒ YES ☐ NO		☒ YES ☐ NO		☒ YES ☐ NO		☐ YES ☐ NO
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
R.T. Cox		7-16-96	302	C.B. Skinner		7-16-96
J.D. Cook			303	OFFICER		
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO						

App'x 376

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

F

3:03:23 Thursday, February 20, 2020

DISI100D

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM02/20/20
C059067

SCDC ID: 242848

DISPLAY INMATE OFFENSE HISTORY

HYMAN, ANDY EUGENE

CURR LOC: EVANS

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV Y
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00008	USE OBSCENE, VULGAR, PR	ADMINIST	10/22/18	10/27/18	00000	CONVICTED	3
00007	DISRESPECT	ADMINIST	10/22/18	10/27/18	00000	CONVICTED	3
00006	REFUSING OR FAILING O	OTHER AC	03/16/01	/ /	00000	CLOSED	3
00005	DAMAGE, DESTROY, PROP. V	MINOR DI	06/20/00	06/27/00	00000	CONVICTED	2
00004	OUT OF PLACE	MINOR DI	05/04/00	05/12/00	00000	CONVICTED	3
00003	POSSESSION OF CONTRAB	MINOR DI	04/10/00	04/20/00	00000	CONVICTED	3
00002	STEALING	MINOR DI	04/05/00	04/12/00	00000	CONVICTED	3
00001	ABUSE OF PRIVILEGES	MINOR DI	12/09/99	12/15/99	00000	CONVICTED	5

END OF LIST

PAGE 0001

SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY
 PF4-MODIFY PF6-DISMISSED/NOT GUILTY PF11-QUIT PF10-MAIN MENU

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

G

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SEXUAL PREDATOR MULTI-DISCIPLINARY TEAM**

REFERRAL DATA

INMATE: Hyman Andy E.

SCDC [REDACTED]

INSTITUTION: Evans

SSN#: [REDACTED]

VICTIM/WITNESS: Yes

DOB/AGE: [REDACTED] (44 y/o)

SCDC ARRIVAL DATE: 09/19/2016

MAX OUT DATE: 02/16/2021

SENTENCE START DATE:
JUVENILE SENTENCE: N/A

**SUPERVISED FURLOUGH
ELIGIBILITY DATE:** N/A

DATA SOURCE(S):

Automated Medical Record: ✓
Institutional Record:
Sex Offender Treatment Record:
Inmate Interview:
Attachment:

Hard Copy Medical Record:
Central Inmate Record:
Offender Management Summary: ✓
Other Data Source(s):
Specify:

CONVICTION HISTORY:

Current Conviction(s): CSC 3rd W/Minor – Lewd Act
Prior SCDC #'s:
Prior Conviction(s):
Parole Revocation(s): N/A
Probation Revocation(s): N/A
Other Information:

INSTITUTIONAL ADJUSTMENT:

Disciplinary(s): Total: 7 (2018) Assaultive: 0
Narrative(s):
Work History: Maintenance
Other Information:

Sexual Misconduct:

SP Multi-Disciplinary Team
Hyman Andy - 242848
Page 3

HEALTH INFORMATION AND HISTORY:

Physical Health/Condition: None
Medications:
Other Information:

MENTAL HEALTH INFORMATION AND HISTORY:

Diagnosis:
Medications:
Problems/Compliance: N/A
Treatment History:
Other Information:

SOCIAL HISTORY: N/A

Inmate's History of Sexual Abuse (age at time of abuse, age of perpetrator
Length of abuse, relationship to perpetrator, gender of perpetrator):

Juvenile History: N/A
Other Information:

SEX OFFENDER TREATMENT HISTORY: None in the file

	TYPE	DATES	STATUS
Phase I:			

SOTP

Phase II:

Phase III: Education

OTHER

RTU: Intensive Residential
Treatment

Admission of Sex Offense(s):
Other Information:

54:04 Monday, February 10, 2020

PRGI100D

SCDC OFFENDER MANAGEMENT SYSTEM
PROGRAM SERVICES02/10/20
C035477

SCDC # 242848

SUMMARY

HYMAN, ANDY EUGENE

CURR LOC: EVANS

OFFENDER TYPE: ADULT-STRAIGHT SENTE

PROGRAM NAME	ENROLLED	TERM DTE	TERM STATUS
JUMP START	01/02/19	11/14/19	COMPLETE-EXC. PARTICIPA.
SCDC ALC/DRUG ORIENTATION	09/23/16	09/23/16	SERV RENDERED & COMPLETED

RESPONSE>

PAGE> 0001

SELECT AN OPTION...

PFKEY 3:ADD 4:MOD ENTER:INQ

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

H

Development and Course

Individuals with sexual sadism in forensic samples are almost exclusively male, but a representative sample of the population in Australia reported that 2.2% of men and 1.3% of women said they had been involved in bondage and discipline, "sodomasochism," or dominance and submission in the previous year. Information on the development and course of sexual sadism disorder is extremely limited. One study reported that females became aware of their sodomasochistic orientation as young adults, and another reported that the mean age at onset of sadism in a group of males was 19.4 years. Whereas sexual sadism per se is probably a lifelong characteristic, sexual sadism disorder may fluctuate according to the individual's subjective distress or his or her propensity to harm nonconsenting others. Advancing age is likely to have the same reducing effect on this disorder as it has on other paraphilic or normophilic sexual behavior.

Differential Diagnosis

Many of the conditions that could be differential diagnoses for sexual sadism disorder (e.g., antisocial personality disorder, sexual masochism disorder, hypersexuality, substance use disorders) sometimes occur also as comorbid diagnoses. Therefore, it is necessary to carefully evaluate the evidence for sexual sadism disorder, keeping the possibility of other paraphilias or mental disorders as part of the differential diagnosis. The majority of individuals who are active in community networks that practice sadistic and masochistic behaviors do not express any dissatisfaction with their sexual interests, and their behavior would not meet DSM-5 criteria for sexual sadism disorder. Sadistic interest, but not the disorder, may be considered in the differential diagnosis.

Comorbidity

Known comorbidities with sexual sadism disorder are largely based on individuals (almost all males) convicted for criminal acts involving sadistic acts against nonconsenting victims. Hence, these comorbidities might not apply to all individuals who never engaged in sadistic activity with a nonconsenting victim but who qualify for a diagnosis of sexual sadism disorder based on subjective distress over their sexual interest. Disorders that are commonly comorbid with sexual sadism disorder include other paraphilic disorders.

Pedophilic Disorder

Diagnostic Criteria

302.2 (F65.4)

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The individual is at least age 16 years and at least 5 years older than the child or children in Criterion A.

Note: Do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12- or 13-year-old.

Specify whether:

Exclusive type (attracted only to children)

Nonexclusive type

Specify if:

Sexually attracted to males
Sexually attracted to females
Sexually attracted to both

Specify if:

Limited to incest

Diagnostic Features

The diagnostic criteria for pedophilic disorder are intended to apply both to individuals who freely disclose this paraphilia and to individuals who deny any sexual attraction to prepubertal children (generally age 13 years or younger), despite substantial objective evidence to the contrary. Examples of disclosing this paraphilia include candidly acknowledging an intense sexual interest in children and indicating that sexual interest in children is greater than or equal to sexual interest in physically mature individuals. If individuals also complain that their sexual attractions or preferences for children are causing psychosocial difficulties, they may be diagnosed with pedophilic disorder. However, if they report an absence of feelings of guilt, shame, or anxiety about these impulses and are not functionally limited by their paraphilic impulses (according to self-report, objective assessment, or both), and their self-reported and legally recorded histories indicate that they have never acted on their impulses, then these individuals have a pedophilic sexual orientation but not pedophilic disorder.

Examples of individuals who deny attraction to children include individuals who are known to have sexually approached multiple children on separate occasions but who deny any urges or fantasies about sexual behavior involving children, and who may further claim that the known episodes of physical contact were all unintentional and nonsexual. Other individuals may acknowledge past episodes of sexual behavior involving children but deny any significant or sustained sexual interest in children. Since these individuals may deny experiences impulses or fantasies involving children, they may also deny feeling subjectively distressed. Such individuals may still be diagnosed with pedophilic disorder despite the absence of self-reported distress, provided that there is evidence of recurrent behaviors persisting for 6 months (Criterion A) and evidence that the individual has acted on sexual urges or experienced interpersonal difficulties as a consequence of the disorder (Criterion B).

Presence of multiple victims, as discussed above, is sufficient but not necessary for diagnosis; that is, the individual can still meet Criterion A by merely acknowledging intense or preferential sexual interest in children.

The Criterion A clause, indicating that the signs or symptoms of pedophilia have persisted for 6 months or longer, is intended to ensure that the sexual attraction to children is not merely transient. However, the diagnosis may be made if there is clinical evidence of sustained persistence of the sexual attraction to children even if the 6-month duration cannot be precisely determined.

Associated Features Supporting Diagnosis

The extensive use of pornography depicting prepubescent children is a useful diagnostic indicator of pedophilic disorder. This is a specific instance of the general case that individuals are likely to choose the kind of pornography that corresponds to their sexual interests.

Prevalence

The population prevalence of pedophilic disorder is unknown. The highest possible prevalence for pedophilic disorder in the male population is approximately 3%–5%. The population prevalence of pedophilic disorder in females is even more uncertain, but it is likely a small fraction of the prevalence in males.

Development and Course

Adult males with pedophilic disorder may indicate that they become aware of strong or preferential sexual interest in children around the time of puberty—the same time frame in which males who later prefer physically mature partners became aware of their sexual interest in women or men. Attempting to diagnose pedophilic disorder at the age at which it first manifests is problematic because of the difficulty during adolescent development in differentiating it from age-appropriate sexual interest in peers or from sexual curiosity. Hence, Criterion C requires for diagnosis a minimum age of 16 years and at least 5 years older than the child or children in Criterion A.

Pedophilia *per se* appears to be a lifelong condition. Pedophilic disorder, however, necessarily includes other elements that may change over time with or without treatment: subjective distress (e.g., guilt, shame, intense sexual frustration, or feelings of isolation) or psychosocial impairment, or the propensity to act out sexually with children, or both. Therefore, the course of pedophilic disorder may fluctuate, increase, or decrease with age.

Adults with pedophilic disorder may report an awareness of sexual interest in children that preceded engaging in sexual behavior involving children or self-identification as a pedophile. Advanced age is as likely to similarly diminish the frequency of sexual behavior involving children as it does other paraphilically motivated and normophilic sexual behavior.

Risk and Prognostic Factors

Temperamental. There appears to be an interaction between pedophilia and antisociality, such that males with both traits are more likely to act out sexually with children. Thus, antisocial personality disorder may be considered a risk factor for pedophilic disorder in males with pedophilia.

Environmental. Adult males with pedophilia often report that they were sexually abused as children. It is unclear, however, whether this correlation reflects a causal influence of childhood sexual abuse on adult pedophilia.

Genetic and physiological. Since pedophilia is a necessary condition for pedophilic disorder, any factor that increases the probability of pedophilia also increases the risk of pedophilic disorder. There is some evidence that neurodevelopmental perturbation in utero increases the probability of development of a pedophilic orientation.

Gender-Related Diagnostic Issues

Psychophysiological laboratory measures of sexual interest, which are sometimes useful in diagnosing pedophilic disorder in males, are not necessarily useful in diagnosing this disorder in females, even when an identical procedure (e.g., viewing time) or analogous procedures (e.g., penile plethysmography and vaginal photoplethysmography) are available.

Diagnostic Markers

Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggests the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. The most thoroughly researched and longest used of such measures is *penile plethysmography*, although the sensitivity and specificity of diagnosis may vary from one site to another. *Viewing time*, using photographs of nude or minimally clothed persons as visual stimuli, is also used to diagnose pedophilic disorder, especially in combination with self-report measures. Mental health professionals in the United States, however, should be aware that possession of such visual stimuli, even for diagnostic purposes, may violate American law regarding possession of child pornography and leave the mental health professional susceptible to criminal prosecution.

Differential Diagnosis

Many of the conditions that could be differential diagnoses for pedophilic disorder also sometimes occur as comorbid diagnoses. It is therefore generally necessary to evaluate the evidence for pedophilic disorder and other possible conditions as separate questions.

Antisocial personality disorder. This disorder increases the likelihood that a person who is primarily attracted to the mature physique will approach a child, on one or a few occasions, on the basis of relative availability. The individual often shows other signs of this personality disorder, such as recurrent law-breaking.

Alcohol and substance use disorders. The disinhibiting effects of intoxication may also increase the likelihood that a person who is primarily attracted to the mature physique will sexually approach a child.

Obsessive-compulsive disorder. There are occasional individuals who complain about ego-dystonic thoughts and worries about possible attraction to children. Clinical interviewing usually reveals an absence of sexual thoughts about children during high states of sexual arousal (e.g., approaching orgasm during masturbation) and sometimes additional ego-dystonic, intrusive sexual ideas (e.g., concerns about homosexuality).

Comorbidity

Psychiatric comorbidity of pedophilic disorder includes substance use disorders; depressive, bipolar, and anxiety disorders; antisocial personality disorder; and other paraphilic disorders. However, findings on comorbid disorders are largely among individuals convicted for sexual offenses involving children (almost all males) and may not be generalizable to other individuals with pedophilic disorder (e.g., individuals who have never approached a child sexually but who qualify for the diagnosis of pedophilic disorder on the basis of subjective distress).

Fetishistic Disorder

Diagnostic Criteria

302.81 (F65.0)

- A. Over a period of at least 6 months, recurrent and intense sexual arousal from either the use of nonliving objects or a highly specific focus on nongenital body part(s), as manifested by fantasies, urges, or behaviors.
- B. The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The fetish objects are not limited to articles of clothing used in cross-dressing (as in transvestic disorder) or devices specifically designed for the purpose of tactile genital stimulation (e.g., vibrator).

Specify:

- Body part(s)**
- Nonliving object(s)**
- Other**

Specify if:

in a controlled environment: This specifier is primarily applicable to individuals living in institutional or other settings where opportunities to engage in fetishistic behaviors are restricted.

in full remission: There has been no distress or impairment in social, occupational, or other areas of functioning for at least 5 years while in an uncontrolled environment.

Other Specified Paraphilic Disorder

302.89 (F65.89)

This category applies to presentations in which symptoms characteristic of a paraphilic disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any of the disorders in the paraphilic disorders diagnostic class. The other specified paraphilic disorder category is used in situations in which the clinician chooses to communicate the specific reason that the presentation does not meet the criteria for any specific paraphilic disorder. This is done by recording "other specified paraphilic disorder" followed by the specific reason (e.g., "zoophilia").

Examples of presentations that can be specified using the "other specified" designation include, but are not limited to, recurrent and intense sexual arousal involving *telephone scatologia* (obscene phone calls), *necrophilia* (corpses), *zoophilia* (animals), *coprophilia* (feces), *klismaphilia* (enemas), or *urophilia* (urine) that has been present for at least 6 months and causes marked distress or impairment in social, occupational, or other important areas of functioning. Other specified paraphilic disorder can be specified as in remission and/or as occurring in a controlled environment.

Unspecified Paraphilic Disorder

302.9 (F65.9)

This category applies to presentations in which symptoms characteristic of a paraphilic disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any of the disorders in the paraphilic disorders diagnostic class. The unspecified paraphilic disorder category is used in situations in which the clinician chooses *not* to specify the reason that the criteria are not met for a specific paraphilic disorder, and includes presentations in which there is insufficient information to make a more specific diagnosis.

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Petitioner's Exhibit

I

Paraphilic Disorders

Paraphilic disorders included in this manual are voyeuristic disorder (spying on others in private activities), exhibitionistic disorder (exposing the genitals), frotteuristic disorder (touching or rubbing against a nonconsenting individual), sexual masochism disorder (undergoing humiliation, bondage, or suffering), sexual sadism disorder (inflicting humiliation, bondage, or suffering), pedophilic disorder (sexual focus on children), fetishistic disorder (using nonliving objects or having a highly specific focus on nongenital body parts), and transvestic disorder (engaging in sexually arousing cross-dressing). These disorders have traditionally been selected for specific listing and assignment of explicit diagnostic criteria in DSM for two main reasons: they are relatively common, in relation to other paraphilic disorders, and some of them entail actions for their satisfaction that, because of their noxiousness or potential harm to others, are classed as criminal offenses. The eight listed disorders do not exhaust the list of possible paraphilic disorders. Many dozens of distinct paraphilias have been identified and named, and almost any of them could, by virtue of its negative consequences for the individual or for others, rise to the level of a paraphilic disorder. The diagnoses of the other specified and unspecified paraphilic disorders are therefore indispensable and will be required in many cases.

In this chapter, the order of presentation of the listed paraphilic disorders generally corresponds to common classification schemes for these conditions. The first group of disorders is based on *anomalous activity preferences*. These disorders are subdivided into *courtship disorders*, which resemble distorted components of human courtship behavior (voyeuristic disorder, exhibitionistic disorder, and frotteuristic disorder), and *algolagnic disorders*, which involve pain and suffering (sexual masochism disorder and sexual sadism disorder). The second group of disorders is based on *anomalous target preferences*. These disorders include one directed at other humans (pedophilic disorder) and two directed elsewhere (fetishistic disorder and transvestic disorder).

The term *paraphilia* denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. In some circumstances, the criteria "intense and persistent" may be difficult to apply, such as in the assessment of persons who are very old or medically ill and who may not have "intense" sexual interests of any kind. In such circumstances, the term *paraphilia* may be defined as any sexual interest greater than or equal to normophilic sexual interests. There are also specific paraphilias that are generally better described as *preferential* sexual interests than as intense sexual interests.

Some paraphilias primarily concern the individual's erotic activities, and others primarily concern the individual's erotic targets. Examples of the former would include intense and persistent interests in spanking, whipping, cutting, binding, or strangulating another person, or an interest in these activities that equals or exceeds the individual's interest in copulation or equivalent interaction with another person. Examples of the latter would include intense or preferential sexual interest in children, corpses, or amputees (as a class), as well as intense or preferential interest in nonhuman animals, such as horses or dogs, or in inanimate objects, such as shoes or articles made of rubber.

A *paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to

others. A paraphilia is a necessary but not a sufficient condition for having a paraphilic disorder, and a paraphilia by itself does not necessarily justify or require clinical intervention.

In the diagnostic criteria set for each of the listed paraphilic disorders, Criterion A specifies the qualitative nature of the paraphilia (e.g., an erotic focus on children or on exposing the genitals to strangers), and Criterion B specifies the negative consequences of the paraphilia (i.e., distress, impairment, or harm to others). In keeping with the distinction between paraphilias and paraphilic disorders, the term *diagnosis* should be reserved for individuals who meet both Criteria A and B (i.e., individuals who have a paraphilic disorder). If an individual meets Criterion A but not Criterion B for a particular paraphilia—a circumstance that might arise when a benign paraphilia is discovered during the clinical investigation of some other condition—then the individual may be said to have that paraphilia but not a paraphilic disorder.

It is not rare for an individual to manifest two or more paraphilias. In some cases, the paraphilic foci are closely related and the connection between the paraphilias is intuitively comprehensible (e.g., foot fetishism and shoe fetishism). In other cases, the connection between the paraphilias is not obvious, and the presence of multiple paraphilias may be coincidental or else related to some generalized vulnerability to anomalies of psychosexual development. In any event, comorbid diagnoses of separate paraphilic disorders may be warranted if more than one paraphilia is causing suffering to the individual or harm to others.

Because of the two-pronged nature of diagnosing paraphilic disorders, clinician-rated or self-rated measures and severity assessments could address either the strength of the paraphilia itself or the seriousness of its consequences. Although the distress and impairment stipulated in the Criterion B are special in being the immediate or ultimate result of the paraphilia and not primarily the result of some other factor, the phenomena of reactive depression, anxiety, guilt, poor work history, impaired social relations, and so on are not unique in themselves and may be quantified with multipurpose measures of psychosocial functioning or quality of life.

The most widely applicable framework for assessing the strength of a paraphilia itself is one in which examinees' paraphilic sexual fantasies, urges, or behaviors are evaluated in relation to their normophilic sexual interests and behaviors. In a clinical interview or on self-administered questionnaires, examinees can be asked whether their paraphilic sexual fantasies, urges, or behaviors are weaker than, approximately equal to, or stronger than their normophilic sexual interests and behaviors. This same type of comparison can be, and usually is, employed in psychophysiological measures of sexual interest, such as penile plethysmography in males or viewing time in males and females.

Voyeuristic Disorder

Diagnostic Criteria

302.82 (F65.3)

- A. Over a period of at least 6 months, recurrent and intense sexual arousal from observing an unsuspecting person who is naked, in the process of disrobing, or engaging in sexual activity, as manifested by fantasies, urges, or behaviors.
- B. The individual has acted on these sexual urges with a nonconsenting person, or the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The individual experiencing the arousal and/or acting on the urges is at least 18 years of age.

Specify if:

In a controlled environment: This specifier is primarily applicable to individuals living in institutional or other settings where opportunities to engage in voyeuristic behavior are restricted.

INDICTMENT NO. 97 -GS-21- 343

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

NOW COMES THE DEFENDANT(S) Andy Eugene Hyman

IN OPEN COURT AND PLEADS GUILTY TO

esc 2nd (lesser included of Count 1)
Lewd Act (count 4)

AND CONSENTS FOR SAID PLEA TO BE ENTERED ON RECORD AGAINST HIM(HER/THEM).

Andy Hyman
 SIGNATURE OF DEFENDANT(S)

ATTEST: Dirk P Hyman
 FLORENCE COUNTY CLERK OF COURT

CERTIFIED: A TRUE COPY
Dirk P Hyman
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

App'x 392

Lewd Act

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

97 -GS-21- 347THE DEFENDANT, Andy Eugene Hyman, IS COMMITTED TO THESTATE DEPARTMENT OF CORRECTIONS/COUNTY FOR A TERM OF Fifteen (15)

DAYS/MONTHS/YEARS AND/OR PAY A FINE OF \$ _____ PROVIDED UPON THE

SERVICE OF _____ DAYS/MONTHS/YEARS AND/OR THE PAYMENT OF A FINE

OF _____, PLUS PAY/WAIVE ASSESSMENTS AS APPLICABLE*, THE

BALANCE IS SUSPENDED WITH PROBATION FOR Five (5) YEARS/MONTHS.RESTITUTION - YES/NO

FOR PROPERTY DAMAGE \$ _____

FOR PHYSICAL INJURY \$ _____

3% _____

3% _____

TO BE PAID AT THE RATE OF \$ _____ PER MONTH BEGINNING _____,

TO THE FLORENCE COUNTY CLERK OF COURT FOR _____

**

OTHER CONDITIONS: \$103 dw 60 DARDATE July 31, 1997Frank Lopez
PRESIDING JUDGE

*ASSESSMENTS\$ _____ (100 % of fine added back)

\$ 100.00 (\$100.00 surcharge)

\$ _____ (\$12.00 for DUIs only)

\$ 3.00 (3 %)TOTAL\$ 103.00

CERTIFIED COPY REC'D BY FCSO

DATE 8-1-97

FCSO

Henry C. Anderson
CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.Jemica B. Linker
FLORENCE COUNTY CLERK OF COURT

**PAY TO VICTIM'S COMPENSATION FUND IF SUBROGATED.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

IN THE COURT OF GENERAL SESSIONS

97 -GS-21- 343

STATE OF SOUTH CAROLINA)
)
 -vs-)

SENTENCE UNDER SECTION 5(c) of the
 YOUTHFUL OFFENDER ACT

Andy Eugene Hyman
 Defendant

OFFENSE: CSC-2nd degree

The sentence of the Court is that the Defendant, Andy Eugene Hyman,
 (age 22, birth date 2/19/75) pursuant to Section five (c) (5c)
 of the Youthful Offender Act, is committed to the custody of the Department
 of Corrections, Youthful Offender Division, for an indeterminate period
 of time not to exceed 5 1/2 (6) years

SPECIAL CONDITIONS AS ORDERED BY THE COURT:

Def. is to be entered in Sex Offender Program

July 31, 19 97

Frank Eggers
 PRESIDING JUDGE, TWELFTH JUDICIAL CIRCUIT

WAIVER:

I, Andy Eugene Hyman being age, 22, do hereby consent
 to being sentenced under Section 5(c) of the Youthful Offender Act.

WITNESS:

Ernie R. Dece

Andy Eugene Hyman
 Defendant

Florence, South Carolina

July 31, 19 97

Certified Copy Rec'd

Date 8-1-97

F.D.C.

Henry C. Anderson 394

CERTIFIED: A TRUE COPY
Don P. Hines
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.
Andy Eugene Hyman

AKA:
Race: White Sex: M Age: 41
DOB: SS#: [REDACTED]
Address: Whitney Lane
City, State, Zip: Johnsonville, SC 29555
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Richardson, David A SC Bar# 74742 Defendant
Attorney for Defendant SC Bar# 15636

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 274 Days

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐

☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.00

TOTAL \$ 105.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-21-00744

A/W#: 2015A2110201126

Date of Offense: 10/23/2015

S.C. Code § : 16-03-0655(C)

CDR Code #: 3661

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code:

Sentence Date: 9/15/16

App'x 395

CERTIFIED A TRUE COPY
CLERK OF COURT D.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
IN THE MATTER OF THE)
CARE AND TREATMENT OF;)
)
ANDY EUGENE HYMAN,)
)
)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
CASE #: 2020-CP-21-1045

ORDER OF COMMITMENT

FILED
2021 JUN -9 AM 11:02
CLERK OF DISTRICT COURT
COCOA BEACH, FL
FLORENCE COUNTY, SC

The trial of this case was held in the Florence County Court of Common Pleas the week of June 7, 2021. A jury of citizens from Florence County heard this case pursuant to a request for a jury trial filed by the State. Suzanne J. Shaw from the Attorney General's Office represented the State and James K. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent, Andy Eugene Hyman is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

- (a) Respondent, Andy Eugene Hyman is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent, Andy Eugene Hyman, is to continue to be detained at the Florence County Detention Center, and then transported to the secure facility of the Department of Mental Health. The Detention Center or the Sheriff's Department is to transport Respondent on such scheduled date as is coordinated with the Department of Mental Health.

AND IT IS SO ORDERED.


~~XXXXXXXXXX~~ Roger E. Henderson
Twelfth Judicial Circuit
Court of Common Pleas

June 9, 2021
Florence, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of February, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Roger E. Henderson, Circuit Court Judge

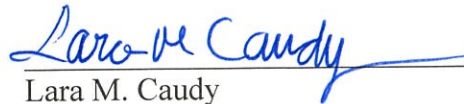
IN THE MATTER OF THE CARE AND
TREATMENT OF ANDY EUGENE HYMAN,

APPELLANT.

APPELLATE CASE NO. 2021-000734

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Record on Appeal in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 16th day of February, 2023.



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Roger E. Henderson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF ANDY EUGENE HYMAN,

APPELLANT.

APPELLATE CASE NO. 2021-000734

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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In this sexually violent predator (SVP) case, the trial judge abused his discretion by admitting evidence through the state’s expert witness concerning Appellant’s results from the penile plethysmograph (PPG) test he underwent as part of his precommitment evaluation since the evidence was unreliable in violation of Rule 702, SCRE, <u>State v. Council</u> , 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), and <u>Watson v. Ford Motor Co.</u> , 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010), and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE.....	7
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STATEMENT OF ISSUE ON APPEAL

In this sexually violent predator (SVP) case, did the trial judge abuse his discretion by admitting evidence through the state's expert witness concerning Appellant's results from the penile plethysmograph (PPG) test he underwent as part of his precommitment evaluation since the evidence was unreliable in violation of Rule 702, SCORE, State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), and Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010), and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCORE?

STATEMENT OF THE CASE

On April 16, 2020, the Attorney General filed a petition seeking to involuntarily commit Appellant pursuant to the Sexually Violent Predator Act (SVPA). R. 319-388. The trial commenced on June 7, 2021 before the Honorable Roger E. Henderson. R. 1. Assistant Attorney General Suzanne Shaw represented the state. R. 1. James Falk represented Appellant. R. 1.

On June 9, 2021, the jury found Appellant was a sexually violent predator under the SVPA. R. 291, l. 25 – 292, l. 11. Judge Henderson ordered Appellant be committed to the Department of Mental Health for long term control, care, and treatment. R. 393.

This appeal follows.

STATEMENT OF FACTS

Appellant was convicted in 1997 of second degree criminal sexual conduct with a minor and lewd act. R. 107, l. 17 – 108, l. 6. He was sentenced to an indeterminate period of time not to exceed six years pursuant to the Youthful Offender Act for second degree criminal sexual conduct with a minor and fifteen years suspended upon the service of five years' probation for lewd act. R. 108, ll. 16-22. Subsequently, in 2016, Appellant was convicted of third degree criminal sexual conduct with a minor. R. 107, ll. 22-24. He was sentenced to ten years imprisonment. R. 109, ll. 1-9.

Before Appellant's anticipated release from the Department of Corrections in February 2021, the state filed a petition pursuant to the Sexually Violent Predator Act (SVPA) seeking to have Appellant involuntarily committed for long term control, care, and treatment. R. 319-388. Dr. Marie Gehle, the chief psychologist with the Department of Mental Health, was court appointed to evaluate Appellant. Dr. Gehle opined that Appellant did not meet the criteria to be committed as a sexually violent predator. R. 206, ll. 1-9. While she found Appellant had been convicted of sexually violent offenses and suffered from a mental abnormality, specifically pedophilic disorder, Dr. Gehle opined Appellant was not likely to engage in acts of sexual violence, as defined under the SVPA, if not confined. R. 190, l. 21 – 191, l. 2; R. 205, l. 16 – 206, l. 9. She determined Appellant's risk of reoffending "is the same as the average sex offender." R. 206, ll. 12-17.

The state sought a second opinion from the Sexual Behaviors Clinic and Lab of the Medical University of South Carolina (MUSC). Dr. Emily Gottfried, the director of the lab, evaluated Appellant in February 2021 and opined Appellant met the criteria to be committed as a sexually violent predator. Like Dr. Gehle, Dr. Gottfried found Appellant had been convicted of

sexually violent offenses and suffered from a mental abnormality, also pedophilic disorder. R. 107, l. 17 – 109, l. 9; R. 121, ll. 11-19. However, it was her opinion that because of Appellant’s disorder, he is likely to reoffend and “poses a danger to public safety.” R. 143, l. 23 – 144, l. 13.

As part of her precommitment evaluation, Dr. Gottfried performed a penile plethysmograph (PPG) test on Appellant. In her testimony before the jury, Dr. Gottfried explained that the PPG “is an objective physiological measure of male sexual arousal.” R. 134, l. 24 – 135, l. 1. She maintained the test is “useful . . . because in these types of evaluations people have [a]n understandable motivation for not be[ing] very forthcoming about what they are currently sexually aroused by.” R. 135, ll. 2-6. She further contended that the PPG is “important . . . because the research suggests that having sexual interest in children *as measured by this test* is a strong predictor or risk factor for future sexual offending.” R. 135, ll. 6-9 (emphasis added).

Gottfried testified that as part of the PPG, Appellant was “administered two separate sets that had a number of trials.” When both sets were viewed together, Appellant “showed clinically significant arousal to scenarios featuring sexual violence against a prepubescent female child, coercion against a prepubescent female child, sexual violence against a pubescent or adolescent child in puberty, three scenarios featuring consensual sexual activity with an adult woman, two scenarios featuring coercion against a prepubescent female child, coercion against an adult man, coercion against an adult woman, two scenarios featuring persuasion against a prepubescent female child, and sexual activity with a male infant.” R. 138, ll. 1-18. She maintained Appellant’s “maximum arousal” during “the first set of trials” “was to a scenario featuring sexual violence against a prepubescent female child” and during the “second set of trials” “was to a scenario featuring coercion against a female prepubescent child.” R. 138, l. 19 – 139, l. 2.

Gottfried asserted these findings were consistent with Appellant's "actual offending history" given Appellant "offended against prepubescent female children." R. 139, ll. 3-5.

The assistant attorney general relied heavily on the PPG evidence during her closing argument to the jury. She went so far as to argue that Appellant's results from the PPG test were sufficient alone to find he should be committed for long term care, control, and treatment. R. 263, ll. 14-23. Specifically, she asserted:

In 1996, he [Appellant] molested three little girls. He was alleged to have and he was charged and he was convicted and he served his time. He started looking at child pornography immediately after he got out, despite having sex offender treatment in the community.

Until he could no longer control himself, in 2015 he molested three more little girls or was alleged to have happened. He was convicted of those offenses and sentenced to ten years. And now he's asking you to let him go back into the community after he has had no further sex offender treatment and after he [recidivated]. I would submit to you that based on that information alone without ***the PPG evidence, which clearly indicates that he has current sexual interest in children***, that information with or without the PPG, indicates that he is likely to reoffend.

But let's go into the PPG. What was he sexually excited by in those scenarios? He was sexually excited by coercive scenarios against prepubescent children. He was sexually excited by coercive scenarios against adults, both men and women. But he was also sexually excited about a scenario featuring an infant and a male. He got erections to all of those things. That was in February of this year. And ***I would submit to you that that, in and of itself, is enough to put him in a secured facility for long term care, control, and treatment.*** I would submit that [he] has, in fact, got an active interest in small children and if he's released to the community he is very, very, [likely] to reoffend. There's not a question of if this individual, it's the question of when. And I would submit that evidence in front of you, we have proven beyond a reasonable doubt that Mr. Hyman is, in fact, a sexually violent predator. We're asking you to commit him to Wellpath Facility for a long term treatment and we thank you.

R. 262, l. 24 – 264, l. 7 (emphasis added).

STANDARD OF REVIEW

“The standard of review for evidentiary rulings is very deferential.” Matter of Bilton, 432 S.C. 157, 161, 851 S.E.2d 442, 444 (Ct. App. 2020), reh’g denied (Dec. 22, 2020). “The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice.” Id. at 161-162, 851 S.E.2d at 444 (quoting State v. Commander, 396 S.C. 254, 262-263, 721 S.E.2d 413, 417 (2011)) (internal quotation marks omitted). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 162, 851 S.E.2d at 444 (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)) (internal quotation marks omitted).

ARGUMENT

In this sexually violent predator (SVP) case, the trial judge abused his discretion by admitting evidence through the state's expert witness concerning Appellant's results from the penile plethysmograph (PPG) test he underwent as part of his precommitment evaluation since the evidence was unreliable in violation of Rule 702, SCRE, *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), and *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010), and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE.

Relevant Facts

Appellant moved pretrial to prohibit Dr. Emily Gottfried, the state's sole witness, from testifying about the PPG test performed on Appellant as part of her precommitment evaluation pursuant to Rule 702, SCRE, *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010), and Rule 403, SCRE. Appellant filed a motion on May 28, 2021, which contained his argument in support of excluding the PPG evidence. R. 295-299.

Appellant argued the PPG test is controversial and there is no evidence of its reliability. He cited to this Court's opinion in *Matter of Bilton*, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020), in which this Court recognized that courts have uniformly declared that PPG test results are inadmissible as evidence because there are no accepted standards for the test in the scientific community. R. 296. Appellant further argued there is no evidence that PPG testing conducted using the "Marshall and the Real Child Voices (RSV) audio and visual scenarios is reliable." R. 297. He concluded, "Absent peer-reviewed studies attesting to the reliability and

standardization of both these stimulus scenarios, the [trial judge] is left with no assurances that the results of [Appellant's] PPG test are reliable.” R. 297.

In support of his argument, Appellant cited to a 2015 article coauthored by Dr. William Burke, PhD, who played a substantial role in the development of the Real Child Voices stimulus set, and Dr. Gregg Dwyer, MD, EdD, who was formally associated with the Sexual Behaviors Clinic and Lab at the Medical University of South Carolina (MUSC). R. 298-299. In the article, the authors wrote: “Wide variation exists concerning stimuli types, assessment protocol, and means of analyzing and interpreting phallometric results in forensic laboratories in North America. Concerns regarding the lack of standardization in phallometry across sites have been discussed since its creation, however, little improvement has been made. There are challenges in the implementation of standardization within jurisdictions and between countries.” R. 298-299 (citing Standardization of Penile Plethysmograph Testing in Assessment of Problematic Sexual Interests, Journal of Sexual Medicine 2015; 12:1853-1854).

In addition to being unreliable, Appellant argued the evidence concerning the PPG was “highly prejudicial.” He asserted, “This is the situation where the jury is gonna grab onto these results from the PPG test, I believe possibly to the exclusion of any other information and not listen to anything else and they’ll [commit] him [Appellant] based on the PPG test [alone].” R. 6, l. 6 – 7, l. 13. Appellant further maintained the probative value of the evidence was outweighed by the danger of unfair prejudice. R. 8, ll. 1-7.

In support of his motion, Appellant proffered the testimony of Dr. Gehle. Dr. Gehle is a clinical psychologist with the Department of Mental Health. R. 10, ll. 15-17. She conducts precommitment evaluations pursuant to the SVPA. Throughout her career, she has conducted over two hundred evaluations. R. 10, ll. 18-24. Gehle explained that she does not use the PPG

test as part of her precommitment evaluations nor does any other psychologist at the Department of Mental Health because the test is not standardized, meaning it is “given differently by different people” which “makes the results unreliable.” R. 10, l. 25 – 11, l. 12. She testified that in psychology, experts typically use standardized testing. The “hallmark of standardized testing is the IQ test.” R. 11, ll. 18-22. Dr. Gehle asserted:

It has an instruction book. It has a scoring manual. . . . Everybody is trained to give it the exact same way. Everybody is trained to score it the exact same way. There is not a lot of interpretation there. That way I know if I give . . . an IQ test I can compare it to somebody else who gave the same IQ test and I’ll know that they gave it the same way and I’ll know that the results are comparable. When you take away that standardization you don’t know how, how this person gave the test. And in terms of the PPG . . . everybody uses different stimulus sets. The stimulus sets are the things that they’re showing the person to [elicit] sexual arousal. Those vary from site to site. People use different stimulus sets. And there is no research on the stimulus set that is used at MUSC, the real child voices, to show that it’s [a] valid, reliable assessment. So we don’t know if when they say that they’re measuring pedophilic arousal if they’re actually measuring pedophilic arousal. We don’t know if they, when they say they’re measuring exhibitionistic arousal if they’re actually measuring that because it’s not been proven in research. [There is no] public research on that stimulus set. So it’s similar to if I decided to give an IQ test, but I’m gonna make up my [own] words, I’m gonna make up my own, I don’t know, portions of the test to give to somebody but then I’m gonna say it’s an IQ test because it looks similar to other IQ tests. It’s just not the way it works in psychology.

R. 11, l. 22 – 13, l. 8.

Dr. Gehle further explained that one of the “primary types of reliability is test/retest. So if I give the test on one day, can I come back later and get a similar result with the same test.”

R. 14, ll. 8-13. She asserted that the “test/retest reliability” of the PPG is “very poor.” R. 14, ll. 8-17.

Moreover, Gehle testified that one of the stimulus sets used by MUSC to measure arousal, called “real child voices,” was developed by Dr. William Burke. R. 15, ll. 3-15. It includes “auditory scenarios followed by some pictures.” The auditory scenario and pictures

relate to the category of arousal the psychologist is attempting to measure. For example, if the psychologist is attempting to measure pedophilic arousal, the auditory scenario may be an interaction between an adult male and a real child actor, followed by a picture of a fully clothed female child. R. 15, l. 19 – 16, l. 12. Dr. Gehle asserted that to her knowledge, there have been no peer reviewed studies on the real child voices stimulus set. R. 17, ll. 14-16. Peer reviewed studies are important because such studies would show whether the set is reliable and valid. Gehle explained that “reliability is how a test is used . . . over time so can you give the same test and get similar results” while “validity is whether you are measuring what you say you’re measuring, what you think you’re measuring.” R. 17, l. 18 – 18, l. 3.

One of the few books that have been written about conducting sexually violent predator evaluations is Evaluations of Sexually Violent Predators, Best Practices by Phillip Whitt and Mary Alice Conroy. The book contains recommendations from experts in the field about how to conduct such evaluations. R. 18, l. 19 – 19, l. 23. Dr. Gehle explained that the authors recommend against the use of PPG testing in SVP precommitment evaluations because the reliability and validity of such testing cannot be established given that the test is not standardized. R. 21, ll. 4-16.

Lastly, Dr. Gehle testified that the PPG is often used during treatment for sex offenders. Its purpose in therapy is to “start a conversation with the offender about their arousal.” R. 20, l. 5 – 21, l. 1. Whereas, during an evaluation, the purpose of the PPG is to diagnose an offender or measure risk assessment. R. 19, l. 24 – 20, l. 4. Gehle asserted that “the stakes are very different” in a therapy setting as opposed to a precommitment evaluation. R. 20, ll. 8-17.

In response to Appellant’s motion, the state proffered the testimony of Dr. Emily Gottfried, the director of the Sexual Behaviors Clinic and Lab at MUSC. Dr. Gottfried manages

the contract MUSC has with the Attorney General's Office to conduct precommitment evaluations pursuant to the SVPA. R. 31, l. 25 – 32, l. 13. She has completed seventeen precommitment evaluations and is in the process of conducting an additional five. R. 35, ll. 13-17. Gottfried orders a PPG be conducted on all adult men who are referred to the lab for evaluation. R. 34, ll. 5-6.

Gottfried maintained that the Sexual Behaviors Clinic and Lab is “certified by Limestone Technologies as a clinical and research laboratory” and she is a “Limestone Technology Certified Clinical Analyst.” R. 36, ll. 10-24. Gottfried later clarified that Limestone Technologies is merely a company that developed the hardware and software used by some psychologists to conduct PPGs. R. 36, ll. 16-20. The Sexual Behaviors Clinic and Lab is not certified by “any independent agency” nor are any of the analysts, including Gottfried. R. 59, ll. 6-21.

Gottfried has written twenty-six peer reviewed articles. One of those articles concerns the PPG. The article compares the differences and similarities between the use of the PPG in Canada, the United States, and the United Kingdom. R. 33, ll. 12-17. She is also “working on a couple of studies” concerning the validity and reliability of the real child voices stimulus set, which Gottfried used during the PPG test conducted on Appellant. However, none of those studies have been peer reviewed. R. 56, ll. 12-16. Gottfried maintained that her current study, again which has not been peer reviewed, “found that the results of the Marshall [stimulus set] and RCV [real child voices stimulus set] were really consistent with one another. We also found that the RCV were more likely to be valid. So *if somebody is going to have a valid test it was more likely to be the RCV than the Marshall.*” R. 56, l. 22 – 58, l. 8 (emphasis added).

Dr. Gottfried admitted there is no way to verify “false/positives” with the PPG, which is why she only uses the PPG results “as one data point” in reaching her final conclusion. R. 62, l.

22 – 63, l. 12. She also uses “a very conservative cut off score.” R. 63, ll. 1-2. She explained, “So the cut score is how you can tell if a test is clinically significant arousal or not. So it is a valid test? So is there millimeter of change from the baseline where they started, flaccid penis. You want it to be over a particular cut score millimeters of change before you say, like, okay that is arousal.” R. 63, ll. 13-19. Gottfried testified that the “literature” recommends doing at least ten percent of a full erection which would be 2.5 mm.” Her lab uses 5 mm. Her “colleagues in Canada use 1 mm.” However, Gottfried emphasized that Canada does not have a sexually violent predator act so psychologists there use the PPG only for treatment. R. 63, ll. 20-25; R. 64, ll. 8-13.

After the proffer, Appellant’s counsel argued that while there may be studies about the use of the PPG test, there have been no peer reviewed articles about the reliability and validity of the real child voices stimulus set which was used as part of the PPG conducted on Appellant. R. 64, l. 21 – 65, l. 1. He also asserted that being certified by the manufacturer is different than being certified by an independent agency. Specifically, he stated, “I mean, the guy who invented the equipment . . . said yeah you’re using [it] the way I want it used.” R. 65, ll. 5-10. Counsel concluded that any testimony concerning the use of the PPG and its results should be excluded because the evidence is not reliable or valid, particularly when used in a high stakes evaluation like in this case. R. 65, ll. 10-14.

The trial judge found the evidence was admissible. He asserted, “Mr. Falk [Appellant’s counsel], I certainly understand your concern about the results of the test, but in this particular case I’m going to find that the relevance outweighs, the probative value outweighs the prejudice so I’m going to allow the PPG test results to come in by way of your witness, Ms. Shaw [the assistant attorney general].” R. 69, ll. 14-19.

Before Dr. Gottfried testified about the PPG in front of the jury, Appellant renewed his objection. The judge again overruled the objection. R. 134, ll. 1-17.

Discussion

The trial judge abused his discretion by permitting Dr. Gottfried, who was qualified as an expert in clinical and forensic psychology, to testify about Appellant's results from the PPG test since the evidence was unreliable in violation of Rule 702, SCRE, State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), and Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). Moreover, the probative value of the evidence was substantially outweighed by the danger of unfair prejudice and should have been excluded pursuant to Rule 403, SCRE.

“The admission of expert testimony is governed by Rule 702, SCRE, which provides: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

“Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.” Id. at 445, 699 S.E.2d at 175. “Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions.” Id. at 445-446, 699 S.E.2d at 175 (citing Rule 703, SCRE).

“[E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, *the trial court must evaluate the substance of the testimony and determine whether it is reliable.* Id. (emphasis added) (internal citation marks omitted).

To determine reliability, the trial judge should apply the factors outlined by our Supreme Court in State v. Jones, 273 S.C. 723, 731, 259 S.E.2d 120, 124 (1979), including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). “Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Id. (citing Rule 403, SCRE).

“The PPG measures changes in blood flow to the male sex organ while the test subject views a series of visual and auditory stimulants corresponding to different ages, genders, and scenarios.” Matter of Bilton, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020). “Certain levels of increased blood flow are associated with arousal.” Id.

In Bilton, this Court addressed a narrow issue regarding the admissibility of PPG test results through an expert who did not administer or observe the PPG testing nor review the test’s

raw data. Id. This Court held that “due process does not allow a testifying expert to be a pipeline for someone else’s scientific work to be admitted into evidence without a baseline demonstration of reliability.” Id. at 167, 851 S.E.2d at 446. It concluded the trial judge abused his discretion by admitting the PPG evidence and, finding the error was not harmless, remanded for a new commitment trial. Id. at 167, 851 S.E.2d at 447.

In so holding, this Court emphasized that the PPG “test is controversial and has been criticized for a lack of standardization and for being subject to manipulation.” Id. at 162, 851 S.E.2d at 444 (citing United States v. Rhodes, 552 F.3d 624, 626-627 (7th Cir. 2009) and United States v. Weber, 451 F.3d 552, 565 (9th Cir. 2006)). It noted that “with limited exceptions . . . courts have ‘uniformly’ declared that PPG test results are ‘inadmissible as evidence because there are no accepted standards for this test in the scientific community.’” Id. at 162-163, 851 S.E.2d at 444 (quoting Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1266 (9th Cir. 2000)). This Court further emphasized that “some authorities take the position that the PPG has value in treating sex offenders but that concerns about reliability and a lack of uniform standards preclude its admission as evidence at trial.” Id. at 164, 851 S.E.2d at 445 (citing Commonwealth v. Ortiz, 93 Mass.App.Ct. 381, 100 N.E.3d 790, 796-797 (2018) (collecting cases)). Other “jurisdictions have held that an expert may rely on a PPG as a basis for the expert’s opinion but have expressly declined to consider whether the test results should be disclosed to the jury given the special weight the jury is likely to afford things that have the appearance of scientific evidence.” Id. at 164-165, 851 S.E.2d at 445 (citing In re Commitment of Sandry, 367 Ill.App.3d 949, 306 Ill.Dec. 202, 857 N.E.2d 295, 317 (2006)).

Dr. Gehle’s *in camera* testimony aligns with what other jurisdictions and courts have concluded. She maintained that the PPG test is not standardized, meaning it is “given differently

by different people” which “makes the results unreliable.” R. 10, l. 25 – 11, l. 12. Dr. Gehle further testified that to her knowledge, there have been no peer reviewed studies on the real child voices stimulus set. R. 17, ll. 14-16. She emphasized that peer reviewed studies are important because such studies would show whether the set is reliable and valid. R. 17, l. 18 – 18, l. 3. Moreover, Dr. Gottfried even admitted there were no peer reviewed studies showing the real child voices stimulus set, which she used during the PPG test conducted on Appellant, is valid and reliable. She is merely “working on a couple of studies” in an attempt to show the validity and reliability of the RCV stimulus set. R. 56, ll. 12-16. Additionally, Dr. Gottfried admitted there is no way to verify “false/positives” with the PPG. R. 62, l. 22 – 63, l. 12. Consequently, under the framework outlined by our Supreme Court in Jones, the state failed to establish that the PPG test was reliable.

Because the PPG test and Appellant’s results from the test are unreliable, Dr. Gottfried’s corresponding testimony had no probative value. Assuming the evidence had probative value, it was outweighed by the danger of unfair prejudice to Appellant. Because the PPG test and its results had the appearance of scientific evidence, it is likely the jury afforded the evidence “special weight.” See Bilton, 432 S.C. at 164-165, 851 S.E.2d at 445. Moreover, the state relied heavily on the results during its closing argument going so far as to argue that the result alone were “*enough to put him in a secured facility for long term care, control, and treatment.*” R. 263, ll. 21-23 (emphasis added).

Respectfully, the trial judge abused his discretion by permitting Dr. Gottfried to testify about the PPG test and Appellant’s results. This Court should reverse Appellant’s commitment and remand for a new trial.

CONCLUSION

Based on the foregoing argument, this Court should reverse Appellant's commitment and remand this matter for a new trial.

Respectfully Submitted,

s/ Lara M. Caudy _____
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of March, 2023.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

March 3, 2023

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2021-000734

IN THE MATTER OF THE CARE AND TREATMENT
OF ANDY EUGENE HYMAN,

APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Judge Henderson did not abuse his discretion in admitting evidence regarding a penile plethysmograph test performed by the State's expert, which she used in formulating her opinion, because the evidence established penile plethysmography is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In 2016, Appellant Andy Eugene Hyman pled guilty in Florence County to one count of criminal sexual conduct with a minor in the third degree, and was sentenced to ten years incarceration. Prior to Appellant's release from incarceration, Respondent State of South Carolina commenced proceedings pursuant to the Sexually Violent Predator Act (SVPA) seeking Appellant's commitment to the South Carolina Department of Mental Health (DMH) for long term control, care and treatment as a sexually violent predator. The matter was called for a jury trial on June 7, 2021, before the Honorable Roger E. Henderson, Circuit Court Judge.

Prior to trial, Appellant moved to exclude any testimony by the State's expert regarding a penile plethysmograph (PPG) performed during a comprehensive psychosexual evaluation of Appellant's mental status and risk to reoffend sexually. Before swearing the jury, the circuit court conducted a full evidentiary hearing pursuant to State v. Council,¹ during which Marie Gehle, Psy.D, of DMH, testified for Appellant, and Emily Gottfried, Ph.D., of the Medical University of South Carolina (MUSC), testified for the State.

A. Pre-Trial Hearing

Dr. Gehle

Dr. Gehle testified she is a clinical forensic psychologist with DMH, she conducts pre-commitment evaluations under the SVPA, and she has never utilized the PPG test because she believes it is not standardized which makes it unreliable. She stated everyone conducting PPG tests uses different stimulant sets, and there is no research on the stimulus sets utilized in MUSC's PPG tests, particularly the Real Child Voices (RCV) stimulus set . She also testified about a "best practices" book regarding evaluation of sexually violent predators, which recommended not using

¹335 S.C. 1, 515 S.E.2d 508 (1999).

the PPG test as part of such evaluations. (Trial Transcript [TT], pp. 101-115; Record on Appeal [R.], pp. 8-22).

On cross-examination, Dr. Gehle acknowledged the “best practices” book she referenced was published in 2009, and stated she was unaware of any updates since the original publication. She stated she remembered looking at articles from 2019 and 2020, and the 2019 article was about a collaboration of professionals regarding PPG standardization issues. She testified she was not trained to administer a PPG test, she had no expertise in using the PPG test, she had never published any articles about the reliability of the PPG, and she had never seen a PPG test performed. In addition, she was unaware of a 2019 meta-data study out of Washington State which found the PPG test had a 92% reliability factor in reproducing results indicating a pedophilic disorder. (TT, pp. 115-122; R., pp. 22-29).

Dr. Gottfried

Dr. Gottfried is an Assistant Professor of Psychiatry and Behavioral Sciences at MUSC, and the Director of MUSC’s Sexual Behaviors Clinic and Lab (SBCL). In her capacity as Director, she oversees all SBCL administrative duties, performs most of the evaluations, as well as overseeing and providing treatment. She is a clinical member of the Association for Treatment of Sexual Abusers (ATSA), and sits on the Executive Committee of the American Psychology and Law Society, and the Executive Board for the Clinical Psychology Section of the American Psychological Association. She has twenty-six peer reviewed published articles, including an article comparing the PPG test’s use in Canada, the United Kingdom and the United States, has written book chapters about best practices in sexual behavior evaluations that included information about the PPG test, and has given research presentations regarding the PPG test at national and international conferences. (TT, pp. 124-127; R., pp. 31-34).

Dr. Gottfried orders PPG tests for all adult men being evaluated at the SBCL. She is trained and certified to administer and interpret the PPG test by Limestone Technologies, which developed and manufactures the PPG test machine and software used in the SBCL. The SBCL is certified by Limestone as a clinical and research laboratory, which is the highest level of certification. (TT, pp. 129-130; R., pp. 36-37).

Research literature indicates that sexual arousal to non-consensual abusive scenarios is a strong predictor of sexual recidivism, and the PPG test provides a physiological measure of male sexual arousal. The PPG test has been peer reviewed in both the sex offender and general sexual behavior literature.

The SBCL has a standard protocol used in every PPG test performed there. The test room is climate controlled, including the humidity and temperature, and the gauge used in the test must be calibrated using a five step process before the test can start. The testing equipment and software includes countermeasures in the event the person does something that might interfere with the test results, *i.e.*, moving around, changes in breathing pattern, etc. The SBCL also uses a very conservative cut score for significant arousal to minimize the possibility of false/positive results. (TT, pp. 132-137; R., pp. 39-44).

The ATSA practice guidelines support responsible use of the PPG test as a data point in sexual behavior evaluations and treatment. Dr. Gottfried stated, “responsible use” means you are following the protocol, interpreting the results in a standardized manner, and not using the PPG test results as the “sole data point to look at risk, release recommendations, diagnosis.” (TT, pp. 138-139; R., pp. 45-46).

Dr. Gottfried testified the recommendation not to use the PPG in the 2009 book Dr. Gehle referenced was premised on a 2006 article from Bill Marshall, who subsequently published another

article in 2014 “that was much more supportive of the PPG.” She stated research since 2009, including the 2019 meta-analysis of data from thirty to fifty studies with PPG test results of over 10,000 men, addressed many issues identified in earlier PPG test research. In addition, the Diagnostic and Statistical Manual, 5th Ed., (DSM-5) recognizes use of the PPG test. (TT, pp. 139-140; R., pp. 46-47).

Dr. Gottfried testified men who sexually offend against children may do so for multiple reasons that are not due to sexual arousal to prepubescent children, and the PPG test is most reliable in differentiating between men who have sexual arousal to children and those who do not. The 2019 meta-analysis study considered multiple groups of men, including men who had sexually offended against children, men who had not sexually offended against children, men who had never been arrested before, and men who had recidivated by committing a new sexual offense. The results indicated that when compared to other groups, the men who had offended against children showed “really robust differences [and] much greater arousal to the child scenarios than the other groups.” (TT, pp. 140-143; R., pp. 47-50).

The SBCL uses the RCV stimulus set, which comes with every PPG test system from Limestone and is used in between fifty and one hundred labs, as well as the Minnesota, California, New York, Illinois and Missouri sexually violent predator programs. The SBCL also uses the Marshall stimulus set, which has been used and researched for many years. Dr. Gottfried testified the SBCL uses both sets because “[w]e want to do a multi-method assessment where we’re measuring the same thing in multiple different ways.” (TT, pp. 144-145; R., pp. 51-52).

Dr. Gottfried testified research regarding the PPG test has been increasing, and a 2019 “best practices” book regarding sexually violent predator evaluations includes a chapter discussing the utility of using the PPG test in sexually violent predator evaluations. She emphasized she uses

the PPG test results as one data point, and does not base any diagnosis or opinion solely on it. (TT, pp. 147-148; R., pp. 54-55).

On cross-examination, Dr. Gottfried testified she was working on a couple of studies regarding the RCV stimulus set, but none of the studies had been published in peer reviewed journals yet. She also testified she was participating with international partners in studies comparing the RCV, Marshall and other stimulus sets, and abstracts of those studies had been peer reviewed by scientific committees and accepted for presentation at national and international research conferences, including the American Academy of Forensic Sciences, the International Association for Sex Research, the American Psychology and Law Society, and ATSA. (TT, pp. 149-151; R., pp. 56-58).

Dr. Gottfried again testified that everyone in the SBCL is certified by Limestone to administer the PPG test, which included having Limestone conduct on-site inspections of the PPG lab and procedures. She stated she did not know if other certifications were available, or what companies other than Limestone do. (TT, p. 152; R., p. 59).

In order to minimize the possibility of false/positive PPG test results, the SBCL uses a cut score of 5mm change in tumescence to establish a clinically significant arousal. The SBCL's cut score is double the research literature's recommended cut score of 2.5mm. They also look for consistency between the person's offense history and self-report, as well as response consistency across multiple stimulus sets. (TT, pp. 155-157; R., pp. 62-64).

Pre-Trial Ruling

At the conclusion of testimony, Appellant acknowledged there are studies regarding the PPG test, but his "concern" was the RCV stimulus set used in the Limestone system, which was not part of a "peer-reviewed study showing its validity," and the Limestone certification was "not

necessarily the same as being certified by some kind of independent agency.” The State responded that Dr. Gottfried testified there was considerable literature finding the RCV and Marshall stimulus sets are reliable, and the PPG test results was only one data point she considered in her evaluation. The State further argued the PPG test evidence was relevant to show Appellant’s current arousal pattern. Judge Henderson found that given the circumstances of the case, the probative value of the PPG test evidence outweighed the prejudice, and the evidence was admissible. (TT, pp. 157-162; R., pp. 64-69. -69).

B. Trial

Dr. Gottfried’s Trial Testimony

Before the jury, Dr. Gottfried was qualified as an expert in clinical psychology and forensic psychology, and specifically sex offender evaluations, and she testified MUSC was retained to perform a pre-commitment evaluation of Appellant pursuant to the SVPA. As part of her evaluation protocol, she reviewed criminal history records, incident/police reports relating to the person’s offenses, prison records, medical records and mental health records. Appellant was transported to MUSC on several occasions for psychological and physiological testing, and a clinical interview, which included reviewing the tests’ results with him. (TT, pp. 187-200; R., pp. 94-107).

Dr. Gottfried testified Appellant pled guilty in 1997 to one count of criminal sexual conduct second degree and one count of lewd act on a minor. (State’s Exhibit 1 [1997 Indictment and Sentencing Sheet]; R., pp. 389-391). The charges involved three female victims, two were six years old and one was eight years old. During the interview, Appellant told Dr. Gottfried he fondled two of the girls, got them to grab his penis, and he may have rubbed his penis in their

genital area and played with their butt. The third victim was Appellant's neighbor, and he said he talked her into taking her clothes off because he wanted to see her. Appellant said he talked the victims into engaging in the behaviors with him, and told them not to tell anybody because he would get in trouble.

In 2016, Appellant pled guilty to one count of criminal sexual conduct with a minor third degree - commit/attempt lewd act on minor under sixteen years of age. (State's Exhibit 2 [2016 Sentencing Sheet]; R., pp. 392). The charges involved three female victims, who were five, seven and eight years old. Appellant told Dr. Gottfried he did not offend against the five and seven year old victims, but he did offend against his eight year old niece by fondling her, feeling her chest, her genitals and her butt, and rubbing his penis on her, and he did this four or five times. Appellant then admitted he performed oral sex on his niece and got her to put her mouth on his penis. In addition to the 1997 and 2016 convicted offenses, Appellant told Dr. Gottfried he exposed himself to a female cousin when he was fifteen or sixteen years old, and sexually touched both of his sisters when he was eighteen or nineteen years old, and they were approximately eleven and fifteen years old. (TT, pp. 200-211; R., pp. 107-118).

Dr. Gottfried testified an offender's offending history is relevant to assessing future risk because prior behavior is the best predictor of future behavior, and the offending history may show patterns of behavior. Dr. Gottfried testified Appellant's criminal history and admissions to her demonstrated Appellant had a pattern of inappropriate sexual behaviors with prepubescent female children beginning when he was fifteen to sixteen years old, which included multiple offenses against prepubescent children under ten years old, fantasizing about prepubescent children and looking at sexualized images of children. Based on all the information she gathered during the

evaluation, Dr. Gottfried diagnosed Appellant with pedophilic disorder, which is an intense and persistent sexual arousal to prepubescent children. (TT, pp. 212-216; R., pp. 119-123).

Dr. Gottfried then testified about the standard battery of tests the SBCL uses in evaluating all adult men, which were administered to Appellant as part of the psychosexual evaluation. The tests included the Minnesota Multiphasic Personality Inventory Version 3 (MMPI), the Personality Assessment Inventory (PAI), and the Multidimensional Inventory of Development Sex and Aggression. (MIDSA). Some of the results from these tests indicated Appellant tried to present himself in an overly positive light, he did not want to admit some minor faults that most people will admit, he was reluctant to admit having undesirable negative reactions, and he had some feelings of sexual inadequacy with adults. (TT, pp. 216-221; R., pp. 123-128).

Dr. Gottfried also used the Sexual Violence Risk-20, which is a tool to help scientifically structure professional judgment when looking for known risk factors relevant to the person being evaluated. She noted Appellant had a history of problems with sexual deviance, consistent sexual arousal to prepubescent children, sexual preoccupation during his offending, a reported history of being the victim of child abuse, offending against his victims multiple times across many years, some psychological coercion in sexual offending, and a possible negative attitude about supervision. (TT, pp. 221-223; R., pp. 128-130).

As part of her assessment of Appellant's risk to reoffend sexually, Dr. Gottfried used two actuarial risk assessment tools, the Static-99R and the Static-2002R. Appellant's score on the Static-99R was two, and his score on the Static-2002R was four, which were in the average category for reoffending when compared to other offenders. She testified these risk assessments only include offenders who have offended and then committed new detected offenses, and only

approximately thirty percent of sex offenses are reported, so the Static scores may potentially underestimate the actual risk of recidivism. (TT, pp. 223-226; R., pp. 130-133).

Dr. Gottfried testified about the PPG test in general, explaining what it measures and how it is administered, and describing the stimulus sets used during the test. Judge Henderson sustained Appellant's objection to testimony about the PPG test reliability, finding the State could redirect or recall Dr. Gottfried if Appellant opened the door to the reliability issue on cross-examination or during Dr. Gehle's direct testimony. (TT, pp. 227-230; R., pp. 134-137).

Thereafter, Dr. Gottfried testified Appellant showed clinically significant arousal on both stimulus sets to scenarios featuring sexual violence against a prepubescent female child, coercion against a prepubescent female child, sexual violence against a pubescent or adolescent child, persuasion against a prepubescent female child, and sexual activity with a male infant. He also showed significant arousal to scenarios featuring consensual sexual activity with an adult woman. Appellant's maximum arousal on the first stimulus set was to a scenario featuring sexual violence against a prepubescent female child, and his maximum arousal on the second stimulus set was to a scenario featuring coercion against a female prepubescent child. Dr. Gottfried stated the PPG test arousal pattern was consistent with Appellant's history of sexually offending against prepubescent female children. (TT, pp. 230-232; R., pp. 137-139).

Dr. Gottfried testified there are dynamic risk factors that are not considered by the Static risk assessment tools, but can be addressed in treatment. She found Appellant's dynamic risk factors include sexual arousal to children, sexual preoccupation, chronic sex offending, grooming behaviors, negative attitudes toward supervision, and poor insight into his need for management and treatment of his sexual arousal to children. She further testified Appellant told her he had not really told anyone who might be a support for him in the community about his offending behavior,

and he had no plans to attend sex offender treatment in the community. In Dr. Gottfried's opinion, Appellant's stated plan to prevent himself from reoffending by just not thinking about it was not a realistic plan, especially for someone with pedophilic disorder. (TT, pp. 232-236; R., pp. 139-143).

Dr. Gottfried testified to a reasonable degree of psychological certainty that Appellant has pedophilic disorder, he fantasizes about prepubescent children, and he acted on his pedophilic disorder despite intervention and prior treatment, which makes him likely to reoffend sexually against children. She opined Appellant has serious difficulty controlling his pedophilic impulses, and his risk to reoffend poses a danger to public safety. (TT, pp. 236-238; R., pp. 143-145).

Dr. Gehle's Trial Testimony

Dr. Gehle explained her evaluation protocol and testified she reviewed all the available documentation regarding Appellant. She also diagnosed Appellant with pedophilic disorder, sexually attracted to females, non-exclusive type, stating Appellant's criminal history provided sufficient information to make that diagnosis. Dr. Gehle stated she heard Dr. Gottfried's testimony regarding the PPG test results, and she was not surprised by any of the results. (TT, pp. 273-294; R., pp. 180-201).

Dr. Gehle also scored the Static-99R and Static-2002R, and placed Appellant in the average risk to reoffend category. The only dynamic risk factor she assigned to Appellant was a sexual preference for prepubescent children. She did not find he had a sexual preoccupation because "he did not seem to be dominated by his sexuality," and "it wasn't on his mind all the time." Dr. Gehle opined Appellant was not likely to reoffend sexually, and his risk was "the same as the average sex offender." (TT, pp. 288-299; R., pp. 195-206).

On cross-examination, Dr. Gehle acknowledged Appellant did not disclose to her that he exposed himself to his twelve year old female cousin when he was fifteen years old, or that he

touched his two minor sisters inappropriately when he was approximately eighteen years old. She further acknowledged that during her interview with Appellant, she specifically asked him if he had any sexual contact with family members and he told her no, which was false. (TT, pp. 307-309; R., pp. 214-216).

Dr. Gehle stated Appellant told her he did not need any sex offender treatment, even though he had sex offender treatment when he was incarcerated on the 1997 conviction and in the community after he was released, and subsequently reoffended. He also denied he was at any risk to reoffend. (TT, pp. 311-313; R., pp. 218-220).

Verdict

The jury found beyond a reasonable doubt that Appellant is a sexually violent predator, and Judge Henderson placed him in DMH's custody for long term control, care and treatment. (TT, pp. 384-385 Order of Commitment filed June 9, 2021; R., pp. 291-292, 393). This appeal followed.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice.” State v. Jackson, 384 S.C. 29, 681 S.E.2d 17, 19 (Ct. App. 2009). ““The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion.”” State v. Prather, 429 S.C. 583, 840 S.E.2d 551, 559 (2020) (*quoting* State v. Chavis, 412 S.C. 101, 771 S.E.2d 336, 338 [2015]). ““A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion,”” which ““occurs when the conclusions of the [trial] court are either controlled by an error of law or are based on unsupported factual conclusions.”” *Id.* (alteration in original).

Appellate courts review Rule 403 rulings pursuant to an abuse of discretion standard and give great deference to the trial court. Lee v. Bunch, 373 S.C. 654, 647 S.E.2d 197, 199 (2007). A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should only be reversed in exceptional circumstances. Johnson v. Horry County. Solid Waste Auth., 389 S.C. 528, 698 S.E.2d 835, 838 (Ct. App. 2010).

ARGUMENT

Judge Henderson did not abuse his discretion in admitting evidence regarding a penile plethysmograph performed by the State's expert which she used in formulating her opinion, because the evidence established penile plethysmography is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests.

Appellant contends Judge Henderson erred in admitting Dr. Gottfried's testimony regarding the PPG test conducted as part of her comprehensive psychosexual evaluation of Appellant's mental status and risk to reoffend, asserting there was no evidence the PPG test is reliable, and its admission was more prejudicial than probative. As support, Appellant primarily relies on dicta from In re Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), while ignoring virtually undisputed evidence before Judge Henderson regarding the research and acceptance of the PPG test. He also presents an extremely truncated and misleading summation of Dr. Gottfried's testimony.

In considering the admissibility of scientific evidence, the court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Jones, 343 S.C. 562, 541 S.E.2d 813, 819 (2001). This type of evidence is also subject to attack for relevancy and prejudice, and once the evidence is admitted, the jury may give it such weight as it deems appropriate. State v. Council, 335 S.C. 1, 515 S.E.2d 508, 517-518 (1999).

A. PPG Testing Reliability

In this case, Judge Henderson heard extensive testimony regarding competing expert views of PPG testing reliability. Dr. Gehle testified she read articles about PPG test standardization

issues, and cited a “best practices” book published in 2009, which recommended against using PPG tests in pre-commitment sexually violent predator evaluations. She stated the PPG test is used in treatment, but differentiated treatment use from sexual predator evaluations because of the possible outcomes. She testified there was no “research on the stimulus sets used at MUSC, specifically the RCV, showing it is a reliable assessment of pedophilic arousal.” (TT, pp. 103-115; R., pp. 10-22).

On cross-examination, Dr. Gehle admitted the 2009 “best practices” book she cited had not been updated since 2009, and stated she was unaware of any developments in standardizing the RCV and Marshall stimulus sets. She further admitted she had no actual training or experience in administering PPG tests or interpreting PPG test results, she had never seen a PPG test performed, and she was “not aware” there was a protocol and standard procedure for administering the test. Dr. Gehle also admitted she was unaware of the 2019 meta-analysis of multiple studies involving thousands of PPG tests, even stating she did not “actually know what [State’s counsel was] talking about.” She testified she heard the PPG test stimulus sets “once,” but it had been “too long” ago for her to state what a particular scenario described. (TT, pp. 115-122; R., pp.22-29). In short, Dr. Gehle’s knowledge regarding the PPG test was extremely limited.²

By comparison, Dr. Gottfried testified extensively regarding the use and reliability of PPG testing, including her first-hand training and experience, multiple research studies and publications

²Appellant’s reliance on Dr. Gehle’s testimony and Bilton as support for excluding the PPG test evidence in this case is interesting. In Bilton, this Court held the State’s expert was not qualified to testify about the PPG test because she possessed only a basic familiarity with the PPG test and how it is performed, had never seen one performed, and was not familiar with the stimulus sets and machine. 851 S.E.2d at 445. If the Bilton court found the expert’s qualification and experience with the PPG test was insufficient to establish basic reliability, Dr. Gehle’s utter lack of qualification and experience with the PPG test patently renders her testimony insufficient to establish the PPG test is not reliable, especially when compared with Dr. Gottfried’s extensive knowledge and first-hand experience with conducting and interpreting PPG tests.

regarding the reliability of the PPG test, the DSM-5 reference to the PPG test, and Dr. Gottfried's active participation in on-going national and international studies and scientific presentations regarding PPG testing in general and the RCV stimulus set in particular. She testified in depth regarding the SBCL protocols and quality control procedures used in every PPG test the lab conducts.³ She stated the PPG test research has been increasing, and a 2019 "best practices" book specifically about sexually violent predator evaluations includes a chapter discussing the utility of PPG testing in such evaluations.

Notwithstanding the Bilton dicta claiming near uniformity of other jurisdictions excluding the PPG test, courts, including South Carolina circuit courts, have recognized the general acceptance and admissibility of the PPG test in sexually violent predator cases.⁴ In In re Detention of Halgren, 156 Wash. 2d, 132 P.3d 714 (2006), the Washington Supreme Court found PPG test results were admissible as part of the diagnostic process, and the PPG test testimony would assist the jury in understanding the expert's sexual deviancy diagnosis.⁵ *Id.* at 719. The court further found the issue of the PPG test's reliability goes to the weight of the evidence rather than its

³In his Statement of Facts, Appellant discounts the training and protocols established by Limestone and utilized at MUSC because Limestone "is merely a company that developed the hardware and software used by some psychologists to conduct PPG tests," and no "independent agency" certifies the labs or analysts. (Brief of Appellant, p. 11). It is simply inaccurate to claim no independent agency has evaluated Limestone's system. As discussed below, federal government agencies and private insurance companies have evaluated the Limestone system and approved it as a valid medical test. Once the system was approved, who better than the company that developed it to train people how to use it?

⁴In addition to the instant case, PPG test evidence was admitted in In re Ronald MJ Gregg, 2018-CP-10-03472 (Jefferson, J.)(*rev'd* August 10, 2022; Petition for Writ of Certiorari filed December 7, 2022); In re Shawn Torlif Daily, 2019-CP-42-03230 (Kelly, J.) (appeal pending); In re James Lewis Williford, 2019-CP-04-01380 (Sprouse, J.) (appeal pending).

⁵Significantly, Washington's sexual predator statute expressly gives the courts the discretion to order the person to comply with a PPG test if requested by the evaluator. RCW §71.09.050(1). Thus, the Washington legislature recognized the PPG test is a valuable tool that should be available to evaluators if they believe it is necessary.

admissibility.⁶ *Id.*; *see also In re Detention of Herrick*, 198 Wash. App. 439, 393 P.3d 879, 885 (2017) (PPG testing may provide critical information to an evaluator in determining if alleged sexual predator has a mental abnormality, and PPG testing is an effective and generally accepted method for evaluating sex offenders).

The Illinois appellate court found PPG test evidence was admissible in *In re Commitment of Sandry*, 367 Ill.App.3d 949, 858 N.E.2d 295 (2006). As to the admissibility of a particular test or methodology, the court stated: “once it is determined that a methodology is generally accepted, it follows that it has achieved a sufficient degree of reliability and validity to cross the threshold of admissibility.” *Id.* at 309. The court then engaged in an exhaustive analysis of case law [use of PPG mentioned in at least 21 states, including South Carolina], statutes [eleven state statutes] and regulations. *Id.* at 310-313.

The court also discussed numerous academic articles, which it determined provided ample support “to conclude that PPG testing is accepted by a substantial number of experts in this field such that it may be used to support a qualitative assessment of the future dangerousness of an individual.” *Id.* at 309-316 (emphasis added). Acknowledging some experts have criticized and rejected PPG testing, the court noted the existence of contrary authority is not dispositive because many people could disagree on the acceptance of any given methodology, but those who accept it may still constitute a significant subset of experts in any given field. *Id.* at 316; *see also State v. Graham*, 275 Kan. 176, 183, 61 P.3d 662, 667 (2003) (some disagreement in the scientific and medical community as to the reliability of a particular test method is a matter affecting the weight

⁶The *Bilton* court dismissed *Halgren* as distinguishable because the Washington court found the PPG test was not novel and subject to the test for scientific evidence. This ignored the reason for the Washington court’s finding was that the PPG test had been analyzed in a previous case and found to be an effective method for assessing and treating sex offenders. 132 P.3d at 719.

of such evidence and not its admissibility; such evidence is admissible if a qualified expert witness testifies the particular test method is reliable and accurate, and it is generally accepted as such by other experts in the field).

The Bilton court distinguished Sandry on the premise that “Illinois courts do not examine reliability before scientific evidence is admitted,” and did not even address all the case law and research articles discussed in Sandry. 432 S.E.2d at 446. The court’s conclusion that Illinois courts do not examine reliability ignored a very significant part of the Sandry opinion, which analyzed Illinois case law expressly stating “[t]he determination of the reliability of an expert’s methodology is naturally subsumed by the inquiry into its general acceptance in the scientific community.” 857 N.E.2d at 308 (*quoting Donaldson v. Central Illinois Public Service Co.*, 767 N.E.2d 314 [2002])(emphasis added). Thus, in examining whether the PPG test is generally accepted in the scientific community, the Sandry court necessarily considered “reliability,” and its discussion of evidence indicating the PPG test is reliable and generally accepted is directly relevant here.⁷

There is ample evidence the PPG test is generally accepted. The PPG test “is a widely recognized means of measuring male sexual arousal to given stimuli,” and “has become a standard objective measure of arousal and is considered by some researchers and clinicians to be essential in the assessment and treatment of male sex offenders and men with paraphilic interests.” Murphy, L., *et. al.*, Standardization of Penile Plethysmography in Assessment of Problematic Sexual

⁷The Bilton court cited to a concurring opinion in United States v. Weber, 451 F.3d 552 (9th Cir. 2006) for the proposition that the PPG test is “Orwellian when, **as here**, the State compels the subject to arouse himself sexually and then forces him to view deviant stimulants.” 851 S.E.2d at 444 (emphasis added). This statement is misleading. There was no evidence in Bilton, and there is no evidence in this case, that MUSC requires the person to “arouse himself sexually” before beginning the test. Dr. Gottfried testified about the protocols MUSC follows in every PPG test, which do not include any masturbation requirement.

Interests, J. Sex. Med. 12(9): 1853-1861 (2015); *see also* Murphy, L., *et. al.*, Assessment of Problematic Sexual Interests with the Penile Plethysmograph: an Overview of Assessment Laboratories, Current Psychiatry Reports 17(5):567 (2015) (PPG test “is an objective assessment of sexual arousal based on the change in penis circumference and volume due to increased vasocongestion in the penis”); Howes R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, J. Forensic Res. 8(6):398 (2017) (PPG test is “[p]erhaps the best means of objectively measuring deviant sexual interest”). While controversy regarding PPG testing remains, as the Sandry court noted, the existence of contrary authority is not dispositive.⁸

In addition to numerous studies and articles indicating the PPG test is reliable and generally accepted, the PPG test has undergone Federal Drug Administration (FDA) review, and the FDA has approved several PPG systems, including the Limestone system used in this case.⁹ In addition, the Medicaid/Medicare regulations provide coverage for PPG tests.¹⁰ Major insurance companies, such as Blue Cross Blue Shield, also recognize the PPG test as a medical procedure, and either provide limited coverage or exclude it from coverage.¹¹ The federal government’s and insurance companies’ recognition of the PPG test as a valid medical procedure amply demonstrates its general acceptance in the health care community.

⁸Indeed, DNA evidence has been widely accepted for years, but its admission is still challenged. *See State v. Phillips*, 430 S.C. 319, 844 S.E.2d 651 (2020) (evidence regarding “touch DNA” was inadmissible).

⁹*See* https://www.accessdata.fda.gov/cdrh_docs/pdf5/K052929.pdf (501(k) Summary – Limestone Technologies, Inc.)

¹⁰*See* Federal Register Volume 72, Number 61, Addendum III and Addendum V (Friday, March 30, 2007) (<https://www.gpo.gov/fdsys/pkg/FR-2007-03-30/html/07-1414.htm>).

¹¹The PPG test is not just utilized in psychosexual evaluations and/or treatment, but used in general medical health care as well. *See* Blue Cross Blue Shield of Texas, Treatment of Male Sexual Dysfunction, Special Comment on Contract Exclusions (January 7, 2003) (<https://www.bcbstx.com/provider/pdf/medicalpolicies/surgery/717-010.pdf>).

As Dr. Gottfried testified, further evidence of the PPG test's general acceptance in the mental health community is the reference to it in the DSM-5, which provides:

Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggest the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. **The most thoroughly researched and longest used of such measures is penile plethysmography**, although sensitivity and specificity of diagnosis may vary from one site to another.

DSM-5-R 698 (emphasis added). While previous DSM versions did not recognize the PPG test at all, by the time the DSM-5 was published in 2013, there was sufficient research indicating the PPG test's validity as a tool to measure an individual's sexual interest.¹²

In psychosexual behavior evaluations, the PPG test provides data useful in determining an individual's level of risk to commit acts of sexual aggression by measuring the extent to which the individual is dominated by sexual arousal to deviant stimuli, and predictions of risk to re-offend "are rendered much more accurate by the inclusion of data from this technique." Howes, R. J., Measurement of Risk of Sexual Violence Through Phallometric Testing, Legal Medicine 11:368-369 (2009). "Although not universally embraced, there nonetheless remains widespread acceptance and recognition of the value of phallometric assessment," and it "is certainly an assessment procedure which has come a long way since it was first devised." Howes & Howes, *supra* (emphasis added). See also Dean Tong, The Penile Plethysmograph, Abel Assessment for Sexual Interest, and MSI-II: Are They Speaking the Same Language?, 35 Am. J. of Fam. Therapy, 187, 190 (2007) ("The PPG, when administered properly, represents a direct and objective

¹²Published in February 2022, the DSM-5-TR contains the same language on page 795, but adds that sites "frequently use different stimuli, procedures and scoring." As discussed above, however, the Limestone system used by MUSC has standardized protocols and procedures utilized in between fifty and one hundred labs across the country and internationally, and to minimize the possibility of false positive results, MUSC intentionally uses a cut score double the minimum cut score recommended in the research literature.

measurement of a man's level of sexual arousal to normal versus sexualized stimuli. Since there is a strong relationship between an individual's pattern of sexual arousal and the probability that he may or will act upon that arousal, an important first step in gauging one's propensity to sexual deviancy is to obtain an accurate assessment of that person's sexual arousal patterns, which is precisely what the PPG does.”)(emphasis added); James M. Peters, Assessment and Treatment of Sex Offenders: What Attorneys Need to Know, Advocate, 23 (Dec. 1999) (PPG test “is invaluable in the evaluation, treatment and management of known sexual offenders.”)(emphasis added).

The evidence before Judge Henderson established PPG testing is generally accepted in the mental health field, and is widely used in sexual behavior evaluations as an objective measure of sexual arousal for diagnosis and risk assessment purposes. Judge Henderson’s ruling that the PPG test evidence was admissible was not controlled by an error of law, and it is amply supported by evidence in the record.

B. Probative/Prejudice

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCORE. “Although relevant, evidence may be excluded if its probative value is **substantially** outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCORE (emphasis added).

Appellant makes the conclusory argument that even if the PPG test evidence had probative value, it was outweighed by the danger of unfair prejudice to him. The PPG test results were no doubt prejudicial to Appellant, but they were consistent with his history of sexually offending

against children, and Dr. Gottfried testified the PPG test was only one data point in her evaluation. Indeed, **Dr. Gehle** testified she was not “surprised” by Appellant’s PPG test results.

The fact Appellant was convicted in 1997 of sexually offending against prepubescent children, received sex offender treatment while incarcerated for that conviction and in the community after his release, and then reoffended against prepubescent children in 2015, clearly indicated a sustained deviant interest in prepubescent children. During his evaluations with both Dr. Gehle and Dr. Gottfried, however, Appellant claimed he was no longer sexually aroused by prepubescent children, even stating there was no risk he would reoffend. Dr. Gehle accepted his claim at face value, but Dr. Gottfried did not.

Results from psychological tests Dr. Gottfried administered as part of Appellant’s psychosexual evaluation indicated Appellant may try to present himself in a better light, and not be forthcoming about his sexual interests. Significantly, only after Dr. Gottfried confronted him about his test results, Appellant admitted to sexually molesting three prepubescent family members (a cousin and his two sisters), which had never been reported.¹³

The SVPA created a civil process for assessing potential sexually violent offenders. It is not punitive in nature, but is intended “to: (1) meet the special needs of sexually violent predators; (2) address the significant likelihood that they will engage in repeated acts of sexual violence if not treated for their mental conditions; and (3) assess the risks requiring their involuntary civil commitment in a secure facility for long-term control, care, and treatment.” Care and Treatment of Brown, 372 S.C. 611, 643 S.E.2d 118, 121 (Ct. App.2007). (citing S.C. Code Ann. §44–48–20). A “person's dangerous propensities are the focus of the SVP Act.” In re Care & Treatment

¹³When Dr. Gehle directly asked Appellant if he had ever offended against family members, he lied and told her no. If Dr. Gehle had done any testing in her evaluation, she may have more aggressively questioned Appellant rather than blindly accepting his response as fact.

of Ettel, 377 S.C. 558, 660 S.E.2d 285, 287 (Ct. App. 2008) (*quoting In re Care and Treatment of Corley*, 353 S.C. 202, 577 S.E.2d 451, 453 [2003]).

In SVPA actions, the State is required to prove beyond a reasonable doubt the person presently suffers from a mental abnormality or personality disorder that makes him likely to engage in future acts of sexual violence if not confined for treatment. *See In re Taft*, 413 S.C. 16, 774 S.E.2d 462, 466 (2015) (the State must prove beyond a reasonable doubt that the person is presently a sexually violent predator). In light of the State's significant burden of proof, any reliable test or assessment tool used by an expert in assessing the person's mental status and risk to reoffend, including the PPG test, should be submitted for the jury's consideration in accessing the expert's methodology and ultimate opinions. An expert is always subject to cross-examination about any test or assessment on which the expert relied in forming relevant opinions.¹⁴

In this case, both experts diagnosed Appellant with pedophilic disorder (deviant sexual interest in prepubescent children). In light of that undisputed diagnosis, the jury had to determine if Appellant presently had the propensity to offend sexually against children in the future in not confined for treatment.

As noted above, Appellant told both experts he was no longer sexually aroused by children, and was not a risk to offend against children in the future. At trial, Appellant told the jury he was a changed man who just wanted to go to church. (TT, p. 335; R., p. 242).

In the face of Appellant's claims, however, the PPG test results indicated Appellant's well established history of sexual arousal to prepubescent children continued, which was highly

¹⁴Due to Appellant's objection to testimony regarding PPG testing reliability, the jury only heard very limited testimony regarding the PPG test, which consisted of a general description of how the test is administered, and the names of the stimulus sets to which Appellant showed significant arousal. (TT, pp. 227-233; R., pp. 134-140).

relevant to the jury's determination of whether Appellant was presently likely to offend sexually against children in the future if not confined for treatment for his pedophilic disorder. Dr. Gottfried testified about all the data she considered in her evaluation, which included Appellant's history of offending against prepubescent children, information from the psychological tests she administered, the PPG test results, and information gathered during Appellant's interview. The PPG test was only one data point in Dr. Gottfried's comprehensive psychosexual evaluation of Appellant, and her diagnosis and risk assessment opinions were based on all the data gathered in the course of Appellant's evaluation, not solely on the PPG test results. When viewed in light of the issues before the jury and the entire record, the prejudice to Appellant arising from the PPG test evidence did not substantially outweigh the evidence's probative value.¹⁵

Based on the evidence presented, Judge Henderson found the PPG test evidence was admissible, and the prejudice to Appellant did not substantially outweigh the evidence's probative value. His findings are amply supported by the evidence in the record and should be affirmed.

¹⁵The State's reference to the strength of the PPG test evidence during closing argument did not ask the jury to ignore all other evidence in the case, or raise the level of prejudice such that it substantially outweighed the PPG test evidence's probative value. Significantly, in responding to Appellant's closing argument, the State did not even mention the PPG test result, but focused on all the information Dr. Gottfried obtained and considered, including Appellant's sexual offending history, the multiple array of tests administered by MUSC, and Appellant's own statements during his interview with Dr. Gottfried, all of which supported a verdict that Appellant is a sexually violent predator beyond a reasonable doubt. (TT, pp. 354-357, 367-371; R., pp. 261-264, 274-278).

CONCLUSION

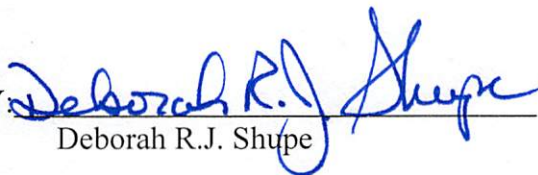
Based on the foregoing, the State respectfully submits the judgment of the circuit court and Appellant's civil commitment pursuant to the SVPA should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 22, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2021-000734

IN THE MATTER OF THE CARE AND TREATMENT
OF ANDY EUGENE HYMAN,

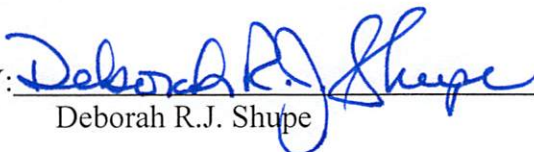
APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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APPELLANT

PROOF OF SERVICE

I, Sally Ellison, certify I served the Final Brief of Respondent on Appellant by email to the address reflected in the AIS to Lara M. Caudy at lcaudy@sccid.sc.gov.

The Final Brief of Respondent has also been filed with the Court of Appeals through the AIS system.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of February, 2023.



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

In the Matter of the Care and Treatment of Andy Eugene
Hyman, Appellant.

Appellate Case No. 2021-000734

Appeal From Florence County
Roger E. Henderson, Circuit Court Judge

Unpublished Opinion No. 2024-UP-271
Submitted July 19, 2024 – Filed July 24, 2024

REVERSED AND REMANDED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia, for Respondent.

PER CURIAM: Andy Eugene Hyman appeals his involuntary commitment under the Sexually Violent Predator Act (the SVP Act),¹ arguing the circuit court erred in admitting evidence of the results of a penile plethysmograph (PPG) test he underwent because the evidence was unreliable. We reverse and remand pursuant to Rule 220(b), SCACR.

¹ S.C. Code Ann. §§ 44-48-10 to 44-48-180 (2018 & Supp. 2023).

We hold the PPG is not reliable as required by Rule 702 of the South Carolina Rules of Evidence; thus, the trial court abused its discretion in admitting the PPG results. *See State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009) ("The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice."); *In re Gonzalez*, 409 S.C. 621, 628, 763 S.E.2d 210, 213 (2014) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."); *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023) ("To admit expert testimony under Rule 702, the proponent . . . must demonstrate, and the trial court must find, the existence of three elements: 'the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.'" (quoting *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999))); *Watson v. Ford Motor Co.*, 389 S.C. 434, 450, 699 S.E.2d 169, 177 (2010) ("[F]actors that the trial court should consider when determining . . . reliab[ility] are: '(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.'" (footnote omitted) (quoting *Council*, 335 S.C. at 19, 515 S.E.2d at 517)); *Matter of Daily*, Op. No. 6061 (S.C. Ct. App. filed June 12, 2024) (Howard Adv. Sh. No. 22 at 19) (holding the trial court abused its discretion in admitting the PPG test results because "the PPG is not reliable, as required by Rule 702"); *see also Matter of Bilton*, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020) ("The [PPG] test is controversial and has been criticized for a lack of standardization and for being subject to manipulation."); *id.* at 162-63, 851 S.E.2d at 444 ("[W]ith limited exceptions . . . courts have 'uniformly' declared that PPG test results are 'inadmissible as evidence because there are no accepted standards for this test in the scientific community.'" (quoting *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1266 (9th Cir. 2000))).

Further, the error of admitting the PPG test results was prejudicial. Here, the State presented testimony of Dr. Emily Gottfried, who conducted an evaluation pursuant to the SVP Act. Dr. Gottfried's testimony regarding the results of the PPG had the

appearance of scientific evidence; she described the PPG test as "an objective physiological measure of male sexual arousal" and "the gol[d] standard of looking at adult males sexual arousal," and she explained that the test was "a strong predictor or risk factor for future sexual offending." Additionally, the State relied on the results of the PPG test during its cross-examination of Hyman when it asked him why he got an erection in response to a stimulus set during the PPG that portrayed an "older man such as yourself raping a little girl." It further relied on the results of the PPG during its closing argument when it argued that the results alone were "enough to put [Hyman] in a secured facility for long[-]term care, control, and treatment." *See Gonzalez*, 409 S.C. at 636, 763 S.E.2d at 217 ("A fundamental principle of appellate procedure is that a challenged decision must be both erroneous and prejudicial to warrant reversal."); *id.* ("Error is harmless where it could not have reasonably affected the result of the trial." (quoting *Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009))); *Daily*, Op. No. 6061 (Howard Adv. Sh. No. 22 at 20) ("Many cases recount the special solicitude juries afford testimony that has the appearance of scientific evidence" (quoting *Bilton*, 432 S.C. at 168, 851 S.E.2d at 447)); *Bilton*, 432 S.C. at 168, 851 S.E.2d at 447 (finding prejudicial error in the admission of PPG test results).

REVERSED AND REMANDED.²

WILLIAMS, C.J., and KONDUROS and TURNER, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2021-000734

IN THE MATTER OF THE CARE AND TREATMENT OF
ANDY EUGENE HYMAN,

APPELLANT.

RESPONDENT'S PETITION FOR REHEARING

On July 24, 2024, this court reversed Appellant's civil commitment pursuant to the South Carolina Sexually Violent Predator Act (SVPA), finding error in the admission of evidence regarding the results of a penile plethysmograph (PPG) conducted in the course of Appellant's evaluation, and the error was not harmless. Matter of Hyman, Op. No. 2024-UP-271 (S.C. Ct. App. filed July 24, 2024). Pursuant to Rule 221(a), SCACR, Respondent respectfully requests that this court rehear the matter, and consider the significant points overlooked and/or misapprehended by this court as discussed below.

Rehearing is appropriate and necessary in this case because this court failed to apply the appropriate standard of review, overlooked evidence in the record, and misapprehended the law related to admissibility of expert opinions. In particular, this court's apparent *de novo* determination regarding reliability and admissibility of the PPG evidence failed to analyze the extensive pre-trial evidence regarding the reliability of PPG testing presented during a full pre-trial evidentiary hearing consistent with State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001), and State v. Council, 335 S.C. 1,515 S.E.2d 508 (1999) (hereinafter Jones/Council). In reversing

Judge Henderson's ruling that the PPG was reliable, this court ignored significant evidence regarding the PPG's reliability and its admissibility as a factor considered by the State's expert in formulating her opinion that Appellant meets the criteria for commitment as a sexually violent predator under South Carolina law.¹ This court's error analysis was directly premised on this court's opinion in Matter of Daily, Op. No. 6061 (S.C. Court App., filed June 12, 2024) (2024 WL 2947801), which Respondent asserts was itself erroneous.²

In addition, even assuming error, which Respondent disputes, this court's harmless error analysis is fundamentally flawed. This court focused on limited testimony and argument regarding the PPG evidence without considering that evidence and argument in context and in relation to the entirety of the evidence and argument as required by well-established South Carolina case law.

ARGUMENT

A. The court failed to apply the required and appropriate standard of review.

The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing the trial court's rulings were based on an error of law or were unsupported by evidence in the record. State v. Prather, 429 S.C. 583, 840 S.E.2d 551, 559 (2020); State v. Jackson, 384 S.C. 29, 681 S.E.2d 17, 19 (Ct. App. 2009); *see also* State v. Davis-Kocsis, Op. No. 28213, 2024 WL 3169855 at *3, n.2 (S.C. Sup. Ct. filed June 26, 2024) (appellate court's standard of review regarding evidentiary rulings is "simply to determine whether the trial court

¹As in previous cases involving PPG evidence, this court summarily decided this case without oral argument, during which evidence regarding the PPG's general reliability and acceptance could have been discussed, and the State would have been afforded an opportunity to address this court's concerns.

²A Petition for Rehearing is pending in that case.

acted within its discretion,” and “[i]f so, we affirm”). The exercise of discretion means “the trial court—when ruling on the admission or exclusion of evidence—must think through the objection that has been made, the arguments of the attorneys, and the law—particularly the applicable evidentiary rules—and must thoughtfully apply the correct law to the information and evidence before it.” State v. Wallace, 440 S.C. 537, 892 S.E.2d 310, 312–13 (2023) (citing Morris v. BB&T Corp., 438 S.C. 582, 885 S.E.2d 394, 397 [2023]). Trial courts are tasked only with determining whether the basis for the expert’s opinion is sufficiently reliable such that it may be offered into evidence, and vigorous cross examination, presentation of contrary evidence and careful instructions on the burden of proof are the traditional appropriate means of attacking admissible evidence. In re Matter of Ridley, 433 S.C. 316, 858 S.E.2d 165, 168-169 (Ct. App. 2021).

At the time this case was tried, there was no authority in South Carolina holding the PPG is unreliable as a matter of law. Matter of Daily, filed three years after this case was tried, was the first case in South Carolina holding that PPG evidence was unreliable. Indeed, in the only previously published case regarding PPG evidence, Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), this court expressly declined to rule on the issue of PPG reliability. *Id.* at 446 (“We wish to emphasize that we are not called on to review whether some hypothetical procedure would qualify as a baseline demonstration that Bilton's PPG test results were reliable. We simply hold, as noted above, that due process does not allow a testifying expert to be a pipeline for someone else's scientific work to be admitted into evidence without a baseline

demonstration of reliability.” (emphasis added).³ Thus, there was no basis for finding Judge Henderson committed an error of law.

Instead of appropriately analyzing the evidence presented to Judge Henderson, this court summarily reversed Judge Henderson’s ruling based on case law that did not exist at the time Judge Henderson had the issue before him. The opinions issued by this court in PPG cases, both published and unpublished, reveal a consistent negative view of the PPG test regardless of the evidence presented. An appellate court’s negative view of a particular scientific test or evidence is not a basis for overruling a trial court’s ruling regarding the evidence’s admissibility if there is evidence in the record to support that ruling. See Morris, 885 S.E.S.2d at 397 (appellate court defers to the trial court’s exercise of discretion even when appellate judges might have decided the issue differently); Wallace, 892 S.E.2d at 312-313 (appellate court will not reverse trial court’s ruling on evidentiary issue unless the trial court did not act with the discretion given to trial courts, which generally means the ruling is not supported by the evidence or is controlled by an error of law). If this court found the record indicated Judge Henderson did not meaningfully exercise the discretion given to him, it failed to acknowledge the evidence presented or conduct any analysis of it. See State v. Phillips, 430 S.C. 319, 844 S.E.2d 651, 662 (2020) (appellate courts analyze the admissibility of scientific evidence for the first time when the trial court fails to meaningfully exercise its discretion).

Dr. Emily Gottfried, who is the Director of the Sexual Behavior Clinic and Lab (SBCL) at the Medical University of South Carolina (MUSC), was qualified as an expert and has extensive experience administering and interpreting PPG test results. She testified during the

³Significantly, Judge Henderson actually reviewed the Bilton opinion at the beginning of the pre-trial hearing. (R., p. 7). Therefore, he was well aware of the holding in that case, which again, did not hold the PPG is unreliable.

pre-trial hearing that she had twenty-six peer reviewed published articles, including an article comparing the PPG test's use in Canada, the United Kingdom and the United States, she had written book chapters about best practices in sexual behavior evaluations that included information about the PPG test, and she had given research presentations regarding the PPG test at national and international conferences. She also testified that research literature indicates the PPG test provides a physiological measure of male sexual arousal, it has been peer reviewed in both the sex offender and general sexual behavior literature, and the Association for the Treatment of Sex Offenders (ATSA) practice guidelines support responsible use of the PPG test as a data point in sexual behavior evaluations and treatment, which means following the protocol, interpreting the results in a standardized manner, and not using the PPG test results as the "sole data point to look at risk, release recommendations, diagnosis." (R., pp. 31-46). Dr. Gottfried further testified that research conducted since 2009, including a 2019 meta-analysis of data from multiple studies with PPG test results of over 10,000 men, addressed many issues identified in earlier PPG test research, and the Diagnostic and Statistical Manual, 5th Ed., (DSM-5) recognizes use of the PPG test. (R., pp. 46-47).

Dr. Gottfried then described the PPG process, interpretation of the test results and the different stimulus sets used in the SCBL. She stated she orders a PPG on every adult male referred to the SCBL for evaluation, and she uses it as a single data point in reaching her conclusions and opinions. She testified that research indicates the PPG reliably identifies men, like Appellant, who are sexually attracted to children, and the PPG research is on-going and increasing, such as the 2019 meta-analysis study and published article. (R., pp. 47-56).⁴

⁴On cross-examination, Dr. Gottfried testified she could complete evaluations without using the PPG, but she preferred not to do evaluations without the PPG because it provided another data point for consideration. (R., pp. 58-59).

In reversing Judge Henderson, this court did not even summarize or address Dr. Gottfried's extensive pre-trial testimony, which was virtually undisputed. The only even arguable pre-trial evidence to the contrary was testimony from Dr. Marie Gehle, who had no training or firsthand experience with the PPG, and merely based her opinions regarding the PPG on outdated articles and a 2009 practice manual. Significantly, the 2009 manual she referenced had not been updated since 2009, she was not aware that the author of an article she cited as authority for the proposition that the PPG is unreliable had published a subsequent article supporting use of the PPG, and she did not know about the published article regarding the 2019 meta-analysis study. (R., pp. 22-29). In short, the only thing remarkable about Dr. Gehle's pre-trial testimony regarding the PPG was her incredible lack of knowledge.

This court failed to apply the required abuse of discretion standard of review, ignored substantial evidence in the record, and substituted its judgment for Judge Henderson's ruling that was based on extensive pre-trial testimony. Accordingly, this court should rehear this matter and affirm Judge Henderson's ruling.

B. This court's harmless error analysis mischaracterized testimony and statements before the jury and overlooked other overwhelming evidence that supported the jury's verdict.

Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 584 S.E.2d 893, 897 (2003). "A harmless error analysis is contextual and specific to the circumstances of the case," and "the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Heller, 399 S.C. 157, 731 S.E.2d 312, 320 (Ct. App. 2012) (emphasis added). "It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence." State v. McFarlane, 279 S.C. 327, 306 S.E.2d 611, 613 (1983).

As with its PPG analysis, this court set forth the correct harmless error standard, then failed to apply it. Rather than considering the PPG trial testimony in context and reviewing the case before the jury as a whole, this court simply concluded the PPG evidence may have contributed to the jury's verdict, and therefore, error in admitting the PPG evidence was not harmless.⁵

1. Scientific Evidence, Cross-Examination & Closing Argument

As a threshold matter, this court found prejudice in part based on its finding that Dr. Gottfried's testimony regarding the PPG "had the appearance of scientific evidence." 2024-UP-271 at 2-3. The Bilton court, however, specifically held that the State's expert testimony regarding the PPG was a pipeline for scientific work performed by someone else, which expressly recognized that the PPG is a **scientific** test. Thus, this court's finding that Dr. Gottfried's testimony merely "had the appearance of scientific work" is contrary to the Bilton court's recognition that PPG evidence is in fact scientific evidence.

Further, this court's reference to the State's reliance on the PPG test during cross-examination of Appellant overlooks the fact that Appellant opened the door to that issue by testifying he had a past attraction to prepubescent girls, but "now, I do not even think about it." (R., p. 244).⁶ After the State asked Appellant about his arousal to the scenario regarding the rape of a female child, Appellant was able to give his explanation for what caused the arousal to that and other scenarios, which the jury was free to evaluate and believe or not. (R., pp. 247-248).

⁵The State does not concede error in the admission of the PPG evidence, but as set forth above, contends there was no error. Because there was no error in admitting the PPG evidence, a harmless error analysis is not warranted. This harmless error analysis is only in response to this court's harmless error conclusion.

⁶ The State further submits the PPG cross-examination was appropriate because Judge Henderson properly ruled the PPG evidence was admissible and its probative value exceeded its prejudicial effect.

As to the State's reference during closing argument that the PPG was "in and of itself" enough to commit Appellant, this court completely overlooks the State's argument immediately prior to the quoted statement, as well as the entirety of the State's initial closing and reply arguments. The vast majority of the State's closing arguments focused on Appellant's extensive sex offense history as established by his charges, convictions and admissions. Prior to discussing the PPG test results during the initial closing argument, the State argued that Appellant's offending history "alone without the PPG evidence," and "with or without the PPG indicates [Appellant] is likely to re-offend." In its reply closing argument, the State again focused on Appellant's offense history and briefly referred to the PPG once as taking place on Appellant's second day at MUSC. Again, the majority of the State's closing argument focused on Appellant's offense history as leading to the conclusion he was a risk to reoffend sexually if not confined. (R., pp. 261-264, 274-278).

2. Other Evidence Supporting the Jury's Verdict

In finding admission of the PPG evidence was not harmless, this court overlooked other, and indeed overwhelming, evidence in the record that more than supported the jury's verdict, even without any of the PPG evidence. Before the jury, Dr. Gottfried was qualified as an expert in clinical psychology and forensic psychology, and specifically sex offender evaluations, and she testified MUSC was retained to perform a pre-commitment evaluation of Appellant pursuant to the SVPA. As part of her evaluation protocol, she reviews criminal history records, incident/police reports relating to the person's offenses, prison records, medical records and mental health records. Appellant was transported to MUSC on several occasions for psychological and physiological testing, and a clinical interview, which included reviewing the tests' results with him. (R., pp. 94-107).

Dr. Gottfried testified Appellant pled guilty in 1997 to one count of criminal sexual conduct second degree and one count of lewd act on a minor, involving three female victims (two six years old and one eight years old). During the interview, Appellant told Dr. Gottfried he fondled two of the girls, got them to grab his penis, and he may have rubbed his penis in their genital areas and played with their butts. The third victim was Appellant's neighbor, and he said he got her to take her clothes off because he wanted to see her. Appellant said he talked the victims into engaging in the behaviors with him, and told them not to tell anybody because he would get in trouble. After that conviction, Appellant received sex offender treatment while incarcerated and then after his release. (R., pp. 114-117, 389-391).

In 2016, Appellant pled guilty to one count of criminal sexual conduct with a minor third degree - commit/attempt lewd act on minor under sixteen years of age, again involving three prepubescent females (four, five and seven years old). Appellant told Dr. Gottfried he did not offend against the five and seven year old victims, but admitted offending against his eight year old niece by fondling her, feeling her chest, her genitals and her butt, and rubbing his penis on her, which he did four or five times. Appellant then admitted he performed oral sex on his niece and got her to put her mouth on his penis. In addition to the 1997 and 2016 convicted offenses, Appellant told Dr. Gottfried he exposed himself to a female cousin when he was fifteen or sixteen years old, and sexually touched both of his sisters when he was eighteen or nineteen years old, and they were approximately eleven and fifteen years old. (R., pp. 117-118, 392).

Dr. Gottfried testified an offender's offending history is relevant to assessing future risk because prior behavior is the best predictor of future behavior, and the offending history may show patterns of behavior. Appellant's criminal history and admissions to her demonstrated Appellant had a pattern of inappropriate sexual behaviors with prepubescent female children

beginning when he was fifteen to sixteen years old, which included multiple offenses against prepubescent children under ten years old, fantasizing about prepubescent children and looking at sexualized images of children. Based on all the information she gathered during the evaluation, Dr. Gottfried diagnosed Appellant with pedophilic disorder, which is an intense and persistent sexual arousal to prepubescent children. (R., pp. 119-123).

Dr. Gottfried then testified about the standard battery of tests the SBCL uses in evaluating all adult men, which were administered to Appellant as part of the psychosexual evaluation, and some of the test results indicated Appellant tried to present himself in an overly positive light, he did not want to admit some minor faults that most people will admit, he was reluctant to admit having undesirable negative reactions, and he had some feelings of sexual inadequacy with adults. Dr. Gottfried also used a tool to scientifically structure professional judgment when looking for known dynamic risk factors relevant to the person being evaluated, and she noted Appellant had a history of problems with sexual deviance, consistent sexual arousal to prepubescent children, sexual preoccupation during his offending, a reported history of being the victim of child abuse, offending against his victims multiple times across many years, some psychological coercion in sexual offending, and a possible negative attitude about supervision. (R., pp. 123-130).

As part of her assessment of Appellant's risk to reoffend sexually, Dr. Gottfried also used two actuarial risk assessment tools, Appellant's scores on both assessments were in the average category for reoffending when compared to other routine offenders. Dr. Gottfried testified these assessments only include offenders who have committed new detected offenses, and only approximately thirty percent of sex offenses are reported, so the scores may potentially underestimate the person's actual recidivism risk. (R., pp. 130-133).

Dr. Gottfried testified about the PPG test in general, explaining what it measures and how it is administered, and describing the two stimulus sets used during the test. She then testified Appellant showed clinically significant arousal on both stimulus sets to scenarios featuring sexual violence against a prepubescent female child, coercion against a prepubescent female child, sexual violence against a pubescent or adolescent child, persuasion against a prepubescent female child, and sexual activity with a male infant, as well as consensual sexual activity with an adult woman. Appellant's maximum arousal on both sets was to scenarios featuring sexual violence or coercion against a prepubescent female child. Dr. Gottfried stated the PPG test arousal pattern was consistent with Appellant's history of sexually offending against prepubescent female children. (R., pp. 134-139).

Based on all the information she obtained and considered during the evaluation, Dr. Gottfried testified Appellant's dynamic risk factors include sexual arousal to children, sexual preoccupation, chronic sex offending, grooming behaviors, negative attitudes toward supervision, and poor insight into his need for management and treatment of his sexual arousal to children. She further testified Appellant told her he had not really told anyone who might be a support for him in the community about his offending behavior, he had no plans to attend sex offender treatment in the community, and his only plan to prevent himself from reoffending was to just not think about it, which she stated was not a realistic plan. (R., pp. 139-143).

Dr. Gottfried testified to a reasonable degree of psychological certainty that Appellant has pedophilic disorder, he fantasizes about prepubescent children, and he acted on his pedophilic disorder despite intervention and prior treatment, which makes him likely to reoffend sexually against children. She opined Appellant has serious difficulty controlling his pedophilic

impulses, and his risk to reoffend poses a danger to public safety. (R., pp. 143-145). She did not tie her opinion regarding Appellant's risk to reoffend to the PPG test results.

Significantly, Dr. Gehle also diagnosed Appellant with pedophilic disorder, sexually attracted to females, non-exclusive type, stating Appellant's criminal history provided sufficient information to make that diagnosis. Dr. Gehle testified she heard Dr. Gottfried's testimony regarding the PPG test results, and she was not surprised by any of the results. She opined Appellant did not meet the criteria for SVPA commitment because he was not a risk to reoffend sexually. (R., pp. 180-206). In other words, the PPG results were consistent with factors she considered in reaching her diagnosis, and her opinion only differed from Dr. Gottfried's on the issue of Appellant's risk to reoffend sexually.

Dr. Gehle's scores on the actuarial risk assessments were the same as Dr. Gottfried's scores, which placed Appellant in the average risk to reoffend category, but the only dynamic risk factor she found was Appellant's sexual preference for prepubescent children. In spite of his sexual preference for prepubescent children, Dr. Gehle concluded Appellant did not have a sexual preoccupation because "he did not seem to be dominated by his sexuality," and "it wasn't on his mind all the time," and she opined Appellant was not likely to reoffend sexually because his risk was "the same as the average sex offender." (R., pp. 195-206).

On cross-examination, however, Dr. Gehle acknowledged Appellant did not tell her he had exposed himself to his twelve year old female cousin when he was fifteen years old, or that he touched his two minor sisters inappropriately when he was approximately eighteen years old, even though she specifically asked him during the interview if he had any sexual contact with family members and he told her no, which she admitted was a lie. He also told her he did not need any sex offender treatment, even though he reoffended after having sex offender treatment

while incarcerated on the 1997 conviction and in the community after he was released, and he was at any risk to reoffend. (R., pp. 214-220).

Thus, in terms of the SVPA statutory elements, both experts found Appellant has a mental abnormality that is causally connected to his sexual offending, but they disagreed on whether Appellant was a risk to reoffend against children in the future. Dr. Gottfried's opinion regarding Appellant's risk to reoffend was based on a comprehensive, multi-faceted psychosexual evaluation, while Dr. Gehle's opinion on that issue was essentially based on Appellant's statements during the interview, even though he lied to her about some critical aspects of his history.

The fact Appellant was convicted in 1997 of sexually offending against prepubescent children, received sex offender treatment while incarcerated for that conviction and in the community after his release, and then reoffended against prepubescent children in 2015, clearly indicated a sustained deviant interest in prepubescent children. During his evaluations with both Dr. Gehle and Dr. Gottfried, however, Appellant claimed he was no longer sexually aroused by prepubescent children, even stating there was no risk he would reoffend. Dr. Gehle accepted his claim at face value, but Dr. Gottfried did not. When Dr. Gottfried confronted Appellant with his test results, he admitted sexually molesting three family members (a cousin and his two sisters), which had never been reported.⁷

This court cites limited quotes from Dr. Gottfried's PPG trial testimony in support of its harmless error conclusion, including her description of the PPG as "an objective physiological measure of male sexual arousal," "the gol[d] standard of looking at adult males sexual arousal,"

⁷Appellant lied to Dr. Gehle about offending against family members, and Dr. Gehle did not challenge him at all, even in light of his documented offenses against family members. The jury was free to consider that fact in determining the credibility of Dr. Gehle's opinions.

and “a strong predictor or risk factor for future sexual offending.” When those quotes are considered in context, however, Dr. Gottfried’s statements were based on the research she testified about in the pre-trial hearing.⁸ Further, her statement regarding the PPG as “a strong predictor or risk factor for future sexual offending” was immediately preceded by “the research suggests that having sexual interest in children as measured by [the PPG],” which tied the statement directly to research in the field, which this court overlooked.

Dr. Gottfried’s entire PPG trial testimony was at most 5.5 pages (pp. 135-139), or 7% of her direct testimony, with the remaining 93% of her direct testimony relating to Appellant’s sex offense history, test results other than the PPG, Appellant’s admissions to her, and her ultimate opinions. (R., pp. 95-145). The State’s reference to the strength of the PPG test evidence during closing argument did not ask the jury to ignore all other evidence in the case, but specifically argued that the jury could commit Appellant “with or without” the PPG evidence.

The jury heard from two experts who agreed on Appellant’s mental abnormality of pedophilia and his sexual preference for prepubescent children, and then testified about the basis for the differences in their opinions regarding his risk to reoffend. The jury was free to accept or reject either expert’s opinion on the issue of Appellant’s risk to reoffend sexually. Even without the PPG evidence, there was more than sufficient, indeed overwhelming, evidence to support the jury’s determination that Appellant has a mental abnormality (undisputed), his sexual offending was caused by his mental abnormality (undisputed), he has a sexual preference for prepubescent children (undisputed), and that Dr. Gehle’s assessment of Appellant’s risk to reoffend was

⁸Judge Henderson ruled that testimony regarding the PPG’s reliability would not be allowed before the jury, which precluded Dr. Gottfried’s testimony about the extensive research, peer review, publications and conference presentations finding that the PPG is reliable. Her statements that the PPG is “objective” and the “gold standard” for measuring male sexual arousal were based on the evidence that was presented during the pre-trial hearing regarding the PPG reliability.

extremely lacking. Significantly, the jury also heard Appellant's own testimony, and was able to judge his credibility, which was a primary factor in Dr. Gehle's risk analysis. In light of that evidence, any error in admitting the PPG evidence was harmless beyond any reasonable doubt.

CONCLUSION

Based on the foregoing, the Record on Appeal and the matter set forth in the Brief of Respondent, the State respectfully requests that this court reconsider and rehear this case, reverse its opinion, and affirm Appellant's commitment under the SVPA.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 12, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2021-000734

IN THE MATTER OF THE CARE AND TREATMENT OF
ANDY EUGENE HYMAN,

APPELLANT.

PROOF OF SERVICE

I, Abigail Hawley-Browder, certify I served the Respondent's Petition for Rehearing by email to Appellant's counsel's address reflected in the AIS system:

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The Petition has also been filed with the Court of Appeals via ctappfilings@sccourts.org.

I further certify that all parties required by Rule to be served have been served.

This 12th day of August, 2024.


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

IN THE MATTER OF THE CARE AND
TREATMENT OF ANDY EUGENE HYMAN,

APPELLANT.

APPELLATE CASE NO. 2021-000734

Appeal from Florence County

Honorable Roger E. Henderson, Circuit Court Judge

Opinion No. 2024-UP-271 (Filed July 24, 2024)

RETURN TO
PETITION FOR REHEARING

On July 24, 2024, this Court reversed Appellant's involuntary commitment to the Department of Mental Health pursuant to the Sexually Violent Predator Act in an unpublished opinion. Matter of Hyman, 2024-UP-271 (S.C. Ct. App. filed July 24, 2024). Pursuant to Rule 221(a), SCACR, the state filed a petition for rehearing on August 12, 2024. On August 13, 2024, this Court requested Appellant file a return to the petition for rehearing within ten days. This return follows.

Appellant argued on appeal that the trial court abuse its discretion by admitting evidence through the state's expert witness concerning Appellant's results from the penile plethysmograph (PPG) test he underwent as part of his precommitment evaluation since the evidence was

unreliable in violation of Rule 702, SCRE, State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), and Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010), and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE.

This Court correctly held “the PPG is not reliable as required by Rule 702” and “thus, the trial court abused its discretion in admitting the PPG results.” In support of this holding, the Court cited to this Court’s recent published opinion in Matter of Daily, Op. No. 6061 (S.C. Ct. App. filed June 12, 2024 (Howard Adv. Sh. No. 22 at 19)). In Daily, this Court likewise held the trial court abused its discretion by admitting Daily’s PPG test results because “the PPG is not reliable, as required by Rule 702.”

In reversing Appellant’s commitment, this Court also cited to its opinion in Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020). In Bilton, this Court recognized that the PPG is “controversial and has been criticized for a lack of standardization and for being subject to manipulation.” Id. at 162, 851 S.E.2d at 444. The Court further emphasized that “with limited exceptions . . . courts have ‘uniformly’ declared that PPG test results are ‘inadmissible as evidence because there are no accepted standards for this test in the scientific community.’” Id. at 162-63, 851 S.E.2d at 444 (quoting Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1266 (9th Cir. 2000)).

This Court also correctly held that the error of admitting Appellant’s PPG test results was prejudicial. The Court asserted that “Dr. Gottfried’s testimony regarding the result of the PPG had the appearance of scientific evidence; she described the PPG test as ‘an objective physiological measure of male sexual arousal’ and ‘the gold standard of looking at adult males sexual arousal,’ and she explained that the test was ‘a strong predictor or risk factor for future

sexual offending.”” Additionally, this Court emphasized that the state relied on the results of the PPG when it cross-examined Appellant and during its closing argument when it argued the results were enough to put Appellant in a secured facility.

In its petition for rehearing, the state generally complained this Court failed to apply the correct standard of review, overlooked evidence in the record, and misapprehended the law related to the admissibility of expert opinions. Pet. at 1. The state argued this Court’s “apparent *de novo* determination regarding the reliability and admissibility of the PPG evidence failed to analyze the extensive pretrial evidence regarding the reliability of PPG testing presented.” Pet. at 1. Appellant disagrees. This Court correctly applied the abuse of discretion standard and reversed the trial court based on the overwhelming evidence presented that the PPG is unreliable and should have been excluded pursuant to Rule 702.

During the pretrial hearing, Appellant proffered the testimony of Dr. Gehle. Dr. Gehle is a clinical psychologist with the Department of Mental Health. R. 10, ll. 15-17. She conducts precommitment evaluations pursuant to the SVPA. Throughout her career, she has conducted over two hundred evaluations. R. 10, ll. 18-24. Dr. Gehle explained that she does not use the PPG test as part of her precommitment evaluations nor does any other psychologist at the Department of Mental Health because the test is not standardized, meaning it is “given differently by different people” which “makes the results unreliable.” R. 10, l. 25 – 11, l. 12. She testified that in psychology, experts typically use standardized testing. The “hallmark of standardized testing is the IQ test.” R. 11, ll. 18-22. Dr. Gehle asserted:

It has an instruction book. It has a scoring manual. . . . Everybody is trained to give it the exact same way. Everybody is trained to score it the exact same way. There is not a lot of interpretation there. That way I know if I give . . . an IQ test I can compare it to somebody else who gave the same IQ test and I’ll know that they gave it the same way and I’ll know that the results are comparable. When you take away that standardization you don’t know how, how this person

gave the test. And in terms of the PPG . . . everybody uses different stimulus sets. The stimulus sets are the things that they're showing the person to [elicit] sexual arousal. Those vary from site to site. People use different stimulus sets. And there is no research on the stimulus set that is used at MUSC, the real child voices, to show that it's [a] valid, reliable assessment. So we don't know if when they say that they're measuring pedophilic arousal if they're actually measuring pedophilic arousal. We don't know if they, when they say they're measuring exhibitionistic arousal if they're actually measuring that because it's not been proven in research. [There is no] public research on that stimulus set. So it's similar to if I decided to give an IQ test, but I'm gonna make up my [own] words, I'm gonna make up my own, I don't know, portions of the test to give to somebody but then I'm gonna say it's an IQ test because it looks similar to other IQ tests. It's just not the way it works in psychology.

R. 11, l. 22 – 13, l. 8 (emphasis added).

Dr. Gehle further explained that one of the “primary types of reliability is test/retest. So if I give the test on one day, can I come back later and get a similar result with the same test.”

R. 14, ll. 8-13. She asserted that the “test/retest reliability” of the PPG is “very poor.” R. 14, ll. 8-17.

Moreover, Dr. Gehle testified that one of the stimulus sets used by MUSC to measure arousal, called “real child voices,” was developed by Dr. William Burke. R. 15, ll. 3-15. It includes “auditory scenarios followed by some pictures.” The auditory scenario and pictures relate to the category of arousal the psychologist is attempting to measure. For example, if the psychologist is attempting to measure pedophilic arousal, the auditory scenario may be an interaction between an adult male and a real child actor, followed by a picture of a fully clothed female child. R. 15, l. 19 – 16, l. 12. Dr. Gehle asserted that to her knowledge, there have been no peer reviewed studies on the real child voices stimulus set. R. 17, ll. 14-16. Peer reviewed studies are important because such studies would show whether the set is reliable and valid. Dr. Gehle explained that “reliability is how a test is used . . . over time so can you give the same test

and get similar results” while “validity is whether you are measuring what you say you’re measuring, what you think you’re measuring.” R. 17, l. 18 – 18, l. 3.

One of the few books that have been written about conducting sexually violent predator evaluations is *Evaluations of Sexually Violent Predators, Best Practices* by Phillip Whitt and Mary Alice Conroy. The book contains recommendations from experts in the field about how to conduct such evaluations. R. 18, l. 19 – 19, l. 23. Dr. Gehle explained that the authors recommend *against* the use of PPG testing in SVP precommitment evaluations because the reliability and validity of such testing cannot be established given that the test is not standardized. R. 21, ll. 4-16.

Lastly, Dr. Gehle testified that the PPG is often used during treatment for sex offenders. Its purpose in therapy is to “start a conversation with the offender about their arousal.” R. 20, l. 5 – 21, l. 1. Whereas, during an evaluation, the purpose of the PPG is to diagnose an offender or measure risk assessment. R. 19, l. 24 – 20, l. 4. Dr. Gehle asserted that “the stakes are very different” in a therapy setting as opposed to a precommitment evaluation. R. 20, ll. 8-17.

In response to Appellant’s motion, the state proffered the testimony of Dr. Emily Gottfried, the director of the Sexual Behaviors Clinic and Lab at MUSC. Dr. Gottfried manages the contract MUSC has with the Attorney General’s Office to conduct precommitment evaluations pursuant to the SVPA. R. 31, l. 25 – 32, l. 13. At the time of the hearing, she had completed seventeen precommitment evaluations and was in the process of conducting an additional five. R. 35, ll. 13-17. Dr. Gottfried orders a PPG be conducted on all adult men who are referred to the lab for evaluation. R. 34, ll. 5-6.

Dr. Gottfried maintained that the Sexual Behaviors Clinic and Lab is “certified by Limestone Technologies as a clinical and research laboratory” and she is a “Limestone

Technology Certified Clinical Analyst.” R. 36, ll. 10-24. Dr. Gottfried later clarified that Limestone Technologies is merely a company that developed the hardware and software used by some psychologists to conduct PPGs. R. 36, ll. 16-20. The Sexual Behaviors Clinic and Lab is not certified by “any independent agency” nor are any of the analysts, including Dr. Gottfried. R. 59, ll. 6-21.

Dr. Gottfried has written twenty-six peer reviewed articles. *One* of those articles concerns the PPG. The article compares the differences and similarities between the use of the PPG in Canada, the United States, and the United Kingdom. It does not address the reliability of the PPG. R. 33, ll. 12-17. Dr. Gottfried is also “working on a couple of studies” concerning the validity and reliability of the real child voices stimulus set, which she used during the PPG test conducted on Appellant. However, none of those studies have been peer reviewed. R. 56, ll. 12-16. Dr. Gottfried maintained that her current study, again which has *not* been peer reviewed, “found that the results of the Marshall [stimulus set] and RCV [real child voices stimulus set] were really consistent with one another. We also found that the RCV were more likely to be valid. So *if somebody is going to have a valid test* it was *more likely* to be the RCV than the Marshall.” R. 56, l. 22 – 58, l. 8 (emphasis added).

Dr. Gottfried admitted **there is no way to verify “false/positives” with the PPG**, which is why she only uses the PPG results “as one data point” in reaching her final conclusion. R. 62, l. 22 – 63, l. 12 (emphasis added). She also uses “a very conservative cut off score.” R. 63, ll. 1-2. She explained, “So the cut score is how you can tell if a test is clinically significant arousal or not. So it is a valid test? So is there millimeter of change from the baseline where they started, flaccid penis. You want it to be over a particular cut score millimeters of change before you say, like, okay that is arousal.” R. 63, ll. 13-19. Dr. Gottfried testified that the “literature”

recommends doing at least ten percent of a full erection which would be 2.5 mm.” Her lab uses 5 mm. Her “colleagues in Canada use 1 mm.” However, Dr. Gottfried emphasized that Canada does not have a sexually violent predator act so psychologists there use the PPG only for treatment. R. 63, ll. 20-25; R. 64, ll. 8-13. This testimony emphasizes again that the PPG lacks standardization.

After the proffer, Appellant’s counsel argued that while there may be studies about the use of the PPG test, there have been no peer reviewed articles about the reliability and validity of the real child voices stimulus set which was used as part of the PPG conducted on Appellant. R. 64, l. 21 – 65, l. 1. He also asserted that being certified by the manufacturer is different than being certified by an independent agency. Specifically, he stated, “I mean, the guy who invented the equipment . . . said yeah you’re using [it] the way I want it used.” R. 65, ll. 5-10. Counsel concluded that any testimony concerning the use of the PPG and its results should be excluded because the evidence is not reliable or valid, particularly when used in a high stakes evaluation like in this case. R. 65, ll. 10-14.

The trial court erroneously found the evidence was admissible. It asserted, “Mr. Falk [Appellant’s counsel], I certainly understand your concern about the results of the test, but in this particular case I’m going to find that the relevance outweighs, the probative value outweighs the prejudice so I’m going to allow the PPG test results to come in by way of your witness, Ms. Shaw [the assistant attorney general].” R. 69, ll. 14-19.

Appellant presented extensive evidence during the pretrial hearing through Dr. Gehle’s testimony and the cross-examination of Dr. Gottfried establishing that the PPG is unreliable. This Court correctly held the trial court abused its discretion by admitting the PPG test results in

violation of Rule 702, SCRE, State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), and Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

“The admission of expert testimony is governed by Rule 702, SCRE, which provides: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

Expert testimony receives additional scrutiny relative to other evidentiary decisions. As part of this analysis, the trial court must evaluate the substance of the expert testimony and determine whether it is reliable. Id. at 446, 699 S.E.2d at 175. To determine reliability, the trial court should apply the factors outlined by our Supreme Court in State v. Jones, 273 S.C. 723, 731, 259 S.E.2d 120, 124 (1979), including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). “Further, if the evidence is admissible under Rule 702, SCRE, the trial court should determine if its probative value is outweighed by its prejudicial effect. Id. (citing Rule 403, SCRE).

Recently, in Matter of Daily, Op. No. 6061 (S.C. Ct. App. filed June 12, 2024 (Howard Adv. Sh. No. 22 at 19), this Court likewise correctly held the trial court erred by admitting the PPG test results because the PPG is unreliable.

In Matter of Bilton, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020), this Court addressed a narrow issue regarding the admissibility of PPG test results through an expert who

did not administer or observe the PPG testing nor review the test's raw data. Id. This Court held that "due process does not allow a testifying expert to be a pipeline for someone else's scientific work to be admitted into evidence without a baseline demonstration of reliability." Id. at 167, 851 S.E.2d at 446. It concluded the trial judge abused his discretion by admitting the PPG evidence and, finding the error was not harmless, remanded for a new commitment trial. Id. at 167, 851 S.E.2d at 447.

In so holding, this Court emphasized that the PPG "test is controversial and has been criticized for a lack of standardization and for being subject to manipulation." Id. at 162, 851 S.E.2d at 444 (citing United States v. Rhodes, 552 F.3d 624, 626-627 (7th Cir. 2009) and United States v. Weber, 451 F.3d 552, 565 (9th Cir. 2006)). It noted that "with limited exceptions . . . courts have 'uniformly' declared that PPG test results are 'inadmissible as evidence because there are no accepted standards for this test in the scientific community.'" Id. at 162-163, 851 S.E.2d at 444 (quoting Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1266 (9th Cir. 2000)). This Court further emphasized that "some authorities take the position that the PPG has value in treating sex offenders but that concerns about reliability and a lack of uniform standards preclude its admission as evidence at trial." Id. at 164, 851 S.E.2d at 445 (citing Commonwealth v. Ortiz, 93 Mass.App.Ct. 381, 100 N.E.3d 790, 796-797 (2018) (collecting cases)). Other "jurisdictions have held that an expert may rely on a PPG as a basis for the expert's opinion but have expressly declined to consider whether the test results should be disclosed to the jury given the special weight the jury is likely to afford things that have the appearance of scientific evidence." Id. at 164-165, 851 S.E.2d at 445 (citing In re Commitment of Sandry, 367 Ill.App.3d 949, 306 Ill.Dec. 202, 857 N.E.2d 295, 317 (2006)).

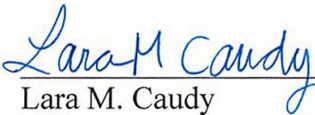
Dr. Gehle's *in camera* testimony aligns with what other jurisdictions and courts have concluded. She maintained that the PPG test is not standardized, meaning it is "given differently by different people" which "makes the results unreliable." R. 10, l. 25 – 11, l. 12. Dr. Gehle further testified that to her knowledge, there have been no peer reviewed studies on the real child voices stimulus set. R. 17, ll. 14-16. She emphasized that peer reviewed studies are important because such studies would show whether the set is reliable and valid. R. 17, l. 18 – 18, l. 3. Moreover, Dr. Gottfried even admitted there were no peer reviewed studies showing the real child voices stimulus set, which she used during the PPG test conducted on Appellant, is valid and reliable. She is merely "working on a couple of studies" in an attempt to show the validity and reliability of the RCV stimulus set. R. 56, ll. 12-16. Additionally, Dr. Gottfried admitted there is no way to verify "false/positives" with the PPG. R. 62, l. 22 – 63, l. 12. Consequently, under the framework outlined by our Supreme Court in Jones, the state failed to establish that the PPG test was reliable.

Because the PPG test and Appellant's results from the test are unreliable, Dr. Gottfried's corresponding testimony had no probative value. Assuming the evidence had probative value, it was outweighed by the danger of unfair prejudice to Appellant. Because the PPG test and its results had the appearance of scientific evidence, it is likely the jury afforded the evidence "special weight." See Bilton, 432 S.C. at 164-165, 851 S.E.2d at 445. Moreover, the state relied heavily on the results during its closing argument going so far as to argue that the result alone were "*enough to put him in a secured facility for long term care, control, and treatment.*" R. 263, ll. 21-23 (emphasis added).

Based upon the above argument, Appellant respectfully requests this Court deny the state's petition for rehearing. This Court correctly held the trial court abused its discretion by

admitting evidence of Appellant's results from the PPG he underwent as part of his precommitment evaluation in violation of Rule 702 since the PPG is unreliable and that the error prejudiced Appellant.

Respectfully Submitted,



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ATTORNEY FOR APPELLANT

This 22nd day of August, 2024.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

IN THE MATTER OF THE CARE AND
TREATMENT OF ANDY EUGENE HYMAN,

APPELLANT.

APPELLATE CASE NO. 2021-000734

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Return to Petition for Rehearing in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at her primary email address listed in the Attorney Information System (AIS), this 22nd day of August, 2024.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

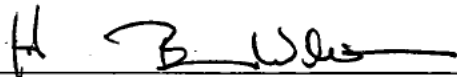
The South Carolina Court of Appeals

In the Matter of the Care and Treatment of Andy Eugene
Hyman, Appellant.

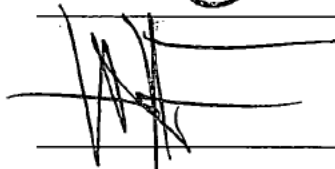
Appellate Case No. 2021-000734

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

Deborah R.J. Shupe, Esquire
Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
The Honorable Roger E. Henderson

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Sep 20 2024

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