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Mar 20 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Kershaw County
The Honorable Daniel McLeod Coble, Circuit Court Judge
Court of Appeals Appellate Case No. 2023-001950

IN THE INTEREST OF THE CARE AND TREATMENT
OF JEREMIAH JAMES POUGH,

APPELLANT

**RESPONDENT'S MOTION TO CERTIFY
CASE TO THE SUPREME COURT**

Respondent State of South Carolina hereby moves pursuant to Rule 204(b), SCACR, to certify the above referenced case from the court of appeals to the Supreme Court on the ground that the case involves an issue of significant public interest or a legal principle of major importance, and that certification will serve the interest of judicial economy. The motion is based on the following:

1) The above captioned appeal arises from a civil commitment proceeding pursuant to the Sexually Violent Predator Act (SVPA). Appellant was civilly committed after a jury trial in November 2023, and this appeal followed. The appeal is currently pending before the court of appeals and all initial briefs have been filed.

2) As evidenced by the Initial Brief of Appellant and the Initial Brief of Respondent, the only issue raised in this appeal is the reliability and admissibility of the penile plethysmograph

(PPG) in SVPA proceedings.¹ This is a novel and important issue in South Carolina, particularly in the context of SVPA proceedings in which the person's propensity to commit future acts of sexual violence is a primary focus. 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, 454 (2003).

3) Six South Carolina circuit court judges have conducted full pre-trial hearings regarding the reliability and admissibility of the PPG and determined the PPG is reliable and PPG evidence is admissible. The court of appeals has reversed four of those cases based on a *de novo* review of the evidence and the court's negative view of the PPG. Three of those cases are currently pending before this Court on certiorari: In re Care and Treatment of Daily, Supreme Court Appellate Case No. 2024-001707; In re Care and Treatment of Williford, Supreme Court Case No. 2024-001782; In re Care and Treatment of Hyman, Supreme Court Case No. 2024-001781. This Court granted certiorari in the fourth case, but ultimately dismissed certiorari as improvidently granted. In re Care and Treatment of Gregg, Op. No. 2022-UP-336 (S.C. Ct. App. filed August 10, 2022), *cert. granted* May 23, 2023, *cert. dismissed as improvidently granted* June 5, 2024

4) The reliability and admissibility of PPG evidence in SVPA cases is an issue of significant public interest and presents a legal principle of major importance. This Court's grant of certiorari in three cases indicates a recognition of the public interest and legal principle involved. Further, because this Court already has before it three cases raising this exact issue, certification of this case for consideration by the Court will serve the interest of judicial economy.

Based on the foregoing, Respondent State of South Carolina respectfully requests that this Court certify the case pursuant to Rule 204(b), SCACR; assume jurisdiction over the case for all


¹The parties initial briefs in the court of appeals are presently available through the South Carolina Appellate Court Public Index (C-Track).
<https://ctrack.sccourts.org/public/caseView.do?csIID=79696>.

purposes; hold the matter in abeyance pending resolution of the State's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Alan Wilson
Attorney General

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098



Deborah R.J. Shupe

ATTORNEYS FOR RESPONDENT

March 20, 2025

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Appeal from Kershaw County
The Honorable Daniel McLeod Coble, Circuit Court Judge
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IN THE MATTER OF THE CARE AND TREATMENT
OF JEREMIAH JAMES POUGH,

RESPONDENT.

PROOF OF SERVICE


I, Abigail Hawley-Browder, certify that I served Respondent's Motion to Certify the Case to the Supreme Court on counsel for Respondent by emailing a copy to the address in the AIS system:

Sarah Elizabeth Shipe
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
sshipe@sccid.sc.gov

I further certify that all parties required by Rule to be served have been served.

The Motion will also be filed this date with the South Carolina Supreme Court via suptcfilings@sccourts.org.

This 20th day of March, 2025.


Abigail Hawley-Browder
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
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Abigail Hawley-Browder

From: Abigail Hawley-Browder
Sent: Thursday, March 20, 2025 4:32 PM
To: sshipe@sccid.sc.gov
Cc: Warren, Kaylynn; Deborah Shupe
Subject: In the Matter of the Care and Treatment of Jeremiah James Pough (2023-001950)
Attachments: POUGH - Motion to Certify.pdf

Good afternoon Ms. Shipe,

Attached is Respondent's Motion to Certify Case to the Supreme Court In the Matter of the Care and Treatment of Jeremiah James Pough (2023-001950).

Thank you,

Abigail Hawley-Browder, Legal Assistant
South Carolina Attorney General's Office
Sexually Violent Predator's Unit | Office 803-734-4156
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scag.gov



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