

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Michael S. Holt, Circuit Court Judge
Court of Appeals Appellate Case No. 2022-000956
Supreme Court Appellate Case No. 2025-000402

RECEIVED

Apr 09 2025

S.C. SUPREME COURT

In the Matter of the Care and Treatment
of Wiley L. Chapman,

Petitioner.

**RESPONDENT STATE OF SOUTH CAROLINA'S RETURN
TO PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

INDEX

STATEMENT OF QUESTION PRESENTED1

STATEMENT OF THE CASE.....2

ARGUMENT14

The court of appeals properly held Judge Holt did not abuse his discretion by excluding evidence regarding outpatient sex offender treatment modalities because the issue before the jury in a SVPA case is whether the person's risk to re-offend sexually is such that he should be confined for long term control, care and treatment, and the specific modalities of treatment, or even whether any treatment is available for the person's particular mental abnormality or personality disorder, is irrelevant and potentially confusing for the jury.....14

CONCLUSION22

STATEMENT OF QUESTION PRESENTED

Did the court of appeals err in holding Judge Holt did not abuse his discretion by prohibiting cross-examination of the State's expert witness regarding outpatient sex offender treatment?

STATEMENT OF THE CASE

In June 1991, Petitioner Wiley L. Chapman pled guilty to criminal sexual conduct in the first degree, which is a statutorily delineated sexually violent offense, and was sentenced to thirty years incarceration. In June 2020, Respondent State of South Carolina initiated proceedings pursuant to the South Carolina Sexually Violent Predator Act (SVPA), S.C. Code Ann. §§44-48-10, *et seq.* (2018), seeking Petitioner's civil commitment for long term control, care and treatment. The matter was called for a jury trial in June 2022 before the Honorable Michael S. Holt, Circuit Court Judge.

Prior to trial, the State moved to exclude any reference to the details or type of treatment Petitioner would receive if committed, contending such evidence was irrelevant to the issue of whether Petitioner met the criteria for commitment. Citing a seminal United States Supreme Court case, the State argued the type of treatment or the likelihood of success in treatment were not questions before the jury, and allowing such evidence would create confusion for the jurors. (R., pp. 8-9).

Petitioner argued he should be allowed to inquire about what type of treatment is generally used for sex offenders because the jury had to decide whether any treatment he needed should be in a secure facility or as an outpatient. The State responded that neither expert involved in the case was asked to answer the question regarding what treatment was needed or whether it would be effective. (R., pp. 9-12).

Judge Holt expressed concern about confusing the jury if questions of treatment were raised. He then instructed the parties to “[s]tay away from treatment once inside the facility.” (R., pp.12-13).

The State presented testimony from Emily Gottfried, Ph.D., who was qualified as an expert in clinical and forensic psychology and sex offender evaluations. Dr. Gottfried is the director of the Medical University of South Carolina (MUSC) Sexual Behaviors Clinic and Lab (SBCL), which provides sex offender assessment, evaluation and treatment. (R., pp. 73-84).

Dr. Gottfried testified she conducted a forensic evaluation of Petitioner, which included reviewing all available records, conducting psychological and physiological testing and assessments, and conducting a comprehensive clinical interview with the person. According to the records Dr. Gottfried reviewed, Petitioner was convicted in 1986 of assault of a female in North Carolina and was sentenced to two years probation. Approximately a year after his conviction, and while he was on probation from the 1986 conviction, Petitioner was arrested for criminal sexual conduct in the first degree in South Carolina.

Petitioner pled guilty to criminal sexual conduct in the third degree on the South Carolina charge in 1987 and was sentenced to six years incarceration. After he was released to probation on that conviction, Petitioner was charged with criminal sexual conduct in the first degree in April 1991, pled guilty to that offense and was sentenced to thirty years incarceration, to be served consecutive to a thirty-year sentence imposed on a burglary first degree conviction. (R., pp. 84-100, 416-424).

Dr. Gottfried testified that when she interviewed Petitioner, he initially seemed polite, pleasant, and easy going, but when she started asking him about his sexual offenses and general sexual history, Petitioner's "demeanor changed pretty significantly." He was "unable to contain or control his emotions, very angry, guarded with information, defensive and a little combative." Dr. Gottfried further testified Petitioner has a history of impulsivity, irresponsibility, sexual preoccupation, and conning, manipulating, or exploiting others. Also, there were discrepancies in

the versions of his sexual history Petitioner gave to the court-appointed evaluator and Dr. Gottfried. (R., pp. 90-95).

When asked about his 1986 conviction, Petitioner told Dr. Gottfried he took the twenty-year-old victim somewhere in a car and he was trying to get “some sex” but the victim pushed him away and told him no. He stated “he tried to force himself on her, tried to open her legs to have sex,” and she “kept resisting.” A police car stopped because of the late hour, and Petitioner said that if the police had not interrupted, he “probably would of ended up assaulting her,” which he clarified as “raping her.” Petitioner stated he was “sexually aroused during this assault and had an erection at the time.” (R., pp. 97-98).

Petitioner’s 1987 criminal sexual conduct third degree conviction involved a fifteen-year-old female who was walking to a baby-sitting job when Petitioner approached her, threw her to the ground, hit and choked her, threatened to kill her and then raped her. Petitioner told Dr. Gottfried he was dating the victim at the time, and she was angry about him being with another of his girlfriends. According to Petitioner’s version, he went to the victim’s house, got in bed with her and tried to have sex with her, but she said no. Petitioner stated he did not take no for an answer, pulled her legs apart, had sex with her and then left. He said he “just really wanted sex.” (R., pp. 99-100, 416-419).

Dr. Gottfried testified that during the interview with the court-appointed evaluator, Petitioner described this victim as “big and fat and unattractive,” which he also told Dr. Gottfried. Petitioner told the court-appointed evaluator Petitioner and the victim had “consensual sex” for a while, which the victim wanted to stop but Petitioner did not stop. Petitioner also told the court-appointed evaluator he intended to break up with the victim the day of the offense and it was the last time he would have sex with her. (R., pp. 101-102).

Dr. Gottfried stated Petitioner's disparaging references to the victim indicated hostility toward women which can be a risk factor for reoffending. She further testified sexual arousal when someone is fighting you, crying or saying no is not typical sexual functioning, and could be a risk factor. Petitioner told Dr. Gottfried that he was aroused and ejaculated during the 1987 attack. (R., pp. 102-105).

Shortly after Petitioner was released from prison on the 1987 conviction, he was charged in 1991 with criminal sexual conduct in the first degree, burglary in the first degree and kidnapping. He ultimately pled guilty to criminal sexual conduct in the first degree and burglary in the first degree and was sentenced to consecutive thirty-year prison terms. (R., pp. 105-106; 420-424). According to the official records, Petitioner broke into a stranger's home, hit the female occupant (approximately sixty years old) on the head, took her out of the house, put her in his car and drove approximately four miles from the house. He then took the victim out of the car, continued hitting her on her head and body, and then raped her. After he raped the victim, Petitioner took her back close to her house. (R., p. 106).

Regarding this offense, Petitioner told Dr. Gottfried his brother-in-law asked Petitioner to drive him to rob a lady, but the victim did not have any money. Petitioner admitted kidnapping the victim and sexual assaulting her, and confirmed he was sexually aroused and ejaculated during the assault. Dr. Gottfried testified Petitioner's conduct during this sexual assault "seems escalated" and "more violent" than the 1987 and 1986 offenses, and it suggested a diverse victim pool (a fifteen-year-old girl versus a sixty year old woman), all of which were risk factors for reoffending sexually. (R., pp. 106-109).

During his incarceration after the 1991 convictions, Petitioner was charged with eight disciplinary infractions between 1996 and 2015, three of which resulted in sanctions. In August

1996, he was charged with striking a correctional officer with/without a weapon and refusing/failing to obey orders. According to the records, Petitioner pushed a female sergeant with the door trying to keep her from entering a room. Petitioner told Dr. Gottfried he was waiting in an office to see the office secretary when the sergeant told him to go back to work, and the sergeant actually slammed the door herself. Petitioner was convicted of both charges after a hearing. Petitioner told Dr. Gottfried most of the complainants in the eight disciplinary infractions were female, which Dr. Gottfried testified was significant when considered with other data she had. (R., pp. 109-112).

Dr. Gottfried testified Petitioner had committed some relatively minor nonsexual offenses and an assault and battery that involved beating a woman with his fist, but Petitioner's sexual offenses were "close together, significant, serious, notable." She stated that was a data point to be considered when looking at a potential diagnosis. (R., pp, 117-118),

According to records from the South Carolina Department of Corrections (SCDC), Petitioner took a sex offender treatment class during his first incarceration in 1988, but he re-offended after he was released from SCDC. Dr. Gottfried testified that was significant because it suggested "either the treatment didn't target when he needed, he disregarded the treatment, [or] he wasn't able to control that behavior." With the treatment, Petitioner "should theoretically have learned how to manage those behaviors, and despite having the treatment, he still offended." After Petitioner was reincarcerated in 1991, he again participated in the SCDC sex offender class in 1991 and 1993, but there is no record of him participating in any additional sex offender treatment programs at SCDC. (R., pp. 119-121).

Dr. Gottfried diagnosed Petitioner with Other Specified Personality Disorder with antisocial traits, which she based on Petitioner's "demonstrated characteristics of antisocial

personality across his at least adult lifetime.” Dr. Gottfried testified the court-appointed evaluator also diagnosed Petitioner with that disorder. (R., pp. 124-126).

Dr. Gottfried administered a comprehensive battery of tests and assessments as part of Petitioner’s evaluation, which included two actuarial risk assessments – the Static-99R and the Static-2002R. Dr. Gottfried testified Petitioner’s score on the Static-99R put him in the well above average risk to re-offend sexually category, which correlates to a rate of sexual reoffending that is three to four times the average re-offense rate of individuals who have prior sex offenses. Petitioner’s score on the Static-2002R put him in the above average risk to re-offend sexually category, which placed him higher than 94% of other offenders. The court-appointed evaluator also scored those risk assessments and arrived at the same results. Dr. Gottfried testified the Static assessments only consider reported and charged offenses, and it is possible the results underestimate an individual’s risk because sexual offenses are the least likely offenses to be reported to authorities. (R., pp. 126-132).

Dr. Gottfried also diagnosed Petitioner with Other Specified Paraphilic Disorder, Paraphilic Coercive Disorder. She explained the coercive disorder is sexual arousal to coercion and sexualized power over another person and the acts, such as raping that person. Dr. Gottfried stated Petitioner admitted that control and power over his victims was arousing, and stated he did think the power aspect was behind all of his actions. (R., pp. 133-135).

Dr. Gottfried testified the facts of Petitioner’s sexual offenses and criminal history also supported a paraphilic coercive disorder diagnosis. The significant facts included: Petitioner reported being aroused and ejaculating during each of the sex offenses that were clearly nonconsensual; the sex offenses had a really similar pattern; Petitioner had minor nonsexual offenses in his criminal history; there was an overrepresentation of sexual offenses in his criminal

history; he offended against a victim who had previously consented to sexual activity with Petitioner that suggested a level of arousal to the nonconsenting aspect; Petitioner offended against individuals where there was a high likelihood he would be caught; and at the time he committed two of the rapes Petitioner had consenting partners who would have sex with him, which also suggested arousal to the coercive behavior. (R., pp.134-137).

The psychological assessments Dr. Gottfried administered indicated a possibility Petitioner would underreport things that might put him in a negative light, deny minor faults that most people would admit, exaggerate any positive traits, and deny engaging in sexual behaviors or having sexual thoughts. One test indicated there was a high probability Petitioner has a substance abuse disorder, and Dr. Gottfried testified substance abuse was a risk factor for reoffending because it would lower inhibitions that might stop the person from doing certain behaviors. (R., pp.137-145).

Another assessment Dr. Gottfried administered indicated Petitioner had some psychopathic traits but he did not meet the full criteria for a psychopathic disorder diagnosis. Petitioner's psychopathic traits identified included: lack of remorse or guilt; lack of empathy; many short term relationships; community supervision failure; overly high self-esteem; pathological lying, conning and manipulating others; a history of promiscuous sexual behavior; impulsivity; irresponsibility; and failure to accept responsibility for his own actions. Dr. Gottfried stated there is an overlap between antisocial personality disorders and psychopathy, and the identified psychopathic traits can be a risk factor for reoffending. (R., pp. 146-148).

Dr. Gottfried testified there are dynamic risk factors for reoffending that are not factored into the Static assessments. She stated Petitioner "has a significant number of dynamic risk factors," including: sexual deviance; preoccupation with sex; traits of antisocial personality disorder and some features of psychopathy; history of substance abuse problems; relationship

problems; physical harm in sexual offending; multiple sex offenses; extreme minimization and denial of sexual offending; hostility toward women; a negative attitude toward supervision; and a lack of realistic plans to avoid reoffending. Petitioner's dynamic risk factors placed him in the high range for reoffending because "a high level of effort or intervention is required to prevent future acts of sexual violence." Dr. Gottfried testified the court-appointed evaluator identified many of the same dynamic risk factors. (R., pp. 148-154, 226-237).

Petitioner told Dr. Gottfried he planned to move to Georgia to live with his brother, have a car business or expand his brother's car business, and "help mentor children in Georgia." Regarding treatment if released, Petitioner told Dr. Gottfried Sheriff Victor Hill had a program Petitioner could enter, but the court-appointed evaluator discovered no such program exists. Petitioner also told Dr. Gottfried that "thinking about sex could put him at risk for sexually offending." Dr. Gottfried testified "he had no realistic plans to prevent future offending." (R., pp. 154-160).

Dr. Gottfried opined to a reasonable degree of psychological certainty that Petitioner is a high risk to re-offend sexually due to his combination of antisocial and psychopathic traits, and his paraphilic arousal to nonconsenting victims which affect his volitional control and predispose him to commit sexually violent offenses. She further opined that Petitioner has serious difficulty controlling his propensity to commit acts of sexual violence, he needs long term treatment to learn how to manage sexual urges, and he poses a menace to the health, safety, and welfare of society at large. (R., pp. 161-163).

After Dr. Gottfried's direct testimony, Petitioner again asked Judge Holt to allow him to question Dr. Gottfried about outpatient treatment, contending Dr. Gottfried opened the door to inquiries regarding treatment by stating during her qualifications testimony that she treats sex

offenders and there is an intensive outpatient treatment center at the SBCL. The State argued Dr. Gottfried was not asked to render an opinion regarding what type of treatment modality Petitioner needs, only whether he has a mental abnormality or personality disorder that makes it likely Petitioner will reoffend if not confined for treatment, and allowing questions regarding the general type of sex offender treatment modalities would confuse the jury. Judge Holt denied Petitioner's request, finding the door was not opened by Dr. Gottfried's testimony. (R., pp.165-168).

Petitioner then proffered testimony from Dr. Gottfried about the treatment provided at the SBCL. Dr. Gottfried testified "a couple" of people had gone through the program either prior to a criminal trial (not court ordered) or as part of a sentencing deal, and it was individualized treatment depending on the person's specific treatment needs and treatment plan. She testified she was not asked to opine on what form of treatment may or may not be effective for Petitioner, and she had not formed any treatment plans regarding him. (R., pp, 187-190).

Petitioner presented testimony from the court-appointed DMH evaluator, who was qualified as an expert in forensic psychology and sexually violent predator assessments. The DMH evaluator's evaluation protocol included reviewing all available records, conducting collateral interviews as necessary and interviewing the person to gather information about the person's background and general history. The DMH evaluator also scored the Static 99-R and 2002-R. (R., pp.246-262).

When asked about the other assessments Dr. Gottfried used in evaluating Petitioner, the DMH evaluator stated he was able to gather the same information in his methodology, and "the most basic principles that we're taught in, in school is that everything you add [to your testing battery] must pass kind of a basic sort of test what incremental value is that thing giving because [any added test] is not just increasing the time of the evaluation but that's adding costs to what's

going on.” He further stated he did not use the assessments Dr. Gottfried utilized “because I felt I was able to answer those questions, get that information in a very thorough manner by talking to [Petitioner], reviewing the records, and talking to other sources that I didn’t need to basically increase the cost of the evaluation to get it.” (R., pp. 262-267).

On the Static risk assessments, the DMH evaluator reached the same scores as Dr. Gottfried, and he diagnosed Petitioner with the same personality disorder that Dr. Gottfried diagnosed. He disagreed with Dr. Gottfried’s diagnosis of Other Specified Paraphilic Disorder – Paraphilic Coercive Disorder, however, because he believed the multiple rapes Petitioner committed were due to something other than a paraphilic or deviant sexual interest motivation. The DMH evaluator testified that based on his review of the records and the offense patterns, he believed it was “a combination of [Petitioner’s] entitlement towards sex, callousness towards victims,” and “it sounds like [Petitioner] wanted what he wanted and he didn’t care how he got it.” The DMH evaluator opined that Petitioner’s personality disorder traits and control had improved while he was incarcerated, but he still had “some degree of eight of [the seventeen known risk factors].” (R., pp. 280, 284-299).

Based on his review of the records, the Static risk assessments, his collateral interviews and interview of Petitioner, and his personal experience, the DMH evaluator opined to a reasonable degree of psychological certainty that Petitioner did “not have a personality disorder or mental abnormality that impacts his emotions and volitional impairment and that predisposes him to commit those acts, and as a result, [Petitioner] does not have a qualifying mental condition, a mental abnormality or personality disorder that makes him likely to commit future acts of sexual violence.” He further opined that “[Petitioner] does not meet the criteria as a sexually violent predator.” (R., pp. 300-301).

On cross-examination, the DMH evaluator acknowledged Petitioner still exhibited multiple concerning behaviors directly connected with risk factors, including callousness toward his victims and offense supportive attitudes, and denial and minimization of specific crimes. He also acknowledged Petitioner had been disciplined in prison for “stalking” female employees. He stated the female correctional employees he interviewed “made it clear that it was a lingering sort of behavior, certainly something that made them feel uncomfortable,” but the DMH evaluator determined there was no “sexual element to it.” (R., pp. 322-332).

Petitioner told the DMH evaluator that Petitioner could live with his brother who would help him find employment and be a community support, but the DMH evaluator acknowledged the brother told him that he did not believe Petitioner committed the sexual crimes for which he was convicted and the allegations were false, which the DMH evaluator found “significant.” The DMH evaluator acknowledged “there are several concerns with both “[Petitioner’s] release plans as well as the nature of his community support,” including the fact that the treatment program Petitioner said he planned to attend “did not exist,” which “raised concerns about whether there will be an adequate structured environment in Georgia” for Petitioner. He stated the concerns regarding Petitioner’s release plans were risk factors for reoffending. (R., pp. 332-338).

The DMH evaluator found Petitioner had essentially the same dynamic risk factors Dr. Gottfried identified, and he testified Petitioner had made some improvement on certain factors, but he did not “feel that any one of those things is still fully managed.” The DMH evaluator further testified he recommended Petitioner receive treatment to address the “still actively (sic) risk factors,” and “there are still concerns going on with [Petitioner].” (R., pp. 338-350).

On re-direct examination, Petitioner asked the DMH evaluator “if [Petitioner] needs to get treatment, does he need to be in a secure facility or could he get outpatient treatment.” The DMH

evaluator responded “[h]e can certainly get outpatient treatment . . . that’s a possibility,” but stated he was not asked to opine on whether Petitioner needs treatment or not, and he determined Petitioner’s personality disorder did not meet the required criteria. (R., pp. 351-352).

Judge Holt charged the jury regarding the State’s burden to prove beyond a reasonable doubt “that unless confined to a secure facility, [Petitioner] is likely to commit another act of sexual violence.” He further charged the jury the elements the State had to prove were the existence of a sexually violent offense conviction “and that [Petitioner] suffers from a mental abnormality and/or personality disorder, and that makes him likely to engage in acts of sexual violent if not confined in a secure facility for long term control, care and treatment.” (R., pp. 394-395, 398-400).

The jury found Petitioner is a sexually violent predator beyond a reasonable doubt. Based on the jury’s verdict, Judge Holt committed Petitioner to DMH custody for long term control, care, and treatment. (R., pp. 409-413, 425). This appeal followed.

By unpublished opinion filed November 27, 2024, the court of appeals affirmed Petitioner’s commitment, finding Judge Holt did not abuse his discretion in prohibiting Petitioner from cross-examining Dr. Gottfried about MUSC’s outpatient sex offender treatment program because the testimony was irrelevant, and the State did not open the door when Dr. Gottfried testified MUSC had such a program. It further found that while the jury did not hear the details of the MUSC program, both experts testified about the availability of outpatient treatment; thus, to the extent availability of outpatient treatment was relevant, details regarding the treatment were redundant or unnecessary. (Appendix, pp. 1-3) The court of appeals denied Petitioner’s rehearing petition, and Petitioner now seeks review of the court of appeals opinion by this Court. (Appendix, pp. 4-8)

ARGUMENT

The court of appeals properly found Judge Holt did not abuse his discretion by excluding evidence regarding outpatient sex offender treatment modalities because the issue before the jury in a SVPA case is whether the person's risk to re-offend sexually is such that he should be confined for long term control, care and treatment, and the specific modalities of treatment, or even whether any treatment is available for the person's particular mental abnormality or personality disorder, is irrelevant and potentially confusing for the jury.

Petitioner contends the court of appeals erred in finding Judge Holt did not abuse his discretion by excluding evidence regarding the specifics of the MUSC outpatient sex offender treatment because Dr. Gottfried testified about the program in the course of her qualification testimony, and the State engaged in a “vicious and effective” cross-examination of the DMH evaluator about the viability of Petitioner’s release plan.¹ These contentions are meritless.

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, SCRE. Even relevant evidence may be excluded if its probative value is substantially outweighed by a danger it will confuse the issues or mislead the jury. Rule 403, SCRE. 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. Glenn v.

¹Petitioner attempts to denigrate Dr. Gottfried’s integrity and objectivity by repeatedly referring to her as “the Attorney General’s hired expert,” who “routinely performs [evaluations] for the Attorney General.” The implication of these references is that Dr. Gottfried is merely a “hired gun” for the State. Significantly, during Dr. Gottfried’s direct examination, the State asked her for the number of evaluations she had performed in SVPA cases, and she testified approximately forty-three or forty-four cases. When the State then asked her how many times she had agreed with the DMH evaluator’s opinion in those cases, Petitioner asked to approach the bench. After the bench conference, the State moved onto another question. (R., pp. 81-82) Thus, Petitioner prevented Dr. Gottfried from testifying that she agrees with the DMH evaluator’s opinions in approximately 50% of the evaluations she does for the State, which hardly evidences a bias in favor of the State.

3M Co., 440 S.C. 34, 890 S.E.2d 569, 581 (Ct. App. 2023) (internal citations omitted); *see also* Gamble v. Int'l Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438, 441 (1996) (same); In re Manigo, 389 S.C. 96, 697 S.E.2d 629, 633 (Ct. App. 2010) (same).

A sexually violent predator is statutorily defined as a person who 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.” *See* S.C. Code Ann. Sections 44-48-30(1)(a) and (b) (2018); In re Care and Treatment of Snow, 425 S.C. 544, 823 S.E.2d 467, 469 (2019). The statute does not require any evidence regarding what type of treatment modalities the person needs, only proof beyond a reasonable doubt the person has a mental condition that makes him likely to engage in acts of sexual violence if not confined for long term control, care, and treatment.

In a seminal case regarding sexually violent predator commitment statutes, the United States Supreme Court stated “it would be of little value to require treatment as a precondition for civil confinement of the dangerously insane when no acceptable treatment existed,” and “[t]o conclude otherwise would obligate a State to release certain confined individuals who were both mentally ill and dangerous simply because they could not be treated for their afflictions.” Kansas v. Hendricks, 521 U.S. 346, 366 (1997). Based on the analysis in Hendricks, even if the inpatient treatment offered to Petitioner if he was committed would be ineffective, or no effective treatment is known at all, it would not preclude Petitioner’s civil commitment pursuant to the SVPA.

As he did before the court of appeals, Petitioner misrepresents the basis for the State’s initial objection, which was specifically to evidence regarding the type of treatment Petitioner would receive, and the likelihood of successful treatment, if committed as a sexual predator, and it had nothing to do with outpatient treatment. When Judge Holt granted the pre-trial motion to

exclude evidence regarding treatment in the sexual predator treatment facility, he specifically instructed the parties to “[s]tay away from treatment once inside the facility.” (R., pp. 7-13) (emphasis added). Thus, the only focus of the State’s motion, and Judge Holt’s ruling, was the treatment offered in the sexual predator treatment facility where Petitioner would go if he was committed.

After Petitioner argued that Dr. Gottfried’s mere mention that MUSC had established an intensive outpatient treatment program for sex offenders opened the door to him asking her about the specifics of treatment because she treats sex offenders, the State responded that Dr. Gottfried was not asked to assess any appropriate treatment modalities for Petitioner, and merely stating MUSC has an outpatient treatment program did not open the door for testimony regarding treatment modalities. Judge Holt found that the State did not open the door by inquiring about Petitioner’s need for treatment, which was a statutory element the State had to prove, Dr. Gottfried had not come up with a treatment plan for Petitioner, and going into the various treatment options “would go far afield if we go down that road.” (R., pp. 165-168).

Petitioner now argues that based on Dr. Gottfried’s proffered testimony about the types of treatment used in MUSC’s outpatient program, he should have been allowed to elicit testimony from her before the jury about what type of treatment modalities are used for sex offenders, such as “aversion therapy, biofeedback, behavioral techniques and cognitive therapy” to “show the kinds of therapy offered without [Petitioner] being confined.” (Petition, p. 12). However, Petitioner overlooks some very significant parts of Dr. Gottfried’s proffered testimony.

Dr. Gottfried testified the treatment program is “individualized treatment depending on their specific treatment needs and treatment plan and then group treatment.” Regarding the success of the program, which only had two participants as of the date of trial, she stated she thought it

was successful, but “we haven’t been doing it for long enough to have like outcome data or, to my knowledge, that people have reoffended but it’s pretty new.” (R., p. 188) (emphasis added). Thus, Dr. Gottfried’s proffered testimony made it clear that the various treatment modalities were “individualized” to address each person’s treatment needs, and did not constitute any evidence of what modalities would be effective for Petitioner, if any.

Significantly, both Dr. Gottfried and the DMH evaluator testified they were not asked to opine about the type of treatment Petitioner should receive or where he should receive it, only whether Petitioner met the statutory criteria for commitment under the SVPA. Dr. Gottfried opined Petitioner did meet the criteria, and the DMH evaluator, even though he testified Petitioner needed treatment, opined Petitioner did not meet the criteria. (R., pp. 161-163, 189-190, 351-352). Since neither expert had formulated an individual treatment plan for Petitioner based on his specific treatment needs, testimony about what treatment modalities are potentially used in sex offender treatment, inpatient or outpatient, would have been pure speculation, and led the jury down the proverbial rabbit hole of what type of treatment would be appropriate for Petitioner, which is not an issue before a jury in SVP proceedings.

Petitioner asserts that the availability of outpatient treatment for sex offenders “makes it less likely that a defendant in an (sic) SVP case will reoffend unless confined for treatment.” Significantly, Petitioner cites no authority for such a proposition. The mere availability of outpatient treatment, even “intensive” treatment, does not impact the issues before the jury. It almost goes without saying that outpatient sex offender treatment is available, as it is for virtually any illness or disorder, and that fact does not make it “less likely” that someone would need to be confined for treatment.

Further, allowing respondents in SVPA cases to present evidence regarding specific treatment modalities available in a particular outpatient program will necessarily require the State to present evidence regarding the treatment modalities in the SVP treatment program. All of this evidence will have the jury weighing the appropriateness and potential success of the programs when no expert will testify about the specific modalities applicable to a particular respondent because they are not asked to determine the type of treatment modalities required to treat that respondent. All the experts are asked to do in a SVPA proceeding is evaluate whether the respondent has a mental or personality condition that predisposes him to commit future acts of sexual violence if not confined for treatment. If an expert opines the respondent meets the statutory criteria for civil commitment pursuant to the SVPA, the expert is necessarily opining the respondent needs to be confined in a secure facility for long term control, care and treatment. Once a respondent is committed, the treatment provider assesses the respondent to determine what treatment modalities are appropriate for that respondent.

Even if the availability of outpatient treatment is relevant however, Petitioner's claim of prejudice because he was unable to inform the jury specifically that **Dr. Gottfried** herself provided "intensive" outpatient treatment is a classic smoke and mirrors argument. Dr. Gottfried testified before the jury that she provides individual sex offender treatment to people on federal probation, and that MUSC has an "intensive outpatient treatment program for individuals who sexually harm." (R., p. 83). Then, the DMH evaluator testified before the jury, without objection, that "[Petitioner] can certainly get outpatient treatment," and [t]hat's certainly a possibility." (R., p. 351). Therefore, as the court of appeals found, the jury heard from both experts that outpatient treatment was available. The jury just determined that Petitioner needed to be confined to receive the sex offender treatment both experts testified he needs.

The jury knew Dr. Gottfried provided individual and “intensive” outpatient sex offender treatment, and that outpatient treatment was a “possibility” for Petitioner. Any inquiries regarding the specific modalities used in MUSC’s outpatient treatment program, or how they might be applicable specifically to treat Petitioner, would require rank speculation and potentially confuse or mislead the jury, especially given both experts’ testimony they did not reach any opinions regarding what type of treatment Petitioner needed.

In addition, Petitioner was able to tell the jury about his plans if he was released. Unfortunately for Petitioner, revealing those plans to the jury was much more prejudicial than helpful for Petitioner. Both Dr. Gottfried and the DMH evaluator testified about Petitioner’s plan to live with his brother in Georgia and that if he needed it, he would enter a treatment program established by Sheriff Victor Hill in Georgia, a program that never existed. Petitioner then testified he planned to go to “Jump Start,” which is a ministry program that would help him find a place to live and a job and he would stay there at least six months, but he did not know if he had been accepted to that program. (R., pp. 363-367). Thus, the jury knew about Petitioner’s plans, and it is highly unlikely that knowing the general sex offender treatment modalities utilized by the MUSC treatment program would have swayed the jury to believe Petitioner did not need to be confined for treatment.

The jury was expressly instructed several times that a verdict for commitment required it to find beyond a reasonable doubt Petitioner has a mental abnormality and/or a 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**. Both experts testified Petitioner has a personality disorder, and Dr. Gottfried testified he also has a paraphilic disorder. Dr. Gottfried opined that Petitioner’s paraphilic and personality disorders make him likely to engage in acts of sexual

violence if not confined for control, care, and treatment. The DMH evaluator opined Petitioner's personality disorder was not the cause of his sexual offenses, and while Petitioner did need treatment to address his risk factors, he did not meet the criteria for commitment under the SVPA.

As in every case involving "dueling experts," the jury was able to make credibility determinations and accept or reject any or all of each expert's testimony. In determining Petitioner is a sexually violent predator as defined by the SVPA, the jury necessarily determined beyond a reasonable doubt that Petitioner's mental abnormality and/or personality disorder was casually related to his sexual offending, that he needed treatment, and that he should be confined for long term control, care, and treatment.

Petitioner's assertion that the mere existence of Dr. Gottfried's outpatient treatment program somehow made the DMH evaluator's opinion that Petitioner did not need to be confined for treatment more credible defies logic, because the jury did know about the MUSC outpatient program. His further assertion that Dr. Gottfried's opinion regarding the need for commitment or outpatient treatment depended "on who was paying her" attacks Dr. Gottfried's integrity, objectivity and credibility with absolutely no evidence to support it.²

Petitioner's reliance on Washington's sex offender statute and case law is unavailing. The Washington statute is fundamentally different from the SVPA on the issue of outpatient treatment, which is not referenced in the SVPA at all. Thus, case law interpreting the Washington statute is not applicable to South Carolina's law.

²Initially, this contention was not raised in the circuit court or the court of appeals. If Petitioner had raised it in the circuit court, Dr. Gottfried would have been afforded an opportunity to address it. Further, Petitioner's argument is undermined by the fact that he told both experts he was going to a sex offender treatment program in Georgia, and it can easily be assumed that program required payment. If Petitioner had the funds to pay for the Georgia program, he would have the funds to pay for the MUSC program, but Dr. Gottfried recommended commitment.

Finally, Petitioner's reference to South Carolina SVPA cases mentioning outpatient treatment as support for his assertion that the testimony at issue in the case should have been allowed is also unavailing. The posture of those cases was different from the instant case. Further, a review of the cited cases reveals they do not support Petitioner's argument at all. The DMH evaluator in this case testified before the jury that outpatient treatment was a "possibility" for Petitioner, which is essentially all that the experts in the cases Petitioner cites did. (R., p. 351). Nothing in those cases indicates there was testimony regarding the specific type of treatment modalities that would be included in the referenced outpatient treatment.

Evidence regarding what specific treatment modalities are used in sex offender treatment, inpatient or outpatient, is simply irrelevant to the issues before the jury in a SVPA case, and has the potential to confuse and mislead the jury by imposing an additional element regarding the specific types of treatment that the State must prove beyond a reasonable doubt. The court of appeals properly found Judge Holt did not abuse his discretion in excluding testimony regarding general or specific modalities of sex offender treatment, and the Petition for a Writ of Certiorari should be denied.


CONCLUSION

Based on the foregoing reasons, the State respectfully submits the Court should deny the Petition in its entirety.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

BY: 
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 9, 2025