

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Kershaw County

Honorable Daniel McLeod Coble, Circuit Court Judge

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

APPELLANT

APPELLATE CASE NO 2025-000548

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INDEX

INDEX	i
SVP PETITION WITH EXHIBITS A-G	1
TRIAL TRANSCRIPT DATED NOVEMBER 13-16, 2023	88
PRE-TRIAL MOTIONS	92
<u>DAUBERT</u> HEARING	93
TESTIMONY (IN-CAMERA)	
EMILY GOTTFRIED	
Direct Examination by Mr. Runyan	94
Cross-Examination by Mr. Kirkland	141
Re-Direct Examination by Mr. Runyan	172
Direct Examination by The Court	175
ARGUMENT BY MR. RUNYAN	181
ARGUMENT BY MR. KIRKLAND	188
REPLY ARGUMENT BY MR. RUNYAN	198
RULING BY THE COURT	203
RENEWAL OF MOTION	210
OPENING REMARKS BY THE COURT	213
OPENING STATEMENT BY MR. RUNYAN	213
OPENING STATEMENT BY MR. KIRKLAND	222
TESTIMONY	
EMILY GOTTFRIED	
Direct Examination by Mr. Runyan	235
Voor Dire Examination by	242
Cross-Examination by Mr. Kirkland	308
COLLOQUY REGARDING JUROR	356

TESTIMONY

EMILY GOOTFRIED

Re-Direct Examination by Mr. Runyan	359
Re-Cross Examination by Mr. Kirkland	378

COLLOQUY.....	382
---------------	-----

STATE RESTS	385
-------------------	-----

MOTION FOR DIRECTED VERDICT.....	385
----------------------------------	-----

RULING BY THE COURT.....	387
--------------------------	-----

RENEWAL OF MOTIONS.....	389
-------------------------	-----

RULING BY THE COURT.....	389
--------------------------	-----

TESTIMONY

MARIE GEHLE

Direct Examination by Mr. Kirkland	390
Voir Dire Examination by Mr. Runyan	397
Direct Examination by Mr. Kirkland	400
Cross-Examination by Mr. Runyan	450
Re-Direct Examination by Mr. Kirkland	503
Re-Cross Examination by Mr. Runyan	511

DEFENSE RESTS	517
---------------------	-----

RENEWAL OF ALL MOTIONS.....	518
-----------------------------	-----

RULING BY THE COURT.....	518
--------------------------	-----

CLOSING ARGUMENT BY MR. RUNYAN.....	520
-------------------------------------	-----

CLOSING ARGUMENT BY MR. KIRKLAND.....	537
---------------------------------------	-----

CLOSING REBUTTAL BY MR. RUNYAN	566
--------------------------------------	-----

CHARGE CONFERENCE.....	577
------------------------	-----

CHARGE ON THE LAW	578
-------------------------	-----

VERDICT	591
---------------	-----

RENEWAL OF ALL MOTIONS.....	592
RULING BY THE COURT.....	593
MOTION IN LIMINE FILED NOVEMBER 13, 2023.....	594
MEMORANDUM IN SUPPORT OF THE ADMISSIBILITY OF PPG TESTIMONY OF DR. EMILY GOTTFRIED.....	599
ORDER OF COMMITMENT FILED NOVEMBER 16, 2023	616
ORDER ALLOWING PPG TESTIMONY BY STATE’S EXPERT WITNESS DATED MAY 31, 2024.....	617
STATE’S EXHIBIT NO. 1 (SENTENCE SHEETS).....	624
STATE’S EXHIBIT NO. 2 (SENTENCE SHEETS).....	628
STATE’S EXHIBIT NO. 3 (SENTENCE SHEETS).....	632
COURT’S EXHIBIT NO. 1 (MEDICAL RECORDS)	636
COURT’S EXHIBIT NO. 2 (501(K) SUMMARY).....	641
COURT’S EXHIBIT NO. 3 (BIBLIOGRAPHY)	646
COURT’S EXHIBIT NO. 4 (PPG ADMINISTRATION INSTRUCTIONS).....	649
COURT’S EXHIBIT NO. 5 (SVP CLINICAL SCIENCE HANDBOOK)	657
COURT’S EXHIBIT NO. 6 (BIBLIOGRAPHY)	664
COURT’S EXHIBIT NO. 7 (BIBLIOGRAPHY)	665
COURT’S EXHIBIT NO. 8 (MANUAL OF MENTAL DISORDERS)	666
COURT’S EXHIBIT NO. 9 (ATSA ADULT PRACTICE GUIDELINES).....	668
CERTIFICATE OF COUNSEL	682

1 Q. And what is that?

2 A. That's somebody who spends time with people who
3 promote negative behaviors people who might be involved in
4 criminal behaviors.

5 Q. Okay. And you found Mr. Pough it has issues in
6 that area?

7 A. Yes.

8 Q. Okay. And then this will go a little bit quicker
9 now, Doctor, because you -- both you and Dr. Gottfried
10 conducted the Static-99R in 2002R, is that right?

11 A. Yes.

12 Q. Okay. And I would like to know why do you use
13 both measures?

14 A. Why do I use both? Because it's recommended that
15 in these kinds of evaluations you use both.

16 Q. Okay. And you said high stakes evaluations.
17 You'd agree that this is a high stakes evaluation, right?

18 A. Yes.

19 Q. And what's your definition of that?

20 A. I didn't say high stakes. I think Dr. Gottfried
21 did. I just said in these types of evaluations.

22 Q. Okay. Well, I'm going to call high stakes
23 evaluations. What's your definition of high stakes
24 evaluations?

25 A. An evaluation that could change the outcome of

1 somebody's life would definitely be high stakes, which is
2 applicable here.

3 Q. So what you testified to is why you use both of
4 those is because it -- it -- the research suggests that
5 that's better when you're doing these types of things,

6 A. That you're a little bit more accurate. The
7 standard is to use the Static-99R and then in high stakes use
8 the Static 2002R because it adds a little bit of incremental
9 validity, so it makes, it makes sure estimations a little bit
10 more accurate.

11 Q. And what was -- your score was the same, an eight
12 on the Static-99R, is that correct?

13 A. That's correct.

14 Q. And that puts him in the well above average
15 category, is that correct?

16 A. Yes.

17 Q. And that his 20-year risk to re-offend estimates
18 are over 50 percent, is that correct?

19 A. That's correct.

20 Q. Okay. And on the Static 2002, you -- you -- your
21 score was a six, correct?

22 A. Correct.

23 Q. And that put him in the above average category to
24 re-offend, is that right?

25 A. Yes.

1 Q. Okay. Did you talk to Mr. Pough about his
2 assessment of his risk?

3 A. Yes.

4 Q. What did he tell you?

5 A. Said he had no risk to do this again?

6 Q. No risk to do this again at all?

7 A. That's correct.

8 MR. RUNYAN: Thank you, Your Honor. No more questions.

9 THE COURT: Redirect.

10 MR. KIRKLAND: Thank you, Your Honor.

11 RE-DIRECT EXAMINATION

12 BY MR. KIRKLAND:

13 Q. I just have a few questions. Sorry. So -- well,
14 first let me go to what we were just talking about. So we
15 talked about the, the Static-99R, Static 2002R and the
16 dynamic risk factors.

17 A. Yes.

18 Q. Okay. So this is something that right at the
19 start, when I started my direct examination of you, this was
20 something that you and Dr. Gottfried agreed upon, if I'm not
21 mistaken, that his risk factors were -- were high?

22 A. We got the same scores on those two actuarial
23 assessments. Yes.

24 Q. So here's my question and -- then I guess, did --
25 are these -- are these tests that you gave, are they specific

1 to diagnosing paraphilic disorder?

2 A. No, they don't have anything to do with diagnosing
3 a paraphilic disorder.

4 Q. Okay. Now a lot was made. There seems to be a
5 fundamental difference in the understanding of coercive
6 versus non-consensual. I mean, I was -- I was watching the
7 -- the cross-examination and -- and it appeared that
8 non-consensual was the word used by Mr. Runyan over and over
9 again. Is there a difference between something that is
10 coercive and non-consensual?

11 A. Yes.

12 Q. So I guess I -- I can't think of another way to
13 put it. Any rape is non-consensual. Right? That's inherent
14 in the definition.

15 A. Yes -- yes.

16 Q. What we're talking about here is whether this
17 person or any person that receives a diagnosis of coercive
18 paraphilic disorder or blasto, whatever you said, what we're
19 talking about is if they become sexually aroused from being
20 coercive. Correct?

21 A. Yes.

22 Q. Because, like I said, all anything defined as rape
23 is non-consensual by nature. Correct?

24 A. All of his charges are -- yes.

25 Q. I mean, that's just a -- I -- I -- I'm -- I'm

1 trying to talk about something that seems so simple to me.
2 It -- nothing can be a rape if it's -- if it's consensual
3 sex, it's not a rape.

4 A. Correct.

5 Q. Okay. And with -- when it comes to people under
6 the age of 16 in South Carolina, it's just automatically
7 non-consensual by virtue of their age.

8 A. As I understand what you're saying. Yeah. At the
9 age of 16 is the age of consent in South Carolina. So
10 anybody under the age of 16 cannot give their legal consent
11 to sex.

12 Q. And in what we've been talking about -- everything
13 that I've been talking about on direct examination, what you
14 were doing was looking at the specific characteristics of
15 these very specific incidents and trying to determine not
16 whether they were non-consensual, because that is inherent as
17 we talked about in a charge like this, right?

18 A. Correct.

19 Q. What we're trying to figure out is if -- if he
20 suffers from a paraphilic disorder that he receives sexual
21 arousal from -- from using some sort of force. Coerciveness.
22 Correct?

23 A. Yes. If the sexual arousal is targeted to that
24 specifically, that's why he's getting sexually aroused.

25 Q. And that is what the coercive paraphilic disorder,

1 that is what it is referring to. Am I mistaken about that?

2 A. Yes.

3 Q. That -- that -- that's what it's -- because I --
4 the end of my question made it sound screwed. So coercive
5 sexual -- so coercive paraphilic disorder is -- is honing in
6 on the coercion and the resistance, is that correct?

7 A. I -- I believe that ---

8 Q. Or describe it however you want.

9 A. The way I define it is -- it is like the target of
10 the arousal is coercive sexual acts with non-consenting
11 persons.

12 Q. Right. So coercion -- so coercion is -- that
13 that's the key to establishing a diagnosis of this particular
14 paraphilic disorder because the people are obviously not
15 going to be not -- non-consenting if someone is coercing them
16 to have sex.

17 A. Yes. Of that particular disorder. Yes.

18 Q. Okay. All right. I understand it now. Now, they
19 also suggested that -- and there there's going to be a lot of
20 confusion about this. I -- I -- I predict. So if someone is
21 mentally incapacitated, it seems like the attorney general's
22 office is suggesting that that automatically means that there
23 is coercion pursuant to coercive paraphilic disorder. Is
24 that true?

25 A. Okay. I think I'm following your question. So in

1 a case where somebody is incapacitated, you can't obtain
2 their consent.

3 Q. Correct.

4 A. But we still don't -- that doesn't automatically
5 mean that that's what they found arousing about the incident.
6 They could have just done it for sex and didn't care about
7 the person's consent. We don't know that if that's the
8 specific reason that he was aroused.

9 Q. Okay. I understand that. Now -- but would there
10 be -- if somebody's passed out, would there be an element of
11 coercion involved in that? They're passed out.

12 A. Right. I -- I don't know -- I don't believe so in
13 the way that -- like the way that coercion is defined.

14 Q. Okay. So your understanding of -- and -- of this
15 paraphilic disorder, coercive paraphilic disorder is that the
16 person would not fall under that particular diagnosis if a
17 person is passed out. And that is simply all the facts that
18 there are to it.

19 A. That's all the facts that there are to it.

20 Q. Right. Okay. Because you -- you would need some
21 type of coercion and resistance. Is that what I'm
22 understanding?

23 A. Each case is different. You need to have
24 information about what she did? What he did? The reactions
25 is level of arousal, what he was aroused to. So you get that

1 from things he might say during the offense ways that he act
2 in response to the victim, things of that nature.

3 Q. And one of the things that they asked you is that
4 some -- some people that are -- that are raped, they
5 psychologically shut down and then there is absolutely no
6 resistance at all. And I And you said that, "Yes, that's
7 true."

8 A. Yes.

9 Q. Okay. So would that be -- would that situation --
10 because I -- I'm trying to understand what they were asking
11 -- why they were asking you. What -- what -- what they think
12 it means. Would that situation automatically mean that
13 somebody falls under coercive paraphilic disorder?

14 A. None of that is -- none of this stuff is automatic
15 in that circumstance. You know, there could be reason that
16 could still indicate the paraphilic coercive disorder if
17 there was weapons used. If there was prolonged raping, if
18 there was lots of evidence of arousal and it was very clear
19 that the victim was terrified, shut down and -- and a ton of
20 distress. Things like that, or it would still depend on that
21 situation.

22 Q. So what I'm getting from all of this is that
23 coercion, is it -- it's -- you have to judge it on the
24 interaction itself, the -- what he is doing, what the other
25 person is doing, and if it escalates, if there's all

1 aggravating factors to it and things like that. I'm trying
2 to get a -- the most simple definition I can because me and
3 the jurors, we don't. We don't know.

4 A. That's a basic -- basic understanding. None of
5 this stuff is it always depends on that particular situation.
6 And it is -- it is. If that's all you had was I -- I -- I
7 can't even finish that thought, but ---

8 Q. That's fine.

9 A. --- if you have the interaction, it will be much
10 easier to tell what he's aroused to things he said during the
11 offense ways he reacted to like, evidence of non-consent or
12 whether he could trick himself into, you know, this isn't
13 harming anybody. Things like that. So it depends on the
14 situation itself.

15 Q. Now, the -- the MMPI that you gave you stated that
16 board excitable, there was problems with, I think,
17 affiliation, you mentioned things like that.

18 A. Yes.

19 Q. Does that go towards -- that stuff go towards
20 paraphilic coercive paraphilic disorder?

21 A. No.

22 MR. KIRKLAND: Okay. If I may have it. Just a moment,
23 Your Honor.

24 BY MR. KIRKLAND:

25 Q. And one of the things that you looked at was the

1 sentence that he received on these offenses when you were --
2 and I think it's in your report and even ---

3 A. Yes.

4 Q. And it's been -- it's been repeated over and over
5 again. His sentence was 10 years suspended on the service of
6 four with two years of community service and five years of
7 probation to run concurrent with mandated sex offender
8 treatment. Is that your understanding of what the sentence
9 -- his sentence is on these offenses?

10 A. I don't see anything about two years of mandated
11 community service on the -- well, I'm sorry. You know what
12 some of these might have a second page, so.

13 Q. Oh, I'm sorry. That's -- I'm asking you to make a
14 legal conclusion that -- that's something that happens
15 automatically. It's not checked on a box on any of the
16 sentencing sheets.

17 A. So my understanding is that he was -- he was
18 convicted of all three sex offenses on a single date.

19 Q. Yep.

20 A. And he was given a concurrent sentence for each of
21 them. All of them are the same. So they're all going to be
22 served at the same time. And it's 10 years provided upon the
23 service of serving four years, that 10 years would be
24 suspended with five years of probation and during probation,
25 the person would be required to go to sex offender treatment.

1 MR. KIRKLAND: Okay. That's all. That's -- that's it.
2 That's all the questions that I have, Your Honor. Thank you.

3 THE COURT: Any brief re-cross?

4 MR. RUNYAN: Yes, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. RUNYAN:

7 Q. Dr. Gehle, is there evidence in the record that in
8 the first victim she told him to stop?

9 A. Yes.

10 Q. That she tried to push him away?

11 A. Yes.

12 Q. When I ask you if you agree with the statement,
13 you said in some cases that someone with paraphilic coercive
14 disorder can present -- paraphilic coercive disorder can
15 present in rapists who target unconscious or mentally
16 incompetent victims who are incapable of consent to their
17 lack of awareness that a sexual assault is being admitted
18 upon them. Is that right?

19 A. Yes.

20 Q. Okay. And is giving someone alcohol and drugs to
21 get them intoxicated, is that a form of coercion? Could it
22 be?

23 A. Is that a form of coercion?

24 Q. Yes.

25 MR. KIRKLAND: Objection, Your Honor.

1 MR. RUNYAN: I mean we can approach, but.

2 THE COURT: What's your argument?

3 MR. KIRKLAND: Oh, wait -- wait, I may misunderstood
4 (inaudible). Your Honor. I would withdraw that objection.
5 I misunderstood that exchange. (Inaudible).

6 BY MR. RUNYAN:

7 Q. So Dr. Gehle, it just -- you know, could it --
8 could giving someone alcohol and drugs be a form of coercion?

9 A. It would -- yeah. It would depend on the
10 circumstances. It might be.

11 Q. Okay. And -- and the third victim there's
12 evidence that she pushed -- pushed his hand away and tried to
13 stop the advances, is that right?

14 A. Yes.

15 Q. Okay. And she lived with him, is that right?

16 A. Yes.

17 Q. And she was a minor?

18 A. Yes.

19 Q. It's a fact that could it be coercive that they
20 live in the same home and someone is basically has no escape?
21 Could that be coercive?

22 A. I don't know that she didn't have an escape. So I
23 don't -- I don't believe that I would say that in this
24 circumstance, no.

25 Q. Okay. But in any circumstance, could it be?

1 A. It would depend on that situation.

2 Q. Okay. Fair.

3 A. Those circumstances.

4 Q. Fair enough. Doctor, you were asked if the MMPI
5 and the, the categories that you found some issues in, you
6 were asked if that would determine a -- a -- a paraphilic
7 disorder. That's not why you use the MMPI, is it?

8 A. That's correct.

9 Q. You use the MMI for personality disorders, is that
10 right?

11 A. Yes.

12 Q. Okay. And Dr. Gehle, what is your referral
13 question?

14 A. Whether the person has a mental abnormality or
15 personality disorder that makes them likely to engage in acts
16 of sexual violence, if not confined in a secure facility for
17 long-term control, care, and treatment.

18 Q. So if your answer is yes, they go into a secure
19 facility, is that right?

20 A. No.

21 Q. If you answer yes, they meet the criteria, they go
22 into a secure facility. Is that right?

23 A. No. The jury (inaudible) that ---

24 Q. Well, I mean, at a trial? I mean, that's your --
25 you're saying that they need to go into, I -- I mis-phrased

1 the question.

2 A. If I answer yes, then I testify on the State's
3 behalf and I testify to that opinion.

4 Q. So yes, they meet the criteria. They need to be
5 in a secure facility for treatment?

6 A. It -- it would be my opinion that they meet the
7 criteria of a sexually violent predator.

8 Q. Is there any other -- any other way to do it?
9 It's either yes or no. They go in or they go out. They
10 don't go in, right. That's your opinion?

11 A. Yes.

12 Q. Okay. So while community supervision and
13 probation, how does that factor in? If you say someone has
14 to go, in your opinion is they must go into secure facility
15 and they have community supervision and probation.

16 A. How...

17 Q. How does that factor in?

18 A. If my opinion is -- is that they have to go or
19 that they meet the criteria of a sexually violent predator,
20 then their probation just runs while they're in the program.
21 And so they would never be on probation.

22 MR. RUNYAN: Thank you, Your Honor.

23 THE COURT: All right. Thank you, Doctor. You may
24 step down.

25 THE WITNESS: Thank you.

1 THE COURT: All right. Ladies and gentlemen, we're
2 going to take a 15 minute break. If you will use the
3 restroom stretch. So while you're back there, do not discuss
4 the case. Do not deliberate, do not do any independent
5 research. We'll have you back in 15 minutes. Thank you.
6 All right. Doctor, you're free to step down.

7 THE WITNESS: Thank you.

8 THE COURT: You going to have any more witnesses?

9 MR. KIRKLAND: That I'm going to need to talk to my
10 client about.

11 THE COURT: Very well. Just take a 15-minute break and
12 then we will figure that out. Let me ask you this ---

13 MR. KIRKLAND: And I think we can release Dr. Gehle
14 from her subpoena? No. Or?

15 MR. RUNYAN: No objection.

16 THE COURT: All right. Free to leave.

17 MR. KIRKLAND: Thanks Dr. Gehle.

18 MS. GEHLE: Thank you.

19 THE COURT: All right. Let's -- 15 minutes.

20 (Off the record)

21 THE COURT: All right. (Inaudible) chance to review
22 the jury instructions. Jury charges?

23 MR. RUNYAN: I did, Your Honor. And I -- I think this
24 is as we discussed, I have no objection to how it was put
25 together here.

1 MR. KIRKLAND: I -- I did have an objection, but I'm --
2 I'm going to get -- I'm not going to make that objection. I
3 have worked out how ---

4 THE COURT: Mic. We need to get on the record.

5 MR. KIRKLAND: I'm going to start over. I originally
6 indicated to Mr. Runyan that I had an objection. This is not
7 the jury charge that I would most desire, but I do think that
8 this is close to what I would desire. So I have made a
9 decision not to object.

10 THE COURT: Well, we're probably doing jury charges
11 tomorrow morning, so you'll have a chance overnight to
12 (inaudible) and send me what you want. You have the -- the
13 word version of it so you can ---

14 MR. KIRKLAND: Yes, sir.

15 THE COURT: -- change it and then say, "This is what I
16 want and show me what you ---"

17 MR. KIRKLAND: I -- I'm -- I'm going to, I'm going to
18 work with this during closing. All right. And I think, I
19 know -- I think I figured out a way to do that. I -- I don't
20 think -- I think it's coming down to a -- a very personal
21 preference that I have about this charge. And I don't -- I
22 don't think that I can say that this charge is error. So you
23 understand -- I -- I think -- I'm putting this on the record
24 so that if I have to remember this one day, I can remember
25 that why I was making this decision. So it -- it have -- it

1 all revolves around likely and where that appears in the
2 charge.

3 And I think that the way that this is written does
4 actually follow the -- the statute itself more closely. My
5 objection would've been, which I'm not going to make, to
6 include the term likely in, within the third element because
7 the third element mentions the word likely, but likely in
8 your charge is defined earlier charge. So you see where I'm
9 coming from. It doesn't -- it doesn't get to a point where I
10 think it's error and therefore, I'm not going to object to it
11 on personal preference.

12 THE COURT: All right. Thank you. Any other witnesses
13 from the Respondent?

14 MR. KIRKLAND: No, sir. We are going to rest at this
15 time.

16 THE COURT: What I'm going to do is I'll bring the --
17 bring the jury out. I'll ask that same question. I'll let
18 you rest. Is there going to be any rebuttal?

19 MR. RUNYAN: No, Your Honor.

20 THE COURT: All right. Then I'm just going to go tell
21 them going straight to closing arguments. And my jury
22 instructions explain what arguments are so I'm not going to
23 ---

24 MR. KIRKLAND: Right.

25 THE COURT: --- get into it ahead of time because I'm

1 going to explained to him already that arguments are just
2 arguments, et cetera.

3 MR. KIRKLAND: And then I just need to renew all my
4 motions and that's it. And I can do that right now.

5 THE COURT: Yeah, please -- please go ahead.

6 MR. KIRKLAND: Okay. So rather than sit here and --
7 I'm going to renew every objection that I made that I -- and
8 I don't remember you ruling against me, quite frankly, but
9 I'm just going to go ahead and renew any objections that I
10 made that you ruled against me. I'm going to renew my motion
11 for a directed verdict. And I don't believe I made -- I'm
12 going to renew my motion -- the motion in limine that I made.
13 I think that's the only motion in limine that I did make. So
14 and if there was another motion that I happened to have made
15 and forgot about, I would renew that motion at this time as
16 well.

17 THE COURT: All right. They're all renewed. For the
18 record. Preserved for the record. And again all the
19 objections are overruled. All previous rulings stand in
20 place.

21 MR. KIRKLAND: Right. Thank you, Judge.

22 THE COURT: Closings, again, is there anything --
23 special in the statute about ---

24 MR. RUNYAN: There's nothing special in the statute,
25 the way we've done these in all the prior, previous SVP

1 cases, since the State has the burden, we go first, they get
2 a chance and then we have a response. But that's it.

3 MR. KIRKLAND: It's civil court.

4 MR. RUNYAN: Civil court.

5 MR. KIRKLAND: Yeah. It's -- yeah. So it's just like
6 what you have seen in civil court. I -- I don't do civil
7 court, but my understanding is the way it's always done is
8 the ---

9 MR. RUNYAN: The plaintiff.

10 MR. KIRKLAND: --- the plaintiff opens, we then have
11 our reply and then they have a rebuttal.

12 MR. RUNYAN: Yep. So it's just civil rules.

13 THE COURT: Mr. Fisher?

14 MR. FISHER: No, nothing.

15 THE COURT: I saw you raise your hand.

16 MR. FISHER: No, I -- I was listening and...

17 THE COURT: All right. Anything else from the State
18 before we bring the jury up?

19 MR. RUNYAN: No, Your Honor.

20 THE COURT: Anything from the Respondent before we
21 bring the jury up?

22 MR. KIRKLAND: No, sir.

23 THE COURT: All right. Well, bring the jury. All
24 right ladies and gentlemen thank you for your patience on
25 that break. We're going to get started right back at this

1 point. Anything else from the Respondent?

2 MR. KIRKLAND: Oh, no, sir. Your Honor, the Respondent
3 rests.

4 THE COURT: Any rebuttal from the State?

5 MR. RUNYAN: No, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, at this
7 time, both sides have rested their cases. They're now going
8 to go into closing arguments.

9 MR. RUNYAN: Thank you, Your Honor. May it please the
10 court?

11 THE COURT: Yes, sir.

12 MR. RUNYAN: We are good. Okay. Good afternoon,
13 ladies and gentlemen. I want to start by telling you, you
14 know, this might be the last chance I had to speak with you,
15 but I want to start by telling you thank you. I told you in
16 the beginning that you'd probably be thanked a lot and I'm
17 telling you again, thank you. Because it's -- the only
18 reason we can do these things is because you're here serving
19 the citizens of Kershaw County and the state of South
20 Carolina.

21 And I thank you on behalf of the Attorney General. I
22 do also want to thank you because I personally asked you to
23 do something for me and that was to listen to all the
24 evidence. And I've been watching you throughout the trial
25 and you have done that. I can't ask for anything else. You

1 guys were attentive to both the State's evidence and you were
2 attentive to Mr. Pough's evidence as well. And that's all we
3 can ask of you. And I thank you for doing that.

4 Ladies and gentlemen, Mr. Pough is a sexually violent
5 predator. Over a period of 2017 to 2019, he engaged in
6 non-consensual sexual acts with three different teenage
7 girls. None of them knew him, but one of them knew him. Two
8 others didn't know him. They were strangers to him, as both
9 doctors told you. The other one was his girlfriend's niece
10 that he lived with.

11 He did this despite the consequences, as you heard
12 testimony in 2017, he was arrested, faced a very significant
13 charge. He bonded out, he went out into the community and he
14 reoffended while he was out on community facing these
15 charges, he sexually assaulted another woman and he was
16 arrested and he was charged. He was let back out in the
17 community. And he reoffended while he was facing two sign,
18 two significant charges. And as you heard, and I'll bring
19 them up here, as you heard, those charges are criminal sexual
20 conduct with a minor victim age 11 to 14, second degree
21 criminal sexual conduct in the third degree and criminal
22 sexual conduct with a minor victim under age -- 16 years of
23 age. Second degree.

24 Why did he do that? Why does he repeatedly engage in
25 these acts engaged in these sexual assaults? Dr. Gehle says

1 it's just criminal behavior. He doesn't know why either.
2 Dr. Gottfried gave us the answer. And that's because he
3 suffers from other specified paraphilic disorder, paraphilic
4 coercive disorder. It's a specifier. And he suffers from
5 other specified personality disorder with narcissistic
6 traits.

7 Now, this has been a short trial and I'm not going to
8 -- it's late in the afternoon. I'm not going to assault you
9 guys with a review of every single detail of the testimony
10 because as I told you in the beginning, you are the fact
11 finders and that's your role. And you're going to have to
12 remember the testimony for yourselves what you remember. I'm
13 going to do my best to recall it accurately. But if
14 anything, I say to you in his closing differs from what you
15 know or what you heard or what you believe, you go with
16 yourself. Because that's important. Because you are the
17 fact finders since I can't do that for you.

18 But I think if you remember those things, we have to
19 prove to you whether or not he's been convicted of a sexually
20 violent offense, whether or not he has a mental abnormality
21 or personality disorder. And whether or not that mental
22 abnormality or personality disorder makes him likely to
23 engage in acts of sexual violence if he's not confined for
24 long-term patrol care and treatment. Those are the things we
25 have to prove to you.

1 So I think because of my -- my burden, State's burden.
2 And it's a higher burden, we discussed that beyond a
3 reasonable doubt burden that the judge will explain to you.
4 I think it's my duty to go over some of the things that you
5 heard or some of the things that I think are important for
6 you to remember as you do your deliberations.

7 I think we can dispense of the first thing very
8 quickly. Has he been convicted of a sexually violent
9 offense? At least one sexually violent offense? And he has.
10 He's been convicted of three. And you're going to have these
11 have been entered into evidence. We've talked about them a
12 lot. You're going to have them back there in the jury room
13 with you. The only thing I ask that you do is you read them.
14 They're not very long. Few pages. Some of them are front
15 and back, so, you know, don't miss that. But they're --
16 you're going to have them back there with you and you're
17 going to be able to review them and take a look at them. So
18 I encourage you to do that. But I think we can we can safely
19 say that Mr. Pough has been convicted of at least one
20 sexually violent offense.

21 Now, I'm going to go a little bit of order. Because
22 the second thing is the mental abnormality or personality
23 disorder, I think is in dispute here. So the third thing is
24 whether or not he -- you know, he's likely to re-offend. Is
25 he likely to do this again? Is he more probably than not

1 going to re-offend? And I think both doctors, I think you
2 heard from both doctors, they're pretty in lock step with
3 this -- this element. Both doctors gave him the Static-99R
4 and the Static 2002R. Both doctors told you that those are
5 actuarial assessments that are used in these high stakes
6 evaluations.

7 Both doctors told you that because these are high
8 stakes evaluations you use them to kind of get a better, a
9 little bit more incremental accuracy to the scores. And both
10 doctors scored him an eight on the Static-99R and that's the
11 well above average category. And that he has over people who
12 scored the same as him have over a 50 percent risk to
13 re-offend over 20 years. The second measure, they gave him
14 the Static-99 -- Static 2002R, excuse me, he scored a six.
15 Both experts individually scored him and came up with the
16 same score. And that put him in the above average category
17 for risk to re-offend sexually. So when they looked at it,
18 they said -- and they both said he has high risk based on the
19 Static-99R.

20 And they both told you about dynamic risk factors.
21 They both told you in -- in -- you know, in looking at risks,
22 they assessed those static risk factors, things that can't be
23 changed, and those dynamic risk factors, things that can be
24 treated in treatment. And they both told you about the risk
25 factors they found for Mr. Pough and both of them came up

1 with ones. And Dr. Gehle told you that she found he had
2 lifestyle -- lifestyle impulsiveness. She explained that to
3 you. She told you he had poor problem solving and she
4 explained that to you and she told you that he had negative
5 social influences and she explained that to you as well.
6 And Dr. Gottfried used a little bit different method. She
7 told you about the SVR 20 actuarial suspect that she uses a
8 more structured guideline to thinking about dynamic risk
9 factors, some professional guidelines on when you're
10 assessing them, how to pick them. Essentially Dr. Gehle
11 picked them from a list of empirically listed. As she said,
12 they're empirically listed risk factors. And I asked her and
13 she said, "Did you go through and you look at the records and
14 you determine if those apply to him?"

15 But Dr. Gottfried's risk assessment, the SVR 20 that
16 she used for dynamic risk factors, it's a little bit more
17 structured with professional guidelines to kind of keep you
18 on track to make sure you're not missing anything or make
19 sure you're not including something that shouldn't be
20 included. And she came up with his risk factors and she said
21 that he suffered from sexual preoccupation, that he had
22 sexual deviance, substance use problems, non-sexual offenses,
23 traits of psychopathy or -- or psychopathic personality
24 disorder, relationship problems, chronic sexual offending
25 that he minimized or denied his sexual offending. He had

1 offensive supportive attitudes. Other words, he blames
2 people for other people for the things that he's done. So
3 they both came up with this with a list of dynamic risk
4 factors and they both scored him in the high range. And I
5 think we can agree that Mr. Pough's risks to re-offend
6 sexually is very high.

7 So we'll move on to the third thing, and I think -- I
8 think everyone agrees this is probably where -- where the
9 dispute is between the doctors. Now, Dr. Gehle said he
10 doesn't suffer from anything, that he has no mental
11 abnormality, that he has no personality disorder, that his
12 behavior is just criminal. Dr. Gottfried said he does suffer
13 from both a mental abnormality and a personality disorder.
14 And she told you other specified paraphilic disorder,
15 paraphilic coercive disorder and other specified personality
16 disorder with narcissistic traits. And they both agreed that
17 he had substance abuse disorders and they both agreed he had
18 a cannabis use disorder and he had an alcohol use disorder.

19 But that -- and I think they both said this that, that
20 doesn't make someone a sexual offender. That doesn't -- it
21 may have lower inhibitions, but it doesn't make you a sexual
22 offender. But they both agreed he had those follow through.
23 Like my told you in my opening, like my wife's first doctor,
24 I think Dr. Gehle did the minimum. I think she read the
25 records. I think she did the interview. I think she

1 performed one test, she said, but she didn't follow up on any
2 of those. And she told you that she normally doesn't do any
3 testing. This was unique for her in this case. She wasn't
4 thorough, she wasn't complete. She stopped and didn't follow
5 through.

6 Like my wife's second doctor, Dr. Gottfried was more
7 thorough. She was more complete. She was able to get more
8 information from Mr. Pough himself. And remember when I was
9 talking to her about the personality disorder, I asked her,
10 "Well, did he tell you this? Did he tell you this? Did he
11 tell you these things? Did he tell you that he was too smart
12 and overqualified for jobs? Did he tell you he wasn't -- he
13 was not? Other people were not mentally strong as he was.
14 Did he tell you that people saw him as cocky and arrogant
15 that he made big money while he was in jail? And his -- his
16 great fighting abilities? Did he tell her that he was going
17 to make a video game then never have to work again? Did he
18 tell her that he was -- he was only understood by people with
19 a higher status?"

20 I think she admitted to some of those. I think she did
21 say that he told her about the video game and that he told
22 her that others saw him as cocky and arrogant. And he also
23 told her that his mom had told him that he had a -- delusions
24 of grandeur, I think is what she said. But she didn't have
25 the other information. She was not able to pull that

1 information out like Dr. Gottfried. And she had to admit on
2 cross that, you know, she didn't have that information. What
3 else didn't she have? That's my question. We know she
4 didn't have records. She amended her report from October to
5 June, but she didn't ask for any more records. And there
6 were other records out there, records she didn't have records
7 that he was given a disciplinary in SCDC for having inmate
8 under influence of -- of alcohol and drugs. That he had got
9 into a fight while he was at the Kershaw County. Things --
10 all these things happened afterwards. But when she admitted
11 the report, she didn't -- she didn't ask for those things.
12 She didn't follow through.

13 Dr. Gottfried was able to do -- get more information
14 out of them. She was able to get more records and she did
15 additional testing to give her more data points. Both
16 doctors talk -- talked about data points about needing as
17 much information as they can to make a decision. And as we
18 look at those data points, as we look at the things that
19 doctors did had and didn't have. We'll go into the
20 paraphilic disorder. Both doctors agreed that there was
21 evidence, I think, Dr. Gehle had to admit there was some
22 evidence of -- that these sexual offenses were coercive in
23 nature.

24 And I think her and I disagreed a little bit when --
25 when I had her on cross. But I think that when you look at

1 the reports that she reviewed, the police report on the first
2 offense, the police report, the medical examiner, and the
3 forensic interviewer, I think across those three reports, it
4 was consistent in the information that that girl was raped,
5 that she tried to stop him, and that he didn't stop.

6 How did Dr. -- I asked Dr. Gehle, how she came up with
7 arousal. How does she find out about somebody's arousal?
8 And she said, she asked some questions. She asked them, why
9 do they have those deviant sexual arousals? And she said, in
10 some cases people are forthright, but a lot of case -- a lot
11 of cases, people don't really want to talk about those things
12 with her.

13 So I asked her if there are other ways that doctors
14 could come up with how somebody was aroused and -- I mean,
15 she had to admit that when someone offends and is in the
16 community and facing significant consequences and they
17 re-offend, that's an indication for that preference for that
18 sexual -- that deviant sexual interest. That's a preference
19 for that interest when people do that. And Mr. Pough did
20 that. Not once, but twice. He was facing significant
21 charges while he was out. He's sexually offended. He faces
22 significant charges, he's sexually offended. And she had to
23 admit that that can indicate a preference for that type of
24 behavior.

25 And then I ask her about the book that she uses. She

1 readily admits she -- she uses the book. I can't find it
2 right now. Maybe I brought it with me. And in this book,
3 when a person tells you that they're not aroused a deviant
4 sexual arousal, that gives you some indicators as to whether
5 or not that person has that arousal. And what'd she tell us?
6 "I didn't get to it." She didn't look at those factors. And
7 then we talked about the PPG. She doesn't use the PPG. Dr.
8 Gottfried does. So essentially, Dr. Gehle reviewed the
9 records, determined that nothing was coercive or paraphilic
10 interest, and she stopped. She didn't do anything else.

11 Dr. Gottfried didn't stop. So Dr. Gottfried looked at
12 the records she saw in the records as you guys heard. Sexual
13 assaults of these teenage girls was coercive. It was
14 non-consensual. She testified to that. She testified that a
15 basis of her opinion, you know, those -- those factors we're
16 talking about. She told you about those factors. She told
17 you that he offended in short periods of time after
18 consequences before raping again. He told you -- and I said
19 this word wrong when I was talking to Dr. Gehle, but
20 concomitant sexual partners, meaning he had people who have
21 sex with him.

22 Both Dr. Gottfried and Dr. Gehle testified to that he
23 had people who had sex with him and he still offended against
24 these teenage girls. He didn't -- Dr. Gottfried testified he
25 didn't interrupt the sexual assaults when he realized the

1 victims were in emotional distress. And then she gave him
2 the PPG. And the PPG both doctors and Dr. Gehle had to
3 admit, and Dr. Gottfried told us, testified to that. The PPG
4 is an objective measure of male sexual arousal. It's used
5 across many different fields. I think Dr. Gottfried
6 testified to using erectile dysfunction. I think she talked
7 about heart issues. And she also talked about it's used in
8 sexually violent predator treatment programs. And she talked
9 about it being used as a diagnostic tool for a sexual
10 arousal.

11 And the question we have to answer, or you have to
12 answer is like Mr. Kirkland told you in his opening is today,
13 as Mr. Pough sits here, is he a sexually violent predator?
14 Dr. Gottfried gave him this test in April of this year. I
15 think it was April, May of this year. Now, I want you to
16 remember the results of that test. She testified that she
17 gave him the Real Child Voices and the Marshall Set. And
18 that he had clinically -- and on the Real Child Voices Set,
19 he had clinically significant arousal. I remember what
20 clinically significant arousal is.

21 She told you they have a baseline and they have a max
22 during the trial. And that change in circumference of blood
23 flow to the penis, they measured that from baseline to max.
24 And that's -- that's the millimeters of arousal. And she
25 told she uses that conservative cut score. They look for

1 five millimeters of arousal because they, they're more
2 interested in finding, not finding an interest than having an
3 interest and not it -- it not being right.

4 So in these evaluations, you want to use that
5 conservative cut score because you don't want to say somebody
6 has something and they don't. So five millimeters or greater
7 on the Real Child Voices, clinically significant arousal to a
8 rape of adult woman, persuasion of an adolescent female,
9 exhibitionism against an adult woman, a consenting adult
10 woman and rape of an adolescent female victim. He had
11 clinically significant arousal to those things on the
12 Marshall Set. He had clinically significant arousal to
13 sexual violence against a pubescent female victim. And
14 pubescent would be you know, like a teenager. Trials
15 consisting of an adult woman, a consenting adult woman trials
16 featuring a -- a passive pubescent female victim. Trials
17 featuring the rape of a pubescent female victim.

18 And then on the second Marshall Set trials of a
19 featuring a rape adult woman and -- and two trials featuring
20 a consenting adult woman and two trials depicting sexual
21 violence against an adult woman. Excuse me. And what she
22 said to you, what was important about this, these different
23 trials is that I think she said nine of -- nine of the 10,
24 there was only one trial that had deviant arousal that he
25 didn't have clinically significant arousal to. And what's

1 important about this is that his arousal to these adult rape
2 scenarios and that the pubescent female scenarios, what's
3 important about that is it matches his offending. He's
4 showing clinically significant arousal today when she gave
5 him the test and it matches his offending pattern. And
6 that's important to her.

7 Even more important, I think she told you that on some
8 of the trials, his -- his arousal -- max arousal to
9 consenting women was equal to his arousal to non-consenting
10 women or in rape scenarios. And some of the trials, his max
11 arousal was greater to those deviant sexual interests than it
12 was to consenting adult women. She said what that means is
13 he shows a preference for section -- sexually deviant
14 arousal. And I think what's more important in all of this is
15 what Mr. Pough said about the PPG. Dr. Gottfried testified
16 to you. She gives him interview after the PPG and she
17 testified to you that he didn't deny the arousal when she
18 talked to him about the, you know, the deviant arousals she
19 said he was asked if he was aroused by the sexual violence of
20 the rape. And he said, "If it's on there, it happened." He
21 says, "Yeah, you can't not feel that. You can't -- " Sorry,
22 "You can't not feel it." He was aware of his arousal during
23 the test. He talked to Dr. Gottfried about it. In fact, he
24 told Dr. Gottfried, he told his mom to talk about it. He
25 seems to be -- he was so concerned about it.

1 He also said, and put in his words, "It shocked me."
2 He was shocked that he was aroused by it. Now, I'll tell you
3 what, you know, people have said to me, the last person to
4 know who an -- if you're an alcoholic, is the person is the
5 alcoholic. And I think maybe the last person to know that he
6 has a deviant arousal is Mr. Pough. But I think he realizes
7 based on his comments, based on his admissions to Dr.
8 Gottfried.

9 So Dr. Gottfried told you in taking all those things
10 into consideration, all those data points that she did,
11 there's evidence that he was sexually aroused during events
12 that were clearly non-consensual that he offended over short
13 periods of time after consequences before he raped someone.
14 Again, he described having girlfriends at the time of the
15 offences, which means he had willing partners. He didn't
16 interrupt his assaults when he was -- the victims were
17 emotionally distressed. And the results of the PPG exam, as
18 I just told you, indicated clinically significant arousal to
19 sexual deviant interest. And that Mr. Pough did not deny
20 those arousals.

21 So based on that information, based on all the
22 information that she had, all the data points that she took
23 and all the testing she gave, she diagnosed him with other
24 specified paraphilic disorder. Paraphilic coercive disorder.
25 But she didn't stop there. She went on to look at

1 personality disorders and she talked about what she did in
2 those. And I want to talk about -- first what Dr. Gehle did.
3 And Dr. Gehle -- obviously, there was something in her
4 interview with Mr. Pough that indicated something wasn't
5 quite right. because she did admit on the stand on
6 cross-examination that she doesn't normally give the MMPI,
7 but she did in this case because there was something about
8 the interview. She talked about his joking about some other
9 things that indicate her he might have a personality
10 disorder. So she gave him that test and there were some
11 issues with that test. And you -- she told you about those
12 different types of things that were issues for her. And I
13 asked her if she did anything to follow up on it. She didn't
14 do anything to follow up on it. No, she didn't.

15 I asked her if she was qualified to give the Hare
16 PCL-R, which Dr. Gottfried gave. She said she was. And Dr.
17 Gottfried gave the Hare PCL-R because not that she thought
18 Mr. Pough was a psychopath, because both doctors agree that
19 he is not. But there are things in that testing, there are
20 facets we talked about with Dr. Gehle that she couldn't
21 remember what they were. We talked about the facets. Dr.
22 Gottfried explained to you those, and that he has these
23 antisocial disorders and that he was glib, lacked empathy.
24 And those are just more data points for Dr. Gottfried. And
25 they all lead towards narcissistic personality disorder. Dr.

1 Gehle could have given him that test, but she didn't. She
2 had suspicions, but she didn't follow up.

3 In fact, she even said in a report that the things he
4 said may suggest -- she said right there on the stand may
5 suggest narcissistic personality traits. But she didn't
6 follow through on it. Dr. Gottfried did. Dr. Gottfried gave
7 him several personalities tests. And she determined that --
8 I -- I think we have to give Dr. Gottfried credit here
9 because she could have easily, I think, just jumped the
10 conclusion and said he has narcissistic personality disorder.
11 But she told you there's five different categories that they
12 have to score in to be considered qualified for narcissistic
13 personality disorder. But she couldn't find those. She
14 couldn't find them. But she found enough. She found enough
15 in the all the testing that she did, the psychological
16 testing she did, she found enough. And in her report with
17 him -- all those things that he told her that were
18 narcissistic in nature that Dr. Gehle had no idea about. You
19 heard me right on the stand when I asked her. She had no
20 idea about it.

21 But Dr. Gottfried had that information. She followed
22 through. So Dr. Gottfried diagnosed him with other specified
23 personality disorder with narcissistic traits. And why is
24 that important? Because she told you as she testified, it's
25 really the combination of those two combined with his risk

1 that make him a sexually violent predator. He's aroused by
2 non-consensual coercive sex. He feels like he's entitled and
3 that he should be able to get what he wants when he wants it.
4 And you put those two together in a situation with his risk
5 and all the risk factors that he has, he will re-offend
6 sexually. So ladies and gentlemen, I think I'm going to wrap
7 it up there. And again, thank you for your time, but I ask
8 you to return a verdict of yes Mr. Pough is a sexually
9 violent predator and get him the treatment that he
10 desperately needs. Thank you.

11 THE COURT: (Inaudible).

12 MR. KIRKLAND: Yes, sir. So this is the thing that's
13 so frustrating about this field of work. We're dealing with
14 psychology. Psychology, even by tacit admission by Dr.
15 Gottfried, seems to be an incredibly changing field all of
16 the time. one of the things that she talked about or that I
17 asked her about, I may have to go back to the table and grab
18 something, but I talked to her about over the years how she
19 has performed her evaluations. And she admitted that she
20 will occasionally add tests and take away tests. She
21 admitted to using tests in the past tests that she no longer
22 finds to be reliable. I talked to her specifically. She
23 even admitted that -- that she was using these tests during a
24 period of time that she knew that these tests were
25 unreliable.

1 Specifically, I asked her about the VRT, which is the
2 something visual as part of the Abel test. But this was the
3 test that you -- whenever you -- you're sat in a chair and
4 you're asked to look at pictures, and then what they do is
5 they measure your eye and how long your eye looks at a
6 particular picture.

7 And presumably if it looks at a picture longer than it
8 looks at another picture, then that is something that you
9 potentially are sexually interested in. And I challenged her
10 on the -- her former use of that test. And when I challenged
11 her on her former use of that test, she -- she admitted, of
12 course, I got to this cross-examination. So I got to lead.
13 So and ask her these questions. I got her to admit that the
14 problem with the test is if, for example, if you were using
15 the test, and this is just a hypothetical, to determine if
16 someone was sexually aroused by something in particular in
17 the picture, they could be aroused by something that the
18 picture was not even intending to depict. It could be just
19 simply that they were aroused by the by breasts or something
20 like that, or something else in the picture that caused them
21 arousal -- arousal that wasn't the intention at the time that
22 they developed the test to -- to determine whether you were
23 aroused by that -- you know, whatever the subject that they
24 identified the picture as -- as being aroused for that it
25 didn't actually arouse the person for that because there was

1 too many other things that -- that were in a picture that
2 could have caused a response to that.

3 And she admitted 100 percent that that was -- that was
4 a problem, that she couldn't use that test anymore. She
5 stopped using it. But she was using it during a period of
6 time that she knew that it was a potentially unreliable test.
7 She also stopped giving -- she said that at one point in time
8 she was giving polygraph examinations. Oh my goodness.
9 Polygraph examinations. Polygraph examinations are -- I
10 think that the, is just pretty much common knowledge are
11 universally panned by the psychological community.

12 And in fact, I got her to admit that universally they
13 are not considered accurate, but she said, "Oh, they're
14 accurate under when they're -- when they're done correctly."
15 Well, here's the thing with a polygraph examination -- and I
16 -- and I'll -- I'll -- I'll give you an example of something
17 that happens to me. Okay? I don't know. I just thought of
18 this because we didn't even know that we were going to be
19 closing today. But I'll give an example of something that
20 happens to me. And this is why polygraph examinations -- and
21 this is why I'm going to submit to you the PPG examinations
22 are absolutely bogus science. And they are -- and even
23 though the judge -- I -- I have to make this absolutely
24 clear, the fact that somebody is allowed to testify to
25 something on that stand. The fact that they're allowed to

1 introduce the PPG, the judge told you that you get to
2 determine, you get to determine the weight and the
3 credibility of any testing or any testimony that is given by
4 any of the experts that take the stand.

5 You do not -- just -- the judge is not endorsing
6 anything that's on that stand. Okay? The fact that it
7 comes, that it, that they're allowed to say it does not mean
8 that this is a -- a good test. So I'll give you an example
9 of -- of -- of -- because we talked about physiological
10 reactions, because that's what the PPG is supposed to
11 measure. Physiological reactions. Well, the physiological
12 reactions, I complained to her that because the stimulus sets
13 were all, you know, they were diverse. You know, you had
14 different stimulus sets all across the nation. You had
15 different cut scores across the nation that this was not a
16 reliable way of -- this was not a reliable way of determining
17 what somebody was aroused by. Now, I compare this to the
18 polygraph examination and she admitted that in a polygraph
19 examination, they're -- they're not necessarily reliable
20 because somebody could be reacting to something other than
21 telling a lie.

22 Human brain is a very complex thing. It controls us
23 physiologically. I mean, that's how it works. We all know
24 that. We all know that our brain is in control of
25 everything. Like, for example, when we feel nervous, we have

1 our heart rate increases, different things happen to us that
2 are out of our control. This just happened to me the other
3 day. I was -- and it's -- and it happens to me occasionally,
4 and it's really weird. And I've always wondered what the
5 deal is, and I need to ask one of these -- one of these
6 experts what -- what this is all about. But it's an odd, it
7 is an odd thing that happens. And I've talked to other
8 people about it. I've asked if they felt the same way, and
9 I've heard other people say that it's really weird when it
10 happens to them. I -- sometimes -- I -- I went into Publix
11 the other day and I went into the del to try to find
12 something in the Publix Deli.

13 And in fact, I remember about six or eight months ago,
14 I had -- I had to buy a printer. And the same thing
15 happened. I went in there to -- to find something in the
16 deli, couldn't find the thing in the deli that I was looking
17 for. And so I turned around just to leave. And as I'm
18 walking out the door to Publix, I'm kind of looking --
19 because I've, I've walked in and now I'm walking out with
20 nothing and not paying for anything. And I had this odd
21 sensation and I don't know, I've heard of other people having
22 the same sensation that, you know, you walk into a store and
23 then you leave that this weird sensation that you want to
24 establish or make sure that people know. Listen, I didn't
25 come in here to shoplift. I just didn't find whatever I

1 needed. You know, I -- it's odd that I -- and I don't know
2 why get that sensation, but I can actually feel my heart rate
3 increase.

4 And at Best Buy, for example, whenever -- whenever I
5 walk out of a Best Buy and -- because I walked in there
6 looking for a printer this was a -- a while ago. Walked in
7 there looking for a printer. And when you walk out of Best
8 Buy, you have to show your receipt to them. And so I -- when
9 I walked past the guy that's -- that checks the -- that
10 checks the receipts, I walked by and I was like, "Listen man,
11 I -- " He's like, "No -- no, you're good." And I'm like,
12 "What am I doing? I'm not stealing anything. Why am I --
13 why am I feeling nervous about this?" But that's the
14 problem with your brain. Your brain does things to you that
15 you don't want it to do. And that's the problem with the PPG
16 test. That's the problem with the polygraph. A person
17 sitting down to do a polygraph could simply have a reaction
18 to the -- the nervousness of the polygraph itself.

19 Now, that -- she says if applied properly, it works.
20 There's no proper application for this. There's no -- there
21 -- there -- there's no absolute way to determine if somebody
22 is telling a lie. There's no such thing as a lie detector.
23 It does not exist on planet Earth. And to think that it is,
24 is crazy. And what we're doing now in these cases is we're
25 hooking people up to a machine and the machine is going to

1 tell us what their sexual preferences are. This, to me is --
2 I -- I mean, it's like minority report. It's like pre-crime.
3 I don't know what to even think that you're going to hook
4 somebody up to a machine and this machine is actually going
5 to tell you. And then she says, "Well, there's -- there's --
6 there's a lot of precautions and there's other things that
7 are involved.

8 But one of the things I asked her, and I thought of it
9 really while I was sitting there talking to her as I asked
10 her, "Well, have you hooked any of your friends up to this?
11 You know, people that you -- you've known forever, people
12 that, you know, they're not -- they're not pedophiles." And
13 and I talked to her about that this -- this test is primarily
14 to determine if someone is a -- suffers from pedophilia or
15 not. It -- it's -- it's interest in adolescence. It's not
16 -- it's not -- the research isn't used just across the board.
17 and there are a lot of people that do not -- I mean, this is
18 not a widely used test.

19 I -- because I asked her about that when she was on the
20 stand and I'm going to get into some of that a little bit
21 more in a second. But I asked her, "Why wouldn't you hook
22 one of your, one of your friends up, somebody that you really
23 know extremely well?" And she absolutely became flustered.
24 I -- I mean, she was baffled. And I said, but, you know, "If
25 somebody you know, wouldn't that be the perfect test subject?

1 You know, somebody that you know is not a pedophile, that
2 isn't interested in a rape." And she was like, "Well, I
3 don't -- I don't really know. I mean, there might be some
4 ethical consideration."

5 I was like, "What ethical considerations? Why would
6 there be any kind of ethical consideration?" And she said,
7 "Well, then I -- I don't, I don't own the lab." And I said,
8 "All right. Fine. I'll buy the lab -- I'll buy the lab.
9 I'll set up a lab that is exactly like your lab, and would
10 you want to bring -- you know, would you be willing to bring
11 in your friends?" And she would not answer that question.
12 She absolutely would not -- she absolutely would not. Why?
13 Why would the people that invented this machine and use this
14 machine all the time -- and I gave the example of law
15 enforcement, whenever they're using -- whenever they use a --
16 because you've seen this on TV, there's tons of cop
17 documentaries and stuff. Whenever they have -- whenever
18 they're using a taser, they make -- a police officer get
19 tased. So a police -- police officer knows what the taser is
20 like.

21 Now, that's -- this is a little -- that's a little bit
22 different, I will freely admit. But whenever they're doing
23 standard field sobriety testing and they're doing data master
24 testing, that's what we use in South Carolina as a
25 breathalyzer. It's our data master. They will literally

1 have a police officer, somebody there, drink however many
2 shots that they know will result in a particular blood
3 alcohol level. And then they have, the recruits actually go
4 through the process of the field sobriety test. They take
5 them down to the data master room. They actually have them
6 blow. And they actually determine -- you know, they actually
7 see themselves this thing working. They can watch it work.
8 She has never watched it work. I asked her, "Who is the
9 control group in these tests?" She could not name a control
10 group.

11 Listen, this is stuff you learn in high school, the
12 scientific method. Okay? The scientific method indicates
13 that you have a hypothesis. Okay? Then you test the
14 hypothesis that is irrelevant how it turns out. And then you
15 publish the results of your test, and you have your peers try
16 to recreate the results. If you received a positive,
17 certainly you would want to have somebody else try to
18 recreate it. So I asked her questions about, you know, "Tell
19 me about the -- the recreation of these tests." And what she
20 basically told me was, "Well, the scientific journals, they
21 -- they -- they've all agreed that it's a -- it's a reliable
22 test." And I was like, "But -- but what about it is
23 reliable? Because -- I said, "There's different companies
24 that make the PPG machine. She -- she uses the -- I think
25 it's called Limestone. I think that's the name of it. But

1 that's not the only one in the world or the only one -- that
2 -- that's just one.

3 And then she says, "We use the -- the Marshall and the
4 Real Child Voices Set of stimuli." And then she says, "We
5 use a five-millimeter cut rate." And I asked, "Is that --
6 when you read all of this research and you look at this
7 machine, is that the same in all of the research?" And she
8 admitted, freely admitted, she had to admit, "No." Everybody
9 does not use the same stimuli. They do not use the same cut
10 rate. They don't even necessarily use the same procedures.
11 She says, "I'm a member of a group, an accredited group, and
12 we all use the same procedures." But I asked her -- I -- I
13 wanted her to explain to me, to point to me, to the peer
14 research that establishes that what she does absolutely is
15 unequivocally reliable and -- and affects what they think it
16 affects.

17 And I gave her an example because she gave the Marshall
18 Set and she gave the Real Child Voices Set. And I said, in
19 the Real Child Voices Set. And I said, "Why didn't you bring
20 this in, by the way? Why don't you bring this in for the
21 jury to hear? You know, they -- they could -- " And she
22 said, "I -- I -- I don't have it with me." They could have
23 brought that in. Let us listen to it, see what the stimulus
24 set is. But they didn't do that. We just have to simply
25 take their word that this stuff is fair.

1 And it is -- and it is reliable. And you do not -- you
2 do not have to give that machine credibility. You don't --
3 you just don't have to. And the fact that she is hesitant or
4 she couldn't explain why in the world would the people that
5 use the machine every day not actually test the machine on
6 themselves or friends or family or something. I mean, it --
7 she -- she finally came down to, "Oh, that's a money issue.
8 You have to reserve time in there." That is -- I'm -- I
9 don't know. That sounded -- that sounded really odd to me.
10 I don't ever want to call somebody a liar, but that was a
11 really, really, really weird response.

12 But I asked her also about the Real Child Voices test.
13 And she said that in those tests in the Real Child Voices
14 test, there's background noise. And I asked her, "Well, what
15 if somebody gets -- " And she said like, clinking glasses,
16 like a bar environment. And she said, "Well, you know,
17 that's the possibility of that is -- yeah, I mean, we try to
18 factor that out." But she admitted that there's other things
19 going on in these recordings other than -- that could be
20 misinterpreted by somebody and they could be aroused by
21 something that is not the intended thing. Just like she did
22 with the VRT test. She also, over the years -- she ended up
23 dropping -- let's see here, the Conner's Continuance
24 Performance Test.

25 Oh yeah, this one; Conner's continuous performance

1 test. This is a test where they look at a screen and when
2 they see a letter pop up, they would press the -- a button or
3 a space bar, I think she said. And she quit using that
4 because she didn't think that was necessary any longer in
5 these evaluations. And she did not think that it contributed
6 to a result. And this is sort of one of the -- and this is
7 one of the problems that I have with the whole thing.

8 They've indicated to you that the PPG has been around
9 for 50 years and it has been around for 50 years. The
10 polygraph's been around a lot longer. People can fail a
11 polygraph that are not lying. People can fail a PPG that are
12 not aroused by something. I mean, that -- that's one of the
13 issues. I can't even envision the idea of me being hooked
14 up. I would be so freaked out, I think, if they started
15 playing child voices to me, I would end up having the same
16 thing happen to me when I walk out of a Publix feeling like I
17 didn't pay that I would, my brain would portray me because my
18 portray my -- my brain, I feel like it betrays me all the
19 time, would end up showing some kind of reaction to it
20 because I got freaked out and knew that I wasn't supposed to
21 have a reaction to it. And that's the thing that I worry
22 about with all of this all of that testing. And it's
23 important to note that when she came to her decision that --
24 and I think it's on page 39, but when she came to her
25 decision that he suffered from the coercive paraphilic

1 disorder, there was only two things that she considered. And
2 I can read the quote, I think that's not the page.

3 But anyway, the two things that she considered were
4 simple. And she -- and it was -- it's page 42. The only two
5 things that she considered according to her own report, she
6 said on the stand that she considered absolutely everything
7 before she -- she made her decision. But her report says, on
8 page 42, that taken together, "Based on Mr. Pough's
9 performance -- Pough's offense behaviors, and the results of
10 the PPG examination, he meets the diagnostic criteria for
11 paraphilic coercive disorder." So what if the PPG is taken
12 out, then what are we left with? I mean, what if this device
13 doesn't work? What if we've got a device putting people into
14 long-term care in a secure facility kind of facility you
15 don't go home for -- for dinner. Deprivation of liberty.
16 That's serious, folks.

17 You got to, seriously -- you got to hold the State to
18 their burden. Because they got to prove that paraphilic
19 disorder, they got to prove it beyond a reasonable doubt.
20 Now, I want to find really quick, because I need to talk
21 about this. So I'm going to give you a general overview.
22 Okay? So the judge and I am mixing a couple of things here
23 together. But there's -- there's three elements that they
24 have to prove, okay? And we've already admitted two of the
25 elements, okay? The first element is that the Respondent has

1 been convicted of a sexually violent criminal offense. He
2 did. I mean, there's -- we don't have to fight that. I
3 mean, he -- he did. But remember, another thing that's very
4 critical about that, being convicted of an offense that's on
5 a -- I establish this with the witness that's on a statutory
6 list. There's just a statutory list of what they say are --
7 are predicate offenses for sexually violent predator
8 hearings, which is what we're in right now, or a trial,
9 whatever you want to call it.

10 They just give a list. So he's got three of those.
11 The State must also prove beyond a reasonable doubt that
12 respondents -- Respondent suffers from a mental, abnormal or
13 abnormality or personality disorder. Now, as to that I would
14 point you to all of the issues that I've already pointed out
15 with Dr. Gottfried, but I'd always point your attention to
16 the testimony of Dr. Gehle. This was one of the things that
17 I told you at the beginning that I was going to be extremely
18 nervous about. I -- I was afraid this was going to happen.
19 That they were going to try to throw just piles and piles and
20 piles and piles of testing and information at you and say,
21 because they did all of these tests, then this is more valid.

22 Now, this is a person that does not do sexually violent
23 predator testing for a living, okay? This is not what she
24 does. She described all of the things that she does, and
25 this is a small part of it, okay? She does -- she's a

1 teacher, she's a researcher, she's in everything and in her
2 entire career, she's only been referred -- that was another
3 thing. Oh, I think I may have been tricked because I asked
4 her how many evaluations she had done. And instead of answer
5 me with the number of evaluations she'd done, she said that
6 she has been referred like 70 times and I should have
7 followed up. Because I don't know what she meant when she
8 said referred. I don't know if that ended up in an
9 evaluation or not. I don't know even what that means. So
10 that was my fault. I -- I don't know that she's done 76, but
11 she -- she did indicate that she's only testified around what
12 she 20 times or something like that. Anyway, you guys
13 remember the numbers?

14 Dr. Gehle, close to 300 evaluations, I think it ended
15 up being well over 200 of those are sexually violent predator
16 pre-commitment evaluations, which is what this is right here.
17 This is a person that has been doing this exclusively for the
18 past -- well, I say exclusively, she said, but for a couple
19 of times. But she's the main writer of these for the
20 Department of Mental Health. But the Department of Mental
21 Health is not in the business of turning people out on the
22 street that they think are sexually violent predators. Her
23 credibility, I would submit to you is beyond reproach. She's
24 not trying to put somebody back on the street that she thinks
25 is going to reaffirm -- to -- to re-offend. She's not trying

1 to put the, the community in danger, but she is trying to --
2 to be fair-minded. And that's extremely important because I
3 am not certain based on what we saw, that I could submit the
4 same thing to you about Dr. Gottfried. And that's a very
5 insulting thing to say, and I know it is.

6 But this is a very serious issue. I -- I -- the first
7 45 minutes to an hour of her testimony, it felt like I -- I
8 mean, that's what I'm, she was on the stand for an entire
9 day. And the first hour or so was her talking about just all
10 of these character flaws that she uncovered during all of her
11 testing. Just, you know, just things that were just
12 basically bad-mouthing him, just saying, you know, "He -- he
13 didn't like to work. He's, you know, he's -- he thinks too
14 highly of himself." All of this stuff that does not directly
15 go to this coercive paraphilic disorder. Now, it may go to,
16 some degree, to this narcissistic paraphilic or whatever
17 disorder. That was interesting also with the narcissism, by
18 the way. So she gives them what she says is the test -- the
19 test, I don't remember the name of the test, but she gives
20 him the test for narcissism.

21 In fact, I can -- I could probably find it, but you --
22 you'll remember me, I'm sure talking to her about that. I
23 was like, "You gave him the test? And when you gave him the
24 test, he came back okay, that he wasn't -- he wasn't a -- he
25 wasn't a narcissist." And she said, "Yeah, but based on

1 everything else, you know, I looked in the DSM, he -- " Mr.
2 Runyan talked about this. "I looked in the DSM and, you
3 know, based on every single thing that was said -- " Even
4 though he didn't quite fit the criteria in the DSM even, so
5 he didn't pass -- he didn't meet the criteria of the test.
6 He didn't meet all of the criteria in the DSM. She said, "I
7 decided anyway." So this is psychology -- this is
8 psychology. This is why this is so frustrating.

9 So I'm going -- it -- it's very hard, I think --
10 certainly, as an attorney, it is very hard for me to see
11 somebody with a liberty interest at stake. And you have
12 somebody standing up -- getting up there on the stand and
13 saying, "You know, at the end of the day, did a lot of
14 testing, didn't fail. I mean, he did -- he passed the
15 narcissism test that I gave him." Whatever it was called.
16 "And he didn't meet all the criteria in the DSM, but, you
17 know, I'm a psychologist. He's a narcissist." And I don't
18 remember exactly what the -- what the -- the label was, but
19 they said that -- that's one of the disorders that he's
20 suffering from. And folks, to me, that's crazy. I -- I
21 don't understand it and I don't understand how you can get up
22 there. I mean, that's how these hearings go. But she just
23 decided that he was, and that's the end of it, despite
24 evidence to the contrary.

25 So the PPG, I don't think you can just consider

1 anything about that at all. The test concerning -- all that
2 she -- everything that she said about narcissism I think all
3 of that is it ended up just being, just her opinion and that
4 -- and that was the end of it. And then we turn to the prior
5 criminal conduct. Now, this prior criminal conduct, boy,
6 talk about a contentious issue. First and foremost, prior
7 criminal conduct is absolutely 100 percent not in and of
8 itself. It does not in and of itself mean that you fall
9 under a sexually violent predator. It is just as -- as Dr.
10 Gehle indicated, with all of her years of experience, it was
11 simply criminal conduct and nothing more. And that she
12 questioned him and she provided him with a particular test.
13 And none of the -- none of the things that he said, and none
14 of the testing that she gave him revealed that he suffered
15 from a coercive paraphilic disorder. and she based that in
16 large part on the evaluation.

17 Now, let me find -- here we go. And so why then, when
18 she was looking at these events, these various events, why --
19 where did I put my water? Did I leave it at the table? So
20 why then did she decide that these particular offenses were
21 not the type of offenses that would indicate that he suffers
22 from paraphilic disorder? And the bottom line was that it
23 did not -- for -- it did not fall under the -- it did not
24 fall under the definition according to the literature and the
25 DSM, it simply did not fall under it. Under the criteria for

1 it.

2 Now, what seems to be the -- the primary thing that --
3 that -- that Dr. Gottfried was relying on was this PPG. I
4 mean, it says specifically in there the PPG and then her
5 prior -- and then his prior sexual conduct.

6 So she noted that there were a lot of things about the,
7 the prior conduct that -- that absolutely cut against this
8 being something that, that was a -- a coercive paraphilic
9 disorder. And I -- I started talking to her about, you know,
10 are you a police officer? Do you know how to plead read
11 incident reports? Do you know all this? And she basically
12 said, "I just -- no, they just -- they hand me this stuff and
13 I just -- and I just look at it." But what ended up
14 happening when she wrote her report, because I asked her
15 questions, I said, "Well, you left out a ton of things in
16 your -- your own report. You left out that she was
17 voluntarily drunk. You didn't consider that she was in and
18 out of consciousness." Wait a minute, I'm skipping one. I
19 got to start with CP.

20 So CP was the one that was supposed to have occurred by
21 the -- by the air conditioner. And CP was 14 years old.
22 This was the one that the victim readily admitted that she
23 did not really remember it because she had voluntarily
24 consumed drugs and alcohol, and she had blacked out. She had
25 admitted that she and Jeremiah walked to the side of the

1 house themselves. He didn't carry her there, he didn't push
2 her there. And and then what she told them was that some guy
3 -- and I actually had the quotes, I read them to you earlier,
4 but that some guy -- and let me -- let me find this really
5 quick.

6 So one of the statements was, and this is something
7 that Dr. Gehle does, and -- and I think in -- in situations
8 like this, this is what you have to do. You can't do it any
9 other way. You cannot pick out anything bad that's just said
10 in there and ignore anything that undercuts the credibility
11 of these potential people. Now, he pled to it. Now, they
12 brought out on the stand that one of the things that he said
13 was, "I was -- I was guilty of -- I was guilty of -- of
14 statutory rape, and I had -- and I was ready to move on with
15 my life. So I got a great plea deal. And it is a good plea
16 deal. 10 years suspended on the service of four." That's a
17 -- a darn -- let me tell you, that's a great plea deal.

18 That's -- I mean, I think you can infer from that, that
19 there was something going on with these cases, because that
20 is a darn good plea deal for three counts of sexual assault.
21 But he got 10 years suspended on four with five years
22 probation. And during that probation, he has to -- has to
23 engage in sex -- sex -- sex offense counseling. But she left
24 out some of the things that were -- that were completely
25 contradictory. And these are things that Dr. Gehle takes

1 into account because it is unfair to read a report and
2 determine from that report. I mean, the fact that somebody
3 pleads guilty to something does not mean that every single
4 fact is true. They read the indictments to you. They read
5 the indictments. There was nothing in those indictments
6 referring to -- to force -- in this case, there was
7 absolutely nothing in those indictments referring to force
8 and referred to a -- a person between the age of 12 and 14,
9 that's just statutory rape and coercion is one of the things
10 that Dr. Gehle told you is necessary for this diagnosis of
11 coercive paraphilic disorder.

12 And the -- and Dr. Gottfried just left out that she
13 didn't remember it at all. That the only reason that she
14 knew what was happening is because her friend Johnny told
15 her. And -- and that's where she got the information. Now,
16 if that turns out to be the case that she got the information
17 from Johnny, if that turns out to be true, she could have
18 repeated that information to the officers on the scene if
19 Johnny had come over and as -- as she said when she talked to
20 the medical team and Johnny -- she didn't remember anything,
21 and Johnny had punched this guy and then pulled her away and
22 Johnny had said, told her, you know, "This is what -- what
23 was going on. You were having sex with -- with Jeremiah
24 Pough. And, you know, I went over and I -- and I punched
25 him." There's nothing in that statement that indicates that

1 it was coercive.

2 Okay. So we get this -- we start getting mixed up
3 then. And I -- I asked Dr. Gehle these questions, the
4 difference between coercive and non-consenting, these are not
5 the same things. If non-consenting was the standard here,
6 then every single person would -- would suffer from that --
7 every single person that committed a rape would suffer from
8 coercive paraphilic disorder. And that's just simply not the
9 case. Something that's non-consenting does not mean the same
10 thing as coercive. And the way that Dr. Gehle explained it
11 is somebody that -- that gets some kind of sexual
12 satisfaction from the resistance of the whole thing. And she
13 said quite simply with this one, there was a lot of
14 contradictory information. She couldn't make a determination
15 of exactly how this -- whether it was Johnny that told her,
16 and then she repeated the information to other people. And
17 when she asked Mr. Pough, Mr. Pough gave a differing account,
18 there is nothing in the indictment that indicates that she
19 was -- that she was in fact being forcibly raped. And so
20 there was no coercion. And so it doesn't fit under the -- it
21 doesn't fit under a coercive paraphilic disorder.

22 The second one, who is AM. AM said that she was
23 voluntarily drunk. That she was in and out of consciousness,
24 that she woke up and observed Jeremy sexually assaulting her.
25 And she never mentioned anything about fighting back. And

1 this -- listen I'm not trying to get you onto team Pough
2 here. Okay? He has done some terrible stuff, okay? Awful
3 stuff. We are not here, as I have told you to make a
4 determination. And if you let yourself get overwhelmed with
5 the things that he did in the past, you are going to just go
6 back there and find that he's a sexually violent predator.
7 You are not going to put any real thought into it. And you
8 have to, you promise to do that. And we expect you to do
9 that. And we, I mean, we're -- we're not concerned that
10 you're going to do that, to be perfectly honest.

11 But this person AM, voluntarily drunk, in and out of
12 consciousness wakes up he's having sex with her, apparently.
13 She -- she pushes him. And there's no indication that the
14 assault continued. And this was one that she didn't even
15 remember for eight months later. Dr. Gehle said, that is not
16 sufficient. That's just not sufficient. I -- there's not
17 enough information in that report for me to make a
18 determination that this falls under coercive paraphilia.
19 Now, that is a fair reading of what was in the reports. I
20 mean, they're not designed -- I mean, if this is the
21 information that you have, you don't read into it. You just
22 read literally the sentences that are in there, and then you
23 try to determine what it was overall, the overall scenario,
24 the interaction between the victim, the interaction between
25 -- and she was a victim. He pled guilty to it.

1 The interaction between the victim and the interaction
2 between the assailant just determine overall what was their
3 -- what happened between them and was there an element of
4 coercive? Was there an element of lack of consent? Yes.
5 Does that mean it was coercive? No. There's no information
6 in that case whatsoever to -- to indicate that it's coercive.
7 Then we have MW this was -- and by the way, AM was the one
8 that he met -- met at a bar, 17-year-old.

9 Then we have MW said she was being sexually molested by
10 her uncle who -- who she considered to be Mr. Pough. And
11 this was the one where I think she was -- I think she was 14,
12 and she alleged that he had -- he had touched her
13 inappropriately on several occasions. And she said that
14 whenever she pushed his hand away, there was no indication in
15 any of the reports that he continued on with his behavior.
16 That she -- he would invite her to her -- to his room on
17 occasion, and that she would voluntarily go to his room and
18 he would perform the -- the acts of touching her. And
19 sometimes she would just say no and just not go. Never did
20 he pick her up and take her in there. Never did he -- was --
21 was there anything in the reports?

22 I talked to Dr. Gottfried about this. There's nothing
23 in the reports. The -- the only -- the closest thing that
24 she could get to was he pushed her hand -- he -- he -- she
25 pushed his hand away, which she couldn't indicate that it

1 continued after that. And then at one point in time, she --
2 she mentioned that she freaked out. What -- that doesn't --
3 the word freak out. I don't have -- that is not a word
4 indicating coercion. And they're going to -- and they have
5 to establish that they don't -- it is not an issue of whether
6 or not there was consent. So ultimately, based on all of
7 this, Dr. Gehle made a determination that there simply is not
8 enough information, or that you could make any kind of
9 realistic determination that this was a paraphilic coercive
10 disorder.

11 Now, what Gottfried did was she assumed, appeared to
12 assume a lot of facts or read into only -- or even -- or only
13 read the facts that she wanted to read. And then she, in
14 addition to that, used the PPG machine, which, as I've --
15 which as I've -- I've tried to establish to you, is not
16 something that you have to have any credibility in. You're
17 free to -- to feel about that machine any way you want, if
18 you think this is a good thing and that it's reliable.
19 That's completely up to you guys. I just -- it just causes
20 me issues to think that that is how we're going to be doing
21 things in the psychological community using machines.
22 So ultimately, what they have to prove is this, the first one
23 we admitted to, he's been convicted of sexually violent
24 conduct in this past.

25 They also must prove beyond a reasonable doubt that the

1 respondent suffers from a mental abnormality or personality
2 disorder. I would submit to you, he does not meet the
3 factors for any personality disorder. I already talked about
4 the narcissism. And that's another thing. There has to be a
5 nexus between the personality disorder, so like narcissism
6 and -- and him, as it says, makes the person likely to engage
7 in acts of sexual violence, if not confined. Well, she never
8 established how the narcissism element has the nexus between
9 that would cause somebody to be likely to engage in actual --
10 in -- in acts of sexual violence, if not confined.

11 So that's never even been established. So narcissism,
12 as far as I can tell, is off the table entirely. Narcissism
13 is just completely off the table. It's not a thing because
14 she never put on the stand that I remember. And if you
15 remember, that's what you remember. I -- I mean, that was a
16 long trial and I was actively over there trying to take notes
17 and do everything else. But I never saw her establish the
18 nexus between the narcissism and likelihood to reengage.
19 Now, everybody agrees that he has a high likelihood to
20 reengage. Okay?

21 So -- so don't get this mixed up in your head because
22 this is so confusing. We've admitted to number one, element
23 number one, and we've admitted to element number three, but
24 it's element number two, the -- they must prove beyond a
25 reasonable doubt that the respondent suffers from a mental

1 abnormal -- abnormality or personality disorder. And that
2 disorder has to have the nexus. It has to -- it has to be --
3 it has to make the person likely to engage in acts of sexual
4 violence, if not confined.

5 So the fact that we admit to one and two, they still
6 have to show the nexus between two and three. They have to
7 show that the narcissism makes him more likely. Nothing was
8 said about that. We submit that there was no narcissistic
9 traits. I mean, well, there were traits, but not a
10 narcissistic disorder. We submit that there was no
11 paraphilic disorder. And therefore, they can't establish the
12 -- the second prong at all. But -- and in -- in particular,
13 one of the reasons why that we are challenging this so
14 vehemently is there seems to have been a vast difference of
15 opinion. And that's reasonable doubt folks, when you got two
16 witnesses up there, one that's been doing this pretty much
17 exclusively for the past, what? 12 years. And somebody
18 that's done -- that's been asked -- that had been qualified
19 as an -- and been qualified as an expert over -- well over a
20 hundred times -- something 180 or something, she said, I
21 don't remember what it was she said, you'll remember.

22 And then somebody that's done it 21 times, I mean, it's
23 not like this person doesn't know what they're talking about.
24 And she found that there was no personality disorder, and she
25 found that neither of these existed. So what I'm telling you

1 folks -- and I mean, God, it's just -- I know this has been a
2 long time, is you're going to have to go back there and
3 you're going to have to make a decision and you're going to
4 have to decide what to make of these two experts in their
5 field. Which one is more credible? And I would say to
6 consider certainly which one is -- has more experience. The
7 methods that they used, particularly, with focus on the PPG
8 machine, because that was a heavy part of Dr. Gottfried's
9 final decision in -- in determining that it was a paraphilic
10 disorder.

11 The reading of the events, the fact that they read them
12 differently, I think that automatically raises reasonable
13 doubt. But that's for you guys to determine. They never
14 established that the narcissism had a nexus with any kind of
15 -- any kind of likelihood of him re-offending in the future.
16 So if you hold the State to their burden, which is, as I
17 said, the highest burden under the law, if you hold them to
18 their burden, there is doubt everywhere in this case. And
19 you can't just get a feel. I -- I have no doubt that at this
20 moment, many of you feel -- I -- I have no doubt that many of
21 you feel like, "Eh, he's probably a sexual -- he's probably a
22 sexually violent predator. Yeah, he probably is. I mean,
23 you'll just look back and, you know, he did that stuff." You
24 know, it's hard not to feel that way.

25 That is -- the judge is going to instruct you. That is

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1 not what goes on back there in a jury room. You've got to
2 look at these three elements. You've got to establish --
3 you've got to make sure that the State established beyond a
4 reasonable doubt, that they can prove each of these. And
5 they especially have to prove the nexus between the number
6 two, that the -- the -- the Respondent suffers from a mental
7 abnormality or personality disorder and that that disorder
8 makes him more likely to engage in sex acts unless he's
9 confined.

10 So we believe -- I believe firmly they have not
11 established this, I believe firmly that there is a tremendous
12 amount of doubt, the disagreement and everything else that
13 occurred during this trial, my attack on the PPG, which I
14 don't think she defended herself particularly well,
15 especially when I was asking her, why don't they test it on
16 -- why can't we -- you tell us, why can't we hear the
17 recordings? Why can't you -- why can't you test it on your
18 friends? Why can't we do more to determine if this -- this
19 machine actually predicts, you know, can actually tell us
20 what exactly somebody is thinking? And so we're going to ask
21 you to find, no, that he's not a sexually violent predator.
22 Let him get out on his probation, let him do his sex offender
23 treatment and let him get on with his life. And I appreciate
24 you guys paying attention. Thank you so much.

25 MR. RUNYAN: Thank you. Your Honor, a brief rebuttal?

1 THE COURT: Yes, sir.

2 MR. RUNYAN: Oh, thank you. I'm sorry -- I'm sorry.

3 Oh, good afternoon again, ladies and gentlemen. You know, I
4 -- Mr. Kirkland and I have done these cases against each
5 other in past and I respect his work and he's an -- you know,
6 he's a effective advocate for a client, his client. But I do
7 think there's some things that I need to address that he said
8 that I don't quite agree with. And I first want to start off
9 kind of this idea that, you know, Mr. Kirkland and I are --
10 we're attorneys. We're not forensic psychologist. So his
11 idea of a great study for what -- how to do a PPG by having
12 Dr. Gottfried's friends come up and take the PPG. While I
13 guess it's good in his mind. That's not how research works.
14 It's not how research works. It's is a very specific field.
15 It's a scientific field. And I think that -- that kind of
16 belittles what Dr. Gehle and Dr. Gottfried both do. Forensic
17 psychology is a very important field of study.

18 I want to talk about a few things. And the first thing
19 is I think he talked about how Dr. Gottfried's changing this.
20 She doesn't use that test. She doesn't use this test. To
21 me, that shows her credibility. To me, this shows that she's
22 evolving in the field of psychology, that she's constantly
23 looking at techniques. She's constantly testing those things
24 against what she believes and what she knows and what she
25 studies. Dr. Gehle doesn't do testing. She doesn't do

1 research. She gets an interview. She scores a static and
2 she does some records reviews. She doesn't follow through.
3 She's not on the forefront of the forensic psychology field
4 as Dr. Gottfried.

5 And we're talking about that. And we're talking about
6 testing. You know, both doctors sat on that stand to you and
7 told you that in the research the PPG is an objective measure
8 of male sexual arousal. It's not what Mr. Kirkland thinks
9 about it. It's not what I think about it. It's going to be
10 what you think. And both doctors told you that. And if you
11 remember, I mean, he's talking about not being standardized,
12 but I -- I think I was standing over here and I -- I was
13 talking about how the people put the headphones on and they
14 listened to those stimulus sets and there's no changing. Dr.
15 Gottfried said there's no change in those stimulus sets.
16 Anybody uses the Marshall Set once they start it, it's the
17 same stimulus step, it's standard. Same with Real Child
18 Voices. Once they start that, it's standard.

19 She talked about the quality control measures that she
20 uses to ensure the PPG is recording what, you know, its
21 results like it should. She talked to you about conservative
22 cut score. And I think that important -- that's important.
23 It goes to her credibility. She doesn't want to show someone
24 with arousal when they don't have it. And the raw data, she
25 talked about, you can't change from base line to peak. She

1 talked about. How you interpret that. The lens by which you
2 interpret that raw data does change. I mean, because if --
3 she talked about its used for impotence. So maybe if you're
4 looking for erectile dysfunction, maybe five millimeters of
5 change is -- is too much. Maybe you want one millimeter of
6 change because you're looking for any blood flow. You know,
7 maybe it's different in treatment.

8 But when these high stakes evaluations, you want to use
9 that conservative cut score. And even using that
10 conservative cut score, Mr. Pough's results in this test
11 showed back -- showed significant -- clinically significant
12 arousal to multiple sets of coercion, persuasion, and rape of
13 pubescent females, teenagers, and adult women. And I asked
14 Dr. Gehle, "You said it's not used by the vast majority."
15 But she really couldn't defend that because she had to admit
16 that even evaluators at DMH have used the PPG and just our
17 small sample that you have here. One doctor use it, one
18 doctor didn't use it. 50-50. Although you can say the vast
19 majority of doctors don't use it.

20 But when we get through all that, and the judge is
21 going to tell you, you can determine what you want to believe
22 from each doctor. You can believe all of Dr. Gottfried, none
23 of Dr. Gottfried, you can believe all of Dr. Gehle. You can
24 believe none of Dr. Gehle. And you can believe whatever
25 parts you want. But remember this, if you throw everything

1 about the PPG, remember the PPG, Dr. Gottfried didn't give
2 him a PPG and say, "Oh, he's got paraphilic coercive
3 disorder." And sign a report. She talked about data points.
4 One data point. And I think -- this is important because I
5 think Mr. Kirkland misrepresents what Dr. Gottfried testified
6 to. He's -- he went to a page, I think, he said 42 of her
7 report. And he went -- there's a paragraph there. And he
8 went to the very last sentence and said, "Taken together
9 based on Mr. Pough's offense behaviors and the results of the
10 PPG examination, he meets diagnostic criteria for paraphilic
11 coercive of disorder." Well, what's taken altogether. When
12 taken all together is the things I told you about when I
13 started my closing.

14 That he was aroused in events that were clearly
15 non-conceptual from the records. That he offended short
16 periods of time after consequence before raping again from
17 the records that he didn't interrupt the sexual assaults.
18 When he realized that the victims were emotionally distressed
19 from the records that he had girlfriends, he had people who
20 would have sex with him. He admitted that from the
21 interview. And his results of the PPG taken altogether, all
22 those different data points, you want to throw the PPG out?
23 Go ahead. But you got to consider all his other data points
24 that Dr. Gehle did not consider. Because all those things I
25 listed to you that Dr. Gottfried testified to you, those are

1 factors that Dr. Gehle told you she didn't even get to in a
2 book that she uses. She didn't get to them. Dr. Gottfried
3 followed through, and I believe established, he has
4 paraphilic coercive disorder.

5 And both doctors agree. I mean, they told you it's in
6 the DSM-5, they told you other specified paraphilic disorder
7 and personality disorder. It's not a catchall. It's not
8 just like, "Oh, well I can't say what it's got. So I'm going
9 to say he is got this." As -- as Mr. Kirkland said. You
10 know, "I'm just going to put it in here." That's not how it
11 works. It's not how psychology works.

12 Both the doctors agreed, those were diagnosis were in
13 the DSM-5, both doctors -- even Dr. Gehle agreed, she's done
14 those diagnosis before. So remember, the PPG is just one
15 data point. Dr. Gottfried made her determinations based on
16 her clinical training, her experience, and that's how she
17 made a determination. She told you this based on her
18 clinical training. And I think -- you know, I think Mr.
19 Kirkland minimizes what Dr. Gottfried did, and he tries to
20 bolster what Dr. Gehle didn't do. I don't think a lot as --
21 as was contradicting.

22 Both doctors testified that they reviewed criminal
23 records, police reports, medical exam, forensic evaluations,
24 they all reviewed those. And he wants to point to -- to Dr.
25 Gehle -- I mean, Dr. Gottfried picked and chose what she

1 wanted. But she told you on the stand, if you remember, when
2 he was cross-examining her, she said -- she said, right
3 there, "I don't cherry pick." Those were her words. "I
4 Consider everything I don't cherry pick." Which is what he's
5 trying to infer to you.

6 Even Dr. Gehle, I had to show her, went up there and
7 showed her a police report on the first one because in her
8 report she didn't talk about that the witness -- the victim
9 state there is a red mark swelling under her left eye. She
10 did admit that was in her report, that he -- that she
11 informed me that he was just raped by Jeremiah Pough. Sorry.
12 That Mr. Pough penetrate her -- penetrated her vagina. That
13 that she remembers Jeremiah forcing himself on her when they
14 got near the AC unit. That Jeremiah -- she was telling him
15 to stop. That Jeremiah wouldn't.

16 And in the medical evaluation or the medical report --
17 you know, I asked Dr. Gehle and I think there's some
18 confusion about it because he says she never said those
19 things, but she was answering the medical examiner's
20 question. "What Did Johnny say to you?" The question was,
21 "What -- what do you remember what did Johnny say to you?"
22 And Johnny said he saw her being raped and they went over
23 there and he beat Mr. Pough off of him. That's what she was
24 responding to.

25 And in that forensic interview, remember she said --

1 Dr. Gehle is the one that said this, "The forensic interview
2 is a specialized interview by trained professionals to not
3 ask leading questions, to not try to, you know, persuade the
4 person to what happened, to get just the facts. And that
5 forensic interview said that she recalled being raped by Mr.
6 Fu, that she recalled trying to push him off. And that's
7 coercive. And Dr. Gehle had to admit that was coercive
8 behavior. When I asked her.

9 The second victim couldn't do anything, and you'll read
10 the indictment. She was incapacitated. And Dr. Gehle had to
11 admit when I was talking to her about this, when I asked her
12 if a paraphilic coercive disorder could present in rapist to
13 target unconscious or mentally incompetent victims who were
14 incapable of consent due to their lack of awareness that a
15 sexual assault is being committed upon them. And she said,
16 "Yeah." She thought in certain circumstances, well, I think
17 these circumstances apply. This poor 17-year-old girl didn't
18 know what was going on and he had sex with her, he raped her
19 because he's aroused by that.

20 And I -- I guess, go back to kind of victim shaming. I
21 mean, to me it's minimizing what the victims are saying,
22 minimizing that this 15-year-old girl who lived in the house
23 with Mr. Pough, his girlfriend's niece, said she pushed him
24 his hand off of him -- off of her. That's important to me.
25 And, I guess, a consensual -- and this is just my opinion,

1 but I guess a consensual sexual encounter, you could be in a
2 consensual sexual encounter and at some point, if a person
3 says, no, it's non-consensual.' And Dr. Gehle had to admit
4 pushing a hand away, that's -- that's evidence of coercive
5 paraphilic disorder.

6 But it's not just the records. That's what I go back
7 to. Dr. Gehle read the records. She says it's insufficient.
8 And she stopped. She didn't go on to look at the factors and
9 she to admit on the stand that in the forensic psychology --
10 and I'll say this again, when somebody is arrested, gets out
11 in the community, is facing significant charges and
12 re-offend, and they do that again and again, that can
13 indicate a preference for that sexual behavior. And she
14 admitted that, but she stopped. I mean, she stopped at that.
15 And I think Dr. Gottfried established, I think at the end, I
16 think that's -- you guys will agree with me on that.

17 But Mr. Kirkland kept saying, you know, narcissistic
18 personality, he's -- he's a narcissist. He's a narcissist.
19 But Dr. Gottfried never said he was a narcissist. In fact,
20 she said he wasn't a narcissist. She said she couldn't
21 diagnose him with narcissistic personality disorder. But he
22 met traits of that through her thorough interview. The
23 information she was able to glean from him through the
24 psychological testing that she did she was able to diagnose
25 him with that.

1 And I've already told you what the nexus is, and Dr.
2 Gottfried told you on that stand with the nexus is she said
3 the combination of his paraphilic coercive disorder along
4 with this other specified personality with narcissistic
5 traits, the combination of those, the fact that he's aroused
6 to non-consensual coercive sex and the fact that he lacks
7 empathy. He has a sense of entitlement. He thinks he should
8 get what he wants when he wants it. The combination of those
9 things make him offend sexually. And ladies and gentlemen,
10 he has a very high risk to re-offend. So again, I ask you to
11 return the verdict of yes, Mr. Pough is a sexually violent
12 predator. Thank you.

13 THE COURT: All right. Ladies, gentlemen, almost 5:30
14 now. So we're going to dismiss you for the evening. Have
15 you come back at 9:30 tomorrow morning in the deliberation
16 room. And again, I know we've had fuzzy arguments, but I
17 have not instructed you on the wall yet. So do not begin any
18 deliberations. Do not discuss the case amongst yourselves,
19 amongst anyone else. Tomorrow morning I'll instruct you what
20 the law is before you begin your deliberations. There are no
21 discussions, no deliberations, no independent research, and
22 I'll see you tomorrow morning in the deliberation room at
23 9:30. Thank you. Anything from the State?

24 MR. RUNYAN: No, Your Honor.

25 THE COURT: Anything from the Respondent?

1 MR. KIRKLAND: No, sir.

2 THE COURT: All right. We'll see you at 9:30 tomorrow
3 morning. You will review the jury charges, any of -- any
4 changes or whatnot -- just looking. And we got the 403, if
5 you would. Should we make him sit through the ---

6 UNIDENTIFIED SPEAKER: Oh. No, I don't think he's done
7 yet.

8 THE COURT: (Inaudible) discretion.

9 UNIDENTIFIED SPEAKER: Judge's discretion.

10 THE COURT: Unless (inaudible).

11 THE CLERK: He said he wanted to be here tomorrow, so.

12 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
13 4:24 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5 of Kershaw County, South Carolina, on the 15th Day of November, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 16, 2024

Natasha Barrientos

Transcriber

1 CONTINUATION OF PROCEEDINGS - NOVEMBER 16, 2023

2 THE REPORTER: Thursday, November the 16, 2023.
3 Kershaw County Common Pleas Court, Judge Daniel Coble.

4 THE COURT: All right. Has the State had a chance to
5 review proposed jury charges?

6 MR. RUNYAN: Yes, Your Honor.

7 THE COURT: Any objections?

8 MR. RUNYAN: No, Your Honor.

9 THE COURT: Has the Respondent had a chance to review
10 the proposed jury charges?

11 MR. KIRKLAND: I have, Your Honor.

12 THE COURT: Any objections other than what you put on
13 the record yesterday about your disagreements?

14 MR. KIRKLAND: Yeah, that -- I looked at it last night
15 and it is 100 percent my belief that these jury charges do
16 represent the statute and the three elements that I had
17 requested. My complaint, I suppose was with, and I'm putting
18 this on the record so that I remember this, if I have to
19 remember it later, my complaint really is how poorly they
20 wrote the statute. It's -- it's kind of out of order. I
21 wish they had made it a lot more clear, but your -- your
22 charge that you're -- that you have proposed and -- and sent
23 to us does accurately reflect the law. So I can't object to
24 it.

25 THE COURT: Thank you. Has the State had a chance to

1 review the proposed verdict form?

2 MR. RUNYAN: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. RUNYAN: No, Your Honor.

5 THE COURT: Has the Respondent had a chance to review
6 the proposed verdict form?

7 MR. KIRKLAND: Yes, sir. And that is the standard
8 verdict form that is used in every single case and I have
9 never objected and I'm not objecting now.

10 THE COURT: And the only evidence that came in this
11 case was one through three, is that correct?

12 MR. RUNYAN: That's correct, Your Honor.

13 THE COURT: And that's simple. But before we send it
14 back, we'll just put on the record that that's confirmed.
15 Anything from the State before we bring the jury out and
16 charges?

17 MR. RUNYAN: No, Your Honor.

18 THE COURT: Anything from the Respondent?

19 MR. KIRKLAND: No, Your Honor.

20 THE COURT: All right. Let's bring the jury. All
21 right. Good morning ladies and gentlemen. Thank you again
22 for your patience and for being here on time. Yesterday
23 afternoon the both parties gave you their closing arguments
24 and at this point I have to instruct you on what the law is
25 before you begin to deliberate. Now, I want you to pay close

1 attention because you're not going to have a copy of these
2 when you go back. You're just have to listen to what I said
3 so I'll -- I'll try to speak as slowly as I can. Sometimes I
4 rush through things, but I'm going to speak slowly. So go
5 pay close attention. I'll instruct you on what the law is.

6 Members of the jury, it is now my duty as the trial
7 judge to instruct you on the law applicable to this case.
8 And in that regard, it is your duty as jurors to accept and
9 apply the law as I now stated to you. Furthermore, it is
10 your exclusive duty to decide all the issues of fact in this
11 case and to determine the effect value and weight of the
12 evidence. All the parties have the right to expect that you
13 will carefully consider and evaluate the evidence and apply
14 the law in this case so that in the end, all parties will
15 receive a fair and impartial trial.

16 During this trial, you and I have separate duties to
17 perform. As the trial judge, it is my responsibility to
18 preside over the trial and to rule upon the admissibility of
19 the evidence offered during the trial. In that regard, you
20 are to consider only the evidence before you. Thus, you are
21 to consider only the testimony which has been presented from
22 the witness stand together with any exhibits admitted into
23 the record of this case.

24 Furthermore, I have the additional duty to charge you
25 on the law applicable to this case. And in that regard, it

1 is your duty to accept and apply the law as I now stated to
2 you. If you have any preconceived ideas as to what the law
3 is or what you think the law ought to be and it does not
4 agree with what I tell you the law is, you are obligated
5 under your oath to abandon these preconceptions because you
6 are sworn to accept the law as I now state it to you.

7 In this trial, you are the sole and exclusive judge of
8 the facts. Do not infer that I have any opinion about the
9 facts of this case or anything I've said or done during the
10 course of this trial. In this regard, the law simply does
11 not permit me to have an opinion about the facts. As jurors,
12 it is your duty alone to determine the effect value and
13 weight of the evidence presented during the course of this
14 trial.

15 Furthermore, it is your job as jurors to determine the
16 credibility or believability of the witnesses who have
17 testified in this case. In determining the believability of
18 witnesses who have testified in this case, you may believe
19 one witness over many or many over one. You may believe a
20 part of the testimony of a witness and reject the remaining
21 part. You may believe the testimony of a witness in its
22 entirety or reject it in full. You may consider whether the
23 witness has an interest in the result of the trial, whether
24 the witness is prejudice toward either party, the opportunity
25 for the witness to have seen the matters and things about

1 which the witness may testify and the way the witness acts on
2 the witness stand.

3 Ladies and gentlemen, in most civil cases tried in the
4 court of common pleas the burden of proving a claim by the
5 preponderance or greater weight of the evidence. However, in
6 this type of case under this particular statute, the State's
7 burden is greater than that. Here it must be beyond a
8 reasonable doubt. The State has the burden of proving beyond
9 a reasonable doubt that the Respondent is a sexually violent
10 predator. Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced that the Respondent is a sexually
12 violent predator. There are very few things in this world
13 that we know with absolute certainty and the law does not
14 require proof that overcome -- overcomes every possible
15 doubt.

16 If, based on your consideration of the evidence, you
17 are firmly convinced that the Respondent is a sexually
18 violent predator, then you must return a verdict for the
19 State. If on the other hand you think there is a real
20 possibility that the Respondent is not a sexually violent
21 predator, you must give the Respondent the benefit of the
22 doubt and find that he is not a sexually violent predator.
23 The following things are not evident and you must not
24 consider them in evidence and in deciding the facts of this
25 case; statements and arguments of the attorneys, questions

1 and objections of the attorney -- attorneys and any testimony
2 that have struck you to disregard. There are two types of
3 evidence which are generally presented during a trial, direct
4 evidence and circumstantial evidence. Direct evidence is
5 testimony by a witness about what the witness personally saw
6 or heard or did. Circumstantial evidence is indirect
7 evidence. In other words, it is proof of a chain of facts
8 and circumstances indicating the existence of the fact.

9 You may -- you may consider both direct and
10 circumstantial evidence equally. You are to consider both
11 direct and circumstantial evidence. The law permits you to
12 give equal weight to both, but it is for you to decide how
13 much weight to give any evidence. The law makes no
14 distinction between the weight or value to be given to either
15 direct or circumstantial evidence.

16 However, to the extent the State relies on
17 circumstantial evidence, all of these circumstances must be
18 consistent with each other and were taken together point
19 conclusively to the finding beyond a reasonable doubt that
20 the Respondent is a sexually violent predator. This burden
21 rest with the State regardless of whether the State relies on
22 direct evidence, circumstantial evidence, or some combination
23 of the two.

24 The rules of evidence ordinarily do not permit
25 witnesses to testify to opinions or conclusions. An

1 exception to this rule exist for witnesses we call expert
2 witnesses. A witness who by education and experience has
3 become an expert in some art, science or profession, may give
4 an opinion as to the subject the witness claims to be an
5 expert in and may also give the reasons for that opinion.
6 You should consider any expert opinion given by a witness and
7 like any other evidence given the weight you think it
8 deserves.

9 If you decide that an expert witness's opinion is not
10 based on sufficient education and experience or if you decide
11 that the reasons given in support of the opinion are not
12 sound or that the opinion is outweighed by other evidence,
13 you may disregard the opinion entirely. An expert witness's
14 testimony is to be given no greater weight than that of other
15 witnesses simply because the witness is an expert. And you
16 do not have to accept an expert's opinion even though it is
17 uncontradicted.

18 The elements which the State must prove beyond a
19 reasonable doubt are three. First, that the Respondent has
20 been convicted of a sexually violent offense. I charge you
21 that one; criminal sexual conduct with a minor victim, 11 to
22 14 years of age inclusive, second degree. Number two,
23 criminal sexual conduct with a minor victim under 16 years of
24 age second degree. And number three, criminal sexual
25 conduct. Third degree are sexually violent offenses.

1 Element number two, that the Respondent suffers from a mental
2 abnormality or personality disorder. And element number
3 three, the mental abnormality or personality disorder makes
4 the person likely to engage in acts of sexual violence, if
5 not confined in a secure facility for long-term control, care
6 and treatment.

7 Inherent in these elements is that the State must prove
8 the requirement that the Respondent's mental abnormality or
9 personality disorder causes him serious difficulty in
10 controlling his behavior. In other words, the State must
11 prove beyond a reasonable doubt that the individual seeks to
12 commit suffers from a mental illness which he cannot
13 sufficiently control without the structure and care provided
14 by a mental health facility rendering him otherwise likely to
15 commit a dangerous act.

16 In order for you to better understand the elements of
17 the State's causes of action, I'm going to define for you
18 some of the terms that I've just used. Number one, mental
19 abnormality means a mental condition affecting a person's
20 emotional or volitional capacity that predisposes the person
21 to commit sexually violent offenses. This mental abnormality
22 or personality disorder must cause Respondent serious
23 difficulty in controlling his behavior. Number two, likely
24 to engage in acts of sexual violence means that a person is
25 predisposed to engage in acts of sexual violence and more

1 probably than not, will engage in acts of sexual violence to
2 such a degree as to pose a menace to the health and safety of
3 others.

4 The burden of proof is on the State to prove to your
5 satisfaction beyond a reasonable doubt that the Respondent
6 has been convicted of a sexually violent offense as I
7 instructed you, and also suffers from a mental abnormality or
8 personality disorder that makes him likely to engage in acts
9 of sexual violence, if not confine -- confined in a secure
10 facility for long-term control, care and treatment.

11 And again, I remind you that the Respondent has already
12 pled guilty to a sexually violent offense. He received a
13 criminal sentence for that crime and has already satisfied
14 that sentence. South Carolina sexually violent credit law
15 was not enacted so as to add to the criminal defendant's
16 punishment and owed upon individuals that commits sexually
17 violent offenses. Therefore, your decision whether to commit
18 respondent in this case may not be influenced by your
19 personal opinions regarding whether respondent received an
20 appropriate criminal punishment.

21 If the State carries its burden of proof and convinces
22 you beyond a reasonable -- reasonable doubt as to each of the
23 two elements of its cause of action, three elements, it is
24 entitled to a finding the Respondent is a sexually violent
25 predator. If the State does not meet that burden of proof as

1 to one or all of these elements, the Respondent is entitled
2 to a finding that he is not a sexually violent predator. A
3 verdict of this case cannot be based upon sympathy, passion,
4 prejudice, or emotion or some other consideration not found
5 in the evidence. I charge you that as jurors, you must
6 decide the issues involved in this proceeding based solely
7 upon the evidence which you hear during the course of the
8 trial. Your verdict must be without bias, without prejudice
9 to any party. You cannot allow yourself to be governed by
10 sympathy, by prejudice, by passion, by public opinion, but by
11 some other consideration not found in the evidence.

12 And let me say something about your deliberations.
13 Deliberation is defined as careful consideration weighing up
14 with a view to decision. The genius of our jury system is
15 that it allows 12 good men and women from 12 different
16 backgrounds, life experiences and perspectives to consider
17 the evidence, talk about it, and ultimately reach a verdict.
18 We call them deliberations for a reason. You are to consider
19 the evidence in this case carefully and deliberately and
20 discuss it in a calm, thorough and courteous manner.

21 Remember, you are not partisan or advocates for either
22 side favoring one side over the other. You are judges,
23 judges of the facts. Listen to the views of all of your
24 fellow jurors. Consider other people's points and points of
25 views and talk through and discuss the evidence. And

1 remember, if you are doing something deliberately, you are
2 not in a big hurry and you should not be in a hurry here.

3 This case is very important to both sides and this is
4 their only day in court. When you retire to the jury room,
5 you should discuss the case with your fellow jurors to reach
6 agreement. If you can do so, your verdict must be unanimous.
7 Each of you must decide the case for yourself, but you should
8 do so only after you have impartially considered all the
9 evidence, discussed it fully with the other jurors and listen
10 to the views of your fellow jurors. Do not be afraid to
11 change your opinion if the discussion persuade you that you
12 should but do not come to a decision simply because other
13 jurors think it is right. It is important that you attempt
14 to reach a unanimous verdict. But of course, only if each of
15 each of you can do so after having made your own decision.

16 Do not change an honest belief about the weight and
17 effect of the evidence simply to breach a verdict. In other
18 words, do not change your opinion solely for the sake of
19 reaching a unanimous verdict. There are two possible
20 verdicts which you may find in this case; that the Respondent
21 is a sexually violent predator or that the Respondent is not
22 a sexually violent predator. There is no significance
23 whatsoever in the order in which I state these possible
24 verdicts. It's simply that one must be stated and must come
25 first.

1 All right. Madam Fore Lady, you'll receive the verdict
2 form. Verdict form, it has the caption of the case, the name
3 of the case, the case number, and it states the following,
4 "Has the petitioner, the State of South Carolina, proved
5 beyond a reasonable doubt that Jeremiah James Pough is a
6 sexually violent predator under the South Carolina Sexually
7 Violent Predator Act." And it goes on to say, "We the jury
8 unanimously answer the following -- the question as follows."
9 And you have two choices, which I just went over. The first
10 one says, "Yes, Jeremiah James Pough is a sexually violent
11 predator." Or the second option, "No. Jeremiah James Pough
12 is not a sexually violent predator."

13 After you deliberate and come to your verdict you will
14 check the appropriate box. You will sign where your
15 signature goes and you will date this verdict form will go
16 back with you. The evidence will go back with you for your
17 review. I'm going to send you back to the jury deliberation
18 room, but do not deliberate quite yet. You are almost there.
19 You will know when you can deliberate when we have sent the
20 evidence back with you.

21 Typically, we take the alternates out that says all the
22 alternates are gone. You don't have to send anyone out.
23 When we send you the verdict form and the evidence, then you
24 can begin your deliberations. But do not discuss the case.
25 Do not deliberate. Just general. All right. We'll send you

1 back now. Thank you. Anything from the State?

2 MR. RUNYAN: No, Your Honor.

3 THE COURT: Anything from the Respondent?

4 MR. KIRKLAND: No, Your Honor. Interestingly though,
5 as I listen to you read that charge, I'd like it better than
6 my charge now. This is the charge I'm going to start going
7 with.

8 THE COURT: The one -- there wasn't --

9 MR. KIRKLAND: Typo. There wasn't typo.

10 THE COURT: Yeah.

11 MR. KIRKLAND: You caught it though.

12 THE COURT: I get it.

13 MR. RUNYAN: Yeah, you caught it.

14 THE COURT: Just for the future, we'll update that.

15 All right. Other than that, if -- we're still on the record.
16 If you all both confirm that is the evidence and then agree
17 that, that's what we're going to send back as well as this,
18 Madam Clerk, that verdict form.

19 All right. No objections. We're going to send back
20 the evidence and the verdict form and they will begin their
21 deliberations. Madam Clerk, you can let them know that they
22 can begin their deliberations. The court will be in recess.

23 (Off the record)

24 THE COURT: All right. Can the attorneys see from that
25 -- the jury's perspective? Can they see his handcuffs at

1 all?

2 MR. RUNYAN: I always have concern about -- just want
3 to see when Mr. Kirkland and this chair I think it going to
4 take of it. Yeah, I cannot see.

5 THE COURT: Okay. All right. So Mr. Pough, you're
6 instructed to keep, remain seated. Everyone's going to
7 remain seated when the jury comes in. Everyone remains
8 seated during the verdict reading. Mr. Pough, if you keep
9 your hands below, we don't want the jury to see anything like
10 that, but I have to weigh the balance of security measures.
11 Something personal, it's just a protocol we have to go
12 through with your constitutional protections as well.

13 So I believe this is a fair balance because they cannot
14 see you, but no one rises at any point when the jury is in
15 here, nobody. All right. Anything else from the State
16 before we bring the jury back?

17 MR. RUNYAN: No, Your Honor.

18 THE COURT: Anything from the Respondent?

19 MR. KIRKLAND: No, Your Honor.

20 THE COURT: All right. Let's bring the jury back.

21 MR. KIRKLAND: No reaction.

22 THE COURT: All right. Ladies and gentlemen, thank you
23 for your deliberations. Madam Fore Lady. It's my
24 understanding that the jury has reached a unanimous verdict.
25 Is that correct?

1 JUROR NUMBER 164: That's correct.

2 THE COURT: All right. If you will hand the verdict
3 form to this bailiff and she will bring it to the clerk to
4 publish. Let me read it first. All right. The verdict form
5 is in its proper form. Madam Clerk, you may publish the
6 verdict.

7 THE CLERK: State of South Carolina, county of Kershaw
8 in the matter of care and treatment of Jeremiah James Pough
9 in the Court of Common Pleas. This -- this circuit, case
10 number 2022-CP (Common Pleas)-28-00351. The verdict is yes,
11 Jeremiah Pough is a sexually violent predator. Signed by the
12 foreperson, November 16, 2023 Camden South Carolina.

13 THE COURT: All right. Thank you, Madam Clerk,
14 anything from the State?

15 MR. RUNYAN: No, Your Honor.

16 THE COURT: Anything from the Respondent?

17 MR. KIRKLAND: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, I want to
19 thank you for your service this week. I know it's been a
20 long week, but as I've said from the very beginning, our
21 system cannot work without jurors like yourselves. So I
22 thank you for your service to your county and to your state.
23 At this point, you're free to return to the deliberation
24 room, grab any of your items, if you need a work excuse or
25 anything of that nature. We'll make sure to get that taken

1 care of you. At some point, attorneys might reach out to you
2 to -- to inquire about the case. You're more than free to
3 talk to them if you wish to, but you do not have to at all.
4 So thank you again for your service. I really appreciate it
5 and you are all free to leave. Anything else from the State?

6 MR. RUNYAN: Your Honor, we have a -- we sent in a
7 proposed order of commitment that we need to have signed
8 really for custody purposes to give the South Carolina
9 Department of Mental Health custody and give the Kershaw
10 County Detention Center custody in the -- in the interim.

11 THE COURT: All right. Anything else from the
12 Respondent?

13 MR. KIRKLAND: I have three motions, Your Honor. We
14 would -- I'll just list all three at once.

15 THE COURT: Yes.

16 MR. KIRKLAND: And then you can just go ahead and rule.
17 So we would ask initially that you enter a judgment
18 notwithstanding the verdict of non-commitment. We would ask,
19 secondly -- I'm trying to think of my three motions.
20 Judgment, notwithstanding verdict. We would ask for a new
21 trial and we would renew all of the motions that we have made
22 throughout the proceedings and ask you to grant a new trial.
23 Those are the three.

24 THE COURT: Anything from the State?

25 MR. RUNYAN: I'll leave to your -- your discretion,

1 Your Honor.

2 THE COURT: I deny those motion -- all of your previous
3 motions are renewed and the same rulings stand, deny the
4 motions of -- or jury would not withstand the verdict based
5 on the evidence that was presented as stated earlier at the
6 initial DV motion as well.

7 MR. KIRKLAND: Thank you.

8 THE COURT: All right. Thank you. And I've signed the
9 order of commitment. Thank you all.

10 MR. KIRKLAND: Thank you, Your Honor.

11 MR. RUNYAN: Thank you, Your Honor.

12 THE COURT: Court is adjourned.

13 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
14 10:45 A.M.)

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
IN THE MATTER OF THE)
CARE AND TREATMENT OF)
JEREMIAH JAMES POUGH,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT
CASE NO.: 2022-CP-28-00351

MOTION IN LIMINIE

FILED FOR RECORD
NOV 13 AM 8:29
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

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 testing, expected to be offered from Petitioner's expert witness, Dr. Emily Gottfried, regarding penile plethysmograph test ("PPG") Respondent underwent on or about 2/6/2023. Contemporaneous with the motion, Respondent's Counsel also files a motion in limine to exclude this same PPG testimony on separate grounds.

ARGUMENT

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). See also Rule 702, SCRE; State v. Council, 335 S.C. 1,515 S.E.2d

508 (1999); *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979). A PPG test is no more reliable than a polygraph examination and the results from PPG testing should be given no more credence in Court than that given to a polygraph examination.

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. Absent peer-reviewed studies attesting to the reliability and standardization 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.*

"Courts generally have held (the PPG] inadmissible to show the presence or absence of pedophilia." David H. Kaye, David E. Bernstein, and Jennifer L. Mnookin, *The New Wigmore: Expert Evidence* ,§ 8.8.2 at n.21 . The Fourth Circuit held the PPG did not meet the scientific

standards for admissibility in *United States v. Powers*, 59 F.3d 1460, 1470-71 (4th Cir. 1995). The court noted the "extensive, unanswered evidence weighing against the scientific validity of the plethysmograph test." *Id.* at 1471.

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, 101-102 (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 IO 1-02 (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. See also *United States v. Medina*, 779 F.3d 55, 65 (1st Cir. 2015) (discussing the problems with the reliability of PPG testing where such testing was imposed as a condition of supervised release); *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1266 (9th Cir. 2000) ("In fact, courts are uniform in their assertion that the results of penile plethysmographs are inadmissible as evidence because there are no accepted standards for this test in the scientific community."); *United States v. White Horse*, 177 F.Supp.2d 973, 975-76 (D.S.D. 2001) (citing the DSM-IV for the proposition that the PPG "is not accepted as a reliable or valid diagnostic tool"); *State v. Spencer*, 459 S.E.2d 812, 815 (N.C. Ct. App. 1995) ("We agree with the trial court that the evidence before it by no means established the reliability of the plethysmograph; there is a substantial difference of opinion within the scientific community

regarding the plethysmograph's reliability to measure sexual deviancy."); *Gentry v. State*, 443 S.E.2d 667, 669 (Ga. Ct. App. 1994) ("Given the rejection of penile plethysmograph evidence by other states, also particularly the uncertainty within the scientific community of its reliability, we hold that it is inadmissible in Georgia.").

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. Gr 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.

5Standardization 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.

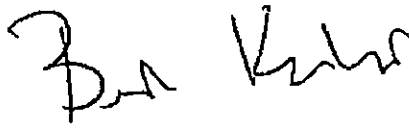
Respondent therefore asks that this Court conduct a hearing to establish the reliability of

the anticipated PPG testimony from Dr Emily Gottfried regarding Respondent's 2/6/2023 PPG test.

Respectfully Submitted,

/s Bradley M Kirkland

Respondent's counsel.

A handwritten signature in black ink, appearing to read "Bradley M. Kirkland". The signature is written in a cursive, flowing style with a large initial "B" and "K".

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	CASE NO. 2022-CP-28-00351
IN THE MATTER OF THE CARE	)	
AND TREATMENT OF	)	MEMORANDUM IN SUPPORT OF
JEREMIAH JAMES POUGH,	)	THE ADMISSIBILITY OF PPG
	)	TESTIMONY OF DR. EMILY
RESPONDENT.	)	GOTTFRIED

PLEASE TAKE NOTICE: The State, by and through the undersigned attorney, files this memorandum in support of the admissibility of opinion testimony of Dr. Emily Gottfried related to the PPG testing. The following is submitted in response:

INTRODUCTION

After a probable cause hearing on June 22, 2022, Respondent was ordered to be evaluated pursuant to the Sexually Violent Predator Act ("SVPA"). On October 25, 2022, the Court appointed expert, Dr. Marie E. Gehle, issued an evaluation finding Respondent does not meet the criteria for civil commitment under the SVPA. As allowed under S.C. Code Ann. Section 44-48-90 (C), the State sought an independent evaluation retaining the services of the Medical University of South Carolina's ("MUSC"). Dr. Emily Gottfried was assigned by MUSC to perform the evaluation.

As part of the standard protocol of MUSC's Department of Psychiatry and Behavioral Sciences Sexual Behavior Clinic and Lab ("SBCL") for forensic psychosexual evaluations, Dr. Gottfried administer a Penile Plethysmography examination ("PPG"). On or about April 20, 2023, Dr. Gottfried issued her evaluation concluding Respondent met the criteria for civil commitment under the SVPA. The evaluation included results of the PPG test. The results were interpretable, and indicated the Respondent experienced clinically significant sexual arousal to various scenarios.

The test was administered by an individual technician employed by the SBCL, who is trained and certified 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. Further, the SBCL is certified by the PPG manufacturer as a PPG clinical research lab, the highest level of certification.

Dr. Gottfried considered the PPG results as one data point in rendering her opinion, and Respondent now seeks to suppress all testimony concerning the results of the PPG testing. The State submits this memorandum in support of opinion testimony regarding the results of the PPG.

ARGUMENT

- I. **Dr. Gottfried should be allowed to testify regarding PPG testing and results she used as a part of the basis of her opinion because the PPG is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests and meets the baseline standards for reliability under the *Council* standard.**

The SVPA created a non-punitive, civil process for the commitment and treatment of sexually violent predators. *In re Care & Treatment of Canupp*, 671 S.E.2d 614, 617 (Ct. App. 2008) (citing *In re Matthews*, 550 S.E.2d 311, 316 (2001) (the United States Supreme Court deemed Kansas' Sexually Violent Predator Act, on which the South Carolina Act is modeled, to be a civil, non-punitive scheme)); *In re Care and Treatment of Brown v. State*, 643 S.E.2d 118, 121 (Ct.App.2007). “The Act is designed 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.” *Brown*, 643 S.E.2d at 621 (citing S.C. Code Ann. §44-48-20). A “person's dangerous

propensities are the focus of the SVP Act.”” *In re Care & Treatment of Ettel*, 660 S.E.2d 285, 287 (Ct. App. 2008) (quoting *In re Care and Treatment of Corley*, 577 S.E.2d 451, 453 (2003)).

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*, 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. *Council*, 515 S.E.2d at 517-518.

The PPG “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 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 “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”).

The PPG has undergone Federal Drug Administration review, and the FDA has approved several PPG systems, including the Limestone system used in this case. *See* 501(k) Summary – Limestone Technologies, Inc. (https://www.accessdata.fda.gov/cdrh_docs/pdf5/K052929.pdf). In

addition, 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 insurance companies' recognition of the PPG as a valid medical device and procedure amply demonstrates its general acceptance in the medical community.

As Dr. Gottfried will testify, the principal purpose of the PPG in sexual offending behavior evaluations is 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 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.”).

As Dr. Gottfried will testify, further evidence of the PPG’s general acceptance in the mental health community, and perhaps the strongest evidence, is the reference to it in the DSM-5. 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.¹

Courts have also recognized the general acceptance and admissibility of the PPG in sexually violent predator cases.² In *In re Detention of Halgren*, 132 P.3d 714 (2006), the Washington Supreme Court found PPG results were admissible as part of the diagnostic process,

¹Published 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.

² Other South Carolina circuit courts have admitted PPG evidence. See *In re Care and Treatment of Gregg*, 2018-CP-10-3472 (Jefferson, J.) (appeal pending) (Supreme Court Appellate Case No. 2022-001710); *In re Care and Treatment of Williford*, 2019-CP-04-01380 (Sprouse, J.) (appeal pending) (Appellate Case No. 2021-000249); *In re Care and Treatment of Hyman*, 2020-CP-21-1045 (Henderson, J.) (appeal pending) (Appellate Case No. 2021-000734); *In re Care and Treatment of Daily*, 2019-CP-42-03230 (Kelly, J.) (appeal pending) (Appellate Case No. 2022-000371).

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*, 393 P.3d 879, 885 (2017), *aff'd*, 412 P.3d 293 (2018)(same). Further in 2015, after receiving testimony from two opposing experts, a Florida circuit court in a Seminole County case found the underlying principals and methods of the PPG reliable and admissible under *Daubert*³ standards. See **EXHIBIT A**, *In RE: Rivers-Finney*, Case No. 13-CA-2970-16-1, Order December 16, 2015.

The Illinois appellate court also found PPG evidence was admissible in *In re Commitment of Sandry*, 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. Further, the *Sandry* opinion analyzed Illinois case law which expressly stated "[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." *Id.* at 308 (*quoting Donaldson v. Central Illinois Public Service Co.*, 767 N.E.2d 314 (2002))(emphasis added). Thus, if a test has gained widespread acceptance in the scientific community, it is inherently reliable to pass threshold standards to be admitted into court for the jury to assess the weight of the evidence.

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

³ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593 (1993).

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*, 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).

Thus, the tide is changing in favor of recognizing the PPG as reliable and admissible evidence. This is particularly true in connection with sexually violent predator cases.

II. Both the Marshall and the Burke-Musolf (Real Child Voices) “RCV” stimulus sets have been peer reviewed.

Peer review and publication is one factor to be considered under *Jones/Council*, it is not the determinative factor. Expert testimony may be reliable and admissible without peer review and publication. *In re Viagra*, 424 F.Supp.3d 781, 791 (N.D. Cal. 2020) (citing *Wendell v. GlaxoSmithKline, LLC*, 858 F.3d 1227, 1237 (9th Cir. 2017)). The absence of independent research into a topic at issue does not mean the experts’ methods were unreliable. *Id.*; *see also United States v. Cloud*, 576 F.Supp.3d 827, 841 (E.D. Wash. 2021) (existence of peer reviewed literature can help determine methodology’s reliability, but “the ‘fact of publication (or lack thereof) in a peer reviewed journal’ is not dispositive”) (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593 (1993)).⁴

⁴South Carolina has not adopted the *Daubert* factors, but the *Jones/Council* factors, including peer review and publication, are very similar, and federal courts’ analysis of the factors is instructive. *See State v. Warner*, 842 S.E.2d 361, 366 (Ct. App. 2020) (“Nevertheless, our approach is “extraordinarily similar” to the federal test.”)

Assuming “peer review” of the Marshall and RCV stimulus set is required, however, Dr. Gottfried will testify both of the stimulus sets have been peer reviewed. The Marshall stimulus set has been utilized in PPGs longer than the RCV stimulus set, and Dr. Gottfried will testify there are more studies concerning the Marshall set.

There are different types of accepted peer review, including a “presentation of a study at a scientific conference or symposium, where it is subjected first to an abstract critique for sound methodology and subject matter relevance by the particular conference’s organizers, then later critiqued and commented upon by the conference’s audience.” *Allen v. International Business Machines Corp.*, 1997 WL 34501372, *28 (D.C. Del. 1997); *see also Keller v. MacCubbin*, 60 A.3d 1117, 1118 (Del. Super. Ct. 2013) (“peer reviewed” is a term of art in scientific parlance, not an evaluation).

Dr. Gottfried will testify that the conference abstract peer review process, including the fact she is a peer reviewer for many organizations that host these conferences, and stated the reviewers provide numerical values for multiple categories, including intellectual merit and innovativeness. Abstracts regarding studies of the RCV stimulus set were submitted for presentations at five scientific conferences from 2015-2019, the conference organizers sent the abstracts for peer review, and based on the peer review responses, the presentations were approved and given at the conferences. Thus, studies regarding the efficacy of the RCV stimulus set have been peer reviewed and received high enough scores from the peer reviewers to be accepted for presentation at the conferences.

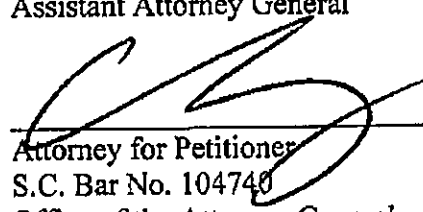
CONCLUSION

Dr. Gottfried has extensive training and experience with the PPG, is certified to interpret its results, and will testify the PPG is reliable and generally accepted in the mental health community. The result of the PPG exam is only one data point for Dr. Gottfried's comprehensive psychosexual evaluation, but it is a valuable data point. As such, the State respectfully requests the court to find the results of Respondent's PPG examination meets the threshold standard of reliability under *Council*, and allow the testimony to be heard by the jury, and for the jury to give the evidence whatever weight and credibility it finds most appropriate.

Respectfully submitted,

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November 10, 2023
Columbia, South Carolina

EXHIBIT

A

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 13-CA-2970-16-A

IN RE: the commitment of:
JEFF C. RIVERS-FINNEY,
Respondent.

ORDER PERMITTING DEFENDANT TO PRESENT PENILE PLETHYSMOGRAPH
EVIDENCE BUT EXCLUDING POLYGRAPH EVIDENCE FROM TRIAL

The State has initiated proceedings to have the Respondent civilly committed as a sexually violent predator.¹ The Respondent is seeking to introduce expert testimony relating to the administration and results of a polygraph examination and a penile plethysmograph (PPG) examination in support of his claims that he should not be civilly committed.

The State filed a "Motion in Limine" on March 3, 2015 in which it seeks to exclude that evidence because it does not comply with the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Fla. Stat. §90.702. An evidentiary hearing was held on August 18, 2015 and was concluded on November 16, 2015. The Court heard testimony from two defense experts, Dr. Robin Wilson and Dr. George Detschman, and one State expert, Dr. Michael Gamache.

The experts explained to the Court the methodology of the particular tests and the information that the tests are designed to reveal. A polygraph test measures a person's involuntary physiological responses to determine whether a person is being deceptive when answering questions. A penile plethysmograph measures a man's physical arousal when exposed to sexually suggestive materials. The results of this test would purportedly be probative in determining whether the Respondent would be a risk to engage in sexually violent behavior if he is not civilly committed.

Dr. Wilson has been involved in the diagnosis and treatment of sexual offenders since 1984. He was associated early in his career with Dr. Kurt Freund, who was a pioneer in PPG methodology, and he has conducted many studies regarding its predictive capabilities. He was eventually appointed as the first clinical director of the Florida Civil Commitment Center and he served in that capacity from 2007-2011. Dr. Detschman is the practitioner who actually administered the PPG and polygraph test to the Respondent. Dr. Gamache testified in opposition to those witnesses, testifying generally that the tests are often used in treatment for various purposes, but they are not sufficiently reliable for admission in a trial.

¹ The parties have stipulated to a non-jury trial.

Fla. Stat. §90.702 sets forth the predicate for admissibility of expert testimony. The Florida Legislature modified that statute in 2013 to adopt the test used by Federal courts, as provided in *Daubert*, rather than the "general acceptance" test previously used in Florida, as set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

Until recently, there were two avenues under this rule to the admissibility of expert testimony under Florida law. First, if the proposed expert testimony espoused a "new or novel" scientific theory, principle or discovery, then "the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the field in which it belongs." *See Marsh*, 977 So. 2d at 546 (quoting *Frye*, 293 F. at 1014) (emphasis added). This path to admissibility is commonly known as the "Frye test." In *Frye*, the "thing" the D.C. Circuit found to lack "general acceptance" in its field was the result of a "systolic blood pressure deception test," an early polygraph. *Id.*

The second path to admissibility of expert testimony until recently was the "pure opinion" path. Under this path, if the proposed testimony is not "new or novel," but instead is based upon the expert's personal experience, observation, and training, the *Frye* test does not apply to the ultimate opinion of an expert, so long as the methods used to reach the opinion were generally accepted scientific methods under *Frye*. *See Marsh*, 977 So. 2d at 548-49 ...

Under *Daubert*, "the subject of an expert's testimony must be 'scientific knowledge,' " 509 U.S. at 590, 113 S.Ct. 2786. "[I]n order to qualify as 'scientific knowledge,' an inference or assertion must be derived by the scientific method." *Id.* (emphasis added). The touchstone of the scientific method is empirical testing—developing hypotheses and testing them through blind experiments to see if they can be verified. *Id.* at 593, 113 S.Ct. 2786; *see also Black's Law Dictionary* 1465-66 (9th ed. 2009) ("[S]cientific method [is] an analytical technique by which a hypothesis is formulated and then systematically tested through observation and experimentation."). As the United States Supreme Court explained in *Daubert*, "This methodology is what distinguishes science from other fields of human inquiry." *Id.* at 593, 113 S.Ct. 2786. Thus, "a key question to be answered" in any *Daubert* inquiry is whether the proposed testimony qualifies as "scientific knowledge" as it is understood and applied in the field of science to aid the trier of fact with information that actually can be or has been tested within the scientific method. *Id.* "General acceptance" [from the *Frye* test] can also have a bearing on the inquiry, as can error rates and whether the theory or technique has been subjected to peer review and publication. *Id.* at 593-594, 113 S.Ct. 2786. Thus, there remains some play in the joints. However, "general acceptance in the scientific community" alone is no longer a sufficient basis for the admissibility of expert testimony. It "is simply one factor among several." *Marsh*, 977 So. 2d at 547 (citing *Daubert*, 509 U.S. at 594, 113 S.Ct. 2786). Subjective belief and unsupported speculation are henceforth inadmissible. *See Daubert*, 509 U.S. at 590, 113 S.Ct. 2786.

Perez v. Bell S. Telecommunications, Inc., 138 So. 3d 492, 496-99 (Fla. 3d DCA 2014) *review denied sub nom, Perez v. Bell S. Telecomm., Inc.*, 153 So. 3d 908 (Fla. 2014) (emphasis in original). Fla. Stat. §90.702 applies to all expert opinion testimony, not only to new or novel scientific evidence. *Perez*, 138 So. 3d at 497.

The *Daubert* test requires this Court to analyze the proffered expert testimony using a three part test. Fla. Stat. §90.702 reads:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

Since the Respondent is seeking to introduce this evidence, he bears the burden of proof to show by a preponderance of the evidence that the evidence is both relevant and reliable. *United States v. Frasier*, 387 F.3d 1244, 1260 (11th Cir. 2004).

While the language and intent of Fla. Stat. §90.702 is clear, it is not settled whether this Court must apply the *Frye* or the *Daubert* standard. If the rule governing the admissibility of expert testimony is a procedural rule, it must be promulgated by the Florida Supreme Court, but if it is a substantive rule, it may properly be enacted by the Legislature. Rules of evidence often have both procedural and substantive principles, and there is no "standard that can mechanically be applied to separate the procedural from the substantive." *In re Commitment of Cartwright*, 870 So. 2d 152, 158 (Fla. 2d DCA 2004). This Court has not been asked to resolve this question, as the State has moved to exclude this evidence under *Daubert*, and the Respondent has not disputed the application of this evidentiary standard. In an abundance of caution, however, this Court will also review the evidence under the *Frye* framework.

Under either standard, results of the polygraph examination would not be admissible. "Polygraph evidence is generally inadmissible in Florida." *Gosciminski v. State*, 132 So. 3d 678, 701 (Fla. 2013), *reh'g denied* (Jan. 28, 2014), *cert. denied*, 135 S. Ct. 57 (2014). *Gosciminski* addressed the admissibility of polygraphs using the *Frye* standard. *Id.* at 701-04. The testimony in support of and in opposition of polygraph evidence in *Gosciminski* was generally similar to the testimony of Dr. Delichman and Dr. Gamaache, respectively. As in *Gosciminski*, this Court finds that under *Frye*, the polygraph results are not sufficiently reliable to be used as evidence at the trial. *Id.* at 704; *see also Davis v. State*, 520 So. 2d 572, 573-74 (Fla. 1988) (recognizing that "[t]he courts of this state have repeatedly held that the factors contributing to the results of a polygraph test – the skill of the operator, the emotional state of the person tested, the fallibility of the machine, and the lack of a specific quantitative relationship between physiological and emotional states – are such that the polygraph cannot be recognized as a sufficiently reliable or valid instrument to warrant its use in judicial proceedings unless both sides agree to its use").

This determination does not change when evaluating the evidence under *Daubert*. According to *Daubert*, the primary question is no longer focused solely upon the general acceptance of the scientific

opinion. Now, the Court's should focus on the reliability of the science and the application of the scientific method to the facts of the case. As noted in the case law and as reinforced by Dr. Gamache, there are many factors that are inherent and unavoidable in polygraph examinations which render that type of test scientifically unreliable. The results can vary widely depending upon several factors, including the operator's methodology and questions, the subject's emotional state, and whether the subject has taken a polygraph before. Based upon these factors, the polygraph test is inadmissible under *Daubert*.

Beyond the scientific unreliability of the polygraph test, the evidence that it would be conveying is improper. Expert opinion testimony is permissible when it will "assist the trier of fact in understanding the evidence or in determining a fact in issue." See Fla. Stat. §90.702. The results of a polygraph test do not offer such assistance to the factfinder.

By its very nature, polygraph evidence may diminish the jury's role in making credibility determinations. The common form of polygraph test measures a variety of physiological responses to a set of questions asked by the examiner, who then interprets these physiological correlates of anxiety and offers an opinion to the jury about whether the witness—often, as in this case, the accused—was deceptive in answering questions about the very matters at issue in the trial. See 1 McCormick §206. Unlike other expert witnesses who testify about factual matters outside the jurors' knowledge, such as the analysis of fingerprints, ballistics, or DNA found at a crime scene, a polygraph expert can supply the jury only with another opinion, in addition to its own, about whether the witness was telling the truth. Jurisdictions, in promulgating rules of evidence, may legitimately be concerned about the risk that juries will give excessive weight to the opinions of a polygrapher, clothed as they are in scientific expertise and at times offering, as in respondent's case, a conclusion about the ultimate issue in the trial.

United States v. Schaffer, 523 U.S. 803, 313-14 (1998) (footnote omitted). The factfinder is tasked with making credibility determinations in fashioning the verdict. The use of a polygraph expert would tend to usurp that role by substituting his opinion of the witness' credibility in place of the factfinder's determination. This danger is one of the primary reasons that polygraph testimony is not generally admissible at trial. This Court finds that, even outside of *Daubert* or *Frye*, such testimony would not be proper under Fla. Stat. §90.702.

As opposed to polygraph evidence, PPG evidence is admissible in this case under both *Frye* and *Daubert*. Such evidence is neither new nor novel, so a *Frye* inquiry would be improper. *State v. Fulwood*, 22 So. 3d 655 (Fla. 3d DCA 2009). That determination is binding on this Court. *Conley v. State*, 129 So. 3d 1120, 1121 (Fla. 1st DCA 2013). Thus, under the *Frye* framework, PPG evidence is admissible.

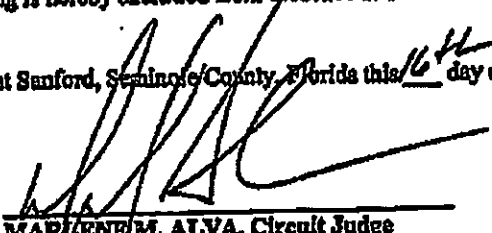
Based upon the evidence presented, the results of the PPG testing would also be admissible under *Daubert*. Drs. Wilson and Deitchman both testified about the usefulness of PPG testing based upon their substantial experience with conducting the tests and their familiarity with the literature and studies

regarding those tests. Dr. Gamache, on the other hand, has little first-hand experience in conducting PPG testing, as he has only conducted 3-4 tests in the 1980's. All three experts noted that the test is useful for treatment purposes, even though they all conceded that a subject can take steps to minimize arousal by employing distraction techniques. Dr. Deitchman mitigated this concern by requiring the Respondent to push a button when the picture changes to ensure that he was paying attention to the stimulus. Dr. Gamache takes issue with Limestone's standard stimulus materials, noting that they have become tamer due to limitations resulting from federal law, and he pointed out deficiencies he sees in the studies on PPG testing. However, his lack of experience with PPG testing as it exists today renders his expertise on this topic somewhat limited. As to PPG testing, then, this Court finds that the underlying principals and methods are scientifically reliable and Dr. Deitchman conducted the test in a scientifically reliable manner as applied to the facts of this case. As such, the expert opinion testimony on PPG testing is admissible under *Daubert*.

ORDERED AND ADJUDGED:

1. Evidence relating to penile plethysmograph testing is admissible at trial.
2. Evidence relating to polygraph testing is hereby excluded from evidence at trial.

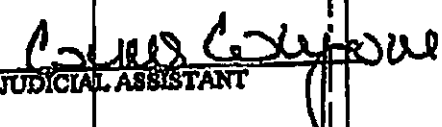
DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 16th day of December, 2015.


MARIENE M. ALVA, Circuit Judge

Copies furnished this 16th day of December, 2015 to:

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Arthur J. Kutsche, Esquire
 Assistant Public Defender
 800 South Street, Suite 1B
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JUDICIAL ASSISTANT

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
IN THE MATTER OF THE)
CARE AND TREATMENT OF)
JEREMIAH JAMES POUGH,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE #: 2022-CP-128-00351

ORDER OF COMMITMENT

FILED FOR RECORD
2023 NOV 16 AM 10:38
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

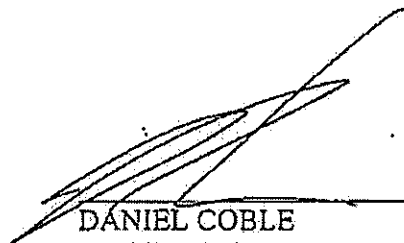
The trial of this case was held in the Kershaw County Court of Common Pleas the week of November 13, 2023. A jury of citizens from Kershaw County heard this case pursuant to a request for a jury trial filed by the State. Christopher Runyan from the Attorney General's Office represented the State and Respondent Jeremiah James Pough was represented by Bradley M. Kirkland, esquire. 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, Jeremiah James Pough, 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, Jeremiah James Pough, is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent, Jeremiah James Pough, is to continue to be detained at the Kershaw 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.


DANIEL COBLE
Presiding Judge
Fifth Judicial Circuit
Court of Common Pleas

November 16, 2023
Camden, South Carolina

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Janet C. Hasty
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	CASE #: 2022-CP-28-00351
	)	
IN THE MATTER OF THE	)	ORDER ALLOWING PPG TESTIMONY BY
CARE AND TREATMENT OF	)	STATE'S EXPERT WITNESS
JEREMIAH JAMES POUGH,	)	
	)	
<u>RESPONDENT.</u>	)	

The Respondent Jeremiah James Pough moved this court for a *Daubert/Council* hearing pursuant to Rule 702, S.C.R.E.; *State v. Council*, 515 S.E.2d 508 (1999); and *Watson v. Ford Motor Co.*, 699 S.E.2d 169 (2010), as well as Rule 403, S.C.R.E. The court granted the request for a hearing, which was held pre-trial on November 13, 2023. The Respondent was represented by Bradley M. Kirkland, Esq., and the State was represented by Assistant Attorney General Christopher S. Runyan.

BRIEF PROCEDURAL HISTORY

This is a pre-commitment matter pending under the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.* ("SVPA"). Pursuant to a previous Order for Evaluation, a report was issued by Dr. Marie E. Gehle of the Department of Mental Health ("DMH") concluding Respondent did not meet the criteria to be civilly committed under the SVPA.

Thereafter, as authorized by Section 44-48-90(C), the Attorney General's office sought an independent evaluation from the Sexual Behaviors Clinic and Lab ("SBCL") at the Medical University of South Carolina ("MUSC"). Emily Gottfried, Ph.D., the Director of MUSC's SBCL was designated to conduct that evaluation.

As a part of her evaluation, Dr. Gottfried administered a penile plethysmograph test ("PPG"). The State seeks to elicit testimony about the results of the PPG administered by Dr. Gottfried. On November 13, 2023, the Respondent filed a motion to exclude the PPG testimony, and the court granted the Respondent's request for a *Daubert/Council* hearing. The State presented Dr. Gottfried as a witness. The parties stipulated Dr. Gottfried is an expert in forensic clinical psychology and sex offender evaluations.

The State further offered Dr. Gottfried as an expert in the field of penile plethysmography. Following testimony from Dr. Gottfried on her education, training, and experience in the field of penile plethysmography, the court qualified Dr. Gottfried as an expert in the field of penile plethysmography, without objection from Respondent. Additionally, the State entered nine (9) court's exhibits into the record for purposes of the *Daubert/Council* hearing only, without objection from Respondent.

LEGAL STANDARD

When 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*, 699 S.E.2d at 174–75. “The proponent of scientific evidence has a corresponding responsibility to provide the trial court the factual and scientific information the court needs to carry out its gatekeeping duty.” *State v. Phillips*, 844 S.E.2d 651, 659 (2020).

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. *Watson*, 699 S.E.2d at 175. 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.

The court must determine if the expert testimony is scientific in nature and if so, the court must determine its reliability. *Graves v. CAS Med. Sys., Inc.*, 735 S.E.2d 650, 655 (2012). 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.

Council, 515 S.E.2d at 518.

Further, the court must determine whether the probative value of the proffered evidence is substantially outweighed by the danger of unfair prejudice. The burden is on the proponent of the

proffered evidence to demonstrate its probative value. *See Phillips*, S.E.2d at 659.

FINDINGS OF FACT

First, with regards to subject matter, the parties and court agree the PPG is highly technical and beyond the scope of an ordinary juror. The PPG is used to explain psychiatry, psychology as well as physiology of a human and how a scientist interprets the data. The court finds an expert is necessary and would be helpful to the jury.¹

Second, turning to the qualifications of the expert, Dr. Gottfried testified she is an associate professor of psychiatry and behavioral sciences at MUSC. She is the Director of the Sexual Behaviors Clinic and Lab and has held that position for the past nine (9) years. As a part of her role at the SBCL, she conducts research in the area of sexual interest and disorders, accurate assessment of sexual behavior risk, and measuring physiological arousal for both men and women. She is a member of multiple professional organizations, including as a clinical member and member of the Board of Directors for the Association for the Treatment and Prevention of Sexual Abuse, which is a national professional organization dealing with sexual behavior and risk. Dr. Gottfried also testified she sits on an international coalition of researchers from the United States, Canada, Russia, and United Kingdom working on international standardization of the PPG. She is trained to administer the PPG and is a certified clinical analyst, which allows her to interpret the PPG data, and she has specifically published, lectured, and presented research regarding the PPG at scientific conferences. Dr. Gottfried testified the PPG is administered to all adult males undergoing a sexual behavior evaluation at the SBCL, and she has personally requested approximately 92 PPG tests and personally interpreted 73-75 of those PPG tests. The court finds Dr. Gottfried is qualified as an expert in the field of penile plethysmography based on her skills, requisite knowledge, her training, and her experience.

Third, the court finds the testimony is scientific in nature; therefore, the *Council* factors apply in determining reliability. Staring with the actual machine, Dr. Gottfried testified the PPG was developed in the late 1950's and has been used in a variety of contexts throughout that time. During testimony, she discussed court's exhibit 1, which showed the PPG is approved by Blue Cross Blue Shield and is defined as "a non-invasive test for measuring the variation in the volume of the penis and in the amount of the blood present or passing through it." To be clear, the evidence of Blue Cross Blue Shield's use of the PPG was not for the same reason as in this case, but merely illustrates its accepted use in other medical fields. Further, testimony and evidence, entered as court's exhibit 2, showed the Limestone Technologies PPG system is approved by the Federal Drug Administration and is intended to measure "penile tumescence in response to visual and auditory stimuli," and notes the "penile tumescence data can later be combined with standard psychological testing procedures to assist clinicians with their assessment and treatment of sexual offenders." Dr. Gottfried testified the PPG is "measuring changes in the blood flow," and "we are looking at arousal, erection, and that is unique to sexual arousal." Based on the testimony and evidence, the court finds the PPG system

¹ The court received a complete copy of the trial transcript including pre-trial hearing testimony and copies of court's exhibits to review.

reliable in measuring blood flow to the penis.

Next, the court looked at the combination of physical and physiological aspects of the machine in connection with the psychological aspects. In other words, the thoughts and connections from the brain to the blood flow and how that is measured. The court reviewed court's exhibit 3, a list of a significant number of peer reviewed articles. Dr. Gottfried testified she regularly reads all the literature on the PPG when she does research, and court's exhibit 3 was a list of articles she cites as the basis for why she conducts a PPG, and why she believes the PPG is reliable and valid. The court notes these peer reviewed articles go through PPG and sexual behavior assessment based on different types of situations: adult victims, child victims, and violence, among others. These articles discuss how the PPG works and its connection with the sex evaluation, whether it be pre-commitment or treatment. The general science seems to be sound that you can study the PPG and its relation with sexual evaluation and the physiological changes that the machine records. Further, Dr. Gottfried testified the Diagnostic and Statistical Manual of Mental Illness Fifth Edition – text revision (DSM-5-TR) is authoritative in the field of psychiatry and psychology. When discussing court's exhibit 8 (an excerpt from the DSM-5-TR p. 795), she testified the DSM states "[t]he most thoroughly researched and longest used of such measures is penile plethysmography, although, the sensitivity and specificity of diagnosis may vary across sites which frequently used different stimuli, procedures and scoring." Based on the testimony and evidence, the court finds the physical machine works based on science and it is reliable. The science of studying the psychological connection between thoughts of a potential offender or a patient and the machine is based on peer reviewed articles that the PPG is reliable, it has been tested, and it has been studied for many years through many different peer reviewed articles.

Dr. Gottfried testified about the prior application of the PPG not just in South Carolina but also in the United States and throughout the world. The court understands from Dr. Gottfried's testimony there is an issue of standardization, and that different stimulus sets are used. For example, she testified that in Canada there is a medical exemption which allows the use of images of children that would be otherwise considered child pornography in the stimulus set. She stated that between 50-100 labs have purchased the Limestone PPG system which has the Marshall and Real Child Voices ("RCV") stimulus sets. She stated that other sexually violent predator treatment programs have also purchased the Limestone PPG system, including Missouri, Illinois, New York, California, and Minnesota. She was aware the Minnesota treatment program uses the Limestone PPG system regularly because she has consulted people who work there.

The court directly examined Dr. Gottfried on the scientific method she uses to choose stimulus sets. She testified she uses the Marshall and the RCV stimulus sets, and the peer review scientific articles and conference presentations "show that the Marshall and [RCV] are pretty equivalent" and both stimulus sets are able "to discriminate people who have offended and are aroused by those offense behaviors from people who do not have the same stimuli in their victim pool." When assessing an offender's arousal, she wants to see sexual arousal to consenting human adults and give the offender stimulus trials that match their victim or offense characteristics from the offender's sexual convictions. For example, she explained for this case, she did not give the

Respondent trials involving infants because Respondent's sexual offenses were against adult and pubescent females. Dr. Gottfried testified she tailors what trials she presents to offenders based on the person's sexual offenses because when interpreting the data she compares the person within themselves. In other words, comparing the offender's level of arousal to consenting adults against their level of arousal to the abusive, non-consensual deviant trials. The court further inquired regarding how the trials were developed to show arousal. Dr. Gottfried testified that except for neutral trials, all the PPG trials are describing sexual situations. The only variation between the trials are the level of coercion or violence and the gender and the age, but otherwise, the trials are describing sexual assault or consenting sexual experiences. The court finds the underlying science of the different stimulus sets, which are used in different places that Dr. Gottfried manipulates scientifically per patient is standardized.

Dr. Gottfried testified extensively regarding the quality control procedures used in the MUSC lab. The MUSC PPG administration instructions manual was entered by the State as court's exhibit 4. This is the instruction manual to ensure the PPG is done properly. Dr. Gottfried testified the document is used for every PPG administered at MUSC. As a part of the PPG system operations, the PPG machine must calibrate the strain gauge, which is the device placed on the penis and measures change in circumference. A special cone is used that varies in circumference, and the strain gauge is placed on the cone. The system randomly selects circumferences, and the technician must move the strain gauge on the cone to match the corresponding circumference. This calibration check must be accurately completed three times before the system will allow a PPG test to begin. Dr. Gottfried further testified there are control measures utilized to ensure the person is not manipulating the test. She stated "[w]e also use some countermeasures." These countermeasures include having the person sit on a pad which measures movement, a respiration strap, a keypad for the person to hit every time a scenario becomes sexual or violent, the examiner will ask questions regarding the content of the scenario, and the inclusion of non-sexual neutral scenarios. The court finds that even though the checklist is created by MUSC, it shows there is a quality control procedure used in this method.

Regarding the consistency of the method with recognized laws and procedures, Dr. Gottfried testified that any test, not just the PPG, has a cut score to determine what is a significant result. During testimony, Dr. Gottfried explained that when the MUSC lab is conducting sexually violent predator pre-commitment evaluations, she uses a conservative cut score of 5 millimeters of change to indicate clinically significant arousal. Dr. Gottfried explained why different labs may use different cut scores. For example, for a person in treatment, a one-half millimeter change may be significant because it showed change on a specific treatment target. She explained false positives (someone does not have arousal, but test shows arousal) and false negatives (someone has arousal, but the test shows no arousal), and testified that MUSC uses a conservative cut score "because [the PPG] is just one data point that we use, we would much rather miss somebody on the PPG than say somebody has arousal that doesn't actually have that arousal."

The court directly questioned Dr. Gottfried on what data points she uses besides the PPG in determining her final opinion. Dr. Gottfried testified she administers a battery of psychological testing. She is looking at psychopathology, symptoms of mental illnesses, and personality

functioning. She gives a lengthy sexual behavior questionnaire, and performs a clinical interview, which asks the examinee about their entire history in addition to obtaining a sexual history from them. She is also looking at the victim's descriptions of what happened to them and all the officially reported information such as police reports, and forensic interviews. She also asks the examinee what happened during that offense, what they were aroused by, and she looks at what they were aroused by in lab on the day of testing. The court finds it important to the assessment that the PPG results are only one data point among many Dr. Gottfried uses in making her assessment.

Regarding S.C.R.E. 403, the State must prove the Respondent "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." S.C. Code Ann. Section 44-48-30 (b). The State argued the testimony was very probative, and the PPG testimony would assist the jury in understanding Dr. Gottfried's sexual deviancy diagnosis. The State asserted it was important that the Respondent's results on the PPG test were identical to his criminal offending history. Further, when discussing court's exhibit 5, a chapter from a clinical handbook, Dr. Gottfried testified that "deviant sexual arousal has been found by multiple researchers to be a significant predictor of sexual offense recidivism." The court finds the PPG testimony is extremely probative because it goes to the underlying elements the State must prove, and the probative value is not substantially outweighed by the prejudicial effect.

CONCLUSIONS OF LAW

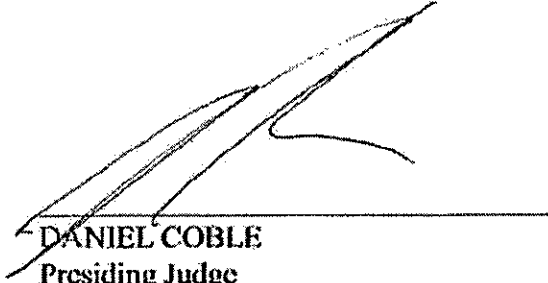
As our Supreme Court has noted "[t]he proponent of scientific evidence has a corresponding responsibility to provide the trial court the factual and scientific information the court needs to carry out its gatekeeping duty." *Phillips*, 844 S.E.2d at 659. In *Phillips*, the Supreme Court stated that in *Council, Graves, and Watson*, "the proponent went to great lengths in a hearing outside of the jury's presence to provide a sufficient factual and scientific basis for the court to consider as gatekeeper." *Id.* In this case, as in *Council, Graves, and Watson*, the State provided an expert witness, Dr. Emily Gottfried, who was qualified as an expert in the PPG, to give the court a factual and scientific basis of the PPG. Moreover, the State made an effort to educate the trial court on the factual and scientific basis of the PPG not only through testimony, but also through court's exhibits relevant to the elements established by S.C.R.E 702.

Based on the findings of fact set forth above, the testimony of Dr. Gottfried, the evidence submitted by the State to the court as exhibits, and the extensive arguments of counsel, the court finds the underlying science of the PPG is reliable for purposes of S.C.R.E 702. Further, the court finds the State has carried its burden of demonstrating the high probative value of the PPG results as it relates to the underlying elements that must be proven to civilly commit a person under the SVPA.

IT IS ORDERED that the State's expert Dr. Emily Gottfried is allowed to testify regarding the PPG testing and results.

AND IT IS SO ORDERED.

May 28, 2024
Keshaw, South Carolina


DANIEL COBLE
Presiding Judge
Fifth Judicial Circuit
Court of Common Pleas

624

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw

STATE

VS.

Jeremiah James Pough

AKA:

Race: BLACK Sex: M Age: 27DOB: 1993 SS#Address: Ivo CircleCity, State, Zip: Elgin, SC 29045DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS280995A/W#: 2017A2810200016Date of Offense: 2/5/2017S.C. Code § : 16-03-0655(B)(1)CDR Code #: 0396

SENTENCE SHEET

0-20 yrs.

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Secondin violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1st or CSC w/minor 3rd

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Curtis Pauling
Pauling, Curtis68071
SC Bar#Jeremiah Pough
DefendantSutherland IV, Travis Colley
Attorney for DefendantSCB60695
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/~~life~~ ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 4 days/months/years/~~life~~ and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDOC.
8110 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.



STATE VS Jeremiah James Pough INDICTMENT/CASE# 2017GS280995

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☒ Substance Abuse Counseling ☐ Completion of GED ☒ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp. ☒ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: SEE PERMANENT RESTRAINING ORDER☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$14-1-206 (Assessments 107.5 %)	\$100	\$ 100.00
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$12	\$
\$56-5-2995 (DUI Assessment)	\$25	\$
\$56-1-286 (DUI Breath Test)	\$25	\$ 25.00
\$14-1-212 (Law Enforce. Funding)	\$150	\$
\$14-1-213 (Drug Court Surcharge)	\$41	\$
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$50	\$
\$50-21-114(BUI Breath Test Fee)	\$40/ea	\$
\$56-5-2942(J) (Vehicle Assessment)	TBD	\$ 18.75 3.75
3% to County (if paid in installments)		

☒ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$500	\$ 711A
TBD	\$
TOTAL	\$ 128.75 643.75

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (07/2021)

Presiding Judge:

Judge Code:

Sentence Date:

Page 2 of 2

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Janet C. Hasty
Clerk of Court Kershaw County

WITNESSES

(S) Dexter Handy
- Kershaw County Sheriff

ARREST WARRANT NUMBER

2017A2810200016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAY 24 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS280995

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2017

K13

**THE STATE
vs.**

Jeremiah James Pough

**Indictment for
SEX / CRIMINAL SEXUAL CONDUCT WITH
MINOR, OR ATTEMPT - VICTIM 11 TO 14
YRS OF AGE INCLUSIVE - SECOND**

SC Code: 16-03-0655(B)(1)
CDR Code: 0396

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2017 MAY 24 PM 4:40
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

**ATTEST True, Correct & Certified
Copy of Original on File in this
Court**

Janet C. Hasty
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on MAY 2017, the Grand Jurors of Kershaw County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (AGE 11-14)

That Jeremiah James Pough did in Kershaw County, State of South Carolina, on or about February 5, 2017, willfully, unlawfully and feloniously engage in sexual battery with a minor who was at least fourteen (14) years or less but who was at least eleven (11) years of age, to wit: [REDACTED] (JUVENILE), whose date of birth is [REDACTED]/2002, in violation of Section 16-03-655(B) of the 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.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw

STATE

VS.

Jeremiah James Pough

AKA:

Race: BLACK Sex: M Age: 27DOB: 1993 SS# [REDACTED]Address: Ivo CirCity, State, Zip: Elgin, SC 29045-9254DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS280847A/W#: 2018A2810100287Date of Offense: 8/20/2017S.C. Code § : 16-03-0654CDR Code #: 0162

✓ SENTENCE SHEET

D-10 yrs.

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Sex / Criminal sexual conduct - Third degreein violation of § 16-03-0654 of the S.C. Code of Laws, bearing CDR Code # 0162☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Curtis Pauling 68671 SC Bar# [REDACTED] Defendant Sutherland IV, Tivis Colley SCB69695
Pauling, Curtis SC Bar# Sutherland IV, Tivis Colley SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years/~~Time Served~~ ☐ Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of 4 days/months/years/~~Time Served~~ and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

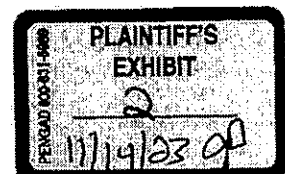
years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDOC.811 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

Correct & Certified
Copy of Original on File in this
Court
Janet C. Hasty
Clerk of Court Kershaw County



STATE VS Jeremiah James Pough INDICTMENT/CASE#: 2018GS280847

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp. ☒ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling☐ May serve W/E beginning: _____☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: See Permanent Restraining Order☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§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)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

	\$
	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$25	\$ 25.00
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$ 375
\$500	\$
TBD	\$
TOTAL	\$ 148.75

Clerk of Court/ Deputy Clerk: Jeanette McBrideCourt Reporter: DCHP Fitzgerald

SCCA/217 (07/2021)

Presiding Judge: _____

Judge Code: _____

Sentence Date: Nov 10, 2021

Page 2 of 2

ATTEST True, Correct & Certified
Copy of Original on File in this
CourtJanet C. Hasty
Clerk of Court Kershaw County

WITNESSES

(S) Carmen T Ford
- Kershaw County Sheriff

ARREST WARRANT NUMBER

2018A2810100287

ACTION OF GRAND JURY

TRUE BILL

Janet C. Hasty
Foreperson of Grand Jury

Date: JUN 06 2018

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018GS280847

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

JUNE TERM 2018

K13

THE STATE

vs.

Jeremiah James Pough

Indictment for
SEX / CRIMINAL SEXUAL CONDUCT -
THIRD DEGREE

SC Code: 16-03-0654
CDR Code: 0162

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED FOR RECORD
2018 JUN -6 PM 2:42

ATTEST True, Correct & Certified
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Court
Janet C. Hasty
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

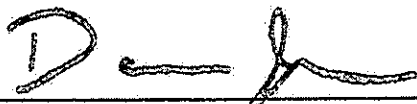
INDICTMENT

At a Court of General Sessions, convened on JUNE 2018, the
Grand Jurors of Kershaw County present upon their oath:

CRIMINAL SEXUAL CONDUCT – THIRD DEGREE

That Jeremiah James Pough did in Kershaw County on or about June 20, 2017, engage in sexual battery with the victim, ALLISON MONSON, when the defendant knew or had reason to know that the victim was mentally defective, mentally incapacitated or physically helpless, in violation of Section 16-03-0654, 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.


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Jeremiah James Pough

AKA:

Race: Sex: M Age: 27DOB: SS# Address: Ivo CirCity, State, Zip: Elgin, SC 29045-9254DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4006093AW#: 2019A4011200576Date of Offense: 5/7/2019S.C. Code § : 16-03-0655(B)(2)CDR Code #: 0397

RECOMMENDATION

SENTENCE SHEET

NEGOTIATED

209

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degreeIn violation of § 16-03-0655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-4The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Anna R Browder

Browder, Anna

SC Bar#

Defendant

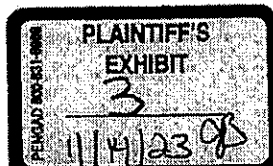
Alicia Dyar
Attorney for Defendant

SCB100067

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/Terms Served~~ ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 4 ~~days/months/years/Terms Served~~ and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDoc.☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or §
16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.CERTIFIED TRUE COPY
OF ORIGINAL FILEDC.C.C. PAGE
RICHLAND COUNTY
SOUTH CAROLINA

STATE VS Jeremiah James Pough INDICTMENT/CASE#: 2019GS4006093

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. or Job Corp. ☒ No Contact With Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling☐ May serve W/E beginning: _____☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours.☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: See Permanent Restraining Order☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fines:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$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)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

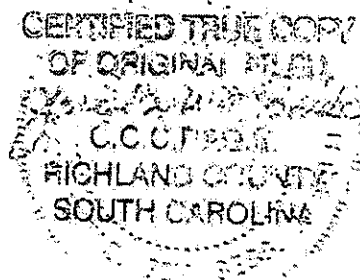
	\$
\$100	\$
\$100	\$ 100.00
\$12	\$
\$25	\$
\$25	\$ 25.00
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$ 3.75
\$500	\$
TBD	\$
TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette McBrattonCourt Reporter: Dee Fitzgerald

SCCA/217 (07/2021)

Presiding Judge: ReedJudge Code: 2164Sentence Date: Nov 10, 2021

Page 2 of 2



WITNESSES

(S) Glenn Oxendine
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2019A4011200576

ACTION OF GRAND JURY

TRUE BILL

Glenn Oxendine
Foreperson of Grand Jury

Date:

SEP. 12 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS4006093

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2019

11

THE STATE
vs.

Jeremiah James Pough

Indictment for
SEX / CRIMINAL SEXUAL CONDUCT WITH
MINOR OR ATTEMPT VICTIM UNDER 16
YEARS OF AGE - SECOND DEGREE

SC Code: 16-03-0655(B)(2)

CDR Code: 0397

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Jeremiah Pough
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CEITERS-TRUE COPY
OF ORIGINAL FILED
SEP 12 2019
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

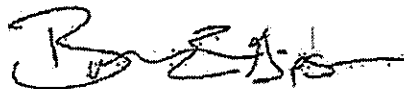
INDICTMENT

At a Court of General Sessions, convened on September 10, 2019,
the Grand Jurors of Richland County present upon their oath:

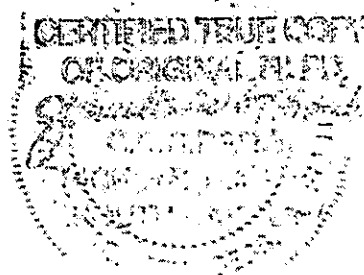
CRIMINAL SEXUAL CONDUCT WITH A MINOR
2nd DEGREE (AGE 11-14)

That Jeremiah James Pough did in Richland County, State of South Carolina, on or between May 7, 2019 and June 7, 2019, willfully, unlawfully and feloniously engage in sexual battery with a minor [REDACTED] who was less than fourteen (14) years of age but who was at least eleven (11) years of age, whose date of birth is [REDACTED] 2003, and the said Defendant was in a position of familial, custodial, or official authority to coerce the said victim to submit and/or the defendant was older than the victim, in violation of Section 16-03-655(C) [formerly Section 16-3-655(3)], 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.



BYRON E. GIPSON, SOLICITOR





BlueCross BlueShield
of Texas

PLETHYSMOGRAPHY

MED202.018

POSTED DATE: 6/11/2003

EFFECTIVE DATE: 8/15/2003

COVERAGE:

Plethysmography modalities considered medically necessary:

Thoracic Electrical Bioimpedance (a type of plethysmography) is considered medically necessary for in-patient or out-patient hospital or office places of service as this technique replaces more invasive methods (i.e. thermodilution) when used to:

- establish a baseline status on a patient with heart failure (CHF), or
- monitoring patients with congestive heart failure.

Plethysmography Modalities considered NOT medically necessary:

While Plethysmography has been used to aid in the diagnosis of peripheral vascular disease, doppler/duplex ultrasound scan has become the method of choice and gives a more accurate and definitive diagnosis. Therefore, any of the following types of plethysmography are considered NOT medically necessary:

- Segmental Plethysmography;
- Electrical Impedance Plethysmography (other than Thoracic Bioimpedance - see above); and
- Venous occlusion plethysmography performed with a Strain Gauge.

Plethysmography Modalities considered experimental or investigational:

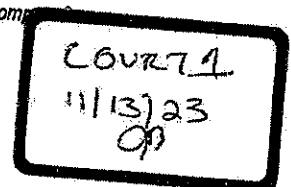
- Inductance plethysmography
- Capacitance plethysmography
- Mechanical oscillometry
- Photoelectric plethysmography
- Bionic plethysmography.

Total Body plethysmography is considered NOT medically necessary.
Examples of non-covered indications include:

- residual volume, functional residual capacity and total lung capacity as more accurate methods such as pulmonary function tests are available;
- body water and/or fat composition or lean body mass using Bioelectric Impedance, Bod Pod or Tanita methods.

DESCRIPTION:

Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company
Southwest Texas HMO, Inc.* d/b/a HMO Blue* Texas
*Independent Licensees of the Blue Cross and Blue Shield Association





**Blue Cross Blue Shield
of Texas**

PLETHYSMOGRAPHY

MED202.018

POSTED DATE: 6/11/2003

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instrument consists of a chart recorder, an automatic cuff inflation and deflation system, and a recording manometer.

- **Oculoplethysmography** -- is a noninvasive cerebrovascular test that indirectly measures blood flow in the ophthalmic artery and reflects the adequacy of cerebrovascular blood flow.
- **Penile Plethysmography** - a non-invasive test for measuring the variation in the volume of the penis and in the amount of the blood present or passing through it. Refer to the Medical Policy on Evaluation of Impotence for coverage information.
- **Total Body plethysmography** - The following list is made up of different types of body plethysmography that are used for:
 1. measuring residual volume, functional residual capacity and total lung capacity. The patient sits inside an airtight box, inhales or exhales to a particular volume (usually functional residual capacity (FRC)), and then a shutter drops across their breathing tube. The subject makes respiratory effort against the closed shutter causing their chest volume to expand and decompressing the air in their lungs. The increase in chest volume slightly reduces the box volume (the non-person volume of the box) and thus slightly increases the pressure in the box. A calculation is made to determine the original volume of gas present in the lungs when the shutter was closed. Body plethysmography may be appropriate for patients who have air spaces within the lungs that do not communicate with the bronchial tree. In these individuals, gas dilution methods of measurement would give an erroneously low volume reading;
 2. body composition analysis (i.e., BOD POD Body Composition System) that measures whole body mass and volume, which are then used to estimate whole body density. The patient sits in a fiberglass cabin while computerized pressure sensors determine the amount of air displaced by their bodies. Once whole body density is measured, the relative proportions of body fat and lean body mass can be calculated using population specific equations which relate body density to body fat and lean tissue masses.
 3. in vivo (in the living body, referring to a process or reaction occurring therein) prediction of total body water, extracellular water and intracellular water using the bioelectrical impedance system.



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PLETHYSMOGRAPHY

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NOTE: Another test frequently billed as total body plethysmography is Body Composition Analyzer/Scales (Tanita). A person's height, age, and gender are entered and the patient steps on the scales. Within seconds, weight, body mass index and body fat percentages are displayed. If more in-depth results are desired such as hydration levels, fat free mass, basal metabolism rate, a separate software package is available. This type of analysis is not true plethysmography.

- **Photoelectric Plethysmography** - involves the measurement and recording of changes in the size of a body part by the circulation of blood to that body part to determine whether or not a pulse is present.

RATIONALE:

A variety of small case series have reported inconsistent results regarding the relationship between measurements of cardiac output (CO) determined by thoracic bioelectric impedance and thermodilution techniques. For example, Belardinelli and colleagues compared the use of thoracic bioimpedance, thermodilution, and the Fick method to estimate cardiac output in 25 patients with documented coronary artery disease and a previous myocardial infarction. There was a high degree of correlation between cardiac output as measured by thoracic bioimpedance and other invasive measures. Shoemaker and colleagues reported on a multicenter trial of thoracic bioimpedance compared to thermodilution in 68 critically ill patients. Again, the changes in cardiac output as measured by thoracic bioimpedance closely tracked those measured by thermodilution. In contrast, Sageman and colleagues did not recommend the use of bioimpedance as a postoperative monitoring technique for patients who have undergone coronary artery bypass surgery. In this study of 50 patients, there was only a poor correlation between thermodilution and bioimpedance, due primarily to the postoperative distortion of the patient's anatomy and the presence of endotracheal, mediastinal and chest tubes. In a study of 34 patients undergoing cardiac surgery, Doering and colleagues also found that there was poor agreement between thoracic bioimpedance and thermodilution in the immediate postoperative period. The largest case series (the cost study) has been published in abstract form only. In this case series, estimations of cardiac output using thermodilution methods and thoracic bioimpedance were performed in 191 patients who underwent right heart catheterization for a variety of clinical indications. Linear regression analysis revealed an overall correlation of $r=0.73$. The authors concluded that cardiac output can be reliably measured with either thermodilution or thoracic

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PLETHYSMOGRAPHY

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bioimpedance, and that bioimpedance has the additional value of being noninvasive.

Inductance, Capacitance, Mechanical Oscillometry and Photoelectric plethysmography have not yet reached a level of development such as to allow their routine use in the evaluation of peripheral artery disease.

Color flow Doppler/Duplex ultrasound scans are newer and preferable methods of detecting a venous thrombus with an accuracy near that of venography. Doppler ultrasound has become the method of choice when scanning for venous occlusive disease. Plethysmography cannot detect deep calf venous thrombus.

Plethysmographic methods need to be validated in randomized, controlled, clinical studies that include long term outcome measures to evaluate the clinical effectiveness in the diagnosis of venous and arterial diseases.

PRICING:

None

REFERENCES:

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PLETHYSMOGRAPHY

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during incremental exercise in patients with ischemic cardiomyopathy." *Am J Cardiol* 1996;77:1293-301.

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DISCLAIMER:

State and federal law, as well as contract language, including definitions and specific inclusions/exclusions, takes precedence over Medical Policy and must be considered first in determining coverage. The member's contract benefits in effect on the date that services are rendered must be used. Any benefits are subject to the payment of premiums for the date on which services are rendered. Medical technology is constantly evolving, and we reserve the right to review and update Medical Policy periodically.

HMO Blue Texas physicians who are contracted/affiliated with a capitated IPA/medical group must contact the IPA/medical group for information regarding HMO claims/reimbursement information and other general policies and procedures.

K052929

PG. 1 OF 2

510(k) SUMMARY**Applicant's Name, Address, Phone, Fax, Contact Person, Email, Date Prepared**

Limestone Technologies Inc.
Jamie Brown, President
556 O'Connor Drive
Kingston, Ontario K7P 1N3
Canada
Phone: (613) 634-2594
Fax: (613) 634-4098
Email: [REDACTED]@limestonetech.com

APR 26 2005

Date Prepared: September 29, 2005

Device Name, Common/Generic Name and Classification Name

Proprietary Name: PrefTest Professional Suite™

Common/Usual Name: Penile Plethysmograph

Classification Name: Monitor, Penile Tumescence

Predicate Device

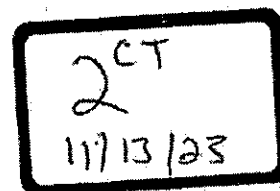
Device Name: MONARCH 21 Penile Plethysmograph (K033126)

Description of the Device

Limestone Technologies Penile Plethysmograph is based on a circumference measurement using a strain gauge transducer which measure penile tumescence in millimeters. PrefTest Professional Suite™ computer software is used to store, tabulate, display and print out the acquired data from a personal computer or lap top.

Intended Use of the Device

The PrefTest Professional Suite™ is used to measure penile tumescence in response to visual and auditory stimuli. Penile tumescence data can later be combined with other standardized psychological testing procedures to assist clinicians with their assessment and treatment of sexual offenders.



Technological Summary between PrefTest Professional Suite and its predicate device

PrefTest Professional SuiteTM has the same intended use and function as its' predicate device.

Performance Test Results

Testing for the PrefTest Professional SuiteTM software included software validation. A risk analysis performed according to ISO 14971: 2000 was conducted.

Clinical Test Results

Testimonials and published literature supports the safety and effectiveness of this technology.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
9200 Corporate Blvd.
Rockville MD 20850

APR 26 2006

Limestone Technologies, Inc.
% Ms. Nancy Ruth
Associate Director, Regulatory Services
CanReg, Inc.
4 Innovation Drive
Dundas, L9H 7P3
CANADA

Re: K052929

Trade/Device Name: PrefTest Professional Suite™
Regulation Number: None
Regulatory Class: Unclassified
Product Code: LIL
Dated: March 31, 2006
Received: April 3, 2006

Dear Ms. Ruth:

We have reviewed your Section 510(k) premarket notification of intent to market the device referenced above and have determined the device is substantially equivalent (for the indications for use stated in the enclosure) to legally marketed predicate devices marketed in interstate commerce prior to May 28, 1976, the enactment date of the Medical Device Amendments, or to devices that have been reclassified in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (Act) that do not require approval of a premarket approval application (PMA). You may, therefore, market the device, subject to the general controls provisions of the Act. The general controls provisions of the Act include requirements for annual registration, listing of devices, good manufacturing practice, labeling, and prohibitions against misbranding and adulteration.

If your device is classified (see above) into either class II (Special Controls) or class III (Premarket Approval), it may be subject to such additional controls. Existing major regulations affecting your device can be found in the Code of Federal Regulations, Title 21, Parts 800 to 898. In addition, FDA may publish further announcements concerning your device in the Federal Register.

*Protecting and Promoting Public Health*

Please be advised that FDA's issuance of a substantial equivalence determination does not mean that FDA has made a determination that your device complies with other requirements of the Act or any Federal statutes and regulations administered by other Federal agencies. You must comply with all the Act's requirements, including, but not limited to registration and listing (21 CFR Part 807); labeling (21 CFR Part 801); good manufacturing practice requirements as set forth in the quality systems (QS) regulation (21 CFR Part 820); and if applicable, the electronic product radiation control provisions (Sections 531-542 of the Act); 21 CFR 1000-1050.

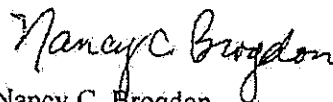
This letter will allow you to begin marketing your device as described in your Section 510(k) premarket notification. The FDA finding of substantial equivalence of your device to a legally marketed predicate device results in a classification for your device and thus, permits your device to proceed to the market.

If you desire specific advice for your device on our labeling regulation (21 CFR Part 801), please contact the Office of Compliance at one of the following numbers, based on the regulation number at the top of this letter:

21 CFR 876.xxxx	(Gastroenterology/Renal/Urology)	240-276-0115
21 CFR 884.xxxx	(Obstetrics/Gynecology)	240-276-0115
21 CFR 892.xxxx	(Radiology)	240-276-0120
Other		240-276-0100

Also, please note the regulation entitled, "Misbranding by reference to premarket notification" (21 CFR 807.97). You may obtain other general information on your responsibilities under the Act from the Division of Small Manufacturers, International and Consumer Assistance at its toll-free number (800) 638-2041 or (301) 443-6597 or at its Internet address <http://www.fda.gov/cdrh/industry/support/index.html>

Sincerely yours,



Nancy C. Brogdon
 Director, Division of Reproductive,
 Abdominal, and Radiological Devices
 Office of Device Evaluation
 Center for Devices and Radiological Health

Enclosure

Indications for Use

510(k) Number (if known): K052929

Device Name: PrefTest Professional Suite™

Indications For Use: The PrefTest Professional Suite™ is used to measure penile tumescence in response to visual and auditory stimuli. Penile Tumescence data can later be combined with other standardized psychological testing procedures to assist clinicians with their assessment and treatment of sexual offenders.

Prescription Use X
(Part 21 CFR 801 Subpart D)

AND/OR

Over-The-Counter Use
(21 CFR 807 Subpart C)

(PLEASE DO NOT WRITE BELOW THIS LINE-CONTINUE ON ANOTHER PAGE IF NEEDED)

Concurrence of CDRH, Office of Device Evaluation (ODE)

James C. Ferguson
(Division Sign-Off)

Division of Reproductive, Abdominal,
and Radiological Devices

510(k) Number K052929

Page 1 of

PPG:

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11/13/03
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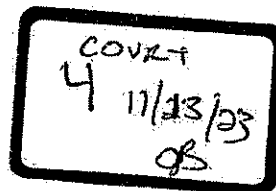
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**Sexual Behaviors Clinic and Lab
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Penile Plethysmograph (PPG) Administration Instructions

1. Ensure that the examinee is at least the minimum age for a Penile Plethysmograph (PPG) examination.
2. Verify that the consent form has been signed by the appropriate person(s).
3. Use the PPG Examination Checklist to prepare the examination room:
 - a. Inflate the Stingray counter-measures pad, if needed.
 - b. Ensure unused paper is covering the examination chair.
 - c. Place unused disposable covers on the examinee's headphones.
 - d. Place an unused disposable cover over the numeric keypad.
 - e. Place an unused disposable medical gown on the exam chair.
 - f. Prepare two unused disposable Galvanic Skin sensors.
 - g. Turn-on the power for the examination room video monitor.
 - h. Check and log the examination room temperature.
 - i. Check and log the examination room humidity.
 - j. Adjust the room lighting.
4. Prepare the PPG software:
 - a. Enter examinee data.
 - b. Select stimuli set and record it on the check sheet.
 - c. Log the examination room temperature.
 - d. Select the "start recording video during instructions" box.
5. Activate the video monitoring system:
 - a. Power on the control room monitor.
 - b. Power on the examination room camera.
 - c. Verify the camera is properly focused.
6. Have the examinee sit in the examination chair and adjust the angle for his comfort and viewing of the monitor.
7. Provide the examinee with an unused circumference ruler and an ink pen, explain how to use the ruler including how to mark it, and advise him to announce when he is finished.



SBCL Penile Plethysmograph Administration Instructions

8. Cover both video cameras; point out to the examinee that the cameras are covered and will not record video of him or provide a means to observe him while he uses the circumference ruler.
9. Leave the examination room and close the door while the examinee uses the circumference ruler.
10. Return to the control room and put on a pair of disposable medical gloves.
11. After the examinee announces he is finished measuring, return to the examination room, retrieve the circumference ruler and verify the ruler has been marked.
12. Log the measurement on the PPG Examination Checklist after confirming the mark with the examinee.
13. Retrieve the proper size strain gauge and show the examinee the strain gauge still sealed in its original plastic packaging.
14. Return to the control room with the strain gauge.
15. Activate the Instructional Video Presentation if it is being used for this examination and if not available, advise the examinee to remain seated in the lab and await your return after calibrating the strain gauge.
16. Calibrate the strain gauge as follows:
 - a. Connect the strain gauge to the PPG DataPac at the ports labeled "P Gauge." Complete the on-screen questions for the calibration; use 10mm increments.
 - b. Place the strain gauge on the calibration cone according to the on-screen instructions and follow the calibration instructions.
 - c. Move the strain gauge down the cone in according to the on-screen instructions (10mm increments) using a pointed, but not sharp tool (4.5 mm knitting needle), ensuring the gauge does not roll up on itself or twist as it could break.
 - d. Log each increment change using the PPG software.
 - e. Ensure the PPG software accepts the entry and proceed to the next increment (10mm larger) until you have recorded five increments.
 - f. Review the calibration data.
 - g. Return the gauge to the measurement level that matches the gauge size and ensure that the measurement is within acceptable limits; if yes, proceed to 18.h., if no, pull the gauge from the cone by no more than ½ inch and release; if the measurement is still not accurate, repeat the calibration process starting at 18.a.; if two attempts fail, then replace the gauge and calibrate the new gauge.
 - h. Remove the gauge from the calibration cone using a pointed, but not sharp tool (4.5 mm knitting needle).
[The calibration instructions continue to the next page.]

SBCL Penile Plethysmograph Administration Instructions

- i. After advising the examinee via the intercom system, pass the strain gauge from the control room to the examination room through the access door, closing and securing the door after doing so.
 - j. Select "rate" from the PPG software desktop toolbar.
17. Verify the video display is visible on the desktop. Advise the examinee via the intercom system that the audio/video recording has been activated and that although the camera is currently covered and therefore the video is blocked from recording the room, the audio is able to record.
18. Return to the examination room and secure the strain gauge sensor lead to the examination chair using a Velcro strap (Velcro straps are positioned on both sides of the examination chair beneath the armrest trays).
19. If the Instructional Video Presentation was not used, then provide to the examinee the following instructions verbally:
 - a. Take the gauge and carefully make the opening just large enough to slip onto your penis.
 - b. Make sure the gauge does not roll up on itself or twist as it could break.
 - c. Carefully place the gauge around the mid-shaft of your penis.
 - d. Take the disposable gown and put it on or cover your lap with it - whichever way you feel most comfortable.
 - e. If you attempt to beat the exam by moving, tensing your muscles, not paying attention, holding your breath, or breathing rapidly, the person conducting the exam will be able to detect your attempts because of the following countermeasures in use during the examination:
 - i. Video Recording: the entire exam will be digitally recorded to ensure that all exam protocols have been followed as well as to record if the examinee attempts to beat or fool the exam.
 - ii. Countermeasure Cushion: detects even the slightest movement made by the examinee to include tensing muscle groups associated with response interference; it is best to stay as still as possible during each stimulus story; you will be given the opportunity to rest and move a bit between stories.
 - iii. Galvanic Skin Response Sensors: two sensors will be placed on one of your hands to measure electrical impulses that indicate muscle tension; if you strain your abdomen, groin, leg, or other muscle in an attempt to fool the exam, the person conducting the exam will detect your attempts.
 - iv. Respiration Belt: you will be given assistance to place the respiration belt around your chest; the respiration belt measures the rate and depth of your breathing; if you hold your breath or breathe rapidly in an attempt to beat or fool the exam, the person conducting the exam will be able to detect your attempts; it is best to breathe normally throughout the exam.
20. Offer to answer questions the examinee may have and show the Instructional Video Presentation again, if it was used, or repeat the verbal instructions, if necessary.

SBCL Penile Plethysmograph Administration Instructions

21. Provide the examinee with a disposable medical gown and advise that he may wear it or use it to drape across his lap to cover his genitalia.
22. Give the examinee the strain gauge, advise him to place it on his penis after you leave the room and close the door, remind him how to place the strain gauge, advise him to announce to you when he has put the gauge on and covered his genitalia, and then leave the room closing the door behind you.
23. After the examinee announces that he has placed the strain gauge on his penis and covered his genitalia with the gown, put on a pair of disposable medical gloves, and return to the examination room.
24. Uncover the cameras; ensure the examinee understands where the camera is aimed.
25. State the date (month, date & year) and examinee's name for the camera and have the examinee verify the information.
26. Remind and have the examinee confirm for the camera that he (have him look at the recording camera while answering):
 - a. Is aware that the examination audio-video recording system has already been activated and obtain his acknowledgement of each for the audio/video recording.
 - b. Has signed the consent form.
 - c. Has heard a description of the PPG examination.
 - d. Has been given the opportunity to ask questions about the exam process.
 - e. Has measured himself for the strain gauge size (hold the strain gauge with the marked measurement facing the recording camera).
 - f. Has been shown the strain gauge selected for his exam while it was still in a sealed package.
 - g. Has placed the strain gauge on himself as instructed or be assisted in placing it (if assisted, then list names and relevant license credentials of person(s) assisting and witnessing assistance, why assistance was provided, and that the examinee provided consent for assistance).
27. Dispose of the used circumference ruler in a trash receptacle in the examination room.
28. Position the Respiration Belt on the examinee with it centered on his chest.
29. Attach two galvanic Skin Sensors to the examinee's non-dominate hand using unused disposable adhesive sensor pads.
30. Ensure the numeric keypad is on the tray attached to the examination chair on the examinee's dominant hand side and that he can comfortably reach all the keys.
31. Give the examinee the headphones and ensure that he places them correctly over his ears assisting him as needed.

SBCL Penile Plethysmograph Administration Instructions

32. Explain to the examinee that he will be requested to pull the strain gauge away from his penis by no more than ¼ inch using the sensor lead side; ensure his understanding of the task and the importance of not overreaching the distance or pulling from an incorrect location.
33. Answer the examinee's questions.
34. Make sure the door is unlocked, leave the room, close the door, and return to the control room; dispose of the used medical gloves.
35. Test the examinee's headphones and the intercom system by briefly conversing with the examinee using the microphone-headphone system and the intercom system.
36. Adjust the recording camera monitoring window so it is visible, but not obscuring the sensor traces.
37. Check the sensor traces on the computer monitor to ensure each is visible on the monitor and not overlapping each other.
38. Direct the examinee to pull the strain gauge away from his penis no more than ¼ inch by grasping the gauge at the point of connection of the sensor lead and then releasing the gauge; verify a change on the p-gauge tracing.
39. Place on the on-screen cursor on the instruction/stimuli display monitor and verify that the examinee can see the cursor on the screen in the examination room.
40. Begin the examination:
 - a. Remind the examinee to:
 - i. Relax.
 - ii. Listen carefully to each story.
 - iii. Pretend to be the person telling the stories.
 - iv. Press "OK" on the numeric keypad whenever the story begins to be sexual or violent in nature.
 - v. Be ready to describe the previous story if asked or to use the following scale to rate the level of arousal to the previous story if asked/directed do so by pressing the corresponding button on the numeric keypad and viewing the selected number on the video monitor and then pressing the key labeled "OK"
 - 1 = highly disgusted
 - 2 = moderately disgusted
 - 3 = neither disgusted nor sexually aroused
 - 4 = moderately sexually aroused
 - 5 = highly sexually aroused
 - vi. Be ready for the examination to begin momentarily
 - b. Click "start" on the PPG software desktop screen.
 - c. Check the scenario audio to ensure it is playing through the computer and PPG systems.

SBCL Penile Plethysmograph Administration Instructions

- d. Adjust the traces to keep them visible and separate from each other on the computer monitor during the examination.
 - e. At the end of each scenario remind the examinee to rate the level of arousal he experienced using the numeric keypad (if he does not respond to the visual prompt on the video monitor) and/or ask him to briefly describe the last scenario.
 - f. Ensure adequate detumescence (if tumescence occurred) before proceeding to the next scenario.
 - g. Advise the examinee that the next scenario is about to begin.
 - h. Continue the examination following steps 36.b. through 36.g. until the conclusion of the examination stimulus set.
 - i. If during the examination, the examinee wants to use the restroom, advise the examinee that you will enter the examination room and cover the cameras so that he can redress and exit the examination room to go to the restroom.
 - i. Put on a pair of disposable medical gloves.
 - ii. Knock and enter the examination room and cover the cameras.
 - iii. Take the headphones from the examinee and place them out of his way.
 - iv. Place an unused paper towel on the tray attached to the side of the examination table where the examinee will place the strain gauge; show the examinee where to place the strain gauge after he removes it.
 - v. Remove the respiration belt and galvanic skin sensors from the examinee.
 - vi. Leave the examination room and allow the examinee to dress and leave the examination room (with an appropriate escort if required).
 - vii. Upon the examinee's return from the restroom, give him the headphones and ensure that he places them correctly over his ears.
 - viii. Verbally remind him how to place the strain gauge on his penis and depart the examination room to allow him to place the strain gauge on his penis; return to step #23.
 - j. Log the time of the end of the trials on the PPG Examination Checklist.
 - k. At the conclusion of the examination, advise that examinee that the examination is complete and that you will enter the examination room and cover the cameras so that the examinee can remove the strain gauge and redress.
41. Put on a pair of disposable medical gloves.
42. Knock and enter the examination room.
43. Take the headphones from the examinee and place them out of his way; dispose of the disposable headphones covers in a trash receptacle.
44. Place the strain gauge package on the tray attached to the side of the examination table where the examinee will place the strain gauge.
45. Show and describe to the examinee how to place the strain gauge into the strain gauge package after removing the gauge.

SBCCL Penile Plethysmograph Administration Instructions

46. Remove the Respiration Belt from the examinee and place it on the exam chair arm tray.
47. Remove the disposable Galvanic Skin sensors from the examinee and dispose of them in a trash receptacle.
48. Cover the cameras.
49. Exit the room so that the examinee can remove the strain gauge and get dressed; advise him to announce when he has removed the strain gauge and gotten dressed.
50. After the examinee announces that he has removed the strain gauge and gotten dressed, return to the examination room.
51. Uncover the cameras.
52. Answer the examinee's questions and then escort him from the examination room back to the waiting room.
53. Log the time the examinee leaves the examination room and other required post-examination data on the PPG Examination Checklist; ensure the Checklist is complete and sign and date it.
54. Save the examination data using the PPG software.
55. Put on a pair of disposable medical gloves and return to the exam room.
56. Using a trash receptacle, dispose of the paper gown, numeric keypad cover, used examination chair paper, and strain gauge, if it is disposable or follow cleaning instructions if it is re-usable.
57. Clean the examination chair using an appropriate cleaning material.
58. Dispose of the used medical gloves in a trash receptacle.
59. Deflate the Stingray counter-measures pad, if inflated.
60. Power off the:
 - a. Examination room video monitor.
 - b. Audio/video recording system.
 - c. Intercom system.
 - d. Video monitoring system (monitor and camera) and power cord.
61. Print and conduct an analysis of the examination results now or at a later time.
62. Log out of the PPG software when finished.

Sexual Behaviors Clinic and Lab
Penile Plethysmograph (PPG) Verbal Instructions/ Commands

Read the following Instructions to the Examinee:

If you attempt to beat the exam by moving, tensing your muscles, not paying attention, holding your breath, or breathing rapidly, the person conducting the exam will be able to detect your attempts because of the following countermeasures in use during the examination:

- *Video Recording: the entire exam will be digitally recorded to ensure that all exam protocols have been followed as well as to record if the examinee attempts to beat or fool the exam.*
- *Countermeasure Cushion: detects even the slightest movement made by the examinee to include tensing muscle groups associated with response interference; it is best to stay as still as possible during each stimulus story; you will be given the opportunity to rest and move a bit between stories.*
- *Galvanic Skin Response Sensors: two sensors will be placed on one of your hands to measure electrical impulses that indicate muscle tension; if you strain your abdomen, groin, leg, or other muscle in an attempt to fool the exam, the person conducting the exam will detect your attempts.*
- *Respiration Belt: you will be given assistance to place the respiration belt around your chest; the respiration belt measures the rate and depth of your breathing; if you hold your breath or breathe rapidly in an attempt to beat or fool the exam, the person conducting the exam will be able to detect your attempts; it is best to breathe normally throughout the exam*

**Offer to answer questions the examinee may have and show the Instructional Video Presentation again, if it was used, or repeat the verbal instructions, if necessary.*

State the date (month, date & year) and examinee's name for the camera and have the examinee verify the information.

Remind and have the examinee confirm for the camera that he (have him look at the recording camera while answering):

- ✓ Is aware that the examination audio-video recording system has already been activated and obtain his acknowledgement of each for the audio/video recording.
- ✓ Has signed the consent form.
- ✓ Has heard a description of the PPG examination.
- ✓ Has been given the opportunity to ask questions about the exam process.
- ✓ Has measured himself for the strain gauge size (hold the strain gauge with the marked measurement facing the recording camera).
- ✓ Has been shown the strain gauge selected for his exam while it was still in a sealed package.
- ✓ Has placed the strain gauge on himself as instructed or be assisted in placing it (if assisted, then list names and relevant license credentials of person(s) assisting and witnessing assistance, why assistance was provided, and that the examinee provided consent for assistance).

Now, Read the Examinee Instructions:

- Relax.
 - Listen carefully to each story.
 - Pretend to be the person-telling the stories.
 - Press "OK" on the numeric keypad whenever the story begins to be sexual or violent in nature.
 - Be ready to describe the previous story if asked to
 - Use the following scale to rate the level of arousal to the previous story if asked/directed do so by pressing the corresponding button on the numeric keypad and viewing the selected number on the video monitor and then pressing the key labeled "OK"
- 1 = highly disgusted
 2 = moderately disgusted
 3 = neither disgusted nor sexually aroused
 4 = moderately sexually aroused
 5 = highly sexually aroused

End of the examination. Respond immediately

William T. O'Donohue · Daniel S. Bromberg
Editors

Sexually Violent Predators: A Clinical Science Handbook

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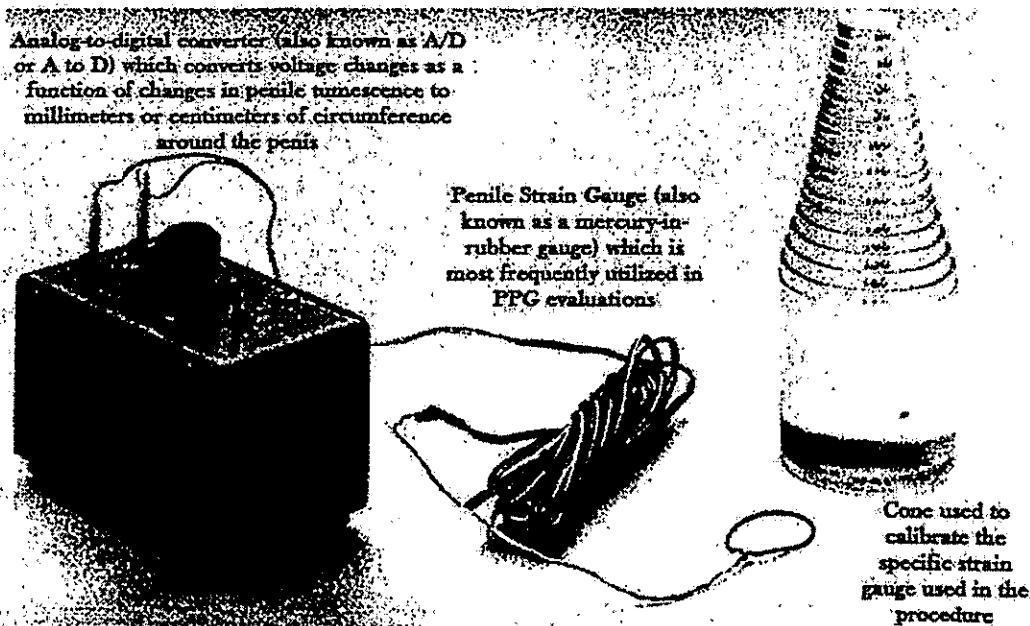


Fig. 15.1 A visual depiction of the basic PPG apparatus

evaluated via PPG places this rubber-like ring on his penis in privacy. The strain gauge is first calibrated according standardized protocols, and the essential measurement being recorded during the procedure involves changes in voltage which are then converted to changes in millimeter or centimeter of penile circumference. As noted by Plaud and Blackstone (2014), the PPG procedure is specifically designed to be private and as non-intrusive as possible.

There have been multiple attempts to measure human sexual arousal via physiological assessment techniques. Such approaches have included skin conductance, heart rate, blood pressure, pupillary responses, and temperature measurements. Almost half a century ago, Zuckerman (1971) argued that measure of penile tumescence was the most sensitive and valid measures of sexual arousal developed. This is not to say that the legitimacy of PPG has not been questioned since its inception. It has been both debated and its legitimacy challenged, sometimes vociferously. As detailed by Plaud and Blackstone (2014):

PPG was developed to measure sexual arousal in the most direct manner: by recording changes in the erectile tissue surrounding the penis as it becomes filled with blood. This is the most basic overt physiological manifestation of sexual arousal in the human male. Despite this basic physiology, it remains the case that controversy surrounds the use of PPG as a tool of basic sexual research as well as clinical applications with sexual offenders (O'Donohue & Plaud, 1994; Gaither & Plaud, 1998). This is not to say that basic behavioral research on patterns of sexual arousal has not been conducted; it has, especially in the principles of basic conditioning and habituation of sexual arousal in respondent or classical conditioning (Plaud & Martini, 1999; Rachman, 1966; Rachman & Hodgson, 1968), operant conditioning (Cliffe & Parry, 1980; Rosen, Shapiro, & Schwartz, 1975), and habituation and spontaneous recovery (Koukounas & Over, 1993; Meuwissen & Over, 1990; O'Donohue & Plaud, 1991; Plaud, Gaither, Amato-Henderson, & Devitt, 1997). In most of the scientific studies of the conditioning, habituation and predictive utility of sexual arousal research, the penile plethysmograph (PPG), has been the essential tool of measurement. And yet the apparatus and the procedure are seemingly plagued by controversy (pp. 73–74).

It is also important in PPG evaluations to differentiate between primary and secondary

decision methodology, that is, making risk predictions based on idiosyncratic weighing of risk factors, that in fact *decreases* the accuracy of prediction by causing clinicians to overpredict risk. Because the use of clinical judgment most probably produces misleading results that would not accurately identify those offenders who are most likely to reoffend, such analyses generally do not meet the test for scientific acceptance. Despite many efforts to predict sexual recidivism using such clinical judgment, there has been no evidence showing any valid link between such clinical judgments and actual future offenses. And there has been abundant evidence that shows that such predictions are generally no more valid than tossing a coin. The reality is that clinicians' evaluations based on a clinical, or even structured clinical, approach have virtually no predictive utility whatsoever despite their clear beliefs to the contrary (Hanson, 1998):

[M]any of the frequently used risk assessment procedures have questionable validity ... [T]he accuracy of [clinical] risk assessments has been unimpressive ... The clinical prediction of sexual offender recidivism is no exception. Across 10 studies ($N = 1453$) that examined the predictive accuracy of clinical judgments concerning sexual offender recidivism risk, the average correlation was only 0.10 ... Evaluators assessing the long-term risk for recidivism can be reasonably sure that a factor should not be considered when the average correlation is near 0 ... Included among the unrelated factors are measures of general psychological adjustment ... (average $r = -0.01$). (pp. 52–57)

Even though the validity of making future sexual recidivism risk predictions via any methodology or combination of methodologies has been debated since the first such laws were enacted (cf., Harcourt, 2005), PPG may have an objective, scientifically based role to play in that psycho-legal process.

Penile Plethysmography and SVP Sexual Offense Risk Assessment

Why is PPG important in both the evaluation and treatment of sexual offenders who are being considered for SVP status? The most straightforward

answer to this question is because the identification of deviant sexual arousal has been found by several researchers to be a significant predictor of sexual offense recidivism. Further, publication of these research findings occurred at the very moment in time when many jurisdictions had recently adopted, or were considering adopting, SVP statutes. The most notable example of this type of publication was the oft-relied-upon meta-analysis conducted by Hanson and Bussière (1998). These researchers found that deviant sexual arousal to prepubescent children, measured specifically by the PPG, was the single greatest predictor of sexual offense recidivism, individually accounting for approximately 10% of the experimental variance.

This empirical finding has held up in subsequent studies as well, although the strength of the statistical association between sexual offense recidivism and deviant sexual preferences measured via PPG has not been as strong as in the original Hanson and Bussière meta-analysis (e.g., Hanson & Morton-Bourgon, 2005; Mann, Hanson, & Thornton, 2010). Taken as a whole, and this is important, a survey of the research indicates that there is in fact empirical support for the finding that deviant sexual arousal is a dynamic risk factor for predicting sexual offense recidivism. From a more theoretical perspective, this research finds support in positing that there is a relationship between being sexually aroused by something and acting behaviorally on that arousal (Plaud and Blackstone, 2014). This finding is generally referred to as the "sexual preference hypothesis."

According to the sexual preference hypothesis, sexual offenders, especially those considered for SVP status, are more physiologically aroused by deviant sexual stimuli depicting illegal, coercive sexual activities than by stimuli depicting consenting, legal sexual activity with adults. The sexual preference hypothesis posits that such individuals are more likely to engage in deviant sexual behavior if they have underlying deviant sexual arousal in that domain. From an empirical perspective, PPG research has provided some support for the legitimacy of the sexual preference hypothesis, mostly with sexual offenders

specified paraphilic disorders. According to the *DSM-5*, "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" (page 686). In the *DSM-5*, "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)" (page 686). As the *DSM-5* specifically notes: "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." In other words, it is clinically possible to have a paraphilia, but not a paraphilic disorder using the diagnostic criteria of the *DSM-5*.

Can the PPG aid in psychodiagnosis of paraphilic disorders in SVP evaluations? *DSM-5* is equivocal in addressing this question:

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. (p. 699)

A recent meta-analysis of PPG found that several phallometric testing procedures did provide for valid indicators of what the authors termed "pedohebephilic interest," a term discussed in greater detail below (McPhail et al., in press). At the very least, it is clear that a fair number of clinicians do utilize PPG as at least an adjunct assessment tool in order to make paraphilia diagnoses. McGrath, Cumming, Burchard, Zeoli, and Ellerby (2010) found, for example, that in community samples, 27.9% utilized PPG in their evaluations of adult sexual offenders and in 9.5% of adolescent sexual offenders. With adults, that number climbed to 36.5% in residential programs. So while a clinical diagnosis of say, pedophilic disorder, should not be made solely or even

primarily on a PPG administration, it is the case that PPG data can and oftentimes is used as a part of the diagnostic process concerning diagnosing clinical paraphilias.

While the PPG may assist an SVP evaluator in the clinical diagnosis of one of more paraphilias, there is also room for its misuse, most notably using the PPG in order to assist in the creation of paraphilias not generally accepted in the scientific community. One example of this potential misuse of PPG is attempting to expand what the *DSM* terms "other specified paraphilia," a broad diagnostic area historically reserved for low-frequency examples of sexual deviance that don't have their own specific diagnostic criteria. Perhaps the most frequent attempt to create a new sexually deviant diagnostic category in SVP proceedings is the term "hebephilia," which has been used in civil commitment proceedings to describe sexual offenders who evidence sexual arousal to postpubescent males or females who have not yet attained legal status to consent to sexual activities. However, as Rind and Yuill (2012) concluded: "The broad-based scientific evidence indicates that hebephilia is not a dysfunction, and therefore cannot justifiably be declared a mental disorder in the *DSM*" (p. 823). Despite this finding, it is all too common for some clinicians in SVP cases to label the sexual behavior of those who have engaged in sexual activities with pubescents/postpubescents as being within the realm of paraphilic or deviant sexual behavior. Plaud (2009) criticized the use of PPG by Blanchard et al. (2009) to support their conclusion that hebephilia should be considered a paraphilic mental disorder, focusing on improper PPG analysis:

There does not appear to be any homogeneity of groupings along the axes of sexual interest groups. If there are 'hebephiles' among us, then this sexual interest/arousal pattern appears to be a very heterogeneous one. If it is heterogeneous, how can it have diagnostic specificity as Blanchard et al. state it has in their conclusion? Look at Fig. 3. In the pedophile groups (especially Pedo 2), there was significant overlap between physiological arousal to both pre-pubescent and pubescent girls. As a matter of fact, in their Pedo 2 group, there was more arousal to pubescent girls than to pre-pubescent girls. And this relation does not seem to hold for homosexual males (even though Blanchard et al. state that the hetero/homo groups were remarkably similar). How is that a diagnostic indicator of pedophilia?...

develop due to early conditioning experiences and to be maintained by their association with orgasm from masturbation to deviant fantasies or through other mechanisms of the principles of reinforcement (Laws, Myer & Holmes, 1978; O'Donohue & Plaud, 1994). Many behavior therapy regimens used to treat sexual disorders also rely on learning principles in the modification of sexually deviant behavior (Kelly, 1982). The PPG is designed to measure potential changes in the patterns of sexual arousal as a function of cognitive and behavioral intervention/treatment strategies designed to target deviant sexual arousal.

The use of PPG in the treatment of an adjudicated sexual offender was described in a case study conducted by Plaud and Gaither (1997) in which a procedure known as assisted covert sensitization was evaluated through PPG monitoring. Covert sensitization as a behavioral intervention involves a combination of respondent and operant conditioning (Plaud, 2002). In the early stages of treatment, the therapist and client come up with an aversive image or verbal script/narrative, later used to pair with situations involving the lead up to deviant sexual responding. The aversive image may be conceptualized as an unconditioned stimulus (US). The images of the events/situations leading to deviant sexual arousal are then paired with the US and according to the principles of respondent conditioning become the conditioned stimulus (CS). The unconditioned response (UR) to the US, and the conditioned response (CR) to the CS consist of negative reactions along both emotional and cognitive/behavioral domains; for example, feeling fearful or anxious and becoming nauseous or physically ill. According to the principles of learning and behavior, the therapeutic technique is for the sexual offender to avoid or escape the situations associated with the deviant sexual behavior due to the aversive consequences of that behavior. As the therapeutic procedure unfolds, sexual arousal is measured via PPG monitoring. Employing this therapeutic methodology, Plaud and Gaither (1997) demonstrated decreased deviant arousal to sexually inappropriate stimuli, coupled with decrement self-report of deviant

sexual arousal as one of the findings in their case study reported in the literature. The PPG was the required measurement tool to demonstrate clinical efficacy in this study.

There are many other behaviorally based sexual offender treatment techniques employed in SVP facilities in which PPG can be used as an adjunct to treatment. Such techniques can include olfactory aversion or olfactory aversive therapy. Similar to covert sensitization as described above, olfactory aversion is based closely on learning principles; however in this case, the punishing stimulus is in the form of a noxious odor. The behavioral theory underlying olfactory aversion also involves principles involving both respondent and operant conditioning (Gaither et al. 1998). In contrast to covert or assisted covert sensitization described above in which an aversive (or punishing) stimulus is based upon the use of imagery and verbal scripts/narratives, the punishing stimulus is the use of ammonia, valeric acid, or other noxious odors which generally are self-administered by the treatment participant himself. Sometimes a small atomizer, which is designed to spray a small amount of a noxious vapor into the treatment participant's nostrils, is also employed. Again, the treatment participant's sexual arousal is being monitored via PPG.

PPG evaluations, conducted periodically while individuals deemed SVP continue to participate in sexual offender treatment, can also be used to assess whether or not the individual is demonstrating changes in deviant sexual arousal as he advances through the treatment program, whether or not he is engaging directly in behavioral treatment as described above. PPGs can also assist in the assessment of behavioral treatment strategies aimed at decreasing deviant sexual arousal, such as masturbatory satiation. In brief, masturbatory satiation involves the treatment participant masturbate while engaging in deviant fantasies for a much longer time than is pleasurable, usually 1–2 hours at a time). In masturbatory extinction, the goal of treatment is to increase sexual arousal to nondeviant fantasies while he masturbates while engaging in nondeviant fantasies until he ejaculates (Alford, Morin, Atkins, & Schoen, 1987).

though the results themselves do not become directly incorporated into the evidentiary record. Therefore, PPG results have the possibility of entering into SVP cases either directly as evidence, or indirectly through its influencing expert opinion, which ultimately translates into court testimony.

It is also true that individual jurisdictions can take specific positions on the use of PPG in SVP proceedings as a matter of statute. The first state to create what can be called the "second wave" of SVP laws is the State of Washington, which enacted its sexual offender civil commitment statute in 1990. A dozen years later, in 2012, the state legislature amended Washington's SVP law and specifically permitted the court to compel PPG evaluations in SVP cases. In the Revised Code of Washington 71.09.050(1), it states that:

Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator...The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests if requested by the evaluator... (c) plethysmograph testing [emphasis added].

The constitutionality of compelling the use of the PPG in Washington SVP proceedings has recently been held up on appeal (*State of Washington v. Donald Herrick*, App. No. 69818-4-1, 2017). In other jurisdictions outside of Washington, sexual offenders facing civil commitment can also be court-mandated to participate in PPG evaluations (Garrison, 2015), although generally speaking PPG results face an uphill battle for admissibility in court, even when such results lead to sexual offender treatment recommendations within an SVP institution.

Conclusion: PPG Evaluations in SVP Proceedings

When SVP proceedings are initiated against adjudicated sexual offenders whose criminal sentences are about to expire, or when those already deemed SVP initiate proceedings to end that legal status, PPG data are not oftentimes consid-

ered central or even relevant in the ultimate decision processes involved in civil commitment. Yet as we have seen, PPG has the potential to have applicability to all elements of the SVP process, from psychodiagnosis to measuring sexual offender treatment progress. Further, the manner in which PPG results influence SVP proceedings can vary significantly, and very often PPG data has a more indirect role to play in the sexual offender civil commitment process.

The PPG was designed over half a century ago in order to measure patterns of male sexual arousal objectively and scientifically. As we have seen, the proper identification of deviant patterns of sexual arousal may have relevance to SVP proceedings given the established empirical relationship between deviant sexual arousal and the prediction of sexual offense recidivism, as analyzed in our exploration of the sexual preference hypothesis. Further, the PPG can and is being utilized in SVP sexual offender treatment programs in order to measure changes in patterns of deviant sexual arousal as a function of treatment participation. It is also true that there is ongoing controversy concerning the psychometric properties of the PPG in the evaluation and treatment of sexual offenders, and even at this time there is no "standardized" assessment protocol when it comes to PPG administrations. However, there is little doubt that when a civil commitment law is based in large part upon statutory definitions that invoke underlying mental conditions as requisite for the finding that an adjudicated sexual offender is SVP, there needs to be a way to measure sexual deviance in an objective manner.

This chapter has been focused on the many ways in which PPG can and does play a role in SVP civil commitment of sexual offenders. It should also be noted that SVP programs should address the potential community reintegration of those adjudicated SVP because lifetime institutional commitment is not the goal of these statutes. Rehabilitation and community reintegration are the ultimate goals of all SVP statutes currently enacted in the United States. Once a sexual offender is no longer considered SVP, whether through demonstration that the person has made satisfactory progress in a sexual offender treat-

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Limestone:

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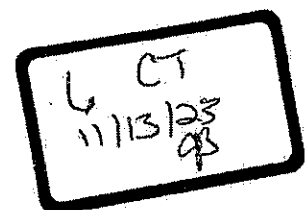
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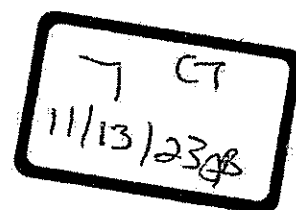
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Our lab:

Murphy, L., Ranger, R., Stewart, H. *et al.* Assessment of Problematic Sexual Interests With the Penile Plethysmograph: an Overview of Assessment Laboratories. *Curr Psychiatry Rep* 17, 29 (2015). <https://doi.org/10.1007/s11920-015-0567-z>

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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 interest.

Sex- and Gender-Related Diagnostic Issues

Laboratory measures of sexual interest, in terms of psychophysiological responses to sexual stimuli depicting children, which are sometimes useful in diagnosing pedophilic disorder in men, are not necessarily useful in diagnosing this disorder in women because there has been very limited research on the assessment of pedophilic sexual interest in women.

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 across sites, which frequently use different stimuli, procedures, and scoring. *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. U.S. clinicians, however, should be aware that possession of visual sexual stimuli depicting children, even for diagnostic purposes, may violate American law regarding possession of child pornography and leave the clinician susceptible to criminal prosecution. The option exists to use audio stimuli describing sexual interactions in penile plethysmography. Across psychophysiological methods, the diagnostic marker is relative sexual response to stimuli depicting children compared with stimuli depicting adults, rather than absolute response to child stimuli.

Differential Diagnosis

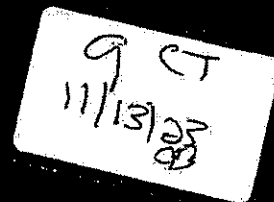
Pedophilia. Individuals with pedophilia experience recurrent, intense, sexually arousing fantasies or sexual urges involving sexual activity with a prepubescent child or children. Unless the individual has acted on these sexual urges with a prepubescent child or unless the sexual urges or fantasies cause marked distress or interpersonal difficulty, a diagnosis of pedophilic disorder is not warranted.

Other paraphilic disorders. Sometimes individuals present with a different paraphilic disorder but are referred for an evaluation regarding possible pedophilic disorder (e.g., when an individual with a diagnosis of exhibitionistic disorder exposes himself to children as well as adults). In some cases, both diagnoses may apply, whereas in others, it may be the case that one paraphilic disorder diagnosis is sufficient. For example, an individual who exposes himself exclusively to prepubescent children may have both exhibitionistic disorder and pedophilic disorder, whereas another individual who exposes himself to victims, irrespective of the victims' age, may be considered to have only exhibitionistic disorder.

Antisocial personality disorder. Some individuals with antisocial personality disorder sexually abuse children, reflecting the fact that the presence of antisocial personality disorder increases the likelihood that an individual who is primarily attracted to mature persons will approach a child sexually, on the basis of relative access to the child. An additional diagnosis of pedophilic disorder should only be considered if there is evidence that over a period of at least 6 months, the individual has also had recurrent, intense, sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child.

Association for the Treatment of Sexual Abusers

for the Assessment, Treatment,
and Management of Male Adult
Sexual Abusers
2014



ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS

PRACTICE GUIDELINES FOR THE ASSESSMENT, TREATMENT, AND MANAGEMENT OF MALE ADULT SEXUAL ABUSERS

2014

(Short title: ATSA Adult Practice Guidelines)

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- 6.08 Members appreciate that recidivism risk is not static and may change as a result of interventions, client actions, or other circumstances and, therefore, members conducting risk assessments employ research-supported methods of assessing dynamic risk factors as warranted over time.

The Use of Phallometry, Viewing Time, and Polygraphy to Support Information-Gathering for Assessments

- 7. Members recognize that research-supported assessment methods such as phallometry and viewing time may be useful for (a) obtaining objective behavioral data about the client that may not be readily established through other assessment means; (b) exploring the reliability of client self-report; and (c) exploring potential changes, progress relative to treatment and other case management goals and objectives. Members appreciate that the polygraph for which reliability and validity questions remain may have utility in facilitating disclosure about sexual history, offense-specific behaviors, and/or compliance with treatment and other expectations.**
- 7.01 Members obtain specific informed consent from clients prior to using phallometric, viewing time, and/or polygraph methods.
- 7.02 Members are familiar with the strengths and limitations of phallometric, viewing time, and polygraph methods (see Appendix B) and note these issues when interpreting and communicating the findings from these methods.
- 7.03 Members take reasonable steps to obtain assurances that examiners utilizing phallometric, viewing time, and polygraph methods are appropriately trained in the use of such methods, use accepted methods, and adhere to
-

applicable professional/discipline-specific standards or guidelines.

7.04 Members recognize that the findings from phallometric, viewing time, and polygraph methods are to be used in conjunction with other sources of assessment information, not as the single source of data for any assessment.

7.05 Members recognize that the results of phallometric, viewing time, and polygraph methods are not to be used as the sole criterion for the following:

- Estimating level of risk for recidivism;
- Making recommendations for release to the community from a correctional, institutional, or other non-community placement;
- Determining treatment completion; or
- Drawing conclusions regarding compliance with or violations of conditions of release or community placement.

7.06 Members appropriately limit phallometry to the following purposes:

- Assessing the client's relative sexual arousal and preferences regarding age and gender;
- Evaluating the client's arousal responses to various levels of sexually intrusive or aggressive/coercive behaviors;
- Exploring the potential role of offense-related sexual arousal in the client's sexually abusive or at-risk behavior and developing accompanying treatment goals; and
- Monitoring the effectiveness of interventions involving the modification, management, and expression of both healthy and offense-related sexual arousal.

7.07 Members appropriately limit the use of viewing time measures to the following purposes:

- Assessing the client's sexual interests with respect to age and gender;
- Exploring the potential role of offense-related sexual interests in the client's sexually abusive or at-risk behavior and developing accompanying treatment goals; and
- Monitoring the effectiveness of interventions involving the modification, management, and expression of both normative and offense-related sexual interests.

7.08 Members appropriately limit use of the polygraph to the following purposes:

- Facilitating a client's disclosure of sexual history information, which may include sexually abusive or offense-related behaviors (generally disclosed in the interview portion of the examination);
 - Eliciting from the client clarifying information regarding the instant/index offense;
 - Exploring potential changes, progress, and/or compliance relative to treatment and other case management goals and objectives (through yes/no questions about adherence to specific treatment and other case management expectations); and/or
 - Making collaborative case management decisions about a client with other partners and stakeholders based on the information gleaned from the examination and interview.
-

Appendix B: Phallometry, Viewing Time, and Polygraphy

Phallometry

Phallometry is a specialized form of assessment used in treatment with individuals who have committed sexual offenses. Responsible use of phallometry results requires at least a rudimentary understanding of how phallometry works, and its advantages and limitations. As with any instrument or procedure, members are familiar with current literature and obtain appropriate training before using or interpreting phallometric testing results. Examiners receive training in phallometric testing in order to become knowledgeable about the technical aspects of the equipment and the appropriate protocols for conducting phallometric testing specific to the equipment being used. Examiners are also familiar with the research evidence on the reliability and validity of phallometric testing.

Phallometric testing using penile plethysmography involves measuring changes in penile circumference or volume in response to sexual and non-sexual stimuli. Circumferential measures (measuring changes in penile circumference) are much more common than volumetric measures (measuring changes in penile volume), which are used in only a few laboratories worldwide. However, there is good agreement between circumferential and volumetric measures once a minimal circumference response threshold is reached. Therefore, circumferential measures are the focus of this appendix.

Phallometric testing provides objective information about male sexual arousal and is therefore useful for identifying atypical sexual interests, increasing client disclosure, and measuring changes in sexual arousal patterns over the course of treatment.

Phallometric test results are not used as the sole criterion for determining atypical sexual interests, estimating risk for engaging in sexually abusive behavior, recommending that clients be released to the community, or deciding that clients have completed treatment programs. Phallometric test results are interpreted in conjunction

with other relevant information (such as, the individual's offending behavior, use of fantasy, and pattern of masturbation) to determine risk and treatment needs. Phallometric test results are not to be used to draw conclusions about whether an individual has or has not committed a specific sexual crime. As well, there are limited data available regarding the use of the plethysmograph with clients who have developmental disabilities and clients with an acute major mental illness. Therefore, members need to exercise caution in using phallometry with these populations and in interpreting and reporting phallometric results.

Prior to testing, examiners screen clients for potentially confounding factors such as medical conditions, prescription and illegal drug use, recent sexual activity, and sexual dysfunction. Clients with active, communicable diseases, particularly sexually transmittable diseases, are not to be tested until their symptoms are in remission.

Specific informed consent for the testing procedure and release forms for reporting test results are obtained at the beginning of the initial appointment. Laboratories have a standard protocol for fitting gauges, presenting stimuli, recording data, and scoring.

Examiners use the appropriate stimulus set to assess sexual interests that are the subject of clinical concern. For example, examiners use a stimulus set with depictions of children and adults to test clients who have child victims or who are suspected of having a sexual interest in children. At a minimum, examiners have at least two examples of each stimulus category. Stimuli that are more explicit appear to produce better discrimination between individuals who sexually abuse and control subjects than less explicit stimuli. It is important to ensure that the stimuli are good quality and avoid any distracting elements.

Members are aware of the applicable legislation in their jurisdiction regarding the possession of sexually explicit materials. If permitted to use visual stimuli for testing of sexual interest in children, examiners use a set of pictures depicting males and

females at different stages of physical development, ranging from very young, pre-pubertal children to physically mature adults. The use of neutral stimuli, such as pictures of landscapes without people present, may increase the validity of the assessment. The inclusion of neutral stimuli serves as a validity check because responses to sexual stimuli that are lower than responses to neutral stimuli might indicate faking attempts. Faking tactics include looking away from or not listening to stimuli. Audiotaped stimuli may also be used to assess sexual interest in children; if used, these stimuli clearly specify the age and sex of the depicted individuals.

For testing of sexual arousal to non-consenting sex and violence, examiners using audiotapes include stimuli describing consenting sex, rape, and sadistic violence. Stimuli depicting neutral, non-sexual interactions are also included. Stimuli can depict males or females, children, or adults.

The phallometric testing report includes a description of the method used for collecting data, the types of stimuli used, an account of the client's cooperation and behavior during testing, and a summary and description of the client's profile of responses. Client efforts to fake or other potential problems for the validity of the data or the interpretation of results are also reported.

The three most common means of scoring plethysmograph data are standardized scores, percentage of full erection, and millimeter of circumference change. Those using phallometric assessment are aware of the advantages and disadvantages of each scoring method. Research has found that standardized scores (e.g., z scores) increase discrimination between groups. Transforming raw scores to standardized scores for subjects who show little discrimination between stimuli can, however, magnify the size of small differences between stimuli. Raw scores, millimeter of circumference change, or scores converted to percentage of full erection may be clinically useful in the interpretation of results.

Deviance indices can be calculated by subtracting the mean peak response to non-deviant stimuli from the mean peak response to deviant stimuli. For example, a pedophilic index could be calculated by subtracting the mean peak response to stimuli depicting adults from the mean peak response to stimuli depicting prepubescent children. Thus, greater scores indicate greater sexual arousal to child stimuli.

Because the sensitivity of phallometric testing is lower than its specificity, the presence of atypical/deviant sexual arousal is more informative than its absence. Results indicating no atypical/deviant sexual arousal may be a correct assessment or may indicate that a client's atypical/deviant sexual interests were not detected during testing.

Research indicates that initial phallometric assessment results are linked with recidivism. Repeated assessments can be helpful to monitor treatment progress and to provide information for risk management purposes.

Viewing Time Measures

Viewing time measures are a specialized form of assessment used with individuals who have engaged in sexually abusive behaviors. Using the results of viewing time measures responsibly requires members to have at least a rudimentary understanding of how viewing time measures work, as well as their advantages and limitations. As with any instrument or procedure, members should be familiar with current literature and obtain appropriate training before using or interpreting viewing time testing results.

Currently, unobtrusively measured viewing time is primarily used to identify sexual interest in children. For instance, to test sexual interest in children, examiners have a set of pictures depicting males and females at different stages of development, ranging from very young children to physically mature adults. The relative amount of time clients spend looking at pictures of children (who

are clothed, semi-clothed or nude, depending on the jurisdiction,) is compared to the time that the same adult spends looking at pictures of adults. Research suggests that, as a group, individuals who have engaged in sexually abusive behaviors against children look relatively longer at stimuli depicting children than adults. Unobtrusively measured viewing time correlates significantly with self-reported sexual interests and congruent patterns of phallometric responding among non-sexually abusive subjects. Little is known, however, about the value of retesting using viewing time as a measure of treatment progress.

As with any test, specific informed consent for the test procedure and release forms for reporting results are obtained prior to beginning testing. Examiners have a standardized protocol for presenting the stimuli, recording, and scoring. Examiners are familiar with the reliability and validity of the test. In particular, it is important that examiners know the degree to which the viewing time measure being used has been validated for the client population being assessed. Note that there is limited information specific to the use of viewing time with clients who have developmental disabilities. Currently this technology has primarily been used to identify sexual interest in gender and age. As well, there is limited information specific to the use of viewing time with clients with developmental disabilities.

The test report includes a description of the method used for collecting data, the types of stimuli used, an account of the client's cooperation and behavior during testing, and a summary and description of the client's responses. Client efforts to fake or other potential problems for the validity of the data or the interpretation of results are also included.

As noted in the main body of this document, viewing time is not to be used as the sole criterion for determining deviant sexual interests, estimating a client's risk for engaging in sexually abusive behavior, recommending whether a client be released to the community, or deciding whether a client has completed a treatment

program. Viewing time test results are interpreted in conjunction with other relevant information (for example, the individual's offending behavior, use of fantasy, and pattern of masturbation) and are never to be used to make inferences about whether an individual has or has not committed a specific sexual crime.

Polygraphy

Polygraph testing involves a structured interview during which a trained examiner records several physiological responses of the examinee. Following this interview, the examiner reviews the charted record and forms opinions about whether the examinee was non-deceptive or attempting deception when answering each of the relevant questions. Many regions and jurisdictions do not utilize polygraphy for a variety of reasons, including empirical questions about its reliability and validity, yet in many other jurisdictions it is a widespread practice.

Post-conviction sex offender polygraph testing is a specialized form of general polygraph testing. Although all principles applicable to general polygraph testing also apply to post-conviction sex offender testing, its unique circumstances generate additional challenges. Using post-conviction sex offender testing responsibly requires members to have at least a rudimentary understanding of how the polygraph works, its advantages and limitations, and special considerations related to its integration into work with individuals who have engaged in sexually abusive behaviors. As with any instrument or procedure, members should be familiar with current literature and obtain appropriate training before using or interpreting polygraph results.

Post-conviction sex offender testing is intended to serve the following objectives:

1. Facilitate a client's disclosure of sexual history information, which may include sexually abusive or offense-related behaviors (generally disclosed in the interview portion of the examination);

2. Eliciting from the client clarifying information regarding the instant/index offense
3. Exploring potential changes, progress and/or compliance relative to treatment and other case management goals and objectives (through yes/no questions about adherence to specific treatment and other case management expectations); and/or
4. Making collaborative case management decisions about a client with other partners and stakeholders based on the information gleaned from the examination interview.

Some research indicates that the polygraph examination can lead to clients providing increased information regarding their sexually abusive behaviors; however, as has been mentioned, test validity and reliability often vary widely across studies. Examiner and examinee characteristics, treatment milieu, instrumentation, procedures, examination type, base rates of attempted deception in the population being tested, and other idiosyncratic factors can also affect reliability and validity. Therefore, it is important for providers to become informed about types of tests that produce the most accurate findings. As well, it is possible that some of the information obtained through post-conviction sex offender testing might be fictitious, representing an accommodation to pressure for disclosures. The third objective of post-conviction sex offender testing—to gauge enhanced supervision and treatment compliance—has received only limited empirical attention.

Members' primary purpose for collecting sexual history information is to further inform, as a complement to other assessment data, clinical interventions and other management strategies. The usefulness of post-conviction sex offender polygraph testing as a "clinical" tool is based on its potential to elicit historical information, thus arguably allowing psychosexual behavioral patterns to be more fully revealed, better understood, and therefore more effectively managed and changed.

The American Polygraph Association, The National Association of Polygraph Examiners, and other polygraph associations have developed standards for certifying polygraph examiners who work in the management and treatment of sexual abusers, as well as standards for administering sexual abuser tests. Some states also regulate post-conviction sex offender testing standards and procedures. Members are familiar with laws, state regulations, and association guidelines governing post-conviction sex offender testing where they practice. Members work with examiners who meet certificate requirements and adhere to procedures recommended by a relevant polygraphists' organization.

Four types of post-conviction polygraph exams are commonly performed with individuals who have engaged in sexually abusive behavior:

1. **Instant/Index Offense Tests** are designed to explore and clarify discrepancies between the client's and the official descriptions of the conviction offense(s).
2. **Sexual History Disclosure Tests** are designed to facilitate a client's disclosure of sexual history information, which may include sexually abusive or offense-related behaviors, to their treatment provider prior or subsequent to the polygraph examination itself.
3. **Maintenance/Monitoring Tests** are designed to explore potential changes, progress, and/or compliance relative to treatment, supervision, and other case management goals, objectives, and expectations, based on specific yes/no questions pertaining to very specific and narrow expectations and goals that have been established.
4. **Specific Issue Tests** are generally designed using a yes/no format to explore a client's potential involvement in a specific prohibited behavior, such as unauthorized contact with a victim at a particular time.

Polygraph test accuracy is believed to be greatest when examiners focus on highly specified (i.e., single issue, narrow, and concrete) questions. Members cooperate with examiners in structuring tests that are responsive to program needs without unnecessarily compromising accuracy considerations.

Members must ensure that limits of confidentiality are fully disclosed to clients prior to polygraph testing, and that clients are afforded the opportunity for informed consent, specifically with respect to the ways in which the findings will be used and to whom the findings will be provided. Client disclosures of potentially incriminating information to mandated reporters can, lead to future prosecution. Members inform clients, in writing, of this potential dilemma and how it is addressed in their jurisdiction and program.

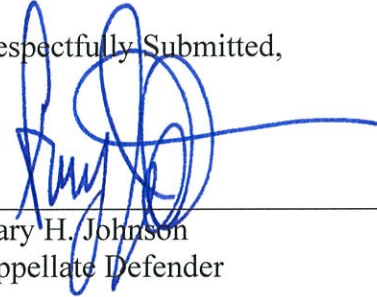
There is very limited empirical research on the use of polygraph with clients who have developmental disabilities and clients with low/borderline IQs. Therefore, further caution is advised if members use polygraphy for assessment, treatment, and management processes with these clients.

As noted in the main body of this document, polygraphy is not used as the sole criterion for determining deviant sexual interests, estimating a client's risk for engaging in sexually abusive behavior, recommending whether a client be released to the community, or deciding whether a client has completed a treatment program or to change a client's treatment status. When the polygraph is utilized, findings are to be interpreted in conjunction with other relevant information to inform decision making.

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,



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This 7th day of May, 2025.