

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**May 16 2025**

S.C. SUPREME COURT

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Appeal from Anderson County  
The Honorable R. Scott Sprouse, Circuit Court Judge  
On Certiorari to the Court of Appeals  
Supreme Court Appellate Case No. 2024-001782

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IN THE MATTER OF THE CARE AND TREATMENT  
OF JAMES LEWIS WILLIFORD,

RESPONDENT.

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**REPLY BRIEF OF PETITIONER  
STATE OF SOUTH CAROLINA**

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## ARGUMENT

As a threshold matter, rather than address Petitioner's argument regarding the court of appeals' failure to apply the appropriate standard of review, Respondent simply cites the appropriate standard of review. He then makes the conclusory argument that the court of appeals properly found Judge Sprouse abused his discretion by allowing the PPG evidence. As set forth in the Brief of Petitioner, the court of appeals failed to analyze Judge Sprouse's findings and conclusions to determine if any of them were unsupported by the evidence, and Respondent also fails to conduct that analysis.

Based on an extremely truncated and misleading version of the PPG evidence presented to Judge Sprouse, Respondent contends the court of appeals properly reversed Judge Sprouse's ruling that the PPG was reliable. In support of his contention, Respondent cites very limited portions of Dr. Gottfried's testimony regarding the PPG and takes the cited testimony completely out of context.<sup>1</sup>

By way of example, Respondent asserts Dr. Gottfried "admitted there were problems with standardization of the PPG test because it was used for different things," citing page 45, lines 8-10 as support.<sup>2</sup> Dr. Gottfried's actual testimony regarding different uses of the PPG, however, was that different uses "has been an issue when we are working on the standardizations," specifically what might be considered a significant arousal for treatment versus evaluation purposes. Rather than presenting this as a standardization "problem" with the PPG, Dr. Gottfried

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<sup>1</sup>Petitioner craves reference to the Statement of Facts in the Brief of Petitioner, the Petition for Writ of Certiorari and the Final Brief of Respondent before the court of appeals for detailed summaries of Dr. Gottfried's testimony supported by citation to the Appendix and Record on Appeal for context.

<sup>2</sup> Respondent's cherry-picking of the evidence is amply demonstrated by his citation to only three lines of the transcript as support for such an important point in his argument.

explained why the significant arousal determination might be different for treatment or evaluation, and why MUSC uses a particular cut score for significant arousal in SVPA evaluations. (Appendix, pp. 44-46).

Then, citing only five lines of the transcript, Respondent asserts Dr. Gottfried “acknowledged it was hard to know what every lab that conducts this test does.” Her actual testimony, however, related to labs using the Real Child Voices (RCV) stimulus set, and she testified there are between 50 to 100 labs using the Limestone PPG system, which includes the RCV set. (Appendix, pp. 74-76). Any difficulty in knowing exactly what other PPG labs are doing is no different than the difficulty in knowing exactly how other DNA labs, MRI labs, blood testing labs or any other scientific testing labs operate, and that does not render the DNA tests, MRIs, blood tests or scientific tests conducted by those labs unreliable as a matter of law. The undisputed evidence before Judge Sprouse established there are standard procedures for the many labs across the United States that use the PPG.

The evidence presented to Judge Sprouse also established that the PPG is now widely accepted as a valid, objective measure of male sexual arousal with application and uses in the general health and mental health communities. The mere fact some may consider the PPG “controversial” does not render the PPG either esoteric or junk science.<sup>3</sup> Literally every scientific test was labeled as esoteric or junk science at one point, including DNA testing, but after research

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<sup>3</sup> Indeed, a prominent mental health expert in South Carolina testified that the Static-99R risk assessment is unreliable, but the Static-99R is accepted and used by virtually every other mental health expert in the field of sex offender risk evaluations. See Matter of Chapman, Appellate Case No. 2014-001181, Record on Appeal, pp. 64-67, 238-245, 252). Using Respondent’s conclusory logic, the Static-99R would be considered “esoteric” and “junk science.”

and study, many were gradually accepted as valid in that particular field.<sup>4</sup> Such is the case with the PPG.

As Dr. Gottfried testified and set forth in the Brief of Petitioner, there is ample evidence the PPG is now widely researched and generally accepted. (Brief of Petitioner, pp. 22-26). In addition to the numerous peer-reviewed articles and presentations regarding the PPG, and notwithstanding the Bilton dicta claiming near uniformity of other jurisdictions excluding PPG evidence, courts have specifically recognized the general acceptance and admissibility of PPG evidence in sexually violent predator cases. (Brief of Petitioner, pp. 19-21). Rather than analyze the evidence presented, or even cite any recent articles or cases with contrary conclusions, however, Respondent simply makes the conclusory assertion, as the court of appeals did, that the PPG is unreliable and inadmissible.

As noted above, the contextual problems with Respondent's truncated version of the PPG evidence presented to Judge Sprouse are demonstrated by the Appendix citations in Respondent's Brief. Within one paragraph, Respondent cites a few transcript lines from one page, skips to a few lines from another page, skips back to a few lines from a previous page, and then skips forward to testimony from twenty to thirty pages later. (Brief of Respondent, p. 6-7). Again, the State craves reference to the Appendix, the Brief of Petitioner, the Petition for a Writ of Certiorari, and the State's Final Brief before the court of appeals for detailed summaries, including context, of the PPG evidence presented. Significantly, Respondent ignores one very important contextual fact – Dr. Gottfried's testimony regarding the PPG was undisputed.

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<sup>4</sup>The on-going controversy regarding the reliability of COVID testing results amply demonstrates the fact that scientific tests can be controversial. Some professionals would, and do, label those tests "junk science," but the test results are considered reliable by many healthcare professionals.

Respondent persists in highlighting a purported lack of standardization of PPG testing, even claiming Dr. Gottfried “explicitly admitted” the problem. Again, Respondent takes Dr. Gottfried’s testimony on that issue completely out of context. Dr. Gottfried did acknowledge a standardization issue related to “international” standards, not standards used in United States labs. She then explained that the standardization issue goes to other countries’ ability to use child pornography in their stimulus sets, which United States labs cannot do. (Appendix, pp. 45-46).

Respondent then uses the fact that Dr. Gottfried now tailors the PPG stimulus sets to address a particular examinee’s offense history as evidence that even her lab “lacked sufficient standardization regarding how the test was administered.” (Brief of Respondent, p. 13). Tailoring a particular test to the particular person being tested or the particular purpose of the test is hardly novel or inherently unreliable. The PPG used by the SBCL has multiple standardized stimulus sets, and Dr. Gottfried testified she now tailors the stimulus sets used during the PPG to the person’s offending history because a person’s arousal to children “is less meaningful to me if there’s no indication the person has a pedophilic disorder.” (Appendix, pp. 73-75).

Thus, much like a blood test is tailored to look for the absence or presence of a particular thing or condition, the PPG can be tailored to measure a particular sexual arousal, and that does not invalidate the PPG as unreliable. Indeed, tailoring the stimulus sets based on the person’s offense history makes the PPG even more reliable because it is focused on what is relevant to that person.

Respondent also contends that Dr. Gottfried’s testimony about the peer-review and publications regarding the PPG was somehow deficient because “much” of it related to her own publications and presentations, and it “lacked any detail regarding what her presentations and publications specifically discussed about the PPG test.” , (Brief of Respondent, pp. 12-13)

Interestingly, Respondent concedes that “the PPG test has long been written about,” but apparently faults Dr. Gottfried’s testimony for failing to specifically discuss the contents of each and every study, publication, and presentation relating to the PPG, which she testified included over 100 published articles.<sup>5</sup>

As to her personal publications and presentations, Dr. Gottfried testified about the studies she was involved with regarding the PPG, particularly the Real Child Voices stimulus set, and she presented the results of those studies at scientific conferences.<sup>6</sup> (Appendix, pp. 39-40, 59-62, 77). Further, and more importantly, Dr. Gottfried discussed the on-going research and findings regarding the PPG throughout her pre-trial testimony. (Appendix, pp. 33-90).

Respondent’s assertion that Dr. Gottfried’s testimony regarding the quality control procedures “was scant” is simply inaccurate. To the contrary, Dr. Gottfried testified in detail about the procedures followed in all PPGs administered in the SBCL, which are designed to ensure accuracy as much as possible, and particularly minimize false positive results, and the procedures used in the MUSC lab are standard procedures implemented by the PPG manufacturer. (Appendix, pp. 42-45, 79-84).

Respondent then contends Dr. Gottfried’s quality control testimony was inadequate

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<sup>5</sup> Respondent denigrates Dr. Gottfried’s reference to a 2021 article in a publication entitled Nature, which he asserts was “irrelevant” to use of the PPG in this case. This assertion completely misses the point. Dr. Gottfried’s testimony about the article established the medical community accepts the PPG as a reliable measure of men’s sexual arousal. If the PPG is considered reliable for purposes of diagnosis and treatment of men’s general sexual health, it is reliable for the purposes it is used in the MUSC lab - determination of deviant sexual arousal, which is directly relevant to the issue in this case.

<sup>6</sup> Many of the more up-to-date articles and case law regarding the PPG were cited in the Final Brief of Respondent before the court of appeals and are cited in the Brief of Petitioner. (Brief of Petitioner, pp. 22-26). In reversing Judge Sprouse, the court of appeals disregarded those articles and cases, instead citing outdated articles and case law. Respondent does the same. He cited no contrary articles in his brief before the court of appeals, and he does not cite any in his Brief before this Court.

because she “was unable to testify regarding how the test is administered in other labs around the country.” Most experts cannot testify with any authority about the procedures in other labs, and such testimony would likely be hearsay. Dr. Gottfried did testify that she was trained on the PPG and was certified as a licensed technologies clinical analyst by the PPG manufacturer, and the SBCL has been certified by the manufacturer as both a clinical and research laboratory, which is the highest possible certification. (Appendix, pp. 37-38). Since the manufacturer has sold approximately 100 of the same PPG systems used in the SBCL, it can easily be inferred that the purchasers administer the PPG in accordance with the manufacturer’s instructions. In any event, the science and technology behind the PPG remains the same regardless of the particular lab using it.

Respondent relies heavily on In the Matter of the Care and Treatment of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), citing dicta from the Bilton opinion that was based on the same outdated articles and case law Respondent cites in support of his argument. Respondent then summarily claims that “esoteric” and “junk science” accurately describe the PPG. This assertion ignores, as did the court of appeals, the extensive amount of scientific research, studies and peer-reviewed scholarly articles in scientific journals and presentations at national and international scientific conferences, all of which clearly establish the PPG is neither esoteric (intended for or understood by only a small group) or “junk science” (assertions that have the appearance, but not the actuality, of scientific support).

Respondent’s argument that the court of appeals properly reversed Judge Sprouse is premised on the court of appeals’ reliance on Bilton and In the Matter of the Care and Treatment of Daily, 443 S.C. 557, 905 S.E.2d 310 (Ct. App. 2024) (cert. granted February 12, 2025). As a threshold matter, Bilton is inapplicable because it involved PPG testimony from an expert who

was not trained in PPG technology and she did not conduct the PPG at issue or even know who conducted it, which the court of appeals concluded made her testimony a “conduit” for hearsay. Bilton, 851 S.E.2d at 446.

Significantly, the court of appeals in Bilton expressly refrained from finding the PPG is unreliable, and acknowledged that PPG evidence might be admissible given proper foundation evidence regarding reliability, which the State submits is exactly what was presented to Judge Sprouse in this case. Further, Respondent cites dicta from the Bilton opinion that is based on outdated information regarding the state of PPG technology and as dicta, it is irrelevant to the issue currently before this Court. “As has been universally recognized, ‘Dictum is not the law.’” State v. Bixby, Appellate Case No. 2007-054161, Supreme Court Order filed March 13, 2025 (Few, J., dissenting) (*quoting* Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173, 177 [2018] [Few, J. concurring in result]).

As to Respondent’s reliance on Daily, the State contends the court of appeals decision in Daily suffers from the same fundamental errors that are present in this case: 1) failing to apply the appropriate standard of review; 2) disregarding undisputed evidence establishing the PPG test is a recognized and reliable scientific measure of deviant sexual arousal; and 3) disregarding other evidence in the record supporting the trial court’s findings and conclusions. Daily is now pending before this Court on certiorari.

Respondent’s conclusory argument on the harmless error issue is unavailing. He asserts the PPG was more prejudicial than probative because Dr. Gottfried “relied heavily” on the PPG and “emphasized its importance in her conclusions.” In support of that assertion, Respondent presents the same inaccurate version of Dr. Gottfried’s statements regarding whether she could perform an evaluation without the PPG that the court of appeals relied on in its harmless error

discussion. Just as the court of appeals stated, Respondent claims Dr. Gottfried testified she “could not conduct an evaluation without the PPG.” As set forth in the Brief of Petitioner, however, the substance of Dr. Gottfried’s testimony was she would not do an evaluation without the PPG because it was part of the lab’s standard protocol that she created, rather than that she could not do an evaluation without it, and she intended to continue using the PPG even if she could not testify about it in court. She even stated “if I went somewhere they said I couldn’t use it, I wouldn’t – I likely wouldn’t take that job.” (Appendix, pp. 64-65). Therefore, Dr. Gottfried could do an evaluation without the PPG, but she chooses to use it because she believes it is reliable and provides another data point in her multi-method evaluations.<sup>7</sup> (Appendix, p. 66).

Respondent’s assertions regarding Dr. Gottfried purportedly relying heavily on the PPG results and emphasizing it in her testimony are belied by the record. Her PPG trial testimony was only 2% of her total testimony (direct, cross and re-direct), which does not constitute heavy reliance on it or an emphasis of it. (Brief of Petitioner, p. 31).<sup>8</sup> Rather, the vast majority of Dr. Gottfried’s trial testimony went to Respondent’s criminal history, the results of the full battery of psychological tests that are part of the lab’s standard protocol, Respondent’s scores on two actuarial risk assessments, her interview of Respondent, and the dynamic risk factors she determined applied to him. The only focus of her limited PPG testimony was that the results were consistent with the pattern established by Respondent’s offense history. In reversing Judge Sprouse’s decision, the court of appeals ignored that testimony and Respondent does the same.

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<sup>7</sup>Indeed, she testified she did one SVPA evaluation without the PPG because the court would not compel the person to take the PPG. (Appendix, p. 64). Therefore, Dr. Gottfried clearly can do an evaluation without the PPG, but she believes it is reliable and considers it to be an important part of her multi-method evaluation.

<sup>8</sup>While she did testify about the PPG extensively in the pre-trial hearing, that testimony was required because it went to the PPG’s reliability.

## CONCLUSION

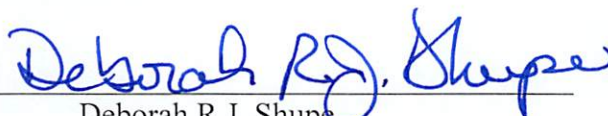
Based on the foregoing, and the matter set forth in the Brief of Petitioner, the Petition for a Writ of Certiorari, the Petition for Rehearing and the Final Brief of Respondent before the court of appeals, the State respectfully submits the court of appeals opinion reversing Respondent's commitment should be reversed, and Judge Sprouse's well supported rulings regarding the PPG, and his finding that Respondent is a sexually violent predator pursuant to the SVPA should be affirmed.

Respectfully submitted,

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