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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Bentley Price, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF ROBERT BRIAN SHARP,

APPELLANT.

APPELLATE CASE NO. 2024-000553

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sleep disorders including obstructive sleep apnea, periodic limb movements, restless legs syndrome, and bruxism.¹⁵⁻¹⁷ Most individuals with sexsomnia have a history of prior or current nonsexual NREM parasomnia. Most individuals have a history of or currently experience sleepwalking, sleep talking, or sleep terrors. Only 11.1% to 35.3% of subjects in research studies report no prior or current nonsexual NREM parasomnias.^{18,19} Similar to other NREM parasomnias, most instances of sexsomnia occur during the initial third of the night. Bed partners report that individuals who engage in SBS tend to be more direct and aggressive and less focused on the partner. They note that SBS may include sexual activities that are atypical for the individual¹⁹ and that the episodes are often brief, abruptly initiated, and short, lasting less than 30 minutes.¹² Consistent with other NREM parasomnias, most people report complete amnesia for sexsomnia,¹³ whereas a minority demonstrate patchy or full recall, particularly if the bed partner initiated the sexual activity.¹⁹ Individuals do not often attempt to conceal their actions and are typically upset when they become aware of them.¹²

The relationship of alcohol ingestion to the priming of NREM parasomnias is a topic of considerable academic debate.²⁰⁻²² In a survey of 39 patients with slow wave sleep disorders, 11 of 12 of those endorsing regular alcohol consumption reported that alcohol intake increased their parasomnia behaviors.²³ Alternatively, Pressman describes how the neurophysiology of alcohol's γ -aminobutyric acid type A (GABA-A) inhibitory activity opposes the known decrease in GABA-A inhibition observed in sleepwalking.²⁴ Alcohol intoxication can disrupt sleep architecture and alcoholic blackouts can mimic parasomnia behaviors, making it crucial to properly assess subjects' alcohol intake. Due to the lack of validated scientific evidence, the recently published *International Classification of Sleep Disorders, Third Edition, Text Revision (ICSD-3-TR)*²⁵ no longer lists alcohol as a trigger for sleepwalking. The ICSD-3-TR states that parasomnias should not be entertained or diagnosed in the setting of acute alcohol intoxication or when the observed behavior is better explained by alcohol intoxication or illicit drug use.

SLEEP-RELATED VIOLENCE AND SEXUAL BEHAVIOR IN SLEEP IN COURT

SRV and SBS can lead to physical injury, sexual abuse, and death. It is not surprising, then, that individuals who engage in SRV and SBS may face legal consequences for their behavior. In 2014, Ingravallo and colleagues published the first systematic review of medico-legal cases stemming

from SRV and SBS.¹ The authors identified 9 cases of SRV and 9 cases of SBS published between the years 1985 and 2011. All 9 of the SRV cases stemmed from a single sleep-related incident. The 9 defendants were all males between the ages of 14 to 42 years. Four of them reported ongoing sleep disturbance, 4 reported a history of parasomnias, and 3 reported a history of SRV. Behaviors were varied and included stabbing one's cousin to death; shooting one's wife; driving 23 km to the house of a wife's parents and beating and stabbing a mother-in-law to death; strangling one's wife while dreaming about being chased by armed Japanese soldiers; and throwing one's son out of a third-floor window. There were 10 victims, 6 of whom were female and 7 of whom were adults. Five defendants faced a charge of murder, 3 faced a charge of attempted murder, and 1 faced charges of both murder and attempted murder. Six defendants put forth defenses of sleepwalking; of these, 2 were acquitted, 2 were convicted, and 2 had their cases dropped or deserted. Other diagnoses included night terrors in 2 defendants who were acquitted and obstructive sleep apnea in 1 defendant who was convicted. Defendants received evaluations of varying depth with components including psychiatric evaluation, neurologic evaluation, electroencephalogram (EEG), head computed tomography (CT), and video-polysomnography (v-PSG).

In Ingravallo and colleagues' review of 9 medico-legal cases of SBS, all but 1 stemmed from a single incident.¹ As in the cases of SRV described above, all defendants were males. The range of ages was similar to the cases of SRV, as well. Six defendants had a clinical history of sleepwalking, sleepwalking with other parasomnias, or snoring. The reported behaviors included drinking a beer while naked in a major urban thoroughfare; fondling breasts; digital penetration of a vagina; and oral, anal, and vaginal penetration of a woman sleeping in a room separate from that of the defendant. Aside from the case involving a man walking nude on a road, all cases had a single female victim. Charges were varied and included sexual assault, sexual battery, rape, sexual misconduct, repeated sexual fondling, and indecent exposure. Five defendants put forth defenses of sleepwalking and 1 a defense of sexsomnia, whereas 3 defendants did not have an explicit defense. Experts diagnosed sleepwalking in 3 cases, NREM parasomnia in 3 cases, nocturnal complex seizure in 1 case, "parasomnic behavior" in 1 case, and parasomnia overlap disorder involving sleepwalking, SBS, and REM sleep behavior disorder in 1 case. Eight of 9 defendants received an acquittal, whereas the outcome of 1 defendant's case was unknown. Forensic evaluations ranged in depth as in the SRV cases.

In 2015, Organ and Fedoroff published an analysis of 10 cases of sexsomnia from Canada occurring between 1966 and 2013.²⁶ Similar to Ingravallo and colleagues' systematic review,¹ all defendants were males and had female victims. Only 4 subjects had known prior parasomnias. The authors noted that alcohol was a "priming factor" in 8 of the 10 cases. Four defendants received outright acquittals, whereas 4 were found guilty due to "lack of supporting evidence." In 1 case, a defendant was found not criminally responsible on account of a mental disorder before receiving an absolute discharge from a government psychiatric facility. The outcome of 1 case was pending at the time of publication.

In 1 final case series of SBS, Mohebbi and colleagues reviewed 8 American cases from 2004 to 2012 in which a defendant presented a sleep disorder as a defense for repeated sexually inappropriate behavior.²⁷ Consistent with the previously described case series, all 8 defendants were males. In contrast, however, all cases involved minor female victims, except 1 case that involved 2 minor male victims. All victims knew the defendant. Most defense experts diagnosed the defendant with an NREM parasomnia such as sleepwalking, sleep terrors, and sexsomnia. Despite this, the defendant was found guilty in 7 of 8 cases; in the remaining case, an appellate court reversed and remanded the verdict of guilt due to the exclusion of an expert's testimony on sexsomnia.

The published medico-legal case series of SRV and SBS are limited in scope and do not account for all cases in which SRV and SBS have been presented in court. Regardless, differences in the outcomes of the cases suggest potential trends in how legal decision-makers view these phenomena. For example, it is notable that all defendants received an acquittal in the cases of SBS reviewed by Ingravallo and colleagues,¹ whereas there were no known acquittals in the series presented by Mohebbi and colleagues.²⁷ It is possible that the legal decision-makers in cases involving recurrent sexual abuse of children are less likely to find in favor of a defendant, regardless of the amount and quality of supporting evidence that the individual has a parasomnia. Also notable is the variation in the degree of interpersonal aggression involved in cases of SRV and SBS. All the cases of SRV presented by Ingravallo and colleagues¹ involved charges of homicide or attempted homicide, rather than less-violent behaviors such as striking, kicking, or hair-pulling. In contrast, cases of SBS included behaviors ranging from standing naked in public to repeated sexual assault, consistent with the variability in sexually inappropriate behavior.

THE FORENSIC EVALUATION OF PARASOMNIAS

With the growing recognition of SRV and SBS and sexsomnia's recent inclusion in the DSM and ICSD, there has been an increasing interest in the forensic evaluation of parasomnias. Some authors have attempted to delineate some guidelines for the evaluation of alleged parasomnias in the forensic context,^{1,28,29} although there is no clear consensus on what constitutes an adequate assessment. In fact, some experts opine that the evidence base of SRV and SBS is too limited to support the proposal for international guidelines on the forensic evaluation of SRV and SBS and instead recommend the prioritization of further research into sleep behaviors.³⁰ This is a legitimate concern; however, defendants and their attorneys may increasingly view a defense of SRV and SBS as worthy of consideration, prompting forensic evaluation and the production of expert opinion. Experts asked to evaluate such claims would therefore benefit from some evidence-based recommendations to assist in conducting such assessments.

Research on Forensic Referrals for Sleep-Related Violence and Sexual Behavior in Sleep

In 2019, Bornemann and colleagues published a review of 351 referrals to a forensic sleep medicine center during 11 years.³¹ Of those, only 110 (31%) were found to be "possibly sleep-related" and accepted for rendering an opinion by a forensic sleep medicine expert. The 241 other cases were rejected because they were believed to be related to a medical condition, a psychiatric condition, alcohol intoxication, or illicit drug use. The most common referrals related to sexual assault (n = 52), murder (n = 18), and driving under the influence of drug or alcohol (n = 7). Seventy-seven cases involved a parasomnia, including 46 sexsomnia cases. In cases of parasomnia, most perpetrators were men (n = 69, 90%) and most victims were women (n = 62, 81%). In the 46 cases of sexsomnia, all perpetrators were men and most victims were women (n = 43, 93%). Other causes for SRV and SBS included zolpidem side effects (n = 17), sleep deprivation (n = 7), obstructive sleep apnea (n = 6), and insomnia (n = 2). Notably, the authors did not report any cases of malingering or feigned parasomnia in their review.

Diagnostic Considerations

One of the primary tasks of a forensic evaluator in cases of SRV and SBS is to determine if the

individual suffers from a parasomnia or other sleep disorder. As the diagnosis of RBD and nocturnal seizure disorders is more straightforward and less forensically fraught than the diagnosis of NREM parasomnias, this section will focus on NREM parasomnias. **Table 1** summarizes relevant elements of the forensic evaluation of SRV and SBS. An in-depth clinical history is necessary and includes a sleep history, psychiatric history, neurologic history, substance use history, family history of sleep disorders, sexual history, and violence history. Descriptions of the SRV events should be consistent with common clinical findings of NREM parasomnias (see **Text Box 1**). Sleep comorbidities, shift work, psychological stress, fatigue, and psychotropic medication use are also relevant areas of inquiry. It is necessary to obtain collateral information from victims, current or prior bed partners, or family members who may be aware of a history of behaviors consistent with a parasomnia.²⁸ **Table 2** summarizes findings that suggest an explanation other than an NREM parasomnia for SRV.

The value of v-PSG in forensic evaluations of SRV and SBS is debatable for multiple reasons.

Video-polysomnography may not capture an episode of NREM parasomnia-related behaviors,¹⁸ which is particularly true in studies of SBS.¹⁹ In fact, there have been few reported cases of SBS occurring in the laboratory setting at all.³² A failure to identify evidence of an NREM parasomnia in v-PSG, therefore, does not rule out the possibility that an individual has one. However, v-PSG may provide evidence of other sleep disorders that could trigger or contribute to episodes of SRV or SBS, such as sleep apnea, periodic limb movements, among others. From a legal perspective, however, there may be little utility in obtaining v-PSG. Even if an individual demonstrates evidence of an NREM parasomnia in the laboratory, such a finding does not mean that he or she was asleep at the time of the alleged offense.³³ Experts have noted that, "there is absolutely no after-the-fact polysomnography finding that could possibly have any relevance as to whether the accused was sleepwalking at the time of the event in question."³⁴ Expert evaluators should therefore consider the potential evidentiary benefit of v-PSG when deciding whether to obtain one in the forensic context.

Table 1
Components of the forensic evaluation of alleged sleep-related violence and sexual behavior in sleep

Component of Evaluation	Factors to Consider
Sleep history	<ul style="list-style-type: none"> • Description of alleged parasomnia-related behaviors based on collateral data from bed partner/family member observer. • Childhood history of an NREM parasomnia • Previous known history of parasomnias, SRV, and SBS • History of other comorbid sleep disorders (untreated obstructive sleep apnea, insomnia, circadian rhythm disorders, periodic limb movements, and so forth) • Identification of potential parasomnia triggers, including fatigue, and illicit substance use, psychotropic medication use, shift work, and cross-time zone travel
Other relevant history	<ul style="list-style-type: none"> • Psychiatric history (including treatment with psychotropic serotonergic medications) • Substance use history • Neurologic history • Family history of sleep disorders • Sexual history (for cases of SBS) • Violence and legal history
Collateral information	<ul style="list-style-type: none"> • Collateral report of parasomnia-related behaviors (from family members or prior or current bed partners) • Relationship between victim and defendant, including a history of violence or abuse
Neurologic evaluations	<ul style="list-style-type: none"> • EEG • CT head or MRI brain (if concern for an organic lesion) • v-PSG (weigh the evidentiary benefit beforehand)
Psychophysiological evaluations (in cases of SBS)	<ul style="list-style-type: none"> • VRT assessment of sexual interests • PPG to assess sexual arousal disorder

Box 1
Expected features of sleep-related violence due to non-rapid eye movement parasomnia

- A history of similar episodes
- Some interaction with the environment
- Usually brief duration
- Without apparent motivation
- Victim is someone who just happened to be present
- Horror or confusion on return of consciousness
- No efforts to escape, conceal the act, or evade responsibility
- Occurs at least 1 h after sleep onset or on awakening
- Not better explained by another mental disorder, medical condition, medication, or substance use

Adapted from Cramer-Bornemann, M. A., Mahowald, M. W. (2017). Sleep Forensics: Criminal Culpability for Sleep-Related Violence. In Kryger, M., Roth, T., Dement, W. C. (Eds.), Principles and Practice of Sleep Medicine, 6th Edition. Amsterdam, NE: Elsevier.

Malingering

Because a parasomnia defense can lead to acquittal or a finding of not criminally responsible, defendants may increasingly attempt to feign a history of SRV or SBS to evade criminal responsibility for their acts. Apart from observing a defendant pretending to engage in violent or sexual behavior while undergoing v-PSG, there are no objective measures by which to identify malingered parasomnias. Forensic experts must rely on collateral information and clinical history to identify inconsistencies or other evidence of feigning in a defendant's narrative.²⁸ Table 3 summarizes some potential indicators of feigned parasomnia. Efforts to hide evidence of one's alleged SRV or SBS are inconsistent with genuine

NREM parasomnias because most individuals lack awareness of their behaviors unless informed by others. Examples include threatening a victim, wearing a condom, and removing clothing or linens from the location of the act. Failing to take steps to avoid repeat acts of SRV and SBS after becoming aware of one's behavior is also concerning. One might expect a conscientious adult to seek out medical attention or otherwise prevent contact with potential victims after learning that he has perpetrated SRV or SBS. Rational preventive behaviors would include locking bedroom doors, storing potential weapons securely, and sleeping in separate rooms. This is likely one reason why all the defendants in Mohebbi and colleagues' case series²⁷ were convicted of sex offenses: repeated sexual abuse of children in the absence of efforts to reduce one's own risk suggests alternative motives for the behavior. Additional warning signs for feigned parasomnias include recall of the incident and new-onset SRV or SBS as the sole presenting parasomnia-related behavior.

Psychosexual Evaluation of Sexual Behavior in Sleep

In cases of alleged SBS, a forensic psychiatrist with expertise in psychosexual evaluation is crucial to identify the presence of atypical sexual interests, or paraphilias, or other psychological motivations that may play a role in sexual behavior.²⁸ A thorough psychosexual evaluation often includes a clinical interview, the review of collateral records, the interview of collateral informants, and objective testing of sexual interests and sexual arousal. In the clinical interview, the evaluator will obtain a detailed sexual history assessing childhood exposure to sexual stimuli and activity, pornography exposure and use, masturbatory practices, sexual acts with others, and a review of potential paraphilic fantasies and interests. Perhaps not surprisingly, individuals undergoing evaluation following SBS who wish to present a sexsomnia defense may not be forthcoming about atypical or problematic sexual

Table 2
Findings indicative of sleep-related violence not due to non-rapid eye movement parasomnia

Finding	Potential Explanation for SRV
Alcohol intoxication before sleep	Alcohol-induced blackout; alcohol intoxication state
Illicit drug use before sleep	Other intoxication state
Zolpidem use before sleep	Zolpidem-induced parasomnia
Dream imagery recall	RBD
Efforts to conceal the act or evade responsibility	Malingering (Table 3)

Table 3**Potential indicators of feigned sleep-related violence and sexual behavior in sleep**

Element	Explanation
Attempts to conceal one's behavior	Threatening a victim or hiding evidence indicates that the defendant is aware of the behavior and attempting to evade responsibility for it
Recurrent SRV and SBS after being notified of violent or sexual acts in sleep	A failure to take steps to reduce one's risk of engaging in SRV or SBS after being informed of the behavior suggests either a disregard for potential victims or feigned parasomnia
Full recall of episodes of SRV and SBS	Individuals typically lack memory of the events that occur in NREM parasomnias or have memory of dream imagery in REM parasomnias
SRV or SBS as sole parasomnia-related behavior in new-onset parasomnia	Most individuals who engage in SRV or SBS have other co-occurring parasomnias. New-onset SRV or SBS without additional parasomnia symptoms should raise one's suspicion for malingering

Adapted from Holoyda et al., 2021.²⁸

interests, so the use of collateral records and informants and objective measures can be useful. Software that assesses visual reaction time (VRT) and penile plethysmography (PPG) can provide evidence of atypical sexual interest and arousal, respectively.³⁵

An expert conducting a forensic evaluation of SBS should always consider paraphilias in the differential diagnosis. For example, a case involving child victims necessitates an evaluation for possible pedophilic disorder. Legal records and collateral informants may provide evidence of pedophilic interest, for example, use of child sexual exploitation materials or a history of grooming behavior. Alternatively, a scenario characterized by particularly violent or brutal sexual behavior should raise suspicion for sexual sadism disorder. Former bed partners may note that the individual has a history of aggressive and injurious sexual behavior. As previously noted, some bed partners of individuals with SBS report more direct, less partner-focused, and sometimes atypical sexual activity.¹⁹ The forensic expert should therefore attempt to identify numerous sources of evidence indicative of a paraphilic disorder before making such a diagnosis. Diagnosing a paraphilic disorder based solely on the reported SBS would be inappropriate.

Violence Risk Assessment and the Relationship of Sleep-Related Violence and Sexual Behavior in Sleep to Waking Behavior

The relationship between SRV and an individual's risk of violence in waking life is unknown.²⁸ There are no studies assessing the violence histories of individuals with known or alleged SRV. It is

unclear if standardized violence risk assessments such as the Violence Risk Appraisal Guide-Revised or the History-Clinical-Risk Version 3 are relevant in the evaluation of individuals with a history of SRV and criminal sanction for such behavior. The relationship between SBS and waking sexuality is similarly mysterious. It is unclear if an individual's waking sexual orientation and sexual interests remain constant during SBS. If an adult man is accused of engaging in SBS with another man or prepubescent children, it is unclear if such behavior suggests an underlying homosexual orientation or pedophilic interest, respectively. Such questions are particularly relevant for treating clinicians and forensic experts involved in developing risk management strategies for individuals with SRV and SBS. If SRV and SBS are phenomena truly independent from a person's behavior in waking life, then treatment of the underlying parasomnia or other sleep disorders should reduce the risk of a recurrence of violence and sexually violent behavior. Whether this is the case remains unclear. Of course, an individual may theoretically have a parasomnia co-occurring with a paraphilic disorder. Determining that a defendant's inappropriate sexual behavior is secondary to a parasomnia rather than a paraphilic interest when the purported SBS is consistent with one's paraphilic interest would be particularly challenging. There should be substantial evidence supporting a finding of SBS before proffering such an opinion.

Criminal Responsibility

The most relevant forensic question in cases of SRV and SBS is the defendant's criminal responsibility.

To commit a crime, an individual must have *mens rea* (guilty mind) and perpetrate an *actus reus* (guilty act). In addition, some criminal statutes establish the degree of intent that an individual must possess at the time of the offense to be convicted. Levels of intent in criminal law include purposely, knowingly, recklessly, and negligently. In cases involving SRV and SBS related to a parasomnia, an individual may be completely unaware of his or her behavior and, therefore, lack *mens rea* and fail to develop any degree of intent to commit a crime. Theoretically, individuals with a known history of SRV and SBS who fail to take steps to protect bed partners or others in the vicinity and engage in SRV or SBS could be accused of a reckless or negligent criminal intent, either consciously disregarding the risk of sexual abuse or failing to be aware of the risk, respectively.³⁶ A parasomnia defense provides a defendant the opportunity to negate his or her *mens rea* at the time of an offense through an insanity plea or to demonstrate that he or she lacked the capacity to develop the requisite criminal intent for the crime. It is the parasomnia's effect on criminal responsibility that renders it potentially attractive to would-be malingerers. Forensic assessments of criminal responsibility for SRV and SBS therefore require cautious formulation of a diagnosis, evaluation of alternative explanations for the alleged behavior, and consideration of malingering.

After a finding of current mental illness and dangerousness, individuals who are found not guilty by reason of insanity (NGRI) are typically remanded to a forensic psychiatric hospital setting and remain there until they are no longer dangerous to the community. As noted above, there is no research on the risk of waking violence posed by individuals who engage in genuine SRV and SBS. It is therefore unclear what purpose treatment in an inpatient forensic hospital setting might serve. Forensic evaluators tasked with evaluating individuals found NGRI based on a parasomnia may have to develop a risk mitigation plan for those returning to the community.²⁸ Risk mitigation strategies may include mandated outpatient sleep medicine treatment, avoidance of triggers for parasomnias, treatment of the parasomnia and co-occurring sleep and psychiatric disorders, and restrictions on sleeping arrangements with bed partners and other individuals in the home environment. Legal decision-makers may experience fear or worry about conditionally releasing an individual found NGRI for SRV or SBS, in which case the forensic expert may provide education about parasomnias and the limited research regarding the risk for violence posed by individuals with parasomnias.

SUMMARY

Although more research is necessary to better understand SRV and SBS, defendants, attorneys, and legal decision-makers increasingly seek forensic assessment of alleged SRV and SBS in criminal cases. Conducting an adequate forensic assessment of alleged SRV and SBS requires an understanding of sleep medicine and forensic psychiatry. Malingering, criminal responsibility, and psychosexual considerations are all potentially relevant in such cases. Despite a limited evidence base, forensic experts may serve an important role in educating attorneys, juries, and judges about parasomnias and associated SRV and SBS.

CLINICS CARE POINTS

- The role of v-PSG in the forensic evaluation of alleged parasomnia is questionable. Attorneys and experts should carefully consider the evidentiary benefit of obtaining v-PSG for a defendant before doing so.
- The forensic evaluation of alleged sexsomnia requires a psychosexual evaluation conducted by a forensic psychiatrist to rule out the presence of a rational alternative motive for the act, such as a paraphilic sexual interest.
- Defendants found not criminally responsible based on a parasomnia diagnosis may be mandated to treatment at a forensic psychiatric hospital or in the community. Forensic evaluators and clinicians must identify and develop a risk management strategy to reduce the likelihood of future SRV and SBS.

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Article

Validation of the Multidimensional Model of the Subjective Orgasm Experience in the Context of Masturbation

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ABSTRACT

Background/Objective: The multidimensional model of the subjective orgasm experience has been validated only in the sexual relationship context, with no evidence for its validity in the solitary masturbation context. This study aims to provide validity evidence for this model in the solitary masturbation context by examining the association of its dimensions (affective, sensory, intimacy, and rewards) with different sexual arousal measures. **Method:** Thirty men and thirty women viewed content-neutral and sexually explicit masturbation films. Subjective orgasm experience, propensity for sexual excitation/inhibition, rating of sexual arousal, rating of genital sensations and genital response (penile erection or vaginal pulse amplitude) were assessed. Regression models were conducted to explain the subjective orgasm experience from sexual arousal measures. **Results:** Propensity for sexual excitation, propensity for sexual inhibition, and the rating of sexual arousal was associated with the different dimensions of the orgasm experience in men, while in women, the rating of sexual arousal and the rating of genital sensations was associated with the sensory dimension. **Conclusions:** Validity evidence is provided for the multidimensional model of the subjective orgasm experience in the solitary masturbation context.

Validación del Modelo Multidimensional de la Experiencia Subjetiva del Orgasmo en el Contexto de la Masturbación

RESUMEN

Antecedentes/objetivos: El modelo multidimensional de la experiencia subjetiva del orgasmo ha sido validado en el contexto de las relaciones sexuales, sin evidencias de validez en la masturbación en solitario. Este estudio pretende proporcionar evidencias de validez del modelo en el contexto de la masturbación en solitario examinando la asociación de sus dimensiones (afectiva, sensorial, intimidad y recompensa) con medidas de excitación sexual. **Método:** Treinta hombres y treinta mujeres visionaron filmes neutros y sexuales explícitos de masturbación. Se evaluó la experiencia subjetiva orgásmica, propensión a la excitación/inhibición sexual, valoración de la excitación sexual, valoración de las sensaciones genitales y respuesta genital (erección peniana o amplitud del pulso vaginal). Se realizaron modelos de regresión para explicar la experiencia subjetiva orgásmica a partir de las medidas de excitación sexual. **Resultados:** La propensión a la excitación sexual, la propensión a la inhibición sexual y la valoración de la excitación sexual se asociaron con diferentes dimensiones de la experiencia subjetiva orgásmica en hombres. En mujeres, la valoración de la excitación sexual y la valoración de las sensaciones genitales se asociaron con la dimensión sensorial. **Conclusiones:** Se aportan evidencias de validez al modelo multidimensional de la experiencia subjetiva del orgasmo en el contexto de la masturbación en solitario.

Palabras clave:

Modelo de la experiencia subjetiva del orgasmo
Masturbación
Excitación sexual
Respuesta genital

Introduction

Orgasm is a critical indicator of pleasure and sexual health (Kontula & Miettinen, 2016) with psychological, physiological, and social backgrounds associated with its experience (Levin & van Berlo, 2004). It is defined as a sensation of intense pleasure combined with changes in the pelvis muscles and resolution of sexual vasocongestion (Meston et al., 2004). Recent works have shown an interest in studying the subjective orgasm experience, which refers to the psychological perception and evaluation of an orgasm (Arcos-Romero & Sierra, 2020; Mah & Binik, 2020; Mollaioli et al., 2018; Muñoz-García et al., 2023).

Mah and Binik (2001) proposed a multidimensional model of the subjective orgasm experience. It included sensorial (i.e., associated with perception of psycho-physiological events), evaluative (i.e., implying an evaluation of an orgasm) and affective (i.e., related to the emotions felt during or immediately following an orgasm) aspects. By taking the basic conceptions of this model as a reference, Arcos-Romero et al. (2018) considered a model of the subjective orgasm experience in the sexual relationship context by integrating four dimensions: affective, sensory, intimacy and rewards. The affective dimension refers to emotional experience during an orgasm, which can be described with adjectives like “fulfilling” or “pleasurable”. The sensory dimension denotes the feelings perceived during an orgasm, described as “uncontrolled” or “exploding”. The intimacy dimension is related to aspects linked with the intimate orgasm experience, and is described by adjectives like “loving” or “tender”. Finally, the rewards dimension is associated with the most rewarding component of an orgasm, described as “soothing” or “relaxing”.

Sexual arousal is defined as an emotional/motivational state that can be activated by internal and/or external stimuli, expressed at both physiological (e.g., genital response), and psychological (e.g., rating of sexual arousal) levels (Bancroft & Janssen, 2000; Janssen, 2011). The assessment of sexual arousal at the psychological level can be measured either as a state in response to a specific situation or stimulus, such as the rating of sexual arousal/genital sensations, or as a trait characterized by a propensity for sexual excitation/inhibition, according to the Dual Control Model (Bancroft & Janssen, 2000). This model conceptualizes sexual arousal as the result of a balance between excitatory and inhibitory mechanisms (i.e., propensity for sexual excitation/sexual inhibition).

Based on evidence about the relation of an orgasm with sexual arousal (Brody, 2007; Brody et al., 2013; Paterson et al., 2014; Stoléru et al., 2012), Arcos-Romero et al. (2019) associated the four dimensions of the subjective orgasm experience in the sexual relationships context with propensity for sexual inhibition/excitation, genital response and self-reported sexual arousal when viewing a film in which a couple have heterosexual relationships. In men, propensity for sexual excitation was associated with the affective, sensory and rewards dimensions of the orgasm experience, whereas genital response was a significant variable associated with the intimacy dimension. In women, the sensory dimension of the orgasm experience was associated with subjective sexual arousal. This validated the multidimensional model of the subjective orgasm experience in the sexual relationships' context.

Recently, Cervilla et al. (2022) psychometrically backed this multidimensional model of the subjective orgasm experience by

finding a similar factorial structure of its measure, the Orgasm Rating Scale, in the solitary masturbation context. In other words, the subjective orgasm experience in the masturbation context groups the same four dimensions that characterized it in sexual relationships: affective, sensory, intimacy and rewards. This similar multidimensional proposal for both contexts shapes a useful conceptual framework from the clinical and research viewpoints (Cervilla et al., 2022).

It has been pointed out that the subjective orgasm experience can differ according to the context in which it takes place and is more intense in the sexual relationships context than in the solitary masturbation one (Muñoz-García et al., 2023; Sierra et al., 2021). The interest in distinguishing the context in which the subjective orgasm experience occurs arises from the initial evidence that approached orgasm from a psychological perspective (Mah & Binik, 2001, 2002). Control and autonomy tend to characterize solitary sexual activity, while mutuality and closeness are more prominent in the context of sexual relationships (Foust et al., 2022; Goldey et al., 2016; Rowland et al., 2019). This highlights the importance of having a valid model that allows for distinguishing between contexts, as they can provide valuable information for sexual health. Thus, following the proposal of Arcos-Romero et al. (2019) in the sexual relationships context, it is important to back the multidimensional model of the subjective orgasm experience in masturbation by relating its dimensions with sexual arousal (i.e., propensity for sexual excitation/inhibition, rating of sexual arousal, rating of genital sensations and genital response) to more profoundly understand the subjective orgasm experience. Previous evidence has shown an association between sexual arousal in response to videos depicting sexual relationships and previous orgasmic consistency reported within sexual relationships (Brody, 2007; Brody et al., 2003). In this way, the objective of the present study was to provide validity evidence for the multidimensional model of the subjective orgasm experience in the solitary masturbation context based on its association with sexual arousal measures as related variables. To do so, the associations of the scores of the four dimensions of the subjective orgasm experience (affective, sensory, intimacy, rewards) will be examined by means of sexual arousal and, more specifically, by propensity for sexual inhibition and excitation (Bancroft et al., 2009), and by the rating of sexual arousal and genital response experienced when faced with the visual sexual stimuli that show masturbation behavior. Thus, as observed in the context of sexual relationship (Arcos-Romero et al., 2019), the different sexual arousal measures are expected to have significant associations with the dimensions of the subjective orgasm experience in the solitary masturbation context (Arcos-Romero et al., 2019).

Method

Participants

The sample consists of 60 Spanish heterosexual young adults (30 men, 30 women) aged 18-29 years. The mean age of participants was 23.23 years for men ($SD = 3.05$) and 22.43 years for women ($SD = 3.13$), with no significant differences between the two groups ($t = 1.00, p < .32$). All the participants reported previous solitary masturbation and sexual relationships

experience. The exclusion criteria were: (a) having medical problems, sexual dysfunction and/or psychological disorders; (b) taking medication that could interfere with sexual functioning (e.g., antidepressants, antihypertensive); (c) drugs/alcohol use; and (d) history of sexual abuse.

Instruments and Materials

The Socio-demographic and Sexual History Questionnaire

It assesses sex, age, nationality, sexual orientation, sexual activity, medical/psychological/sexual problems, pharmacological treatments, drugs/alcohol use and sexual victimization history.

Spanish Version of the Orgasm Rating Scale (Mah & Binik, 2020) Validated in the Masturbation Context by Cervilla et al. (2022)

Its 25 adjectives, answered on a 6-point Likert scale (0 = *does not describe it at all*; 5 = *describes it perfectly*), quantify the intensity of the subjective orgasm experience in the solitary masturbation context. This instrument is referred to the most recent orgasm experienced in the masturbation context with the following instructions: "Try to recall to the best of your ability the most recent orgasm you experienced during solitary masturbation. This may include any sexual activity you engaged in while alone. [...]. Next to each adjective, rate how well it describes your most recent orgasm through solitary masturbation". The scale is distributed on four dimensions (affective, sensory, intimacy, rewards), whose internal consistency reliability ranges from .71 (Intimacy) to .95 (Sensory). In addition, it measures are invariant by sex and it has adequate validity evidence (Cervilla et al., 2022). Cronbach's alpha in the present study was .92.

The Spanish Version of the Sexual Inhibition/Excitation Scales-Short Form (Carpenter et al., 2011) by Moyano and Sierra (2014)

Based on the Dual Control Model (Bancroft et al., 2009), it assesses self-reported propensity for sexual excitation and inhibition with 14 items distributed in three subscales: Sexual excitation, Sexual inhibition due to threat of performance failure, and Sexual inhibition due to threat of performance consequences of sexual activity. It has adequate internal consistency reliability with values between .66 and .85 (Sierra et al., 2024), and shows adequate validity evidence (Sierra et al., 2019). In the present study, a Cronbach's alpha of .55 was obtained for sexual excitation, .84 for sexual inhibition due to threat of performance failure and .62 for sexual inhibition due to threat of performance consequences of sexual activity.

The Spanish Version of the Rating of Sexual Arousal (Mosher, 2011) by Sierra et al. (2017)

It has five items with varying Likert-type responses from 1 (*no arousal at all*) to 7 (*extremely sexually stimulated*). It evaluates self-perception of the overall level of sexual arousal, intensity of genital sensations, sensations of warmth experienced, nongenital physical sensations and level of sexual concentration. It has adequate internal consistency reliability (Cronbach's alpha of .90). In this study, a coefficient of .92 was obtained.

The Spanish Version of the Rating of Genital Sensations (Mosher, 2011) by Sierra et al. (2017)

It has a list of 11 descriptions about genital sensations from no genital sensation to multiple orgasms. Its validity evidence is adequate (Sierra et al., 2017).

The Biopac Model MP150 Polygraph With 16 Channels (Biopac Systems Inc., Goleta, CA, USA) With the AcqKnowledge 5.0 Software is Used for Data Acquisition and Processing

To measure genital response, a penile plethysmograph module (Biopac amplifier DA100C and indium/gallium plethysmograph sensors) and a vaginal photoplethysmography module (Biopac amplifier PPG100C and vaginal transducers) are used. Genital response is calculated from the difference between the scores of the sexual stimulus and the baseline stimulus according to previous laboratory studies (Álvarez-Muelas et al., 2022; Arcos-Romero et al., 2019; Granados et al., 2021).

Visual stimuli

Two 3-minute content-neutral (nature documentary) and two sexually explicit films with a man or woman engaged in solitary masturbation. The sexual films were previously validated by demonstrating the ability to elicit sexual arousal (Cervilla et al., 2021).

Procedure

The study was previously approved by the Ethics Committee on Human Research of the University of Granada (n. 682/CEIH/2018). Young adults were invited to participate voluntarily and without compensation through distribution lists of university students, posters and posts on social networks. The recruitment of participants was carried out between October 2021 and July 2022. Interested volunteers accessed an online survey previous to the experimental laboratory task that included screening instruments, used to ensure the inclusion and exclusion criteria. It included informed consent, the Socio-Demographic and Sexual History Questionnaire, and the Spanish versions of the Orgasm Rating Scale and Sexual Inhibition/Excitation Scales-Short Form. Eligible participants were contacted and invited to the Human Sexuality Laboratory. Women were not evaluated during menstruation. To avoid potential sources of variation in physiological response, the participants were asked to refrain from consuming caffeine, alcohol and engaging in sexual activity, either alone or with a partner, during the 24-hour period prior to the experiment.

During the experimental laboratory task, the participants accepted informed consent with the purpose of the experiment, which ensured their anonymity and data confidentiality. After they were explained what their participation would consist in and placing devices to record their genital response, the man or women researcher (who coincided with the participant's sex) left the experimental room. After placing devices and checking for a good signal, they were allowed a 5-minute adaptation time. Temperature and lighting of the experimental room were stable. Genital response was recorded while the participants viewed two blocks of videos: (a) neutral video 1 and sexual video 1; (b) neutral video 2 and sexual video 2. Sequences were counterbalanced among the participants to control

a possible effect of the order of stimuli (Álvarez-Muelas et al., 2022; Granados et al., 2021). According to their heterosexual orientation, men viewed sexual videos of a masturbating woman, and women viewed a masturbating man. When each sexual video ended, the participants answered the Rating of Sexual Arousal and Rating of Genital Sensations. During the laboratory task, the objective was to assess genital response and self-reported sexual arousal elicited by visual sexual stimuli depicting masturbation behavior. For hence, no masturbation occurred in the laboratory task.

Data Analysis

By considering a power calculation ($\alpha = .05$, power = .80, effect size = 0.55, number of predictors = 5) performed using the G*Power program (Faul et al., 2007), for multivariate regression models it was established that a minimum of 30 participants per group was necessary. First, descriptive statistics of the evaluated variables were compared between men and women using the Student's *t*-test. The association among the four dimensions of subjective orgasm experience and all sexual arousal measures was analyzed using Pearson correlations. Multiple regression models by the stepwise method were proposed to explain the variance of the orgasm dimensions, separately in men and women. The predictor variables were divided into two blocks: (1) propensity for sexual

excitation/inhibition and (2) rating of sexual arousal, rating of genital sensations, and genital response.

Results

The descriptive statistics of the variables evaluated are shown in Table 1. Significant differences between men and women were observed only in the rating of genital sensations ($t = -2.71$, $p < .01$). No differences were found in the affective, sensory, intimacy and reward orgasm dimensions, propensity for sexual excitation/inhibition, and rating of sexual arousal.

Bivariate Correlations

Regarding correlations (see Table 2), an association was observed between propensity for sexual excitation and the affective ($r = .43$, $p < .05$), sensory ($r = .39$, $p < .05$) and rewards dimensions ($r = .49$, $p < .01$) for men. Propensity for sexual inhibition due to threat of performance consequences correlated with the affective ($r = -.61$, $p < .001$), sensory ($r = -.52$, $p < .01$) and rewards dimensions ($r = -.40$, $p < .05$). The rating of sexual arousal was significantly related to the affective ($r = .44$, $p < .05$), sensory ($r = .38$, $p < .05$) and intimacy dimensions ($r = .44$, $p < .05$). The rating of genital sensations and genital response were associated with the intimacy dimension of orgasm ($r = .37$, $p < .05$; $r = .37$, $p < .05$, respectively).

Table 1
Descriptive Statistics of the Evaluated Variables

Variables	Total <i>N</i> = 60		Men <i>n</i> = 30		Women <i>n</i> = 30		<i>t</i>
	<i>M</i> (<i>SD</i>)	Range	<i>M</i> (<i>SD</i>)	Range	<i>M</i> (<i>SD</i>)		
Affective	24.53 (4.84)	5-30	24.07 (5.48)	14-30	25 (4.16)		-0.74
Sensory	31.22 (12.60)	1-55	30.97 (14.53)	2-51	31.47 (10.57)		-0.15
Intimacy	6.33 (3.22)	0-15	6.67 (3.67)	1-13	6 (2.73)		0.79
Rewards	11.03 (3.27)	1-15	11.33 (3.51)	2-15	10.73 (3.05)		0.70
Propensity for sexual excitation	15.92 (2.82)	9-22	15.97 (3.37)	11-19	15.87 (2.19)		0.13
Propensity for sexual inhibition to the threat of performance failure	7.75 (2.15)	5-16	7.17 (2.26)	5-13	8.33 (1.90)		-2.16
Propensity for sexual inhibition to the threat of performance consequences	11.23 (2.38)	5-16	11.17 (2.74)	9-16	11.30 (2.00)		-0.21
Rating of sexual arousal	9.28 (6.26)	0-20	8.10 (5.11)	0-23	10.47 (7.13)		-1.47
Rating of genital sensations	2.13 (1.40)	0-4	1.67 (1.12)	0-6	2.60 (1.51)		-2.71**
Genital response	-	0.65-28.70	10.21 (7.03)	0-0.09	0.04 (0.02)		-

Note. ** $p < .01$.

Table 2
Correlations Between the Subjective Orgasm Experience Dimensions (Affective, Sensory, Intimacy and Rewards) and Propensity for Sexual Excitation, Propensity for Sexual Inhibition due to Threat of Performance Failure, Propensity for Sexual Inhibition due to Threat of Performance Consequences, Rating of Sexual Arousal, Rating of Sexual Arousal and Genital Response

Variable	1	2	3	4	5	6	7	8	9	10
1. Affective	-	.43*	.22	-.05	-.08	-.13	-.16	.01	.07	-.22
2. Sensory	.70***	-	.36	.18	.03	.40*	-.19	.59**	.38*	-.10
3. Intimacy	.55**	.51**	-	-.07	.11	.19	-.28	.25	.10	.29
4. Rewards	.72***	.59**	.63***	-	-.17	.03	.32	.32	.23	-.05
5. Propensity sexual excitation	.43*	.39*	.29	.49**	-	.34	-.11	.04	.21	-.14
6. Propensity for sexual inhibition to the threat of performance failure	.00	-.06	-.04	-.15	-.02	-	-.06	.38*	.30	.06
7. Propensity for sexual inhibition to the threat of performance consequences	-.61***	-.52**	-.32	-.40*	-.50**	.22	-	.05	.10	.08
8. Rating of sexual arousal	.44*	.38*	.44*	.33	.41*	-.18	-.48**	-	.82***	.17
9. Rating of genital sensations	.19	.18	.37*	.20	.12	-.15	-.11	.69**	-	-.04
10. Genital response	.18	.14	.37*	.10	.13	-.20	-.21	.69**	.64***	-

Note. Values below the diagonal are based on men scores. Values above the diagonal are based on women scores. * $p < .05$; ** $p < .01$; *** $p < .001$.

Table 3
Multiple Regression Models for Subjective Orgasm Experience Dimensions in men

Predictors	B	SE	β	95% CI	t	p	R ²	VIF
Affective							.35	
Propensity for sexual inhibition due to the threat of performance consequences	-1.03	0.34	-.51	-1.72, -0.33	-3.02	.005		1.30
Rating of sexual arousal	0.21	0.18	.19	-0.17, 0.58	1.14	.265		1.30
Sensory							.24	
Propensity for sexual inhibition due to the threat of performance consequences	-2.35	0.98	-.44	-4.35, -0.35	-2.41	.023		1.30
Rating of sexual arousal	0.46	0.52	.16	-0.61, 1.54	0.88	.385		1.30
Intimacy							.16	
Rating of sexual arousal	0.32	0.12	.44	0.07, 0.57	2.59	.015		1.00
Rewards							.21	
Sexual excitation	0.51	0.17	.49	0.16, 0.86	2.96	.006		1.00

Notes. B: non-standardized beta; SE: standard error; β : standardized beta; 95% CI: 95% confidence interval; R²: adjusted R-squared value; VIF: Variance inflation factor

Table 4
Multiple Regression Models for Subjective Orgasm Experience Dimensions in Women

Predictors	B	SE	β	95% CI	t	p	R ²	VIF
Sensory							.33	
Rating of sexual arousal	1.23	0.39	.83	0.41, 1.34	3.16	.004		1.00
Rating of genital sensations	-2.05	1.83	-.29	0.16, 5.17	-1.12	.274		1.00

Notes. B: non-standardized beta; SE: standard error; β : standardized beta; 95% CI: 95% confidence interval; R²: adjusted R-squared value; VIF: Variance inflation factor

For women, correlations were observed between propensity for sexual inhibition due to threat of performance failure ($r = .40, p < .05$), rating of sexual arousal ($r = .59, p < .01$) and rating of genital sensations ($r = .38, p < .05$) with the sensory dimension.

Regression Models

Regarding regression models, in men propensity for sexual excitation was positively correlated with the rewards dimension, $R^2 = .24, F(1, 28) = 8.78, p < .01$. Propensity for sexual inhibition due to threat of performance consequences was significantly associated in the negative sense with the affective, $R^2 = .35, F(1, 28) = 8.89, p < .01$, and sensory dimensions, $R^2 = .25, F(1, 28) = 5.58, p < .01$. The rating of sexual arousal was positively associated with the intimacy dimension of orgasm, $R^2 = .16, F(1, 28) = 6.70, p < .05$ (see Table 3).

In women, only the sensory dimension was associated with the positive sense with the rating of sexual arousal, $R^2 = .33, F(1, 28) = 8.13, p < .01$ (see Table 4).

Discussion

The present study aimed to provide validity evidence of the multidimensional model of the subjective orgasm experience in the solitary masturbation context by relating the measures of its four dimensions with sexual arousal measures (i.e., propensity for sexual excitation, propensity for sexual inhibition due to threat of performance failure, propensity for sexual inhibition due to threat of performance consequences, and the rating of sexual arousal, the rating of genital sensations and genital response when viewing videos showing masturbation behavior).

The relations found between orgasm and sexual arousal measures were congruent with previous findings (Arcos-Romero et al., 2019; Brody, 2007; Brody et al., 2013; Paterson et al., 2014; Stoléru et

al., 2012). In men, propensity for sexual excitation correlated with the rewards dimension, and propensity for sexual inhibition due to threat of performance consequences was correlated with the affective and sensory dimensions. Also, the rating of sexual arousal was a significant correlate of the intimacy dimension of orgasm. In women, only the sensory dimension correlated with the rating of sexual arousal. The differences that appeared between the sexual arousal variables involved in men and women's subjective orgasm experience also fall in line with previous results which suggest that an orgasm is experienced differently depending on subjects being men or women (Arcos-Romero & Sierra, 2020; Mangas et al., 2022; Tavares et al., 2018).

First of all, propensity for sexual excitation was related in men with the affective, sensory and rewards dimensions of orgasm. Despite these correlations being moderate, only propensity for sexual excitation was capable of explaining 21% of variance for the rewards dimension. The association of propensity for sexual excitation with orgasm in men, but not in women, has already been previously reported (Arcos-Romero et al., 2019; Carpenter et al., 2011; Moyano & Sierra, 2014). Explanations related to gender differences have been put forward because men show greater propensity for sexual excitation than women (Arcos-Romero & Sierra, 2020; Carpenter et al., 2011; Moyano & Sierra, 2014). This is consistent with results that have related this trait to more frequent masturbation (Janssen et al., 2002), with men showing more frequency (e.g., Cervilla et al., 2022; Mercer et al., 2013). In the sexual relationships context, it has also been reported that women do not always expect to have an orgasm after sexual arousal (Salisbury & Fisher, 2014), which suggests a relative independence between sexual arousal and an orgasm in women. While previous studies have linked propensity for sexual excitation with orgasm (Quinta Gomes et al., 2018), there is also evidence where no differences in propensity for sexual excitation were observed in women with and without orgasmic difficulties (Moura et al., 2020),

suggesting some independence of this dimension of excitation from the subjective orgasm experience in women. Future works should more profoundly analyze these findings in the masturbation context. It has also been hypothesized that the items making up this scale might be more representative of the sexual arousal of men than women (Graham et al., 2004; Granados et al., 2017).

Moreover, propensity for sexual inhibition due to threat of performance failure was correlated positively with the sensory dimension of the last orgasm in the masturbation context. Despite not being a variable significantly associated with this dimension of orgasm in the regression model, the correlation could be counterintuitive. It has been previously described how sexual inhibition is associated with orgasm problems (Moura et al., 2020) by propensity for sexual inhibition due to threat of performance failure playing a relevant role in difficulties with female orgasm (Tavares et al., 2018). Nonetheless, those women who have more difficulty in having an orgasm during sexual relationships consider masturbation more satisfactory (Rowland et al., 2019), which could explain the association between propensity for sexual inhibition due to threat of performance failure and more intense sensorial experience with an orgasm obtained by masturbation, where clitoris stimulation is more frequent than vaginal penetration (Fahs & Frank, 2014; Rowland et al., 2020).

Propensity for sexual inhibition due to threat of performance consequences was correlated in men negatively with the affective, sensory and rewards dimensions, but only explained variance negatively on the affective and sensory dimensions. The previous literature reveals how propensity for inhibition due to threat of performance failure is more relevant in sexual dysfunctionality for men (Bancroft et al., 2009; Moyano & Sierra, 2014; Sierra et al., 2019) and women (Tavares et al., 2018) comparing to propensity for sexual inhibition due to threat of performance consequences. However, our results suggest that the role of sexual inhibition propensity due to the threat of performance consequences might be more relevant in the context of masturbation than inhibition due to the threat of performance failure. This pattern is contrary to what was observed in the context of sexual relationships, where inhibition due to the threat of performance failure appears to be more relevant to sexual functioning difficulties than sexual inhibition propensity due to the threat of performance consequences (Bancroft et al., 2009; Sierra et al., 2019; Tavares et al., 2018). This would suggest that the role of sexual inhibition might differ according to the type of sexual activity. Future work should address this question in greater depth. In line with this, previous results have pointed out that inhibition for fear of sexual activity consequences would be a more related dimension to external threats than to sexual difficulties (Bancroft et al., 2009). Indeed, one of the items of this dimension refers to inhibition associated with being discovered while masturbating: "If I am masturbating on my own and I realize that someone is likely to come into the room at any moment, I will lose my erection/my sexual arousal". Practicing masturbation in men could be seen as behavior that compensates unsatisfactory sexual relationships or not participating in them (Regnerus et al., 2017). So it is possible to expect inhibition by the presence of an external threat during such practice might affect the intensity with which an orgasm is experienced.

The associations of the sexual arousal and genital sensation ratings with the subjective orgasm experience in both men and women are congruent with former studies (Paterson et al., 2014; Stoléro et al.,

2012). The rating of sexual arousal explained, on the one hand, 33% of the variance on the sensory dimension for women, and congruently with that observed in the sexual relationships context (Arcos-Romero et al., 2019) and, on the other hand, 16% of the variance on the intimacy dimension of orgasm for men. These results fall in line with former findings showing a relation between either an increase or accumulation of the sexual arousal rating and having an orgasm after masturbation in the laboratory context for men and women (Paterson et al., 2014). The relation between genital sensations and the sensory dimension in women (Arcos-Romero et al., 2019) is congruent with the hypothesis which indicates that women can better describe orgasm sensations than men when considering physical, affective and emotional aspects (Rowland et al., 2018; Sierra et al., 2021), while men are more focused on their own genital reactions (Mah & Binik, 2002). The association between the rating of sexual arousal and the intimacy dimension of masturbation in men could be expected because they use explicit sexual material more frequently during masturbation than women (Hald et al., 2014), which could favor the sexual arousal experienced in the laboratory being correlated with intimate aspects of men's last orgasm.

Finally, genital response (penile circumference) correlated with the intimacy dimension for men. This association coincides with that encountered in the sexual relationships context (Arcos-Romero et al., 2019). Unlike this cited work, genital response in the present study was not a significant variable associated in the regression model with orgasm experience. Recent results point out how people with sexual dysfunction in the sexual relationships context reveal better functioning in the masturbation context (Rowland et al., 2021). This suggests that men's subjective orgasm experience could be relatively independent of genital response unlike the sexual relationships context.

Worth mentioning, in terms of sexual concordance, the differences in the intercorrelation patterns between men and women. These differences reveal that rating of sexual arousal and genital response correlate more weakly in women than in men, which is consistent with prior findings (see Chivers et al., 2010). In women, subjective sexual arousal and subjective genital sensations are correlated with each other, whereas they do not correlate with genital response. However, these two measures are the only ones correlated with the sensory dimension (except for sexual inhibition due to the threat of performance failure). In women, higher sexual concordance in response to sexual relationship stimuli has been associated with a more frequent experience of orgasm (consistency) in sexual relationships but not in masturbation (Brody et al., 2003). These results would suggest that, in women, sexual concordance would be independent of both orgasmic consistency and the subjective orgasm experience in masturbation. On the other hand, in men, congruence is observed between rating of sexual arousal and genital response, but these measures are not the strongest variables correlated with the sensory dimension. Despite finding greater sexual concordance, sexual inhibition would have a greater impact on the orgasmic experience during masturbation. Taken together, these results suggest that sexual concordance would not be associated with the orgasmic sensory dimension during masturbation. Future research should more specifically test this hypothesis by considering variables related to traditional sexual scripts (Bonilla-Algobia & Rivas-Rivero, 2022) and sexual double standard (Álvarez-Muelas et al., 2022, 2023). Moreover, there are no differences between men

and women in most measures of sexual arousal. This suggests that the distinct association patterns between sexes are unlikely to be explained by different score distributions. However, these findings should be approached with caution, as previous work has indicated that the applied analytical methods may be linked to observed sexual concordance (Suschinsky et al., 2009) and the type of device used could also be implicated in this lack of concordance, as the rating of sexual arousal is more strongly associated with vulvar blood flow than with vaginal vasocongestion (Bouchard et al., 2017).

This study has some limitations. The sample was formed by a young heterosexual university population, which should be considered when generalizing the results. Due to the sample size and the differences between men and women in internal consistency—especially in the measures of the intimacy dimension—, interpretations should be considered with caution. This design type might not allow causality relations to be established. Future research should include a population with a wider age range, and different gender identities or sexual orientations. Due to the different observed relationships of sexual inhibition with the subjective orgasm experience, future studies should include additional measures of propensity for sexual inhibition/excitation to enrich the results.

Conclusion

The results of this study contribute evidence to validity of the multidimensional model of the subjective orgasm experience in solitary masturbation, confirming its usefulness. It is worth highlighting the relation between sexual arousal measures and the subjective orgasm experience in masturbation, especially for men, where its dimensions are correlated with more sexual arousal measures than women. Similarly, as observed in the sexual relationships context, the variables related to propensity for sexual inhibition/excitation would be more relevant for men, while for women the rating of sexual arousal would be more relevant. In conclusion, studying orgasm experience from a multidimensional perspective offers a conceptual framework that allows orgasm to be evaluated by including differential nuances in the psychological qualities of the sexual response in men and women. This model helps us to gain a deeper understanding of the different patterns observed in both men and women and highlights the importance of considering orgasm not only in the context of sexual relationships. The findings of this study contribute to a more intricate viewpoint, contributing to the essential exploration of orgasm from a psychological perspective. These ideas could potentially guide sex therapy by shedding light on the roles of arousal and the mechanisms that contribute to heightened orgasm experiences.

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Institutional Review Board Statement: This study was approved by the Ethics Committee on Human Research of the University of Granada (n. 682/CEIH/2018).

Informed Consent Statement: Informed consent was obtained from all subjects involved in the study.

Data Availability Statement: The data is available upon request from the corresponding author.

Conflicts of Interest: The authors declare that there is no conflict of interest.

GENERAL SESSIONS TRACKING SHEET

INDICTMENT NO: 2019-GS-01-1336; 1337, 1338

NAME: ROBERT BRIAN SHARP

WARRANT NO(S): 2017A2110100625

2017A2120202049

2017A2120202050

2019 OCT -2 PM 5:16
DORIS POULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

DISPOSITION:

- NOLLE PROS.
- DISMISSED/NOT PROS/PROS ENDED
- REMANDED
- DISMISSED AT PRELIM
- JUDICIAL COMMITMENT
- JUDICIAL DISMISSAL
- FAILURE TO APPEAR
- OTHER

EXPLAIN: The defendant pled to other warrants and indictments.

DATE: 10/2/19

SOLICITOR: Jerrold Hunsucker, AG office

[Faint circular stamp: CLERK OF COURT, FLORENCE COUNTY, SOUTH CAROLINA]

EXHIBIT
12

PROBATION DEPT
1000 9th St
OAKLAND CA 94612
OCT 5 1978

FILED

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

ARREST WARRANT

2017A2110100625

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 Florence)

Personally appeared before me the affiant Terry L. Christmas, Jr who
 being duly sworn deposes and says that defendant Robert Brian Sharp
 did within this county and state on or about 10/15/2017 violate the criminal laws of the
 State of South Carolina (or ordinance of County/ Municipality of Florence)
 in the following particulars:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
 THAT THE DEFENDANT DID ON OR ABOUT 10/15/2017 AT MILFORD LANE, FLORENCE SC IN FLORENCE COUNTY S.C. COMMIT THE OFFENSE OF KIDNAPPING. TO WIT: THE DEFENDANT (ROBERT BRIAN SHARP) DID COERCE AN 11 YEAR OLD FEMALE MINOR TO THE VEHICLE HE WAS SEATED IN TO LOOK AT A PICTURE OF HIS PUPPY ON HIS CELLULAR PHONE. WHEN THE MINOR WALKED UP TO THE VEHICLE THE DEFENDANT EXPOSED HIS PENIS TO HER. THE DEFENDANT DID ATTEMPT TO KIDNAP THE VICTIM BY TELLING HER TO GO WITH HIM TO LOOK FOR HIS PUPPY. THE 11 YEAR OLD VICTIM RODE HER BICYCLE BACK TO HER HOUSE TO ELUDE THE SUSPECT. THE SUSPECT FOLLOWED HER BACK TO HER RESIDENCE IN HIS VEHICLE. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. INVESTIGATED BY PCSO CASE NUMBER 2017-10-0455.

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 Florence)

Affiant's Address 6719 Friendfield Road
Effingham, SC 29541-
 Affiant's Telephone (843)665-2121

Signature of Affiant [Signature]

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 It appearing from the above affidavit that there are reasonable grounds to believe that
 on or about 10/15/2017 defendant Robert Brian Sharp
 did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Florence) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
 Sworn to and subscribed before me
 on 11/20/2017)
 Signature of Issuing Judge [Signature] (L.S.))
 Judge's Address 180 North Irby Street (MSC-W)
Florence, SC 29501-
 Judge's Telephone (843)665-0031
 Issuing Court: Magistrate Municipal Circuit

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THE STATE
 against
 Robert Brian Sharp

Address: [Redacted]
Johnsonville, SC 29555-

Phone: [Redacted] SSN: [Redacted]
 Sex: M Race: W Height: 6 2 Weight: 185
 State: SC DL #: [Redacted] Agency ORI #: SC0210000
 DOB: [Redacted] /1986
 Prosecuting Agency: Florence County Sheriff
 Prosecuting Officer: Terry L. Christmas, Jr - S00253
 Offense: Kidnapping / Kidnapping

Offense Code: 0095
 Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____ The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge _____

RETURN
 A copy of this arrest warrant was delivered to
 defendant Robert Brian Sharp
 on 11/20/17
[Signature]
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 General Sessions Court
 M S C-E 180 North Irby Street
 Florence, SC 295013456

ORIGINAL

ORIGINAL



WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Handwritten notes:
 1/10
 1/10
 1/10

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

CODEFENDANTS

FILED

52
After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury

Defendant

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

DEFENSE ATTORNEY
FLORENCE COUNTY, S.C.
JAMES H. HARRIS, III
1000 W. BROAD ST.
FLORENCE, S.C. 29501

Defendant

Witness:

C.C.C. Pls. And G.S.

Docket Number 2019-GS-21-01338

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

August Term 2019

THE STATE

vs.

Robert Brian Sharp

DEFENDANT

Indictment for

Attempted Kidnapping

Common Law
Felony/Class A
CDR Code 95

WITNESSES

Terry Christmas - Florence County

Sheriff's Office

ARREST WARRANT NUMBER

2017A2110100625

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Attest: _____

Date: 8/22/2019

VERDICT

Foreperson of Petit Jury

Date:

WITNESSES

Sheldon Shelley - Florence Police
Department

ARREST WARRANT NUMBER

2017A2120202049

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
ADD

Date: 8/22/2019

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2019-GS-21-01336

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

August Term 2019

THE STATE

vs.

Robert Brian Sharp

DEFENDANT

Indictment for

Attempted Kidnapping

Common Law
Felony/Class A
CDR Code 95

524
After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury

Defendant

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

CERTIFIED
CLERK OF COURT C.L.R. S.C.
FLORENCE COUNTY, S.C.

Defendant

Witness:

C.C.C. Pls. And G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE) IN THE COURT OF GENERAL SESSIONS

INDICTMENT

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of Florence County present upon their oath:

Attempted Kidnapping

On or about November 7, 2017, the Defendant, Robert Brian Sharp, did in Florence County, commit the crime of attempted kidnapping, in that the Defendant did attempt to unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away a minor, not his child, to wit: the Defendant, attempted to lure the victim, E.B. [REDACTED], into his vehicle in violation of §16-03-0910, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

for  *CDA6*
 ALAN WILSON, JEFF
 SOUTH CAROLINA ATTORNEY GENERAL

52
After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury

Defendant

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

OFFICE OF THE CLERK OF COURT
FLORENCE COUNTY, S.C.
JUL 22 2019 10:00 AM
Clerk of Court
Florence County, SC

Defendant

Witness:

C.C.C. Pls. And G.S.

Docket Number 2019-GS-21- 01337

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

August Term 2019

THE STATE

vs.

Robert Brian Sharp

DEFENDANT

Indictment for

Attempted Kidnapping

Common Law
Felony/Class A
CDR Code 95

WITNESSES

Sheldon Shelley - Florence Police
Department

ARREST WARRANT NUMBER

2017A2120202050

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
ATD

Date: 8/22/2019

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE) IN THE COURT OF GENERAL SESSIONS

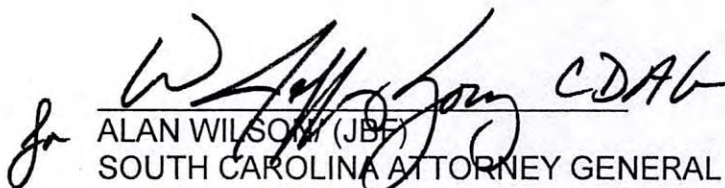
INDICTMENT

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of
 Florence County present upon their oath:

Attempted Kidnapping

On or about November 13, 2017, the Defendant, Robert Brian Sharp, did in
 Florence County, commit the crime of attempted kidnapping, in that the Defendant did
 attempt to unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away a
 minor, not his child, to wit: the Defendant, attempted to lure the victim, A.L. [REDACTED], into
 his vehicle in violation of §16-03-0910, Code of Laws of South Carolina, (1976, as
 amended).

Against the peace and dignity of the State, and contrary to the statute in such case
 made and provided.

for  CDAB
 ALAN WILSON (JBF)
 SOUTH CAROLINA ATTORNEY GENERAL

11-16-17

ARREST WARRANT

2017A2120202050

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

THE STATE
against

ROBERT BRIAN SHARP

Address: [REDACTED] JOHNSONVILLE SC 29555
Phone: [REDACTED] SSN: [REDACTED]
Sex: [REDACTED] Race: W Height: 6-2 Weight: 152
DL State: SC DL#: [REDACTED] Agency OR#: SC0210100
DOB: [REDACTED] / 1988
Prosecuting Agency: FLORENCE MUNICIPAL COURT
Prosecuting Officer: SHELDON SHELLEY II
Offense: ATTEMPTED KIDNAPPING

Code/Ordinance Sec. 16-03-0910 Offense Code: 0095

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

is to be arrested and brought before me to be
dealt with according to law.

Date: _____ Signature of Judge _____ (L.S.)
Time _____

RETURN
A copy of this arrest warrant was delivered to
defendant ROBERT BRIAN SHARP
on 11/16/17
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

Personally appeared before me the affiant SHELDON SHELLEY II
being duly sworn deposes and says that defendant ROBERT BRIAN SHARP
did within this county and state on 11/13/2017

State of South Carolina (or ordinance of County/ Municipality of FLORENCE
in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0910 / ATTEMPTED KIDNAPPING

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE JUVENILE VICTIMS, AGES 7 AND 9, WERE RIDING THEIR BICYCLES IN THE 2700 BLOCK OF WHITESTONE DR, LOCATED IN THE CITY OF
FLORENCE. THE VICTIMS WERE APPROACHED BY THE DEF. IN A BLACK SPORT UTILITY VEHICLE. THE DEF., A YOUNG WHITE MALE, ASKED
THE VICTIMS IF THEY HAD SEEN HIS GOLDEN RETRIEVER DOG AND THEY ADVISED HIM THEY HAD NOT AND RODE AWAY. THIS INCIDENT
AND DEF AND VEHICLE DESCRIPTION IS IDENTICAL TO AN INCIDENT THAT OCCURRED ON 11/07/2017 IN WHICH THE SAME VEHICLE AND DEF.
APPROACHED A TEN YEAR OLD GIRL IN FLORENCE ASKING HER IF SHE HAD SEEN HIS GOLDEN RETRIEVER DOG. THE DEF'S LICENSE PLATE
NUMBER (DDY154) WAS CAPTURED BY A HOME SURVEILLANCE SYSTEM ON WHITESTONE DR AND RETURNED TO THE DEF. THIS VEHICLE
INFORMATION LED TO AN ADDRESS IN JOHNSTONVILLE, SC WHERE THE VEHICLE WAS LOCATED. THE DEF'S HOUSE IS IN ANOTHER TOWN
AND YET HE HAS POSED AS THOUGH HE IS LOOKING FOR HIS DOG IN TWO NEIGHBORHOODS IN THE CITY OF FLORENCE. THE DEF'S
BEHAVIOR AND MISLEADING QUESTIONS SUPPORT THE AFFIANT'S BELIEF THAT THIS WAS AN ATTEMPT TO ABDUCT THE JUVENILE VICTIMS.

Signature of Affiant


STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE
Affiant's Address FLORENCE POLICE DEPT., 324 W. EVANS
FLORENCE SC 29501
Affiant's Telephone 843-665-3191

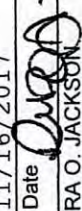
ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/13/2017 defendant ROBERT BRIAN SHARP

did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of FLORENCE) as set forth below:
DESCRIPTION OF OFFENSE: KIDNAPPING / KIDNAPPING

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on 11/16/2017)
Date  Time _____ (T.S.)
DEBRA O. JACKSON)
Judge's Address 324 W. EVANS STREET, ROOM 103
FLORENCE SC 29501
Judge's Telephone 843-665-3148
Issuing Court: Magistrate Municipal Circuit
Judge Code: 6919

ORIGINAL

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

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 Telephone: _____

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 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defense Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Brian Sharp

AKA: _____
Race: White Sex: Male Age: 32
DOB: 1986 SS#: _____
Address: _____
City, State, Zip: Johnsonville, SC 29555
DL# _____ * SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-21 - 01604

AW#: Direct Presentment

Date of Offense: 11/7/2017

S.C. Code §: 16-15-0342

CDR Code #: 2999

SENTENCE SHEET

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Criminal Solicitation of a Minor

In violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

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 Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 102247 [Signature] [Signature] 100799
Assistant Attorney General SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 10/2/19
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____
 Set by SCDPPPS

Recipient: _____

*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100
§14-1-211 (A)(2)(DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ _____

TOTAL

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]

PTUP _____

_____ days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. Or Job Corp. _____

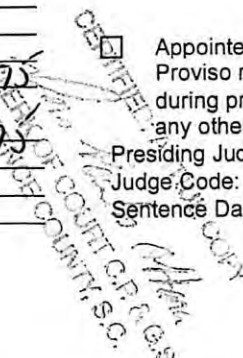
May serve W/E beginning
Substance Abuse Counseling

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
prmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: Defendant shall be placed on the sex offender registry

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]
Judge Code: 2153
Sentence Date 10/2/19



WITNESSES

Ashley Shelley - Florence Police
Department

ARREST WARRANT NUMBER

20196-52101604
Direct Presentation

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2019-GS-21-01604

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

October 2019 Term

THE STATE

vs.

Robert Brian Sharp

DEFENDANT

Indictment for

Minor/Criminal Solicitation of a Minor

16-15-0342

Felony/Class E

CDR Code 2999

After being fully advised as to my legal rights, I hereby waive presentation 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.

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2019 OCT -2 PM 5:17

FILED

531

RECEIVED
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.
OCT 2 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) IN THE COURT OF GENERAL SESSIONS

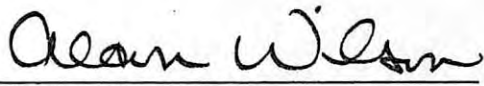
INDICTMENT

At a Court of General Sessions, convened on 10/2/2019 the Grand Jurors of Florence County present upon their oath:

Minor/Criminal Solicitation of a Minor

On or about November 7, 2017, the Defendant, Robert Brian Sharp, did in Florence County, commit the crime of criminal solicitation of a minor, in that the Defendant, a person over the age of eighteen, did knowingly contact or communicate with a person under the age of eighteen for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in sexual activity, to wit: the Defendant, made contact with the victim, E.B. [REDACTED], with the intent of persuading, inducing, enticing, or coercing her into engaging in sexual activity in violation of §16-15-0342, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON/ (JBF)
SOUTH CAROLINA ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence

STATE _____

VS.

INDICTMENT/CASE#: 2019-GS-21 - 01605

Robert Brian Sharp

AW#: Direct Presentment

AKA: _____

Date of Offense: 10/15/2017

Race: White Sex: Male Age: 32

S.C. Code §: 16-15-0342

DOB: [REDACTED] /1986 SS#: [REDACTED]

CDR Code #: 2999

Address: _____

City, State, Zip: Johnsonville, SC 29555

DL# [REDACTED] * SID# _____

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Criminal Solicitation of a Minor

CONVICTED OF or PLEADS

In violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

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 Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Jerald F. [Signature] 102247 Defendant [Signature] 100799 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 or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 10/2/19

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.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms: Set by SCDPPPS

Obtain GED Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning Substance Abuse Counseling

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$	100.00
§56-5-2995 (DUI Assessment)	\$	12
§56-1-286 (DUI Breath Test)	\$	25
Proviso (Public Def/Probation)	\$	500
§14-1-212 (Law Enforce. Funding)	\$	25
§14-1-213 (Drug Court Surcharge)	\$	150
§50-21-114 (BUI Breath Test Fee)	\$	50
§56-5-2942(J) (Vehicle Assessment)	\$	40/ea
3% to County (if paid in installments)	\$	_____

Random Drug/Alcohol Testing Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ _____ Paid to Public Defender Fund

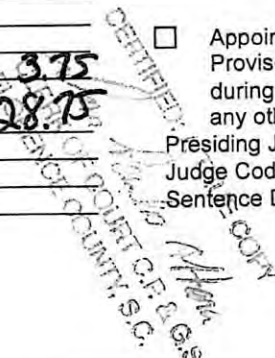
Other: Defendant shall be placed on the sex offender registry

TOTAL

Clerk of Court/Deputy Clerk E. Rogin
Court Reporter: K. Smith

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]
Judge Code: 2153
Sentence Date 10/2/19



WITNESSES

Terry Christmas - Florence County
Sheriff's Office

ARREST WARRANT NUMBER

2019G-52101605
Direct Presentation

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2019-GS-21-01605

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

October 2019 Term

THE STATE

vs.

Robert Brian Sharp

DEFENDANT

Indictment for

Minor/Criminal Solicitation of a Minor

16-15-0342

Felony/Class E

CDR Code 2999

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

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

2019 OCT -2 PM 5:17

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

DECLERED A TIME
CLERK OF COURT C.F. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) IN THE COURT OF GENERAL SESSIONS

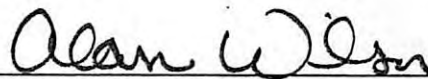
INDICTMENT

At a Court of General Sessions, convened on 10/2/2019 the Grand Jurors of Florence County present upon their oath:

Minor/Criminal Solicitation of a Minor

On or about October 15, 2017, the Defendant, Robert Brian Sharp, did in Florence County, commit the crime of criminal solicitation of a minor, in that the Defendant, a person over the age of eighteen, did knowingly contact or communicate with a person under the age of eighteen for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in sexual activity, to wit: the Defendant, made contact with the victim, S.B. [REDACTED], with the intent of persuading, inducing, enticing, or coercing her into engaging in sexual activity in violation of §16-15-0342, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALAN WILSON/ (JBF)
SOUTH CAROLINA ATTORNEY GENERAL

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

Personally appeared before me the affiant Terry L Christmas, Jr

being duly sworn deposes and says that defendant Robert Brian Sharp

did within this county and state on or about 10/15/2017 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Florence in the following particulars:

DESCRIPTION OF OFFENSE: Obscene / Disseminating obscene material to a minor 12 Y or younger

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT DID ON OR ABOUT 10/15/2017 AT MILFORD LANE, FLORENCE SC IN FLORENCE COUNTY S.C. COMMIT THE OFFENSE OF DISSEMINATING OBSCENE MATERIAL TO A MINOR 12 Y OR YOUNGER. TO WIT: THE DEFENDANT (ROBERT BRIAN SHARP) DID COERCE AN 11 YEAR OLD FEMALE MINOR TO THE VEHICLE HE WAS SEATED IN TO LOOK AT A PICTURE OF HIS PUPPY ON HIS CELLULAR PHONE. WHEN THE MINOR WALKED UP TO THE VEHICLE THE DEFENDANT EXPOSED HIS PENIS TO HER. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. INVESTIGATED BY FCOS CASE NUMBER 2017-10-0455.

Terry L Christmas, Jr
Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

Affiant's Address 6719 Friendfield Road

Effingham, SC 29541-

Affiant's Telephone (843)665-2121

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/15/2017 defendant Robert Brian Sharp

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Florence) as set forth below:

DESCRIPTION OF OFFENSE: Obscene / Disseminating obscene material to a minor 12 Y or younger

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 11/20/2017

Jerry F. Rivers
Signature of Issuing Judge

Jerry F. Rivers

Judge Code: 7339

Judge's Address 180 North Irby Street (MSC-W)

Florence, SC 29501-

Judge's Telephone (843)665-0031

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2017A2110100626

STATE OF SOUTH CAROLINA

County/ Municipality of

Florence

THE STATE against

Robert Brian Sharp

Address: [Redacted]

Johnsonville, SC 29555-

Phone: [Redacted] SSN: [Redacted]

Sex: M Race: W Height: 6 2 Weight: 185

State: SC DL #: [Redacted]

DOB: [Redacted] Agency ORI #: SC0210000

Prosecuting Agency: Florence County Sheriff

Prosecuting Officer: Terry L Christmas, Jr - S00253

Offense: Obscene / Disseminating obscene material to a minor 12 Y or younger

Offense Code: 3131

Code/Ordinance Sec: 16-15-0355

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant Robert Brian Sharp

on 11/20/17

Jerry F. Rivers
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Court

M S C-E 180 North Irby Street

Florence, SC 295013456

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL



WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
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Name: _____
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Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

CODEFENDANTS

Handwritten notes:
 11/18/11
 11/18/11
 11/18/11

FILED

51

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

Defendant

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

CERTIFIED TRUE COPY
CLERK OF COURT
FLORENCE COUNTY, S.C.
M. M. [Signature]

Defendant

Witness:

C.C.C. Pls. And G.S.

Docket Number 2019-GS-21-01339

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

August Term 2019

THE STATE

vs.

Robert Brian Sharp

DEFENDANT

Indictment for

Indecent Exposure

16-15-0130

Misdemeanor/Class A

CDR Code 91

WITNESSES

Terry Christmas - Florence County

Sheriff's Office

ARREST WARRANT NUMBER

2017A2110100626

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

[Signature]
Date: 8/22/2019

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE) IN THE COURT OF GENERAL SESSIONS

INDICTMENT

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of Florence County present upon their oath:

Indecent Exposure

On or about October 15, 2017, the Defendant, Robert Brian Sharp, did in Florence County, commit the crime of indecent exposure, in that the Defendant did willfully, maliciously, and indecently expose himself in a public place, on property of others, or to the view of a person on a street, to wit: the Defendant exposed his penis to a minor, S.B. [REDACTED] in violation of §16-15-0130, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

for  CDAL
 ALAN WILSON (JEF)
 SOUTH CAROLINA ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Brian Sharp

AKA:

Race: White Sex: Male Age: 32

DOB: 1986 SS#: [redacted]

Address: [redacted]

City, State, Zip: Johnsonville, SC 29555

DL# [redacted] * SID# [redacted]

*CDL Yes [] No [x] CMV Yes [] No [x] Hazmat Yes [] No [x]

In disposition of the said indictment comes now the Defendant who was TO: Indecent Exposure

In violation of § 16-15-0130 of the S.C. Code of Laws, bearing CDR Code # 0091

[x] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: [x] As indicted, [] Lesser Included Offense, [] Defendant Waives Presentation to Grand Jury. (def.'s initials)

The plea is: [] Without Negotiations or Recommendation, [x] Negotiated Sentence, [] Recommendation by the State.

ATTEST:

Assistant Attorney General SC Bar # Defendant

Attorney for Defendant SC Bar # 100799

WHEREFORE, the Defendant is committed to the [x] State Department of Corrections [] County Detention Center, for a determinate term of 3 days/months/years or [] under the Youthful Offender Act not to exceed [] years and/or to pay a fine of \$ [] ; provided that upon the service of [] days/months/years and or payment of \$ [] ; plus costs and assessments as applicable*; the balance is suspended with probation for [] months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[x] CONCURRENT or [] CONSECUTIVE to sentence on: 10/2/19 [x] 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.

[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP

Total: \$ [] plus 20% fee: \$ [] days/hours Public Service Employment

Payment Terms:

[] Set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	
§56-5-2995 (DUI Assessment)	\$12	
§56-1-286 (DUI Breath Test)	\$25	
Proviso (Public Def/Probation)	\$500	
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL	\$	\$ 128.75

Clerk of Court/Deputy Clerk Court Reporter: E. Ragn K Smith

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-21 -01339

AW#: 2017A2110100626

Date of Offense: 10/15/2017

S.C. Code §: 16-15-0130

CDR Code #: 0091

SENTENCE SHEET

[] CONVICTED OF or [x] PLEADS

Obtain GED [] Attend Voc. Rehab. Or Job Corp. []

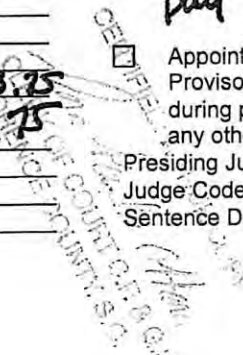
May serve W/E beginning Substance Abuse Counseling []

Random Drug/Alcohol Testing [] Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ [] Beginning [] \$ [] Paid to Public Defender Fund

Other: Defendant shall be placed on the sex offender registry pay \$40 PD fee

[x] Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature] Judge Code: 2153 Sentence Date: 10/2/19



COUNTY OF Kershaw
STATE VS. Robert Brian Sharp
AKA:
Race: WHITE Sex: M Age: 26
DOB: [REDACTED]-1986 SS#: [REDACTED]
Address:
City, State, Zip:
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2013-GS-28-0817
A/W#: DP00035
Date of Offense: 6/1/2012
S.C. Code § : 16-03-600(c)(1)
CDR Code #: 3412

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []
In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

[] CONVICTED OF or [X] PLEADS

in violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC [] §17-25-45
w/minor 1st or Lowd Act)

The charge is: [] As Indicted, [] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: [] Without Negotiations or Recommendation [X] Negotiated Sentence, [] Recommendation by the State.

ATTEST:
SIMPSON, NICOLE SC Bar# 77500 Defendant
Attorney for Defendant SC Bar# 5509

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,
for a determinate term of 10 days/months/years or [] under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 3 days/months/years and/or payment
of \$; 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.

[] CONCURRENT or [] CONSECUTIVE to sentence on:
[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
[] Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling []

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Conv. Surcharge, DUI Surcharge, etc. Total: 133.90

Random Drug/Alcohol testing []
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: NO CONTACT WITH VICTIM OR FAMILY
OF VICTIM
DEF. TO BE EVALUATED & TREATED FOR ALL
SEXUAL PROBLEMS
AND TO DETERMINE LIKELIHOOD TO BE OFFERED
COURT WILL THEN DETERMINE IF DEF
[] Appointed PD or appointed other counsel, IS TO REGISTER
§ 47.12 requires \$500 be paid to Clerk
during probation.
cal before REGISTER:

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2110
Sentence Date: 8/26/13

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2024 FEB 23 PM 2:53

IN THE MATTER OF THE)
CARE AND TREATMENT OF)
DORIS POULOS O'HARA)
OF SC)
FLORENCE COUNTY, SC)

CASE #: 2022-CP-21-01382

RESPONDENT'S FIRST MOTION IN
LIMINE

ROBERT BRIAN SHARP,)
RESPONDENT)

To: ALAN WILSON, ATTORNEY GENERAL AND JAMES FISHER, ASSISTANT
ATTORNEY GENERAL FOR THE STATE:

**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 a penile plethysmograph test ("PPG"). Respondent underwent on or about May 31, 2023. Contemporaneous with the motion, Respondent's Counsel also files a motion *in limine* to exclude this same PPG testimony on separate grounds.

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 penile plethysmograph test." Id. at 1471.

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, 61:" (Ga. Ct. App. 1994) ("Given the rejection of penile plethysmograph evidence by other stat... 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. Gregg Dwyer, MD, EdD and others, the authors stated:

Wide variation exists concerning stimuli types, assessment protocols and means of analyzing and interpreting phallometric results in forensic laboratories in North America. Concerns regarding the lack of standardization in phallometry across sites have been discussed since its creation, however, little improvement has been made. There are challenges in the implementation of standardization within jurisdictions and between countries.

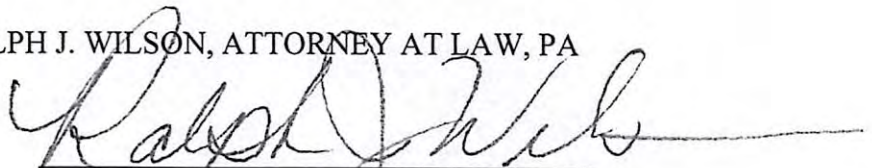
Standardization of Penile Plethysmograph Testing in Assessment of Problematic Sexual Interest" Journal of Sexual Medicine 2015; 12:1853-1854. (Internal citations omitted). This Court should note that R. Gregg Dwyer was formerly associated with MUSC's SBCL and Dr William Burke played a substantial role 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 May 31, 2023, and PPG test.

WHEREFORE, Respondent be granted a Council Hearing and PPG information within the report of Dr. Gottfried be excluded as scientifically unreliable.

Respectfully submitted.

RALPH J. WILSON, ATTORNEY AT LAW, PA



Ralph J. Wilson, Sr., Esq., SC Bar No. 06176

Post Office Box 1827

Conway, South Carolina 29526

Phone: (843) 381-0765

Fax: (888) 519-0549

info@rjwlawpa.com

Appointed Attorney for Respondent

February 20, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) 2024 FEB 23)
IN THE COURT OF COMMON PLEAS)
TWELFTH JUDICIAL CIRCUIT)

DORIS POULD O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFICATE OF SERVICE

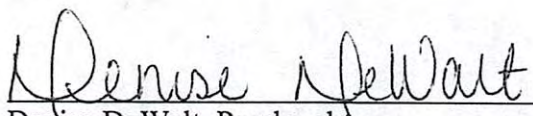
IN RE: THE CARE & TREATMENT OF)
ROBERT BRIAN SHARP)
RESPONDENT)

DOCKET NO. 2022-CP-21-01382

I, Denise DeWalt, Paralegal to Ralph J. Wilsons, Sr., attorney of record for the above Respondent, do hereby certify that I have this day served the foregoing *Respondent's First Motion in Limine* upon the State by mailing a copy of same to the prosecuting authority/agency of record via electronic mail, and addressed as follows:

James Fisher, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
jimfisher@scag.gov

Date: February 20, 2024


Denise DeWalt, Paralegal to
RALPH J. WILSON, SR., ATTORNEY AT LAW
Post Office Box 1827
Conway, South Carolina 29526
Phone: (843) 381-0765
Fax: (888) 519-0549
denise@rjwlawpa.com

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT

2024 FEB 23 PM 2:53

IN THE MATTER OF THE)
CARE AND TREATMENT OF)
OF:)
CORIS POULOS O'HARA)
CCCP & GS)
FLORENCE COUNTY, SC)

CASE #: 2022-CP-21-01382

)
) RESPONDENT'S SECOND MOTION IN
) LIMINE

ROBERT BRIAN SHARP,)
RESPONDENT)

To: ALAN WILSON, ATTORNEY GENERAL AND JAMES FISHER, ASSISTANT
ATTORNEY GENERAL FOR THE STATE:

**RESPONDENT'S MOTION IN LIMINE TO DISALLOW TESTIMONY
REGARDING PPG**

You will please take notice that the Respondent moves before this Court to prohibit any and all testimony or expert opinions regarding PPG by States witness Dr. Gottfried as such testimony is unreliable, misleading and without peer review or adequate standards as to its legitimacy.

In State v. Spencer, 459 S.E.2d 812, 815 (N.C. Ct. App. 1995) the North Carolina Court of Appeals highlighted a number of problems regarding the reliability of PPG testing, specifically the "lack of standards for training and interpretation of data, lack of norms and standardization and susceptibility of the data to false negatives and false positives." The court in Spencer agreed that the validity and reliability of the testing should be determined without regard to the sophistication of the technology used in the testing.⁴⁸ Still, there has been a move to standardize PPG testing. The Association for the Treatment of Sexual Abusers (ATSA) was responsible for creating a set of practical guidelines that were meant to assist administrators of the treatment in standardization. Not only is it a problem that different methods are used, but

regardless of which actual test is being administered, there is a lack of standardization from state to state.

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 (Va. 2007). The Billips court approached PPG testing with a critical eye:

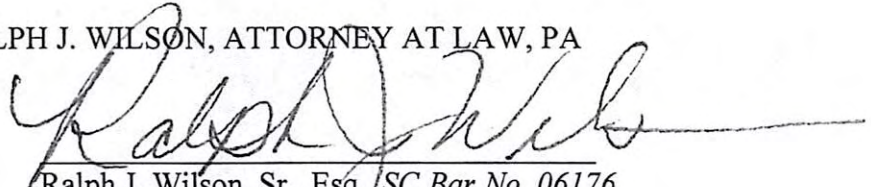
Advancements in the sciences continually outpace the education of laymen, a category that includes judges, jurors and lawyers not schooled in the articular field under consideration. Consequently, there is a risk that those essential components of the judicial system may gravitate toward uncritical acceptance of any pronouncement that appears to be "scientific," and the more esoteric the field, the more difficult it becomes for laymen to greet it with skepticism. That tendency has given rise to frequent complaints of "junk science" in the courts. To guard against that risk, we continue to require a "threshold finding of fact with respect to reliability of the scientific method offered. . . ."

Id. at 101-02 (emphasis added). It is hard to imagine any field more "esoteric" than PPG testing. The court concluded that the PPG "evidence, lacking foundation, was inadmissible in the sentencing proceeding." Id. at 102. . See United States v. Medina, 779 F.3d 55, 65 (1st Cir. 2015)(discussing the problems with 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 [PPG] are inadmissible as evidence because there are no accepted standards for this test in the scientific community."); Gentry v. State, 443 S.E.2d 667, 669 (Ga. Ct. App. 1994) ("Given the rejection of [PPG] evidence by other states, and particularly the uncertainty within the scientific community of its reliability, we hold that it is inadmissible in Georgia."); Leftwich v. State, 538 S.E.2d 779, 781 (Ga. Gt. App. 2000) (holding defendant could not use PPG results to show he was not a pedophile because PPG was not shown to be reliable).

WHEREFORE, then Respondent moves this court to limit the scope of testimony of the states expert witness to exclude any testimony regarding a PPG test performed in this case.

Respectfully submitted.

RALPH J. WILSON, ATTORNEY AT LAW, PA



Ralph J. Wilson, Sr., Esq., SC Bar No. 06176
Post Office Box 1827
Conway, South Carolina 29526
Phone: (843) 381-0765
Fax: (888) 519-0549
info@rjwlawpa.com
Appointed Attorney for Respondent

February 20, 2024

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

2024 FEB 23 PM 2: 53

TWELFTH JUDICIAL CIRCUIT

DORIS POULOS O'HARA
CCCP) & GS
FLORENCE COUNTY, SC

CERTIFICATE OF SERVICE

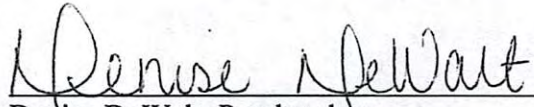
IN RE: THE CARE & TREATMENT OF)
ROBERT BRIAN SHARP)
RESPONDENT)

DOCKET NO. 2022-CP-21-01382

I, Denise DeWalt, Paralegal to Ralph J. Wilsons, Sr., attorney of record for the above Respondent, do hereby certify that I have this day served the foregoing *Respondent's Second Motion in Limine* upon the State by mailing a copy of same to the prosecuting authority/agency of record via electronic mail, and addressed as follows:

James Fisher, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
jimfisher@scag.gov

Date: February 20, 2024



Denise DeWalt, Paralegal to
RALPH J. WILSON, SR., ATTORNEY AT LAW
Post Office Box 1827
Conway, South Carolina 29526
Phone: (843) 381-0765
Fax: (888) 519-0549
denise@rjwlawpa.com

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT

2024 FEB 23) PM 2: 53

IN THE MATTER OF THE)
CARE AND TREATMENT OF:) DORIS POULIS ONABA
OF:) CCCP & GS) CASE #: 2022-CP-21-01382
FLORENCE COUNTY, SC)

)
) RESPONDENT'S THIRD MOTION IN
) LIMINE

ROBERT BRIAN SHARP,)
RESPONDENT)

To: ALAN WILSON, ATTORNEY GENERAL AND JAMES FISHER, ASSISTANT
ATTORNEY GENERAL FOR THE STATE:

**RESPONDENT'S MOTION IN LIMINE TO DISMISS FOR FAILURE TO
PROSECUTE TIMELY**

YOU WILL please take notice that the Respondent, by and through his counsel of record will move before this court to dismiss this action against Respondent for Failure to Prosecute.

This case was filed under S.C. Code Ann. § 44-48-10 et seq. A probable cause hearing was held and order field August 26, 2022. The Prosecutor's Review Committee (PRC) received the case from the MDT on May 23, 2022, and on June 20, 2022, following a vote of 3-0, determined there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute. Respondent's precommitment evaluation was done on September 20, 2022, and the report was issued on December 28, 2022. On January 4, 2023, an independent evaluation was requested Mr. Donald J. Zelenka, Deputy Attorney General, of the South Carolina Attorney General's Office (SCAG) requested the Sexual Behaviors Clinic and Laboratory (SBCL) of the Department of Psychiatry and Behavioral Sciences at the Medical University of South Carolina (MUSC) to provide consultation services. The

regarding Mr. Sharp. report was issued by Dr. Gottfried at MUSC. The State did not receive its independent evaluation from Dr. Gottfried at MUSC. Until May 31, 2023, nearly more than five months later. Dr. Gehle from the Department of Mental Health issued an amended evaluation report in June of 2023.

Under Section 44-48-80(D) and 44-48-90 “the court -appointed qualified evaluator must complete the evaluation within ninety days after the Department of Mental Health provides written certification to the Attorney General's Office and the person's legal counsel that it has received all medical, psychological, criminal offense, and disciplinary records and reports concerning the person but not greater than one hundred eighty days after the probable cause order is filed.” The probable cause order in this case was filed on August 26, 2022.

“If the person or the Attorney General seeks an independent evaluation by an independent qualified evaluator, pursuant to Section 44-48-90(C), then that evaluation must be completed within ninety days after receipt of the report by the court-appointed qualified evaluator.”

It appears the Attorney General filed a request for an independent evaluation with Dr. Gottfried on January 4, 2023. There is no record of request for an extension of time, yet the evaluation report was issued until May 31, 2023 (more than ninety days after the request). In fact, nearly two months past the ninety days permitted by statute.

Secondly, this case should have been tried within ninety days of the independent qualified report unless a good cause continuance is granted pursuant to Section 44-48-90(A) (B). The report was issued May 31, 2023, and trial is being held more than seven months after that ninety-day period pursuant to Section 44-48-90(A) (B).

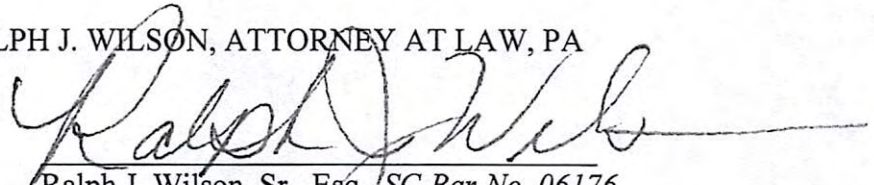
This Respondent is substantially prejudiced having to languish in jail for many extra

months as this process plays out. Plus, Respondent's Due Process Rights have been, and are being violated.

WHEREFORE, Respondent prays this court to dismiss this action and release Respondent from custody based on the states failure to timely prosecute this matter.

Respectfully submitted.

RALPH J. WILSON, ATTORNEY AT LAW, PA



Ralph J. Wilson, Sr., Esq. SC Bar No. 06176
Post Office Box 1827
Conway, South Carolina 29526
Phone: (843) 381-0765
Fax: (888) 519-0549
info@rjwlawpa.com
Appointed Attorney for Respondent

February 20, 2024

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) 2024 FEB 23 } PM 2: 53 TWELFTH JUDICIAL CIRCUIT

DORIS POULOS O'HARA
CCCP JGS
FLORENCE COUNTY, SC

CERTIFICATE OF SERVICE

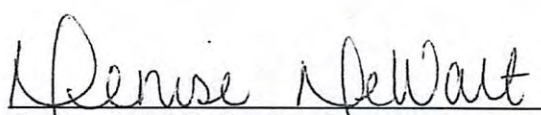
IN RE: THE CARE & TREATMENT OF)
ROBERT BRIAN SHARP)
RESPONDENT)

DOCKET NO. 2022-CP-21-01382

I, Denise DeWalt, Paralegal to Ralph J. Wilsons, Sr., attorney of record for the above Respondent, do hereby certify that I have this day served the foregoing *Respondent's Third Motion in Limine* upon the State by mailing a copy of same to the prosecuting authority/agency of record via electronic mail, and addressed as follows:

James Fisher, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
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Date: February 20, 2024



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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 that 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 [an] essential [measure] 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

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.

²Other 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

Washington Supreme Court found PPG results were admissible as part of the diagnostic process, and the PPG testimony would assist the jury in understanding the expert's sexual deviancy diagnosis. *Id.* at 719. The court further found the issue of the PPG's reliability goes to the weight of the evidence rather than its admissibility. *Id.*; see also *In re Detention of Herrick*, 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.

(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); *In re Care and Treatment of Pough*, 2022-CP-28-00351 (Coble, J.).

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

The court also discussed numerous academic articles, which it determined provided ample support “to conclude that PPG testing is accepted by a substantial number of experts in this field such that it may be used to support a qualitative assessment of the future dangerousness of an individual.” *Id.* at 309-316. Acknowledging some experts have criticized and rejected PPG testing, the court noted the existence of contrary authority is not dispositive because many people could disagree on the acceptance of any given methodology, but those who accept it may still constitute a significant subset of experts in any given field. *Id.* at 316; *see also State v. Graham*, 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).

As recently as November 14, 2023, after a *Counsel* hearing, Judge Coble found the PPG to be scientifically reliable in the case of *The State of South Carolina v. Jeremiah James Pough*. Judge Coble found that the PPG was reliable, subjected to peer review, that Dr. Gottfried was qualified to administer and interpret the results of the examination, and was based on scientific laws and procedures. **See Exhibit C.**

Thus, the courts are now 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*, however, 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

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. See **EXHIBIT B**. 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 a significant number of organizations that host these conferences, provides the reviewers with numerical values for multiple categories, including intellectual merit and innovativeness. Abstracts regarding studies of the RCV stimulus set were submitted for

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.")

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.

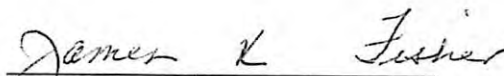
CONCLUSION

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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February 23, 2024
Columbia, South Carolina



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 to 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 Deitchman, 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. Deitchman 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. Fraxler*, 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. Daltzman and Dr. Gamache, 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. Scheffer, 323 U.S. 303, 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 these 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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 JUDICIAL ASSISTANT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND COUNTY)

SOUTH CAROLINA CIRCUIT COURT 5
DOCKET NO. 2022-CP-28-00351

STATE OF SOUTH CAROLINA,)
Plaintiff,)
versus)
JEREMIAH JAMES POUGH,)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE DANIEL COBLE

DATE: November 14, 2023
TIME: 9:40 a.m.
LOCATION: South Carolina Circuit Court 5

TRANSCRIBED BY: Natasha Barrientos

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PROCEEDINGS

2

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

4

1 THE COURT: All right. As to the -- back on the record
2 for -- in the matter of the care and treatment of Jeremiah
3 James Pough. We ended yesterday's hearing with the Daubert
4 counsel hearing. With the testimony of Dr. Godfrey regarding
5 the PPG, specifically about her treatment of Mr. Pough and
6 her determination about the sexual violent predator nature of
7 that and the future risk.

8 Mr. Kirkland made the argument that it was not reliable
9 based on many factors. In my procedure for determining
10 whether or not to admit it under the reliability standard,
11 first and foremost, just making some findings of fact and law
12 as I see it under 702. The three factors I first need to
13 determine, first, is this type of evidence beyond the scope
14 of the ordinary juror. I think we all agree that it is, it's
15 highly technical.

16 It was explaining both psychiatry, psychology, as well
17 as physiology of a human and how a scientist interpreted that
18 data. So I think an expert -- expert is needed. It'll be
19 helpful to the juror. So -- so I find that first factor is
20 met.

21 Secondly, when it comes to the qualifications, I
22 believe that Dr. Godfrey is qualified based on her skills,
23 requisite knowledge, her training, her experience. She was
24 qualified in as an expert in several different areas for the
25 purposes of Daubert counsel hearing, the sexual evaluation

1 and specifically with the PPG. She did -- she went through
2 her entire training which was significant, including being
3 the director of the behavioral sciences department, as well
4 as a lot of other training, and writing, presentations, all
5 in this specific field for well over the past decade, if not
6 more, so I find she was qualified in this area.

7 The third factor, which needs to be determined is is
8 the underlying science reliable. Obviously, whether it's
9 reliable does not, I mean, whether or not it's credible. I
10 need to find whether or not it is reliable, though that
11 threshold foundational question before it goes to the jury as
12 the gatekeeper.

13 First, I find that this is scientific in nature. I
14 don't -- I don't believe it's not scientific. I believe it's
15 scientific in nature. So the counsel factors are the ones
16 that I'm looking for.

17 Several of these factors. Now, whether or not I need
18 to use every single one, whether I need to go outside of
19 them, which is different under Daubert. I don't know what
20 our Supreme Court has said it all. It kind of changes, but
21 the way I looked at this -- this science, kind of the
22 general, then more specific and then more specific than that.

23 First and foremost, the actual machine from limestone,
24 we heard testimony that it was created back in the 1950s.
25 The general technology for different reasons it was created.

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1 So it's been around for a long time. It's been used not just
2 for the sex evaluation, but it was also used -- we saw from
3 two different exhibits; we saw from Court's Exhibit 1 that
4 under Blue Cross Blue Shield it generally has been used for
5 heart failure, and other -- other measuring types of devices
6 to show that it's accurate in what it's doing in its physical
7 form.

8 And as -- as Dr. Godfrey explained the procedure about
9 how it works and what it measures. So I think the actual
10 machine, based on the testimony and the evidence presented,
11 that is reliable, that it -- it measures what it measures.

12 Now, the second step is combining the physical and
13 physiological aspect of this machine with the psychological,
14 with the -- the thoughts and the connection from the brain to
15 the blood flow, and how that is measured.

16 So the next thing I look at are, there were a lot of
17 peer review articles presented, which I believe was Court's
18 Exhibit Number 3, which the doctor testified to that she had
19 reviewed, looked at, studied before.

20 A lot of these peer review articles go through PPG, and
21 sexual behavior assessment based on different types of
22 situations. Adult victims, child victims, violence, other
23 things these articles discussed about how the PPG works and
24 its connection with the sex evaluation, whether it be
25 pre-commitment treatment or whatnot. The general science

1 seems to be sound that you can study the PPG and its relation
2 with sexual evaluation and the physical, physiological
3 changes that the machine records.

4 So I think that's important to -- to understand the
5 baseline that I believe that the physical machine works based
6 on science. And it is reliable that the -- the science of
7 studying sex evaluation, the psychological connection between
8 the thoughts of a potential offender or a patient and the
9 machine are based on peer-reviewed articles. That it is
10 reliable, that it has been tested, that has been studied for
11 many years through many different peer-reviewed articles.

12 As to the specific science that was used by Dr. Godfrey
13 with, we have the limestone machine and then we have the
14 specific trial sets, which included the Marshall and the RCV,
15 I believe it was. And how these stimuli worked in her
16 assessment, and how they were connected.

17 For me, the most important thing was that this was one
18 data point among many that she used in making her assessment.
19 She stated, I believe multiple times that it would not work
20 solely based on as one data point, because it's not reliable
21 enough. She needs to use her expert training and experience
22 and other knowledge of this area of the medical field to
23 determine, to make her evaluation about whether or not
24 someone is likely to re-offend under that standard.

25 So she used the -- the peer-review technique. She

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1 cited several articles, which again was in Court's Exhibit 3.
2 She has discussed her many peer-reviewed articles. She's
3 written peer-reviewed presentations, she has given, as well
4 as other discussions she has had on this subject multiple
5 times before.

6 We discussed -- throughout her testimony, she discussed
7 the application method -- kind of prior application
8 throughout not just the State, but the United States and
9 throughout the world. There was an issue about it not being
10 standardized, which I understand.

11 However, the underlying science, which I asked her
12 about was the stimuli which was being used, which is used in
13 different places, which she manipulates scientifically per
14 patient. I believe is standardized in how the underlying
15 science was created.

16 The Marshall test, she discussed how that was created.
17 The RCV, she discussed how that was created, and why it's
18 important that these voices were used in certain ways. And
19 so the underlying science of whether or not it was the same
20 Marshall test, or the same RCV test, or she changed a
21 question here or there, was based on the studies and getting
22 the -- the sexual type of arousal out of the patient. So
23 there was a basis on how they did that.

24 She talked about the quality control procedures
25 extensively, including Court's Exhibit 4, which is the

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1 procedure for the instructions to ensure that -- that it's
2 done properly. That is -- there's controlled measure
3 including the -- the seating that the patient was used to
4 ensure that they can't manipulate it. Even though this was
5 her own checklist that she created, it shows that there is a
6 quality control procedure used in this method.

7 She also discussed the -- the cut score, and how she
8 evaluates that. And that goes, I think, the consistency of
9 the -- method with recognized scientific laws and procedures
10 that she changed the cut method based on her own evaluation.
11 And why -- she discussed why she used a certain more
12 conservative cut method, as opposed to a treatment method,
13 you might make a little bit less because you're -- it's
14 different. She discuss it's different for treatment versus
15 essentially diagnosis or an assessment. And that went to the
16 specificity and sensitivity.

17 She discussed the false positives versus false
18 negatives and how she used her -- the method changed based
19 on that, and how they were more concerned about avoiding
20 false positives, and they'd rather have false negatives so
21 that it can be consistent.

22 I believe that essentially covers it. There were these
23 other court exhibits, Court Exhibit 5, which is the sexual --
24 sexually violent predator, is a clinic science handbook.
25 Court Exhibit 6, goes to some peer-reviewed studies of

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1 limestone and that machine.

2 We have the DSM-5-TR, Court Exhibit 8. The diagnostic
3 markers which quote, "The most thoroughly researched and
4 longest use of such measures is the PPG, although the
5 sensitivity and specificity of diagnosis may vary across
6 sites, which frequently use different stimuli procedures and
7 scoring."

8 And again, I think this goes to the overall technology
9 is sound and reliable based on the peer-review studies, based
10 on the link that's been used. And then as the DSM talks
11 about, it varies site by site. And then Dr. Godfrey
12 explained why it varies, and how she uses it in different
13 ways, which I believe are based on scientific methods.

14 So I find that the underlying science is reliable for
15 purposes of 702. Obviously, the credibility can be attacked,
16 but I think that has met that threshold matter. As to 403,
17 I believe the -- the probative value versus prejudicial,
18 obviously, the probative has to be substantially outweighed
19 by the prejudicial effect. And this is extremely probative
20 because it goes to the underlying element of the two
21 elements, you know, did he have a conviction and then what
22 was her assessment.

23 So I believe that the 403 -- it also passes 403 with
24 the burden being on the State for all of those factors, I
25 believe they have carried that burden. So I find that it is

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1 reliable, and I'll allow her to testify to it.

2 Anything else from the State?

3 MR. RUNYAN: No, Your Honor. Thank you.

4 THE COURT: Okay. And if the State -- if the State
5 will prepare a written proposed order for the Respondent to
6 review at some point. It doesn't have to be just essentially
7 what I said, what the prior motion, kind of summed up again,
8 what was testified to. So I believe that was rather
9 accurate. So if you will have that and let Defense counsel
10 review that as well.

11 MR. RUNYAN: Okay.

12 THE COURT: And anything else from the Respondent?

13 MR. KIRKLAND: No, sir. I believe I don't need to make
14 further objection that it's already preserved since we -- I
15 filed a motion and you made a ruling, so I would redo the
16 motion just ---

17 THE COURT: Of course.

18 MR. KIRKLAND: -- just make sure (crosstalk).

19 THE COURT: Of course. It is renewed -- your
20 objections are renewed for the record.

21 MR. KIRKLAND: Thank you.

22 THE COURT: All right. Anything else? We can bring
23 the jury in?

24 MR. RUNYAN: No, Your Honor. We're ready.

25 MR. KIRKLAND: No, Your Honor.



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FILED

JUDGMENT IN A CIVIL CASE

2024 FEB 28 AM 11:54 CASE NO. 2022-CP-21-01382

IN THE MATTER OF THE CARE AND TREATMENT
OF ROBERT BRIAN SHARP, DORIS POULOS O'HARA
SCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

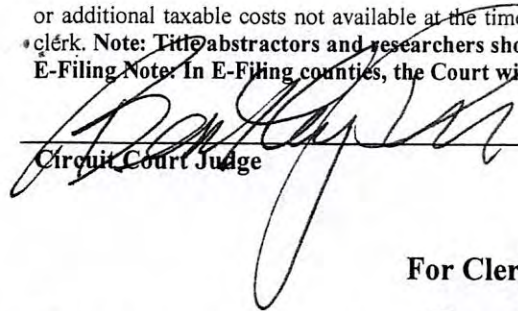
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. 583
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2766
Judge Code

2.28.24
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of February, 2024 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of February 2024 to attorneys of record or to parties (when appearing pro se) as follows:

James K. Fisher
Hand Delivered

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ralph J. Wilson, Sr.
PO Box 1827
Conway, SC 29526
Don P. O'Hara
CLERK OF COURT

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

JURY RENDERED A VERDICT IN FAVOR OF THE STATE OF SOUTH CAROLINA THAT THE RESPONDENT IS A SEXUALLY VIOLENT PREDATOR AND A COMMITMENT ORDER WAS SIGNED.

FILED
2024 FEB 28 AM 11:54
DORIS POULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
IN THE MATTER OF THE)
CARE AND TREATMENT OF)
ROBERT BRIAN SHARP,)
)
)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
CASE #: 2022-CP-21-01382

ORDER OF COMMITMENT

The trial of this case was held in the Florence County Court of Common Pleas the week of February 26, 2024. A jury of citizens from Florence County heard this case pursuant to a request for a jury trial filed by the State. James K. Fisher from the Attorney General's Office represented the State and Respondent, Robert Brian Sharp, was represented by Ralph Wilson, Sr., Esq. 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:

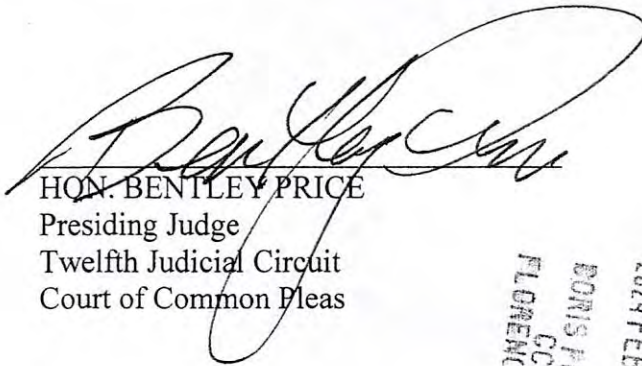
The State has proven beyond a reasonable doubt that Respondent, Robert Brian Sharp, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

(a) Respondent, Robert Brian Sharp, is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;

(b) Respondent, Robert Brian Sharp, is to continue to be detained at the Florence County Detention Center, and then transported to the secure facility of the Department of Mental Health. The Detention Center or the Sheriff's Department is to transport Respondent on such scheduled date as is coordinated with the Department of Mental Health.

AND IT IS SO ORDERED.


HON. BENTLEY PRICE
Presiding Judge
Twelfth Judicial Circuit
Court of Common Pleas

February 28th, 2023
Florence, South Carolina

2024 FEB 28 AM 11:54
DORIS POULOS O'HARA
GCCP # 65
FLORENCE COUNTY, SC

FILED

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Jun 26 2025

SC Court of Appeals

This 26th day of June, 2025.

RECEIVED

Jun 26 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Bentley Price, Circuit Court Judge

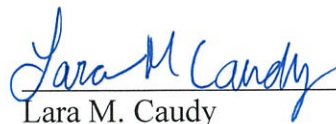
IN THE MATTER OF THE CARE AND
TREATMENT OF ROBERT BRIAN SHARP,

APPELLANT.

APPELLATE CASE NO. 2024-000553

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon Christopher S. Runyan, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 26th day of June, 2025.



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Jun 26 2025

SC Court of Appeals

From: [Mcinnis, Sara](#)
To: [Deborah Shupe](#); [Chris Runyan](#)
Cc: [Abigail Hawley-Browder](#); [Caudy, Lara](#)
Subject: 2024-000553 In the Matter of Robert B. Sharp Record on Appeal Volume 2 of 2
Date: Thursday, June 26, 2025 3:55:00 PM
Attachments: 2024-000553 In the Matter of Robert B. Sharp Record on Appeal Volume 2 of 2.pdf

Good Afternoon,

Attached for service in the above-referenced case is Volume 2 of the Record on Appeal, which will be filed with the Court of Appeals today, June 26, 2025, via email filing.

Respectfully,

Sara McInnis

Administrative Assistant

South Carolina Commission on Indigent Defense

Appellate Division

(803) 734-1330