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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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

Petitioner.

BRIEF OF RESPONDENT STATE OF SOUTH CAROLINA

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STATEMENT OF QUESTION PRESENTED

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

STATEMENT OF THE CASE

Respondent concurs with petitioner's procedural statement of the case.

STATEMENT OF FACTS

In June 1991, Petitioner Wiley L. Chapman pled guilty to criminal sexual conduct in the first degree, which is a statutorily enumerated sexually violent offense. S.C. Code. Ann § 44-48-30(2)(a) (2018). Petitioner was sentenced to thirty years incarceration. In June 2020, Respondent State of South Carolina initiated proceedings pursuant to the South Carolina Sexually Violent Predator Act (SVPA), S.C. Code Ann. §§44-48-10 *et seq.* (2018), seeking Petitioner's civil commitment for long term control, care and treatment. The matter was called for a jury trial in June 2022 before the Honorable Michael S. Holt, Circuit Court Judge.

Prior to trial, the State moved to exclude any reference to the details or type of treatment Petitioner would receive if committed, contending such evidence is irrelevant to the issue of whether Petitioner met the criteria for commitment. Citing a seminal United States Supreme Court case,[1] the State argued the type of treatment or the likelihood of success in treatment were not questions before the jury, and allowing such evidence would create confusion for the jurors. (R.pp.8–9).

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

Judge Holt expressed concern about confusing the jury if the type of treatment modalities were raised. He then instructed the parties to "[s]tay away from treatment once inside the facility." (R.pp.12–13).

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[1] *Kansas v. Hendricks*, 521 U.S. 346, 366 (1997), discussed infra at pp.17–18.

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

Dr. Gottfried testified she conducted a forensic evaluation of Petitioner, which included reviewing all available records, conducting psychological and physiological testing and assessments, and conducting a comprehensive clinical interview with the person. (R.pp. 85). According to the records Dr. Gottfried reviewed, Petitioner was convicted in 1986 of assault of a female in North Carolina and was sentenced to two years probation. Approximately a year after his conviction, and while he was on probation from the 1986 conviction, Petitioner was arrested in South Carolina for criminal sexual conduct in the first degree. (R.pp.96-99).

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

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

Office of Mental Health (OMH).[2] (R.pp.90–95).

Petitioner's 1987 criminal sexual conduct third degree conviction involved a fifteen-year-old female who was walking to a baby-sitting job when Petitioner approached her, threw her to the ground, hit and choked her, threatened to kill her and then raped her. Dr. Gottfried testified that during the interview with the OMH evaluator, Petitioner described this victim as "big and fat and unattractive," which he also told Dr. Gottfried. (R.p.101). Dr. Gottfried stated Petitioner's disparaging references to the victim indicated hostility toward women which can be a risk factor for reoffending. She further testified sexual arousal when someone is fighting you, crying or saying no is not typical sexual functioning, and could be a risk factor. Petitioner told Dr. Gottfried that he was aroused and ejaculated during the 1987 attack. (R.pp.102–105).

Shortly after Petitioner was released from prison on the 1987 conviction, he was charged in 1991 with criminal sexual conduct in the first degree, burglary in the first degree and kidnapping. He ultimately pled guilty to criminal sexual conduct in the first degree and burglary in the first degree and was sentenced to consecutive thirty-year prison terms. (R.pp.105–106; pp.420–424). Petitioner admitted kidnapping the victim and sexually assaulting her, and confirmed he was sexually aroused and ejaculated during the assault. Dr. Gottfried testified Petitioner's conduct during this sexual assault "seems escalated" and "more violent" than the 1987 and 1986 offenses, and it suggested a diverse victim pool (a fifteen-year-old girl versus a sixty-year-old woman), all of which were risk factors for reoffending sexually. (R.pp.106–109).

During his incarceration after the 1991 convictions, Petitioner was charged with eight disciplinary infractions between 1996 and 2015. Petitioner told Dr. Gottfried most of the

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[2] Formerly the South Carolina Department of Mental Health. Act No. 3 of 2025 eff. April 28, 2025, 2025 S.C. Acts ___.

complainants in the eight disciplinary infractions were female, which Dr. Gottfried testified was significant when considered with other data. (R.pp.109–112).

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

Dr. Gottfried diagnosed Petitioner with other specified personality disorder with antisocial traits, which she based on Petitioner's "demonstrated characteristics of antisocial personality across his at least adult lifetime." Dr. Gottfried testified the OMH evaluator also diagnosed Petitioner with that disorder. (R.pp.124–126).

Dr. Gottfried administered a comprehensive battery of tests and assessments as part of Petitioner's evaluation, which included two actuarial risk assessments: the Static-99R and the Static-2002R. Dr. Gottfried testified Petitioner's score on the Static-99R put him in the "well above average risk to re-offend sexually" category, which correlates to a rate of sexual reoffending that is three to four times the average re-offense rate of individuals who have prior sex offenses. Petitioner's score on the Static-2002R put him in the "above average risk to re-offend sexually" category, which placed him higher than 94% of other offenders. The OMH evaluator also scored those risk assessments and arrived at the same results. Dr. Gottfried testified the Static assessments

only consider reported and charged offenses, and it is possible the results underestimate an individual's risk because sexual offenses are the least likely offenses to be reported to authorities. (R.pp.126–132).

Dr. Gottfried also diagnosed Petitioner with other specified paraphilic disorder, paraphilic coercive disorder. She explained the coercive disorder is sexual arousal to coercion and sexualized power over another person. Dr. Gottfried stated Petitioner admitted that control and power over his victims was arousing, and stated he did think the power aspect was behind all of his actions. (R.pp.133–135).

Dr. Gottfried testified the facts of Petitioner's sexual offenses and criminal history also supported the paraphilic coercive disorder diagnosis. The significant facts included: Petitioner reported being aroused and ejaculating during each of the sex offenses that were clearly nonconsensual; the sex offenses had a similar pattern; there was an overrepresentation of sexual offenses in his criminal history; he offended against a victim who had previously consented to sexual activity with Petitioner, which suggested a level of arousal to the nonconsenting aspect; Petitioner offended against individuals where there was a high likelihood he would be caught; and at the time he committed two of the rapes Petitioner had consenting partners who would have sex with him, which also suggested arousal to the coercive behavior. (R.pp.134–137).

One psychological assessment administered by Dr. Gottfried indicated a high probability Petitioner has a substance abuse disorder. Dr. Gottfried testified substance abuse is a risk factor for reoffending in the community because it lowers inhibitions. (R.pp.137–145).

Dr. Gottfried determined Petitioner had psychopathic traits but did not meet the full age of onset criteria for a psychopathic disorder diagnosis. Petitioner's psychopathic traits included: lack of remorse or guilt; lack of empathy; many short term relationships; community supervision

failure; overly high self-esteem; pathological lying, conning and manipulating others; a history of promiscuous sexual behavior; impulsivity; irresponsibility; and failure to accept responsibility for his own actions. Dr. Gottfried stated there is an overlap between antisocial personality disorders and psychopathy, and the identified psychopathic traits can be a risk factor for reoffending. (R.pp.146–148).

Dr. Gottfried testified there are dynamic risk factors for reoffending that are not factored into the Static assessments. She stated Petitioner "has a significant number of dynamic risk factors," including: sexual deviance; preoccupation with sex; traits of antisocial personality disorder and some features of psychopathy; history of substance abuse problems; relationship problems; physical harm in sexual offending; multiple sex offenses; extreme minimization and denial of sexual offending; hostility toward women; a negative attitude toward supervision; and a lack of realistic plans to avoid reoffending. Petitioner's dynamic risk factors placed him in the high range for reoffending because "a high level of effort or intervention is required to prevent future acts of sexual violence." Dr. Gottfried testified the OMH evaluator identified many of the same dynamic risk factors. (R.ppp.148–154, pp.226–237).

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

Dr. Gottfried opined to a reasonable degree of psychological certainty that Petitioner is a

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

After Dr. Gottfried's direct testimony, Petitioner again asked Judge Holt to allow him to question Dr. Gottfried about outpatient treatment, contending Dr. Gottfried opened the door to inquiries regarding treatment by stating during her qualifications testimony that she treats sex offenders and there is an intensive outpatient treatment center at the SBCL. Judge Holt denied Petitioner's request, finding the door was not opened by Dr. Gottfried's testimony. (R.pp.165–168). Judge Holt then permitted Petitioner to proffer testimony from Dr. Gottfried about the treatment provided at the SBCL. Dr. Gottfried testified "a couple" of people had gone through the program either prior to a criminal trial (not court ordered) or as part of a sentencing deal, and it was individualized treatment depending on the person's specific treatment needs and treatment plan. She testified she was not asked to opine on what form of treatment may or may not be effective for Petitioner, and she had not formed any treatment plans for him. (R.pp.187–190).

Petitioner presented testimony from the OMH evaluator, who was qualified as an expert in forensic psychology and sexually violent predator assessments. The OMH evaluator testified that, based on his review of the records and the offense patterns, he believed it was "a combination of [Petitioner's] entitlement towards sex, callousness towards victims," and "it sounds like [Petitioner] wanted what he wanted and he didn't care how he got it." The OMH evaluator opined that Petitioner's personality disorder traits and control had improved while he was incarcerated,

but he still had "some degree of eight of [the seventeen known risk factors]." (R.p.280, pp.284–299).

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

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

On re-direct examination, Petitioner asked the OMH evaluator "if [Petitioner] needs to get treatment, does he need to be in a secure facility or could he get outpatient treatment." The OMH evaluator responded "[h]e can certainly get outpatient treatment . . . that's a possibility," but stated he was not asked to opine on whether Petitioner needs treatment or not and, in his opinion, Petitioner's personality disorder did not meet the required criteria. (R.pp.351–352).

Judge Holt charged the jury regarding the State's burden to prove beyond a reasonable doubt "that unless confined to a secure facility, [Petitioner] is likely to commit another act of sexual violence." He further charged the jury that the elements the State had to prove were the existence of a sexually violent offense conviction, "and that [Petitioner] suffers from a mental abnormality

and/or personality disorder, and that makes him likely to engage in acts of sexual violent if not confined in a secure facility for long term control, care and treatment." (R.pp.394–395, pp.398–400).

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

By unpublished opinion filed November 27, 2024, the court of appeals affirmed Petitioner's commitment, finding Judge Holt did not abuse his discretion in prohibiting Petitioner from cross-examining Dr. Gottfried about MUSC's outpatient sex offender treatment program because the testimony was irrelevant, and the State did not open the door when Dr. Gottfried testified MUSC had such a program. The court of appeals further found that, while the jury did not hear the details of the MUSC program, both experts testified about the availability of outpatient treatment; thus, to the extent availability of outpatient treatment was relevant, details regarding the treatment were redundant or unnecessary. (App.pp.1–3) The court of appeals denied Petitioner's rehearing petition (App.pp.4–8), and this Court granted certiorari by Order filed June 3, 2025.

STANDARD OF REVIEW

The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice. *Glenn v. 3M Co.*, 440 S.C. 34, 890 S.E.2d 569, 581 (Ct. App. 2023) (internal citations omitted); *see also Gamble v. Int'l Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438, 441 (1996) (same); *In re Manigo*, 389 S.C. 96, 697 S.E.2d 629, 633 (Ct. App. 2010) (same).

ARGUMENT

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

Petitioner contends the court of appeals erred in finding Judge Holt did not abuse his discretion by excluding evidence regarding the specifics of the MUSC outpatient sex offender treatment because Dr. Gottfried testified about the program in the course of her qualification testimony, and the State opened the door for cross-examination of Dr. Gottfried about those specifics. These contentions are meritless.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". Rule 401, SCRE. Even relevant evidence may be excluded if its probative value is substantially outweighed by a danger it will confuse the issues or mislead the jury. Rule 403, SCRE. The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice. *Glenn v. 3M Co.*, 440 S.C. 34, 890 S.E.2d 569, 581 (Ct. App. 2023) (internal citations omitted); *see also Gamble v. Int'l Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438, 441 (1996) (same); *In re Manigo*, 389 S.C. 96, 697 S.E.2d 629, 633 (Ct. App. 2010) (same). "Trial judges may impose reasonable limits on such cross-examination based on concerns about . . . *confusion of the issues* . . . or *interrogation that is repetitive or only marginally relevant*." *State v. Jenkins*, 322 S.C. 360, 474 S.E.2d 812, 814 (Ct. App. 1996) (emphasis added).

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

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

As he did before the court of appeals, Petitioner misunderstands the basis for the State's initial objection, which was specifically to evidence regarding the <u>type</u> of treatment Petitioner would receive, and the likelihood of successful treatment, <u>if committed</u> as a sexual predator; the State's objection had nothing to do with outpatient treatment. When Judge Holt granted the pre-trial motion to exclude evidence regarding treatment in the sexual predator treatment facility, he specifically instructed the parties to "[s]tay away from treatment <u>once inside the facility</u>." (R.pp.7–

13) (emphasis added). Thus, the only focus of the State's motion and Judge Holt's ruling was the treatment offered in the sexually violent predator treatment facility.

After Petitioner argued, during qualification testimony, that Dr. Gottfried's mere mention of MUSC's intensive outpatient treatment program for sex offenders opened the door to inquiry into specifics of treatment, the State responded that Dr. Gottfried was not asked to assess any appropriate treatment modalities for Petitioner, and merely stating MUSC has an outpatient treatment program did not open the door for testimony regarding treatment modalities. Judge Holt found that the State's inquiry regarding Petitioner's need for treatment, a statutory element the State had to prove, did not open the door to testimony regarding the types of treatment provided in MUSC's treatment program. The court found that Dr. Gottfried had not come up with a treatment plan for Petitioner, and reasoned that going into various treatment options "would go far afield if we go down that road." (R.pp.165–168).

During the ensuing proffer, Dr. Gottfried testified the MUSC treatment program is "individualized treatment depending on [the offender's] specific treatment needs and treatment plan and then group treatment." Regarding the success of the program, which had only two participants as of the date of trial, Dr. Gottfried stated she thought it was successful, but "we haven't been doing it for long enough to have like outcome data or, to my knowledge, that people have reoffended but it's pretty new." (R.p.188). Thus, Dr. Gottfried's proffered testimony made it clear that the various treatment modalities were "individualized" to address each offender's specific treatment needs, and did not constitute evidence of what modalities would be effective for Petitioner, if any.

Significantly, both Dr. Gottfried and the OMH evaluator testified they were not asked to opine about the type of treatment Petitioner should receive or where he should receive it, only

whether Petitioner met the statutory criteria for commitment under the SVPA. (R.p.84, p.255, pp.258–259). Moreover, the OMH evaluator's opinion turned not on whether Petitioner needed treatment, but on the fact that he did not find Petitioner's personality disorder predisposed him to commit acts of sexual violence. (R.pp.161–163, pp.189–190, pp.351–352).

Since neither expert had formulated an individual treatment plan for Petitioner based on his specific treatment needs, testimony about what treatment modalities might be used in sex offender treatment, inpatient or outpatient, would have been pure speculation, and led the jury down the proverbial rabbit hole of weighing the appropriateness and potential success of hypothetical programs, which is not an element the jury must find in SVPA proceedings.

The various authorities relied upon by Petitioner do not support the contention that testimony regarding specific treatment modalities is relevant. Petitioner cites *United States v. Wooden*, 217 F.Supp.3d 843 (E.D.N.C. 2016) for the proposition that outpatient treatment is an important component of a plan to avoid reoffending because the federal court relied in part on Wooden's release plan that included outpatient treatment. However, Wooden was committed under the federal SVP statute, 18 U.S.C. § 4248, which is quite different than the SVPA. Specifically, the Federal statute provides for conditional release to treatment. *See* 18 U.S.C.A. §§ 4248 (d)(2) and (e)(2). The SVPA does not provide a conditional release option.

Moreover, the outpatient treatment in the release plan at issue in *Wooden* did not reference the specific modalities used in the treatment program or the success of those modalities, only "Mrs. Simm's plan to enroll [Wooden] in a sex treatment program at a nearby hospital. . . ." *Wooden*, 217 F.Supp.3d at 859. In this case, Dr. Gottfried testified before the jury that she provides individual sex offender treatment to people on federal probation, and that MUSC has an "intensive outpatient treatment program for individuals who sexually harm." (R.p.83). Further, the OMH

evaluator testified before the jury, without objection, that "[Petitioner] can certainly get outpatient treatment," and "[t]hat's certainly a possibility." (R.p.351). Therefore, as the court of appeals found, the jury heard from both experts that outpatient treatment is available.

Petitioner's reliance on Florida case law is likewise unavailing. The case of *In re Commitment of Jackson*, 77 So.3d 651 (Fla. Dist. Ct. App. 2011) is particularly inapplicable. Jackson was subject to a conditional release contract that required him to participate in a sex offender treatment program and if he violated that contract he would be reincarcerated.[3] *Id.* at 653. The existence of that enforceable contractual requirement factually distinguishes *Jackson* from the instant case because there is nothing that would require Petitioner to attend a sex offender treatment program if he were to be released; no such contract exists in South Carolina. Here, both experts testified they spoke with South Carolina Probation, Pardon and Parole and determined Petitioner had no conditions or requirements at release. (R.p.89, pp.334–335).

Petitioner's reliance on the State of Washington's sex offender statute and case law is also unavailing. The Washington statute is fundamentally different from the SVPA on the issue of outpatient treatment, which is not referenced in the SVPA at all. Washington's statute expressly provides respondents in SVP proceedings the right to present evidence of proposed voluntary treatment options to combat the State's contention that they are likely to reoffend if not committed to a secure facility. *See In re Det. of Post*, 145 Wash. App. 728, 743, 187 P.3d 803, 811–12 (2008), citing RCW 71.09.060(1). No such provision exists under the SVPA.

While there is no statutory provision in South Carolina enabling out-patient control, care, and treatment for a sexually violent predator, testimony regarding Petitioner's plans to participate

[3] The conditional release contract is similar to the standard sex offender probation requirements in South Carolina.

in voluntary outpatient treatment was presented to the jury. Both Dr. Gottfried and the OMH evaluator testified about Petitioner's plan to live with his brother in Georgia and that if he needed it, he would enter a treatment program established by Sheriff Victor Hill in Georgia, a program that never existed. (R.pp.155–156, pp.333–334). Petitioner then testified he planned to go to "Jump Start," which is a ministry program that would help him find a place to live and a job and he would stay there at least six months, but he did not know if he had been accepted to that program. (R.pp.363–367). Thus, the jury knew about Petitioner's plans, and it is highly unlikely that knowing specific sex offender treatment modalities utilized by the MUSC treatment program would have swayed the jury to believe Petitioner did not need to be confined for treatment.

Petitioner's reliance on Arizona's sexually violent person law is misplaced and does not support the argument that specific treatment modalities in outpatient treatment are relevant in commitment proceedings. Ariz. Rev. Stat. Ann. section 36-3707 provides for post commitment release to less restrictive alternatives if certain conditions are met. South Carolina law provides no option for conditional release or release to less restrictive alternatives. Further, post commitment assessments of a person's dangerousness are different than the issues a jury must decide in SVP commitment trials. The fact that Arizona provides release to less restrictive alternatives is irrelevant to the issues in this case.

Finally, Petitioner's reference to South Carolina SVPA cases mentioning outpatient treatment as support for his assertion that the testimony regarding specific treatment modalities of the MUSC program is relevant fails because the only thing those cases reflect is the availability of outpatient treatment, which was presented to the jury by both experts. Nothing in those cases indicates there was testimony regarding the specific type of treatment modalities that would be included in the referenced outpatient treatment.

Petitioner's claim of prejudice, therefore, fails because the information Petitioner proffered was either stated in testimony or irrelevant. The jury knew Dr. Gottfried provided individual and intensive outpatient sex offender treatment, and that outpatient treatment was a "possibility" for Petitioner. As noted above, any inquiries regarding the specific modalities used in MUSC's outpatient treatment program, or how they might be applicable specifically to treat Petitioner, would require speculation and potentially confuse or mislead the jury, especially given both experts' testimony that they did not reach any opinions regarding what type of treatment Petitioner needed.

The jury was expressly instructed several times that a verdict for commitment required it to find beyond a reasonable doubt Petitioner has a mental abnormality and/or a personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long term control, care, and treatment. Both experts testified Petitioner has a personality disorder, and Dr. Gottfried specified that Petitioner has a paraphilic disorder. Dr. Gottfried opined that Petitioner's paraphilic and personality disorders make him likely to engage in acts of sexual violence if not confined for control, care, and treatment. The OMH evaluator opined Petitioner's personality disorder was not the cause of his sexual offenses, and while Petitioner did need treatment to address his risk factors, he did not meet the criteria for commitment under the SVPA.

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

Evidence regarding specific treatment modalities used in sex offender treatment, whether inpatient or outpatient, is irrelevant to the issues before the jury in a SVPA commitment trial and has the potential to confuse and mislead the jury by presenting an additional element the jury might think the State must prove beyond a reasonable doubt. The court of appeals properly found Judge Holt did not abuse his discretion in excluding testimony regarding general or specific modalities of sex offender treatment and finding the State did not open the door to such testimony. The court of appeals' decision should be affirmed.

CONCLUSION

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

Respectfully submitted,

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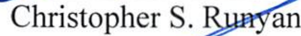
BY: 
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