

**RECEIVED**  
**Nov 17 2025**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County  
The Honorable Daniel Dewitt Hall, Circuit Court Judge  
The Honorable William A. McKinnon, Chief Administrative Judge

Appellate Case No. 2025-001916

In The Matter of the Care and Treatment of  
TYRELL JERMAINE NEELY,

APPELLANT

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RETURN TO MOTION TO DISMISS

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The appellant is being physically detained for a determination of whether he satisfies the requirements for confinement and treatment under the Sexually Violent Predator Act (SVPA). For a full understanding of the nature of the present appeal and the State's current motion to dismiss, appellant would note that below all "parties stipulated that [appellant] presently remains incompetent and is unable to assist in his own defense. As such, in exercising his authority as Guardian, Mr. Thompson recommended that the [appellant] be evaluated under the SVPA, as it is in his best interest. His court appointed SVP counsel concurred." (Ex. 1 June

12, 2023, Order). Appellant has been and continues to be confined at the York County Detention Center until a final disposition of the present action concludes. (Ex. 1 June 12, 2023, Order).

The South Carolina Department of Behavioral Health and Developmental Disabilities (formerly Department of Mental Health) evaluation determined he would not qualify for confinement SVPA. The State sought a second opinion and retained Dr. Emily Gottfried, with the Medical University of South Carolina (MUSC), to conduct a second evaluation. As acknowledged by MUSC, appellant “was seen for his first appointment date on January 25, 2024. On that date, he was generally cooperative, and he signed a consent form indicating that he consented to each portion of the evaluation. He completed a battery of psychological assessment measures on that date.” (Ex. 2 Gottfried Affidavit). However, appellant refused to submit voluntarily to a penile plethysmograph (PPG) test as a part of Gottfried’s follow up appointment. The State argued below that Dr. Gottfried “advised” counsel that the PPG would be necessary as part of the evaluation process. (Ex. 3 State’s Motion to Compel). Thereafter, the lower court compelled appellant to submit to the remainder of the MUSC evaluation, including the PPG test, and required that appellant be transported to MUSC with use of all restraints required to compel compliance. (Ex. 4 Order dated July 31, 2024). The SVP action was held in abeyance pending the completed evaluation and appellant was confined under the order of the court. Appellant acknowledges that the July 31, 2024, order does not make a formal ruling that appellant was in contempt of court. However, regardless of styling the ruling as an order “compelling” cooperation, with continued confinement and abeyance of the SVP action until such compelled cooperation is completed, the trial court has held appellant in the functional equivalent of contempt and has sanctioned appellant, who is suffering from said sanction through is continued confinement and the long delay in the SVP action.

In short, the current matter is being held in suspension indefinitely for the administration of a PPG test by MUSC which appellant has, through his disruptive behavior, refused. Recently, this Court issued a definitive ruling finding that since “PPG is not reliable, as required by Rule 702, we find the trial court abused its discretion in admitting the PPG test results.” Matter of Daily, 443 S.C. 557, 566, 905 S.E.2d 310, 315 (Ct. App. 2024), reh'g denied (Sept. 6, 2024), cert. granted (Feb. 12, 2025). In Daily, this Court noted the extensive use Dr. Gottfried places on a test that, from a legal perspective, is unreliable and not admissible in the courts of this state:

However, Dr. Gottfried was also the State's sole witness and a significant portion of her testimony centered on the PPG test. She emphasized to the jury that the PPG was an “objective test of male sexual arousal” and claimed it is “really, really important to objectively know what this person is aroused by ... [a]nd so the PPG is going to give you data about today on ... what they were aroused by in the laboratory.” She also told the jury that “the PPG has the greatest validity and reliability ....”

Daily, 443 S.C. at 567, 905 S.E.2d at 315.

Despite numerous cases warning about the reliability of penile plethysmograph (PPG) testing, the State continues to bolster the opinion of their retained experts with use of and reliance upon PPG testing results. *See* (Ex. 3 State’s Motion to Compel exhibit 4). Attacks on the admissibility of PPG as part of the initial confinement determination was noted in Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020). In Bilton, this Court dealt with the use of PPG test results by an expert that did not administer or observe the test, serving as a mere conduit to the work performed by a different expert. In addition to that issue, this Court in Bilton noted “some authorities take the position that the PPG has value in treating sex offenders but that

concerns about reliability and a lack of uniform standards preclude its admission as evidence at trial.” *Id.*, 432 S.C. at 164, 851 S.E.2d at 445. This reliability challenge continued with this Court reversing a confinement verdict and remanding for a new trial following the admission of PPG test results in an unpublished decision. *See Matter of Gregg*, No. 2019-001954 (S.C. Ct. App. Aug. 10, 2022), cert. *dismissed as improvidently granted*, No. 2022-001710 (S.C. June 5, 2024).

*A. The matter is immediately appealable under S.C. Code Ann. § 14-3-330(3) (1976 as amended) as impacting a substantial right made during a special proceeding.*

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14–3–330 (1976 & Supp. 2003). *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005). The Code allows an appeal from “A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment.” S.C. Code Ann. § 14-3-330(3).

The term “special proceeding” must be taken in the sense of the Code. It is there defined, under Sections 2 and 3, *as any remedy other than an action or ordinary proceeding in a Court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence.*”

*Allen v. Partlow*, 3 S.C. 417, 418 (1872).

An SVP proceeding is not a private action for the protection or enforcement of a right. It is not to redress or prevent a wrong. It is clearly not a punishment. *See In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002) (holding the SVP statute “is a civil, non-punitive scheme.”). An action under the SVP Act is therefore a special proceeding and any order affecting a substantial right is therefore immediately appealable.

Appellant currently suffers from indefinite confinement under the lower court order which compels him to participate in an unreliable and invasive testing procedure that is inadmissible in courts throughout this state. This impacts a fundamental right and appellant's liberty interests and is immediately appealable under S.C. Code Ann. § 14-3-330(3). See In re Treatment & Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (noting the SVPA "impacts a fundamental right" requiring a "strict scrutiny analysis.").

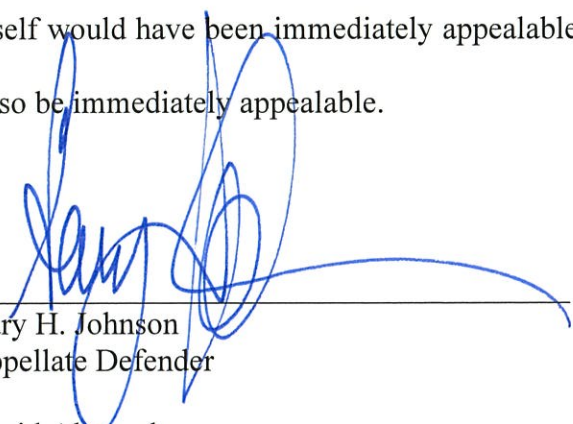
*B. The matter is immediately appeal under S.C. Code Ann. § 14-3-330(1) (1976 as amended) as an intermediate judgment involving the merits since appellant has been held in the equivalent of contempt and subjected to continued and indefinite confinement.*

Appellant is being compelled to take an invasive and unreliable test and will remain confined until said test is administered with no viable avenue for redress.<sup>1</sup> While the order under which appellant continues to be detained speaks in language of an order to compel, it is in fact a finding of contempt. Generally, "a contempt order also is a final order that is immediately appealable." Hooper v. Rockwell, 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999)(holding contempt orders in DSS custody cases are immediately appealable); see also Ex Parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986) (finding a party must refuse to comply with a discovery order and then appeal after a contempt for failure to comply ruling to preserve the issue for appellate review). While the underlying order was fashioned as an order compelling compliance, the State has effectively placed appellant in a judicial black hole. Appellant has not been transported to MUSC so he can formally refuse to submit to Dr. Gottfried's PPG test as

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<sup>1</sup> If this Court determines the action below is not a technical finding of contempt, then appellant would be required to file a motion to compel the state to proceed with the PPG exam at MUSC and, *if that motion to compel were to be granted*, then refuse (again) to cooperate. There is no requirement that the lower court grant the prospective motion to compel, leaving appellant with no avenue to seek redress through direct appeal.

required by the lower court's order of July 31, 2024. (Ex. 5 Appellant's Rule 60, SCRC Motion). The lower court has refused to address the unexplained delay in this step by denying appellant's Rule 60, SCRC, motion. (Ex. 6 Order dated August 12, 2025). As noted, appellant is under confinement at the York County Detention Center while his SVP hearing is being held in abeyance. Holding appellant in confinement under an order to compel compliance with an invasive procedure that has been deemed unreliable and inadmissible in the courts of this state is the functional equivalent of a contempt order. The present appeal should proceed accordingly. While the time for appeal of the original order compelling compliance has passed, the lower court has refused to lift the sanction or move the matter forward in response to the Rule 60, SCRC, motion. Since the underlying order itself would have been immediately appealable, the denial of the Rule 60, SCRC, motion would also be immediately appealable.



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Gary H. Johnson  
Appellate Defender

David Alexander  
Deputy Chief Attorney for Capital Appeals

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

ATTORNEYS FOR APPELLANT

This 17th day of November 2025.

# Exhibit 1

Order Dated June 12, 2023

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 IN THE MATTER OF THE CARE )  
 AND TREATMENT OF )  
 TYRELL JERMAINE NEELY, )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2021-CP-46-02853

CONSENT ORDER FOR EVALUATION  
 FOLLOWING HEARING PURSUANT TO  
 S.C. CODE ANN. § 44-48-100B

FILED-RECEIVED  
 2023 JUN 13 AM 9:40  
 DANIEL HAMILTON  
 CLERK P. & GS  
 YORK COUNTY SC

This matter comes before the Court on the Petition of the State of South Carolina for an Order requiring the Respondent, Tyrell Jermaine Neely, to submit to an examination and to be detained in an appropriate secure facility pending a trial pursuant the Sexually Violent Predator Act (S. C. Code Ann. §§ 44-48-10, *et seq.*; hereafter "the Act"). A Probable Cause Hearing was held on April 12, 2023, and the Respondent, by and through his Guardian Ad Litem, Don A. Thompson, Esq. and his court appointed attorney, Kindle K. Johnson, Esq., consented to the entry of this Order. The State was represented by Suzanne J. Shaw, Assistant Attorney General.

It appeared that this case must proceed under S.C. Code Ann. § 44-48-100(B), which provides that since Respondent has been charged with a sexually violent offense, has been found incompetent to stand trial and is about to be released, and his commitment is sought by the State, requiring this court to first hear evidence to determine whether Respondent committed the act or acts with which he is charged. The Section further requires that the hearing on this issue must comply with all the procedures specified in S.C. Code Ann. § 44-48-100; the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

After hearing evidence and taking testimony on this issue on April 12, 2023, this court made specific findings by separate order regarding whether Respondent committed the act or acts with which he is charged; the extent to which Respondent's incompetence or developmental disability affected the outcome of the hearing, including its effect on Respondent's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of Respondent; and the strength of the prosecution's case.

Following the hearing on this issue, this court found beyond a reasonable doubt that Respondent committed the act or acts with which he is charged, specifically, Attempted Criminal Sexual Conduct, 2<sup>nd</sup> Degree. This court then entered a final order, appealable by Respondent, on that issue, and proceeded to consider whether there is probable cause to believe Respondent meets criteria as a Sexually Violent Predator pursuant to this chapter.

The parties stipulated that Respondent presently remains incompetent and is unable to assist in his own defense. As such, in exercising his authority as Guardian, Mr. Thompson recommended that the Respondent be evaluated under the SVPA, as it is in his best interest. His court appointed SVP counsel concurred.

Based upon the review of the evidence submitted in the Petition and Respondent's consent, I find probable cause exists to believe the Respondent is a sexually violent predator as defined by S.C. Code Ann. § 44-48-30.



THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Respondent shall:

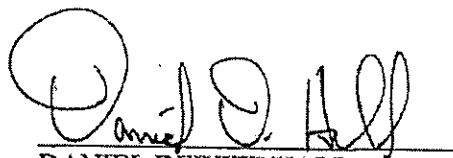
- (a) be confined at the York County Detention Center until a final disposition of this action; and
- (b) be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation to determine whether the Respondent suffers from a mental abnormality or personality 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; and
- (c) Don A. Thompson, Esq. is relieved as Guardian Ad Litem; and
- (d) Kindle K. Johnson, Esq. is relieved as Counsel of Record for purposes of the 100B hearing, but remains counsel of record in the ongoing SVP proceeding.

The ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility as soon as possible. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility. The Respondent continues under the jurisdiction of this Court.

The Department of Mental Health will assign this matter, within five (5) days of receipt of this order, to one of the following qualified experts for Sexually Violent Predator cases: Marie E. Gehle, Psy.D., Christopher Gillen, Ph.D., Victoria Hauth, Ph.D., Jacqueline Dye, Psy.D., Rachel Carter, Ph.D. or Michelle Jones, J.D., Ph.D.

Within five days of the receipt of the written report of the examination by the Office of the Attorney General of South Carolina, said office shall make a copy of such examination available to Respondent's attorney.

IT IS SO ORDERED.



DANIEL DEWITT HALL  
Judge of the Sixth Judicial Circuit  
Court of Common Pleas


June 12, 2023  
York, South Carolina

# Exhibit 2

## Gottfried Affidavit

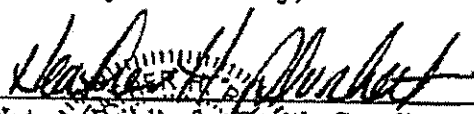


- a. Upon exiting the restroom, Mr. Neely attempted to grab one of the transporting officers' firearms, which resulted in him having to be taken to the ground and a scuffle ensued.
  - b. Following this incident, Mr. Neely jumped out of his chair and lunged at the MUSC examination technician, and the officers had to push him down back into his chair.
  - c. In light of those incidents, the officers indicated that he would need to remain in full restraints which would make the examination scheduled for that date impossible.
  - d. During that discussion, Mr. Neely remained very hostile, and the officers indicated they wanted to return to the detention center immediately.
7. Due to Mr. Neely's lack of cooperation and safety concerns on February 2, 2024, we are unable to complete the evaluation. Although he signed the consent form and vocalized his willingness to cooperate with the evaluation procedures, Mr. Neely's behavior indicates that he is not cooperating.
  8. We respectfully request that the Court order that Mr. Neely cooperate with the procedures of the evaluation and conform his behavior to the requirements of safely conducting this evaluation. Without his cooperation, we are unable to assess whether Mr. Neely's risk of sexual recidivism and the potential presence of a mental abnormality could lead to his engaging in future acts of sexual violence.

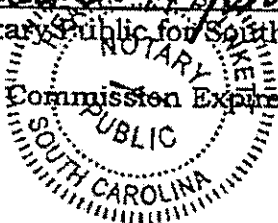
 (L.S.)  
 Emily D. Gottfried, Ph.D.

SWORN to before me this

12<sup>th</sup> day of February, 2024

 (L.S.)  
 Notary Public for South Carolina

My Commission Expires: 7/12/2029



# Exhibit 3

## State's Motion to Compel

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
 )  
IN THE MATTER OF THE CARE )  
AND TREATMENT OF )  
 )  
TYRELL JERMAINE NEELY, )  
RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2021-CP-46-02853

**STATE'S MOTION TO COMPEL  
COOPERATION WITH EVALUATION**

2021 MAR -8 PM 4: 27

To: Kindle Johnson, Esquire:

YOU WILL PLEASE TAKE NOTICE that the State of South Carolina, through the undersigned, makes the this Motion for an order compelling Respondent to fully cooperate in the State's independent evaluation, including the Medical University of South Carolina's psychosexual evaluation protocol(s), for the purposes of determining whether he is a sexually violent predator; and if required, use whatever reasonable means necessary to restrain Respondent during the evaluation, but if he does not fully cooperate with MUSC's psychosexual evaluation protocol, that he be held in contempt of this court, but he may purge his contempt by fully cooperating with MUSC's psychosexual evaluation; and an order continuing the matter and staying all statutory deadlines until such time as Respondent fully cooperates with the MUSC psychosexual evaluation.

In support of this motion, the following is offered:

1. On or about June 20, 2019 Respondent was Indicted by a Grand Jury convened in York County for the offense of Assault with Intent to Commit Criminal Sexual Conduct in the First Degree. This case was later identified as 2019-GS-46-3695. **(EXHIBIT A).**
2. On or about April 23, 2021 the Honorable Judge Keith Kelly entered an Order "Finding of Lack of Competence to Stand Trial for the Foreseeable Future and Ordered a Probate Commitment Proceeding." **(EXHIBIT B).**
3. As directed above, On June 15, 2021 and June 28, 2021 the Honorable Carolyn E. Woodruff conducted the Probate Commitment Proceeding in York County Case No. 2015-MHES-46-00323. In her order, Judge Woodruff ordered that Respondent undergo outpatient treatment

and comply with additional terms. **(EXHIBIT B)**.

4. As of the filing of this Motion to Compel Cooperation, Respondent remains incompetent to stand trial.
5. On September 17, 2021 an action under the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.*, was commenced with the filing of a Petition in York County Court of Common Pleas.
6. As required by the Act, this matter was reviewed by the Multi-Disciplinary Team, the Prosecution Review Committee, and the Chief Administrative Judge of Common Pleas in the Sixteenth Circuit, and an Order Finding Probable Cause was issued on September 29, 2021. **(EXHIBIT C)**.
7. Since Respondent continues to be incompetent to proceed, the State must proceed under S.C. Ann. Code 44-48-100(B) as described below.
8. Section 44-48-100(B) S.C. Code Ann. provides as follows:

(B) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), then the court first shall conduct a non-jury hearing, where it will hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal hearings, except the right not to be tried while incompetent and the right to a jury trial, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, then the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

9. On April 12, 2023 this Court conducted the 44-48-100(B) hearing as required above and found beyond a reasonable doubt that Respondent had committed the offense of Assault with Intent to Commit Criminal Sexual Battery in the First Degree as described in case no. 2019-GS-46-3695. The Order was signed by the Honorable Judge Daniel Dewitt Hall on April 20, 2023. **(EXHIBIT D)**.
10. Thereafter, the parties stipulated to an Order Finding Probable Cause and on June 12, 2023, the Honorable Daniel Dewitt Hall ordered that Respondent submit to an evaluation to be conducted by a doctor at the South Carolina Department of Mental Health to determine whether he is a Sexually Violent Predator. **(EXHIBIT E)**.
11. On December 11, 2023 a doctor at the South Carolina Department of Mental Health filed her report with this Court.
12. As allowed by statute, the Attorney General's office sought an independent evaluation of Respondent, pursuant to S.C. Code Ann. Section 44-48-90(C). A Notice of Retention of Independent Expert was filed retaining the Medical University of South Carolina ("MUSC"). **(EXHIBIT F)**.
13. Dr. Emily Gottfried, Ph.D. of MUSC was designated to conduct the evaluation of Respondent.
14. On February 2, 2024 Respondent was transported to the MUSC hospital located in Charleston, SC for the second day of his evaluation.
15. Dr. Gottfried advised this office that during Respondent's second appointment, he became hostile, attempted to snatch the transporting officer's service weapon, jumped out of his chair, and lunged at Dr. Gottfried's examination technician. A brawl ensued until the transport officers were able to regain control of Respondent. He was then placed in full restraints<sup>1</sup>. Due to safety concerns, the evaluation was suspended, and Respondent transported back to the York County Detention Center. (See Dr. Gottfried's affidavit attached as **EXHIBIT G**).
16. Dr. Gottfried advised the undersigned that to conduct a complete evaluation, it will be necessary to utilize certain procedures to appropriately restrain Respondent during a portion of her examination, specifically the Penile Plethysmograph ("PPG" Examination). Further, Dr. Gottfried advised that it would be preferable to have Respondent partially unshackled or out of full restraints during this portion of the evaluation, but due to his past combative and dangerous conduct, Respondent may need to remain in full restraints to ensure the safety of MUSC staff and law enforcement personnel.

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<sup>1</sup> It is not known at this time whether additional criminal charges will be instituted by the Ninth Circuit Solicitor's Office.

17. Failure to cooperate with an evaluation, specifically the PPG, has been addressed by South Carolina circuit courts in numerous cases. In 2017, *In the Matter of the Care and Treatment of Robert David Mayne*, and *In the Matter of the Care and Treatment of Roy Wade*, Charleston and Aiken County circuit courts found the State was entitled to the evaluation sought, including the PPG, and granted the State's Motion to Compel. In 2020, *In the Matter of the Care and Treatment of Harry L. Leonard*, a Charleston County circuit court ordered Leonard to cooperate with the evaluation, including the PPG or be subject to the contempt powers of the court. Significantly, testimony was received on the PPG by two qualified experts, and the court found the PPG was necessary and not an overly invasive procedure. Most recently, in 2021, *In the Matter of the Care and Treatment of Shawn Torlif Daily*, and, *In the Matter of the Care and Treatment of John Gleason Hubner* Spartanburg and Richland County circuit courts found the PPG was not an overly invasive procedure and ordered Daily to cooperate or be held in contempt. The courts in *Mayne*, *Wade*, *Leonard*, *Daily* and *Hubner* all held: "[R]easonable access" as contained in S.C. Code Ann. Section 44-48-90(C) would be best determined by the evaluator, whether that person is appointed by the Court or retained by either side. See **COMPOSITE EXHIBIT H**.
18. This Court has jurisdiction over the subject matter of this litigation, as well as the Respondent himself. It is within the powers of the circuit court to enforce its orders, enforce a statute enacted by the General Assembly, and to punish for contempt.
19. When the General Assembly passed the Sexually Violent Predator Act, it made a legislative finding that "a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment. . ." S.C. Code Ann. Section 44-48-20. For this goal to be met, it is necessary that the Respondent cooperate with evaluations ordered by the Court or authorized by the statute.
20. S.C. Code Ann. Section 44-48-90(C) confers upon the Attorney General the right to secure an independent evaluation, where the Court-appointed evaluator has concluded the person did not meet the criteria to be committed. The courts in *Mayne*, *Wade*, *Leonard*, *Daily*, and *Hubner* held: "[R]easonable access" as contained in Section 44-48-90(C) would be best determined by the examiner, whether that person is appointed by the Court or retained by either side. Since Section 44-48-90(C) requires that "[A]ll examiners are permitted to have reasonable access" to the person and the documentary records, such access would also apply to an employee or associate of the examiner involved in any evaluation or testing of Respondent.

WHEREFORE, the State moves this Court as follows:

- (1) An order requiring Respondent to fully cooperate in the State's independent evaluation, including the Medical University of South Carolina's ("MUSC") psychosexual

evaluation protocol(s), for the purposes of determining whether he is a sexually violent predator;

(2) An order allowing law enforcement personnel to utilize whatever restraints and shackles that they deem reasonably necessary to ensure the safe transportation, delivery, and evaluation of Respondent to, and while being evaluated by the MUSC staff;

(3) An order allowing law enforcement or security officers to utilize any restraints they deem reasonably necessary to ensure the safety of all MUSC staff and law enforcement or security personnel while MUSC is administering the psychosexual evaluation protocol(s);

(4) An order mandating that if Respondent does not fully cooperate with MUSC's psychosexual evaluation protocol(s), that he be held in contempt by this Court, but that he may purge his contempt by fully cooperating with MUSC's psychosexual evaluation; and

(5) An order continuing this matter and staying all statutory deadlines until such time as Respondent fully cooperates with the MUSC psychosexual evaluation; and

(6) An order granting all such further relief as is just and proper.

Respectfully Submitted,

ALAN WILSON  
Attorney General

JAMES K. FISHER  
Assistant Attorney General

By: James K. Fisher  
Attorneys for Petitioner  
S.C. Bar Number 106127  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-4042

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I sent a copy of The Motion to Compel Cooperation, its Exhibits, and the Supporting Memorandum of Law to Kindle Kay Johnson, attorney for Respondent, at 223 East Main Street, Suite 500, Rock Hill, SC 29730 on this 5<sup>th</sup> day of March, 2024.

Respectfully Submitted,

ALAN WILSON  
Attorney General

JAMES K. FISHER  
Assistant Attorney General

By:



Attorneys for Petitioner  
S.C. Bar Number 106127  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-4042

STATE OF SOUTH CAROLINA

COUNTY OF YORK

INDICTMENT

2019 JUN 26 PM 3:48




At a Court of General Sessions, convened on June 20, 2019, the Grand Jurors of York County present upon their oath:

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT

The Defendant, Tyrell Jermaine Neely, did in York County, South Carolina, on or about February 18, 2019, committed the crime of Assault with Intent to Commit Criminal Sexual Conduct in the First Degree upon the Victim, **F.E.** in that the Defendant assaulted the Victim with the intention to engage in a sexual batter with the Victim without her consent and 1) through the use of aggravated force to accomplish the sexual battery and/or 2) to gain the victim's submission to sexual battery under circumstances where the victim was also the victim of forcible confinement, kidnapping, burglary, housebreaking, or any other similar offense or act, all in violation of Section 16-3-652, 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.

  
ERIN M. JOYNER  
ASSISTANT SOLICITOR

**WITNESSES**

RHPD

Witnessing Officer: *R. Smith*

**ARREST WARRANT NUMBER**

Direct Indictment

**ACTION OF GRAND JURY**

*State*

*Sarah W*  
Foreperson of Grand Jury  
Date: *6/20/19*

**VERDICT**

Foreperson of Petit Jury  
Date:

*Direct Indictment*

DOCKET NO. 2019-GS-46-03695

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 20, TERM 2019

THE STATE

VS.

TYRELL JERMAINE NEELY

INDICTMENT FOR

ASSAULT WITH INTENT TO COMMIT  
CRIMINAL SEXUAL CONDUCT

SC Code: § 16-03-0656  
CDR Code: 0253

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
 )  
IN THE MATTER OF TYRELL NEELY )  
An Alleged Mentally Ill Person )  
 )  
EX PARTE: Erin Joyner, )  
Assistant Solicitor )

IN THE PROBATE COURT  
Case No.: 2015MHES4600323

JUDGMENT AND ORDER  
FOR TREATMENT



THIS MATTER CAME ON FOR HEARING pursuant to S. C. Code Ann. §44-23-430(2). On April 23, 2021, Circuit Court Judge R. Keith Kelly entered an Order following a Blair hearing on Tyrell Neely's competency to stand trial. The Order is entitled "Finding of Lack of Competence to Stand Trial for the Forseeable [sic] Future and Ordering Probate Commitment Proceedings" and is hereinafter referred to as the Kelly Order. The Kelly Order included a detailed analysis of Tyrell Neely's charges <sup>1</sup>and previous evaluations for competence conducted by three (3) examiners.

Among other things the Kelly Order directed the Solicitor to initiate judicial admission proceedings in the York County Probate Court. Assistant Solicitor Erin Joyner filed the Petition for Judicial Admission on April 23, 2021, with the Kelly Order attached. Following the procedures outlined in S. C. Code §44-17-510, et seq., on April 23, 2021, the Court appointed Thomas B. Roper, Esquire, as counsel for Tyrell Neely (hereinafter referred to as Mr. Neely), and scheduled examinations at Catawba Mental Health Center (hereinafter CMHC) for June 10, 2021, which was the earliest date available from CMHC. The Court also appointed Catawba Mental Health Center's physicians, Christine Williamson, MD, or Manojbhai Patel, MD, as the examiners, as the Court was not informed at the time of appointment which physician would

<sup>1</sup> Mr. Neely is charged with Assault with Intent to Commit Criminal Sexual Conduct, Escape, Indecent Exposure, and Exposure of Private Parts in a Lewd and Lascivious Manner.

#1  
CFW

CERTIFIED TRUE COPY  
Carilyn E. Woodriff  
PROBATE JUDGE, YORK COUNTY, SC

conduct the examination. The Court also appointed Amanda Clough, LMSW, as the other examiner, but Kara Schneider, MA, was later substituted for Ms. Clough.

Also, on April 23, 2021, the Court emailed the Petition for Judicial Admission with the Kelly Order attached to Mr. Roper and to Ms. Clough at Catawba Mental Health Center.

Dr. Patel and Ms. Schneider conducted the examinations on June 10, 2021.

A hearing was held June 15, 2021. Present were Ms. Joyner; Mr. Neely; Mr. Roper; Mr. Neely's private counsel, Twana Burris; and with Mr. Neely's permission, Daisy Cotton, Mr. Neely's mother. At the hearing, the Court was informed that Mr. Neely is a resident of Richland County and resides there with Mrs. Cotton.

Also present at the hearing was Ms. Schneider, who reported both her diagnosis and that of Dr. Patel, testifying from his report, which is a record kept in the ordinary course of business at CMHC. Ms. Schneider was questioned by both Mr. Roper and Ms. Joyner.

Both examiners determined that Mr. Neely is mentally ill with a diagnosis of Schizoaffective Disorder, Bipolar Type. Both Dr. Patel and Ms. Schneider employed SCDMH criteria for civil commitment to discern whether Mr. Neely needs both inpatient and outpatient treatment as opposed to outpatient treatment only. These criteria include whether a person is exhibiting suicidal or homicidal ideations or is experiencing hallucinations, command or otherwise, directing him to harm himself or others. Based on their analysis of Mr. Neely's current mental status, both examiners recommended involuntary outpatient treatment for Mr. Neely. Ms. Schneider testified that both examiners found Mr. Neely was oriented to person, place, time and situation, and had insight into his need for injectable medication. The examiners did not find that Mr. Neely was endorsing any hallucinations. Ms. Schneider further testified that

#2  
CEN

the criteria employed with a SCDMH assessment do not include assessment for risk of harmful behaviors toward self or others, including risks due to hyper-sexuality.

It came to the attention of the Court at the hearing, however, that neither Dr. Patel nor Ms. Schneider had an opportunity to review the Kelly Order prior to conducting their examinations. To ensure the full record of the proceedings was before the examiners, the Court again sent the Kelly Order to Catawba Mental Health Center and reconvened the hearing on June 28, 2021. Dr. Patel and Ms. Schneider filed amended examiners' reports prior to the hearing and copies were provided to counsel.

Present in the courtroom at the June 28<sup>th</sup> hearing were Ms. Joyner; Mr. Roper; Mr. Neely; Ms. Burris; Ms. Cotton; and Ms. Schneider. Dr. Patel appeared via Zoom. Both examiners testified as to their amended reports and were questioned by Ms. Joyner, Mr. Roper, Mr. Burris and the Court. Both examiners testified that after review of the Kelly Order, neither examiner would change his or her professional opinion and recommendation that Mr. Neely meets the criteria for outpatient treatment and not for inpatient treatment. Both examiners elaborated that Mr. Neely should seek the services of a neurologist or neuropsychiatrist and perhaps an immunologist, a geneticist and endocrinologist. Ms. Schneider noted that a forensic risk assessment could be sought, but that such an assessment was outside the criteria for her and Dr. Patel's examinations.

Based on the clear and convincing evidence adduced at the hearing and consideration of the testimony and the record, the Court finds that Mr. Neely is mentally ill and because of his mental condition lacks sufficient insight or capacity to make responsible decisions with respect to his treatment.

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CJW

IT IS THEREFORE ORDERED that Mr. Neely shall undergo an outpatient treatment program for a period not to exceed twelve (12) months. The Court considered committing Mr. Neely to inpatient treatment at a State mental facility, but due in part to the frequent and prolonged delays encountered by the Court in obtaining inpatient beds and on the examiners' opinions that Mr. Neely would not benefit from inpatient treatment, the Court adopted the recommendations of the examiners for outpatient treatment with the following terms and conditions.

Because Mr. Neely and Mrs. Cotton represented that Mr. Neely resides in Richland County, the Court will communicate with the Richland County Probate Court to transfer venue. Until venue is transferred ~~or~~ if Mr. Neely is physically present in York County after transfer of venue, however, this Court retains jurisdiction of Mr. Neely to ensure compliance with this Order pursuant to S. C. Code §44-17-610, as amended.

While this Order is in effect, Mr. Neely shall continue to receive his biweekly injection of Prolixin Decanoate, 25 mg, as well as his dosage of Seroquel, 200 mg at night, unless his medications are changed by his DMH physician or other medical specialists to manage both his schizoaffective disorder and his narcolepsy with cataplexy. Mr. Neely may be released from Moss Justice Center immediately after his next injection, which is due on or about July 8, 2021.

Mr. Neely shall immediately sign a release for his records from Catawba Mental Health Center and Moss Justice Center to be transferred to his providers in Richland County. The SCDMH liaison, Sarah Franke, shall coordinate the transfer of services to Richland County. Mr. Neely shall report for an initial intake appointment and assessment with local SCDMH facilities in Richland County within three (3) business days of his release from jail. Thereafter he shall make and keep all appointments with the provider's therapists and medical personnel.

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Because the Court has concerns about the seriousness and frequency of the charges pending against Mr. Neely and his need for compliance with intensive outpatient treatment, in lieu of ordering inpatient treatment the Court requires Mr. Neely to reside with his mother at her residence at 513 Scribes Lane, Columbia, South Carolina, so that he has reliable housing and transportation while undergoing outpatient treatment.

After his case is opened at the local mental health center in Richland County, Mr. Neely shall be followed by the equivalent of the Intensive Community Treatment Team (ICTT or ACTT) available at the local SCDMH outpatient treatment facility to ensure that he remains compliant with this Order.

Mr. Neely may not travel to or be present in York County while this Order, as amended or extended, is in effect.

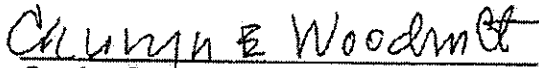
Any victims of Mr. Neely's criminal actions shall be notified by the Solicitor of his release and that he is not to be present in York County.

The Court also emphasized to Mr. Neely that if either Probate Court receives an affidavit that he is not compliant with his outpatient treatment, he will be in contempt of a Court Order and a Supplemental Hearing will be scheduled to determine sanctions for contempt, one of which may be incarceration until an inpatient bed may be obtained.

The notice required by S. C. Code Ann. §23-31-1040 (a copy of which is attached to and made a part of this Order) has been provided to Mr. Neely.

AND IT IS SO ORDERED.

June 29, 2021  
York, South Carolina

  
Carolyn E. Woodruff  
Judge of Probate

HS  
CJM

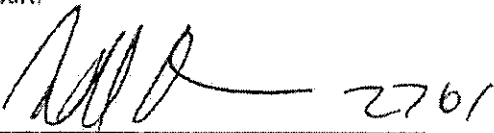
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|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
|                         | ) | SIXTEENTH JUDICIAL CIRCUIT   |
| COUNTY OF YORK          | ) | CASE #: 2021-CP-46-02853     |
|                         |   |                              |
| IN THE MATTER OF THE    | ) |                              |
| CARE AND TREATMENT OF   | ) |                              |
| TYRELL JERMAINE NEELY,  | ) | PROBABLE CAUSE ORDER         |
| RESPONDENT.             | ) |                              |
| _____)                  |   |                              |

IT APPEARING FROM the petition filed by the State of South Carolina, after a review pursuant to S. C. Code Ann. Section 44-48-80, that there is probable cause to believe the Respondent meets the criteria to be a sexually violent predator pursuant to the statute, and the State of South Carolina has established sufficient evidence to require that the Respondent be taken into custody and confined in a secure facility, and a hearing be held to allow Respondent to contest probable cause as to whether Respondent is a sexually violent predator; therefore,

IT IS HEREBY ORDERED THAT:

1. If Respondent is not currently in custody in a secure facility, Respondent shall be taken into custody by the Sheriff of any county in which the Respondent may be found, and shall be transferred to the custody of the Sheriff of York County and shall be confined in the York County Detention Center pending the Probable Cause hearing held pursuant to Section 44-48-80(B);
2. Respondent shall be personally served, by the agency having custody of the Respondent, with a copy of the Petition filed in this action and this Order, as notice to the Respondent of this proceeding and of his opportunity to be heard;
3. A Probable Cause hearing shall be held before the Court to allow Respondent to contest whether probable cause exists to order that Respondent remain in custody, and be evaluated by an appointed expert; provided, that if Respondent is not already in custody, such as at the Department of Corrections, he shall be taken into custody and a Probable Cause hearing held within 72 hours.
4. The Clerk of Court for York County shall appoint the Commission on Indigent Defense Contract Attorney for court-appointed indigent cases in York County to represent the Respondent at the above hearing, and until further Order of the Court. The Clerk of Court shall promptly notify said attorney of that appointment;
5. Counsel for the State shall ensure that Respondent is transported to Court for the hearing on the date and time of the hearing as will be set by the Court.

AND IT IS SO ORDERED.

  
 WILLIAM A. MCKINNON  
 Chief Administrative Judge  
 Sixteenth Judicial Circuit  
 Court of Common Pleas

September 29, 2021  
 York, South Carolina

6. Per phone call with the state, the state will schedule + hearing with an appropriate pickup date.



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 IN THE MATTER OF THE CARE )  
 )  
 AND TREATMENT OF )  
 )  
 TYRELL JERMAINE NEELY, )  
 )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2021-CP-46-02853

**ORDER FOLLOWING HEARING  
 PURSUANT TO S.C. CODE ANN. § 44-48-100B**

FILED-RECEIVED  
 2023 APR 28 AM 8:58  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SOUTH CAROLINA

This matter comes before the Court on the Petition of the State of South Carolina for an Order requiring Respondent, Tyrell Jermaine Neely, to submit to an examination and to be detained in an appropriate secure facility pending a trial pursuant the Sexually Violent Predator Act S. C. Code Ann. §§ 44-48-10, *et seq.* (hereafter “the SVPA”). Respondent is represented by Kindle K. Johnson, Esq., as well as by and through his Guardian Ad Litem, Don A. Thompson, Esq. The State is represented by Suzanne J. Shaw, Assistant Attorney General.

Respondent was initially charged by way of a Direct Indictment for Assault with Intent to Commit Criminal Sexual Conduct, on or about June 20, 2019. State’s Exhibit B. A conviction of the conduct charged as indicted would qualify as a sexually violent offense as defined by S.C. Code Ann. § 44-48-30. That charge remains pending under docket number 2019-GS-46-03695. Following initial proceedings in the criminal matter, a competency evaluation was ordered, and it was ultimately determined Respondent was not competent to stand trial for the pending offense. The matter then proceeded to Probate Court on or about April 23, 2021, and Respondent was ultimately ordered to Involuntary Outpatient treatment<sup>1</sup> by way of a Judgment and Order for Treatment in Case #2015-MHES-46-00323, executed by the Hon. Carolyn E. Woodruff on June 29, 2021. State’s Exhibit A.

On July 15, 2021, the SCDC Multidisciplinary Team met, and following a vote, referred Respondent for further review. The Prosecutor’s Review Committee met on August 17, 2021, and following a vote, also referred Respondent for further review under the SVPA. The State filed its Petition on September 17, 2021. Because Respondent was declared incompetent to stand trial in the criminal court, prior to any probable cause findings or the issuance of an Order for Evaluation, this case must proceed under S. C. Code Ann. § 44-48-100(B).

Section 100(B) provides that since Respondent has been charged with a sexually violent offense, has been found incompetent to stand trial and is about to be released, and his commitment is sought by the State, the court must first hear evidence to determine whether Respondent committed the act or acts with which he is charged. The Section requires that: (1) the hearing on this issue must comply with all the procedures specified in S.C. Code Ann. § 44-48-100; (2) the rules of evidence applicable in criminal cases apply; and (3) all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

<sup>1</sup> Among other conditions, including, in part, that Respondent was required to live with his mother in Richland County, and that he not physically be present in York County for a prescribed period.



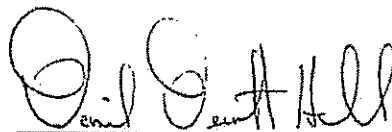
After receiving the State's proposed Exhibits A (6/29/21 Judgment and Order for Treatment) and B (Certified copies of Direct Indictments under case #2019-GS-46-03695) in evidence without objection, and after hearing the testimony of, F.E., on April 12, 2023, this court makes the following specific findings on whether Respondent committed the act or acts with which he is charged; the extent to which Respondent's incompetence or developmental disability affected the outcome of the hearing, including its effect on Respondent's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of Respondent; and the strength of the prosecution's case.

This court hereby finds the following: (1) on February 21, 2019, Respondent did engage in conduct toward F.E. which constitutes Assault with Intent to Commit Criminal Sexual Conduct, a Sexually Violent Offense; (2) Respondent was and presently remains incompetent, and unable to assist his counsel or Guardian in his defense; (3) Respondent's incompetence, given that he is represented by counsel and has a Guardian to speak on his behalf, did not materially affect the outcome of the hearing as he did not testify under oath and the State's witness was subject to cross examination; (4) the evidence in this case is straightforward, the victim testified clearly and credibly as to the events which occurred on February 21, 2019, and reconstruction of the record was not required; and (5) based on the evidence presented to the court, the State has proven beyond a reasonable doubt that Respondent committed the acts alleged in the indictment.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Respondent:

- (a) Is hereby adjudicated to have committed Assault with Intent to Commit Criminal Sexual Conduct for purposes of S.C. Code Ann. § 44-48-100(B); this finding is sealed, and shall not be used for any purpose other than civil commitment proceedings under the SVPA; and
- (c) Don A. Thompson, Esq. is relieved as Guardian Ad Litem; and
- (d) Kindle K. Johnson, Esq. is relieved as Counsel of Record for purposes of the 100B hearing, but remains counsel of record in the ongoing SVP proceeding.

IT IS SO ORDERED.



DANIEL DEWITT HALL  
Judge of the Sixth Judicial Circuit  
Court of Common Pleas

April 20, 2023  
York, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 IN THE MATTER OF THE CARE )  
 AND TREATMENT OF )  
 )  
 TYRELL JERMAINE NEELY, )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2021-CP-46-02853

CONSENT ORDER FOR EVALUATION  
 FOLLOWING HEARING PURSUANT TO  
 S.C. CODE ANN. § 44-48-100B

FILED-RECEIVED  
 2023 JUN 13 AM 9:40  
 DAVID HAMILTON  
 CLERK P. & GS  
 YORK COUNTY, SC

This matter comes before the Court on the Petition of the State of South Carolina for an Order requiring the Respondent, Tyrell Jermaine Neely, to submit to an examination and to be detained in an appropriate secure facility pending a trial pursuant the Sexually Violent Predator Act (S. C. Code Ann. §§ 44-48-10, *et seq.*; hereafter "the Act"). A Probable Cause Hearing was held on April 12, 2023, and the Respondent, by and through his Guardian Ad Litem, Don A. Thompson, Esq. and his court appointed attorney, Kindle K. Johnson, Esq., consented to the entry of this Order. The State was represented by Suzanne J. Shaw, Assistant Attorney General.

It appeared that this case must proceed under S.C. Code Ann. § 44-48-100(B), which provides that since Respondent has been charged with a sexually violent offense, has been found incompetent to stand trial and is about to be released, and his commitment is sought by the State, requiring this court to first hear evidence to determine whether Respondent committed the act or acts with which he is charged. The Section further requires that the hearing on this issue must comply with all the procedures specified in S.C. Code Ann. § 44-48-100; the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

After hearing evidence and taking testimony on this issue on April 12, 2023, this court made specific findings by separate order regarding whether Respondent committed the act or acts with which he is charged; the extent to which Respondent's incompetence or developmental disability affected the outcome of the hearing, including its effect on Respondent's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of Respondent; and the strength of the prosecution's case.

Following the hearing on this issue, this court found beyond a reasonable doubt that Respondent committed the act or acts with which he is charged, specifically, Attempted Criminal Sexual Conduct, 2<sup>nd</sup> Degree. This court then entered a final order, appealable by Respondent, on that issue, and proceeded to consider whether there is probable cause to believe Respondent meets criteria as a Sexually Violent Predator pursuant to this chapter.

The parties stipulated that Respondent presently remains incompetent and is unable to assist in his own defense. As such, in exercising his authority as Guardian, Mr. Thompson recommended that the Respondent be evaluated under the SVPA, as it is in his best interest. His court appointed SVP counsel concurred.

Based upon the review of the evidence submitted in the Petition and Respondent's consent, I find probable cause exists to believe the Respondent is a sexually violent predator as defined by S.C. Code Ann. § 44-48-30.



THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Respondent shall:

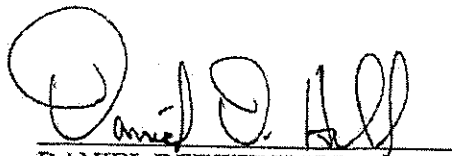
- (a) be confined at the York County Detention Center until a final disposition of this action; and
- (b) be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation to determine whether the Respondent suffers from a mental abnormality or personality 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; and
- (c) Don A. Thompson, Esq. is relieved as Guardian Ad Litem; and
- (d) Kindle K. Johnson, Esq. is relieved as Counsel of Record for purposes of the 100B hearing, but remains counsel of record in the ongoing SVP proceeding.

The ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility as soon as possible. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility. The Respondent continues under the jurisdiction of this Court.

The Department of Mental Health will assign this matter, within five (5) days of receipt of this order, to one of the following qualified experts for Sexually Violent Predator cases: Marie E. Gehle, Psy.D., Christopher Gillen, Ph.D., Victoria Hauth, Ph.D., Jacqueline Dye, Psy.D., Rachel Carter, Ph.D. or Michelle Jones, J.D., Ph.D.

Within five days of the receipt of the written report of the examination by the Office of the Attorney General of South Carolina, said office shall make a copy of such examination available to Respondent's attorney.

IT IS SO ORDERED.

  
DANIEL DEWITT HALL  
Judge of the Sixth Judicial Circuit  
Court of Common Pleas

June 12, 2023  
York, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
 )  
IN THE MATTER OF THE )  
CARE AND TREATMENT OF )  
TYRELL JERMAINE NEELY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
CASE #: 2021-CP-46-02853  
  
NOTICE OF RETENTION OF  
INDEPENDENT EXPERT

To: Kindle K. Johnson, Attorney for Respondent:

YOU WILL PLEASE TAKE NOTICE that the Attorney General's Office is exercising its right, pursuant to S.C. Code Ann. § 44-48-90(C), to an independent evaluation of the above Petitioner regarding whether he continues to suffer from a mental abnormality or 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, pursuant to the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10, *et seq.* Attached as Exhibit A is the letter from the Attorney General's Office retaining its expert to conduct an evaluation.

Respectfully submitted,

ALAN WILSON  
Attorney General

James K. Fisher  
Assistant Attorney General


By: James K. Fisher  
Attorneys for Petitioner  
Office of the Attorney General  
S.C. Bar No. 106127  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(O) (803) 734-4042; jimfisher@scag.gov

December 21, 2023



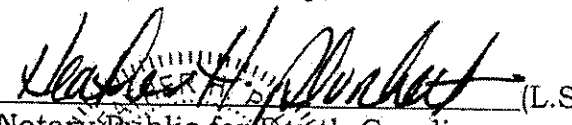


- a. Upon exiting the restroom, Mr. Neely attempted to grab one of the transporting officers' firearms, which resulted in him having to be taken to the ground and a scuffle ensued.
  - b. Following this incident, Mr. Neely jumped out of his chair and lunged at the MUSC examination technician, and the officers had to push him down back into his chair.
  - c. In light of those incidents, the officers indicated that he would need to remain in full restraints which would make the examination scheduled for that date impossible.
  - d. During that discussion, Mr. Neely remained very hostile, and the officers indicated they wanted to return to the detention center immediately.
7. Due to Mr. Neely's lack of cooperation and safety concerns on February 2, 2024, we are unable to complete the evaluation. Although he signed the consent form and vocalized his willingness to cooperate with the evaluation procedures, Mr. Neely's behavior indicates that he is not cooperating.
8. We respectfully request that the Court order that Mr. Neely cooperate with the procedures of the evaluation and conform his behavior to the requirements of safely conducting this evaluation. Without his cooperation, we are unable to assess whether Mr. Neely's risk of sexual recidivism and the potential presence of a mental abnormality could lead to his engaging in future acts of sexual violence.

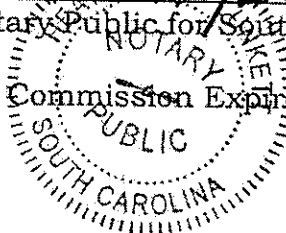
 (L.S.)  
 Emily D. Gottfried, Ph.D.

SWORN to before me this

12<sup>th</sup> day of February, 2024

 (L.S.)  
 Notary Public for South Carolina

My Commission Expires: 7/12/2029



RICHLAND COUNTY  
FILED

2021 JUN 16 AM 9:55

JAMES K. FALK, ESQ.  
CCH, G.S., & F.F.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
IN THE MATTER OF THE )  
CARE AND TREATMENT OF )  
JOHN GLEASON HUBNER, )  
 )  
 )  
RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
CASE #: 2020-CP-40-03112  
  
ORDER TO COMPEL COOPERATION

The State of South Carolina through the Attorney General's Office moved for an Order requiring Respondent John Gleason Hubner to cooperate in an evaluation for the purposes of determining whether he is a sexually violent predator. A hearing was held on May 12, 2021 in Richland County. The Respondent was present and represented by James K. Falk, Esq. The State was represented by Assistant Attorney General Christopher S. Runyan.

This is a pre-commitment matter pending under the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.* ("SVPA"). Pursuant to a previous Order for Evaluation, a report was issued by Dr. Rozanna Tross of the Department of Mental Health ("DMH") concluding Respondent did not meet the criteria to be civilly committed under the SVPA. Thereafter, as authorized by Section 44-48-90(C), the Attorney General's office sought an independent evaluation from the Sexual Behaviors Clinic and Lab ("SBCL") at the Medical University of South Carolina "MUSC". Dr. Emily Gottfried, the Director of MUSC's SBCL was designated to conduct that evaluation. Dr. Gottfried advised the Court that in order to conduct a complete evaluation, it will be necessary to utilize certain procedures, including but not limited to the Penile Plethysmograph ("PPG"). The Court qualified Dr. Gottfried and Dr. Tross as experts in the areas of Forensic Psychology and Sexually Violent Predator evaluations. The Court also received testimony from the Respondent.

Dr. Gottfried testified the PPG is part of a standard protocol used at MUSC's SBCL based on the recommendations in evidence-based literature for assessing Respondent's likelihood to engage in future acts of sexual violence. Dr. Tross testified she does not use the PPG in her evaluation protocol, but conceded that she is free to choose the methods and diagnostic testing she believes are necessary to answer the referral question.

Dr. Gottfried stated the PPG was of particular importance to her evaluation to assist in assessing Respondent's sexual arousal because there was evidence of deceptiveness indicated in psychological tests administered to Respondent as a part of the evaluation. Dr. Tross also testified Respondent was deceptive during her evaluation. Both experts agreed the PPG is generally accepted in the psychological community as an objective measure of male sexual arousal. Additionally, both experts agreed the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. "DSM-5" is authoritative in their field, and both agreed the DSM-5 notes the PPG is most thoroughly researched and longest used psychophysiological measures of sexual interest, although sensitivity and specificity of diagnosis may vary from one site to another.

Dr. Tross testified one issue with the PPG was it could not alone answer the referral question of whether a person suffers from a mental abnormality or personality disorder that makes them likely



to engage in future acts of sexual violence; however, she conceded that no one test could answer the referral question. Of significance, Dr. Gottfried testified the PPG was only one part of a comprehensive evaluation included in the MUSC's standard protocol, and she does not rely solely on the PPG to render an opinion.

Dr. Gottfried testified she is a certified PPG Clinical Analyst and the SBCL is a certified PPG Research Lab, the highest level of certification for PPG labs. Dr. Gottfried has published and presented peer reviewed materials specific to the PPG, and is active in current research specific to the PPG. She has authorized and interpreted results in 42 PPG examinations, 36 specific to the SVPA. Dr. Tross, on the other hand, has not published or presented peer review material specific to the PPG, has never authorized a PPG, and is not certified to administer or interpret results.

The Court is faced with weighing the testimony of two qualified experts and finds Dr. Gottfried's extensive first-hand experience working with and researching the PPG is more compelling than Dr. Tross' limited experience specific to the PPG. Further, Dr. Gottfried's testimony established a valid need to perform the test, and a baseline reliability of the PPG. An expert's established protocol for completing a psychosexual evaluation is not unreasonable simply because experts may disagree about what protocols to follow in completing a psychosexual evaluation.

When the General Assembly passed the Sexually Violent Predator Act it made a legislative finding that "a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment..." S.C. Code Ann. § 44-48-20. A person's dangerous propensities are the focus of the SVP Act. *In re Care & Treatment of Corley*, 353 S.C. 202, 577 S.E.2d 451, 453-54 (2003). For this goal to be met it is necessary that the person cooperate with evaluations ordered by the Court or authorized by the statute. The subsequent evaluation here is authorized by S.C. Code Ann. Section 44-48-90(C).

Failure to cooperate with an evaluation, specifically the PPG, has been addressed by South Carolina circuit courts in numerous cases. In 2017, *In the Matter of the Care and Treatment of Robert David Mayne*, and *In the Matter of the Care and Treatment of Roy Wade*, Charleston and Aiken County circuit courts found the State was entitled to the evaluation sought, including the PPG, and granted the State's Motion to Compel. In 2020, *In the Matter of the Care and Treatment of Harry L. Leonard*, a Charleston County circuit court ordered Leonard to cooperate with the evaluation, including the PPG or be subject to the contempt powers of the court. Significantly, testimony was received on the PPG by two qualified experts, and the court found the PPG was necessary and not an overly invasive procedure. Most recently, in April 2021, *In the Matter of the Care and Treatment of Shawn Torlif Daily*, a Spartanburg County circuit court found the PPG was not an overly invasive procedure and ordered Daily to cooperate or be held in contempt. The courts in *Mayne*, *Wade*, *Leonard*, and *Daily* all held: "[R]easonable access" as contained in S.C. Code Ann. Section 44-48-90(C) would be best determined by the evaluator, whether that person is appointed by the Court or retained by either side.

In 2019, *In the Matter of the Care and Treatment of James Gregory Younger*, a Sumter County circuit court found the PPG to be overly invasive and denied the State's motion to compel; however that court's decision is easily distinguished from the cases above. The court's order was based largely on issues of admissibility of the PPG, not whether a court should compel cooperation with a court ordered or statutorily authorized evaluation.

The only issue currently before this Court is whether Respondent should be compelled to cooperate with MUSC's evaluation. This matter has yet to reach the civil commitment trial stage. Much of the attack by Respondent is focused on the admissibility of the PPG, and this proceeding is not yet at that point. The admission of evidence is within the sound discretion of the trial judge. *Hartfield v. Getaway Lounge & Grill, Inc.*, 388 S.C. 407, 697 S.E.2d 558, 561 (2010).

Currently, neither the State nor Respondent know what Dr. Gottfried's evaluation will conclude or recommend. Indeed, Dr. Gottfried herself testified she has no opinion at this time because her evaluation is not complete. It is premature to even discuss whether the PPG is admissible as evidence at trial when it is unknown if there will be a civil commitment trial. While not binding, this Court finds the orders in *Mayne, Wade, Leonard, and Daily* more on point and persuasive than *Younger*.

Further, the standard to be applied by this Court is whether compliance by Respondent would be prejudicial to him. This is not an unlawful search and seizure because it is reasonable based on a judicial finding of probable cause. Ultimately, the standard for the Fourth Amendment is reasonableness. *State v. Ross*, 423 S.C. 504, 508, 815 S.E.2d 754, 756 (2018) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973)). "[P]robable cause is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness." *Camara v. Mun. Court of San Francisco*, 387 U.S. 523, 534-35 (1967). The Court finds the PPG is not an overly invasive procedure. In fact, it is very possible the PPG may benefit the Respondent, and he may want the results used at trial, if there is one. If the Respondent complies as ordered, Dr. Gottfried should complete her evaluation with all deliberate speed.

This Court has jurisdiction over the subject matter of this litigation, as well as the Respondent himself. It is within the inherent powers of the circuit court to enforce its orders, enforce a statute enacted by the General Assembly, and punish for contempt. *Floyd v. Floyd*, 365 S.C. 56, 71, 615 S.E.2d 465, 473 (Cl. App. 2005); *Tirado v. Tirado*, 339 S.C. 649, 530 S.E.2d 128 (Cl.App.2000); *Fagan v. Timmons*, 224 S.C. 286, 78 S.E.2d 628 (1953) (A decision on contempt rests within the sound discretion of the trial court.)

After consideration of the testimony received, the documents reviewed, the argument of counsel, applicable court rules, and relevant statutory and case law, this Court finds that "reasonable access" to Respondent for the purpose of the State's evaluation would be best determined by the evaluator, whether that person is appointed by the Court or retained by either side. Further, this Court does not find Respondent should be held in contempt at this time, but if Respondent fails to fully cooperate with the evaluation, and an affidavit to that effect is provided to the Court, Respondent will be held in contempt until such time as he purges himself of that contempt by fully cooperating with all aspects of the evaluation. Accordingly,

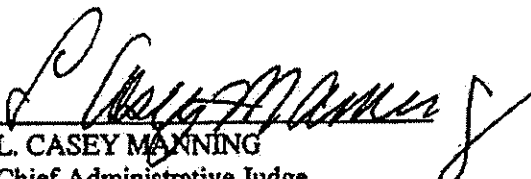
IT IS THEREFORE ORDERED that the Attorney General's Office is entitled to the evaluation by the Attorney General's expert as allowed by Section 44-48-90(C). Any statutory deadlines relating to the pending evaluations of Respondent are stayed, pending further order of the Court.

IT IS FURTHER ORDERED that if the Respondent complies as ordered, Dr. Gottfried should complete her evaluation with all deliberate speed.

IT IS FURTHER ORDERED that the Petitioner's Motion to Compel Cooperation is granted. Respondent is directed to cooperate with all aspects of the MUSC evaluation, including but not limited to the PPG, or be subject to the contempt powers of the Court.

IT IS FURTHER ORDERED this Court does not find Respondent is in contempt at this time. If he fails to cooperate with all aspects of the evaluation, and an affidavit to that effect is provided to the Court, Respondent will be held in contempt until such time as he purges himself of that contempt by fully cooperating with all aspects of the evaluation.

AND IT IS SO ORDERED.

  
L. CASEY MANNING  
Chief Administrative Judge  
Fifth Judicial Circuit  
Court of Common Pleas

June 14, 2021  
Columbia, South Carolina

# Exhibit 4

Order Dated July 31, 2024

**EXHIBIT A**

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA 2024 JUN 31 3:11 PM ENGEL COURT OF COMMON PLEAS

COUNTY OF YORK

ANGIE N. BRYANT  
CLERK OF COURT  
CASE #: 2021-CP-46-002853

SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE  
CARE AND TREATMENT OF

**ORDER GRANTING THE STATE'S  
MOTION TO COMPEL COOPERATION**

TYRELLE JERMAINE NEELY

RESPONDENT.

**ORDER**

This cause having come before the Court on the State's Motion to Compel Cooperation with the Medical University of South Carolina Sexual Violent Predator Evaluation, pursuant to S.C. Code Ann. §§ 44-48-80(D), and Respondent being represented by Kindle Johnson, Esq., and the State being represented by Assistant Attorney General, James K. Fisher, Esq., and also appearing as guardian ad litem for Respondent, Don A. Thompson, Esq., and the court being otherwise fully informed;

**NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:**

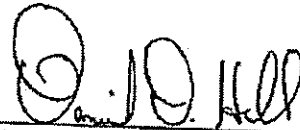
1. The State's Motion to Compel Cooperation to Conduct its Sexual Violent Predator Evaluation of Respondent is granted.
2. The York County Detention Center shall transport Respondent to the Medical University of South Carolina (MUSC) for the evaluation at a mutually agreeable date and time. Further, The York County Detention Center is authorized to use any and all restraints necessary to safely transport Respondent to and from MUSC.
3. Respondent shall comply with and shall take all medication(s), as prescribed, prior to being transported to MUSC.
4. In the event that The York County Detention Center determines, in its reasonable discretion, that it cannot safely transport Respondent to MUSC, it is authorized to cancel the transport of Respondent, but must promptly report to the parties that Respondent will not be transported and provide the bases or reasons why he will not be transported.
5. Dr. Gottfried, Ph.D., of MUSC, is authorized to use whatever restraints she deems necessary to conduct her evaluation.
6. In the event that Dr. Gottfried determines, at any point, that she cannot safely conduct or complete her evaluation of Respondent, she is authorized to terminate the evaluation and request that Respondent be returned to The York County Detention Center immediately.

7. In the event that Dr. Gottfried terminates the evaluation as described above, she shall promptly contact the parties advising them that the evaluation was terminated, and thereafter, provide an affidavit to the court stating the bases or reasons that the evaluation was terminated.

8. In the event that Respondent fails to cooperate with the evaluation, and a supporting affidavit is provided to the court by Dr. Gottfried or her staff at MUSC, Respondent's attorney shall promptly set this matter for an evidentiary hearing to determine whether Respondent shall be held in contempt of this court.

9. All relevant statutory time limits are tolled until Respondent cooperates with the evaluation.

IT IS SO ORDERED.



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HON. DANIEL DEWITT HALL  
Chief Administrative Judge  
Fifteenth Judicial Circuit  
Court of Common Pleas

July 31, 2024  
York, SC

## Exhibit 5

Appellant's Rule 60, SCRCF Motion

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE MATTER OF THE  
CARE AND TREATMENT OF

TYRELL NEELY,  
  
RESPONDENT

FILED-RECEIVED  
IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
2025 AUG -4 PM 12:57

ANGIE F. DRYANT  
C.C.P. & G.  
YORK COUNTY, MOTION TO ALTER, AMEND  
OR RECONSIDER ORDER

DOCKET NO. 2021-CP-46-2853

YOU WILL PLEASE TAKE NOTICE that Respondent, by and through undersigned counsel Kindle K. Johnson, respectfully moves this Court to alter, amend, or reconsider its July 31, 2024 Order Granting the State's Motion to Compel, pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure. Respondent requests that the Court reconsider and reverse the portion of the Order that mandates his continued confinement to compel compliance with the penile plethysmograph (PPG), as well as any other provisions of the Order that warrant modification in light of the arguments presented.

In light of Respondent's detention status and significant mental illness, Respondent further requests that this Motion be scheduled for hearing by videoconference or other remote means. Counsel believes the record contains sufficient evidence to resolve the Motion without additional witness testimony; however, counsel will coordinate witness attendance if the Court deems it necessary.

In support of his Motion, Respondent offers the following.

### PROCEDURAL BACKGROUND

1. On or about June 20, 2019, Mr. Tyrell Neely ("Respondent") was indicted by a York County Grand Jury for Assault with Intent to Commit Criminal Sexual Conduct in the First Degree (Docket No. 2019-GS-46-3695). (EXHIBIT A).
2. On or about April 23, 2021, the Honorable Keith Kelly entered an Order finding Respondent Incompetent to stand trial for the foreseeable future. A probate Commitment Proceeding was also ordered and was conducted by the Honorable Carolyn E. Woodruff of the Sixteenth Circuit Probate Court. By Order dated June 29, 2021, Judge Woodruff directed Respondent to undergo outpatient treatment.
3. On September 17, 2021, the State filed an action against Respondent in York County, pursuant to the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10, *et seq.* Given Respondent's continued incompetence, the State sought relief under S.C. Code Ann. § 44-48-100(B), which permits the Court to conduct a non-jury evidentiary hearing to determine whether Respondent committed the charged act.
4. On April 12, 2023, an evidentiary hearing was held before the Honorable Daniel Dewitt Hall pursuant to S.C. Code Ann. § 44-48-100(B). In an Order filed April 28, 2023, Judge Hall found beyond a reasonable doubt that Respondent committed the charged offense of Assault with Intent to Commit Criminal Sexual Battery in the First Degree. At the time, Respondent had no other sexual offenses on his record.<sup>1</sup> In a subsequent Order filed June 13, 2023, Judge Hall found probable cause for Respondent to be evaluated by a qualified expert from the South

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<sup>1</sup> Respondent has been charged with multiple counts of indecent exposure and related offenses during his detention. Some charges have been dismissed due to his incompetency, while others remain pending.

Carolina Department of Mental Health (SCDMH) to determine whether he met the criteria of sexually violent predator.

5. Dr. Marie Gehle, Psy.D. of SCDMH conducted Respondent's evaluation. On December 11, 2023, Dr. Gehle filed a report with the Court entitled, "Forensic Psychological Evaluation Precommitment Evaluation Pursuant to the South Carolina Sexually Violent Predator Act." In her report, Dr. Gehle did not diagnose Respondent with a paraphilic disorder, personality disorder, or any other mental abnormality linked to sexual violence. While he was diagnosed with schizoaffective disorder, bipolar type, Dr. Gehle found no clear nexus between his mental illness and his sexual behavior.

Dr. Gehle discussed Respondent's 2019 Criminal sexual Conduct charge, noting that at the time Respondent was having a psychotic episode wherein he believed that a demigod was telling him to assault the victim. The victim believed that her ex-boyfriend set her up for the incident by telling Respondent, who was on psychotropic medications, that she was willing to engage in sexual acts.

Dr. Gehle acknowledged that Respondent had no known history of sexually violent behavior in the community. Besides the 2019 incident, all allegations of Respondent's sexual misconduct, including several incidents of indecent exposure, occurred when he was being held at the detention center and hospital, and although no clear or consistent pattern was established, Respondent's behavior may have correlated with his medication changes ("His mental health symptoms could not be correlated with the sexual behavior in the jail because the jail does not document the information necessary to complete such an analysis. Nonetheless, I tracked his medications, documented symptoms, and behavior. There was some indication of a correlation between medications changes resulting in decreased medications

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and an increase in sexual behavior in the jail... It was also evident that his mental health further deteriorated during that time. At G. Werber Bryan Psychiatric Hospital, he was prescribed Lithium (a mood stabilizer) to decrease sexual behaviors. The sexual behaviors stopped at the hospital. When he returned to the detention center while prescribed Lithium, he engaged in sexual behaviors. The Lithium was discontinued due to suspected Lithium toxicity. Within a few weeks of the change to his medication, he engaged in multiple sexual behaviors. In contrast, there were times when he engaged in sexual behaviors and there was no relationship with medication changes or poor compliance with medications. His exposures are limited to the detention center and the forensic hospital. He has no known history of such behavior in the community.")

Even using the 21 charges that Respondent received for Indecent Exposures and Lewd and Lascivious Exposure of Private Parts during his detention, Dr. Gehle found that Respondent's risk assessments, which estimate the likelihood of *any* sexual offending, showed that his overall likelihood of committing a sexually violent act was low ("his 20-year risk estimate is 27.1%."). Dr. Gehle concluded that Respondent does not have a mental abnormality that makes him likely to engage in acts of sexual violence if not confined, and thus does not meet the statutory definition of an SVP. (EXHIBIT B, pp. 24-25).

6. On December 27, 2023, the State invoked its right under S.C. Code Ann. § 44-48-90(C) to seek an independent evaluation and retained Dr. Emily Gottfried of the Medical University of South Carolina ("MUSC") to conduct the assessment. Per her affidavit, Dr. Gottfried's evaluation was to span three appointments, including a Penile Plethysmograph (PPG) on the second date.

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Respondent attended his first appointment with Dr. Gottfried on January 25, 2024. According to Dr. Gottfried, he was generally cooperative and completed a battery of assessments. He also signed a consent form agreeing to participate.

On February 2, 2024, Respondent was transported for the second appointment, which included the PPG. During transport and upon arrival, Dr. Gottfried claimed that Respondent exhibited erratic and dangerous behavior. According to Dr. Gottfried, Respondent attempted to grab an officer's firearm, engaged in a physical scuffle, and lunged at a MUSC technician. The officers believed that Respondent would need to remain in full restraints, which made the PPG "impossible" to perform, per Dr. Gottfried. She further stated that although Respondent had consented, "his behavior indicates that he is not cooperating."

Dr. Gottfried requested that the court compel Respondent to cooperate and "conform his behavior to the requirements of safely conducting this evaluation... Without his cooperation, we are unable to assess whether [Respondent]'s risk of sexual recidivism and the potential presence of a mental abnormality could lead to his engaging in future acts of sexual violence."

(EXHIBIT C, Gottfried Affidavit, ¶¶ 5, 6, 7, 8.)

7. On March 8, 2024, the State filed a Motion to compel Respondent's cooperation with the Evaluation. The motion sought an order, authorizing restraints, staying deadlines, and allowing contempt sanctions. Notably, in support of the motion, the State also specified that, "Dr. Gottfried advised the undersigned [Assistant Attorney General James K. Fisher] that to conduct a complete evaluation, it will be necessary to utilize certain procedures to appropriately restrain Respondent during a portion of her examination, specifically the Penile Plethysmograph ("PPG" Examination). Further, Dr. Gottfried advised that it would be preferable to have Respondent partially unshackled or out of full restraints during this portion of the evaluation,

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but due to his past combative and dangerous conduct, Respondent may need to remain in full restraints to ensure the safety of MUSC staff and law enforcement personnel.” (State’s Motion to Compel Cooperation with Evaluation p. 3, ¶ 16.)

8. Judge Hall granted the State’s motion by Order filed on July 31, 2024. The court gave broad authority to the York County Detention Center and Dr. Gottfried, allowing both to use any necessary restraints to transport Respondent and conduct his evaluation. The Detention Center was authorized to forego transport of Respondent if it deems it unsafe, and Dr. Gottfried was allowed to terminate the evaluation at any point if she determines it cannot be safely completed. Both Dr. Gottfried and the Detention Center were required to notify counsel and provide an explanation for any termination.

The court also imposed obligations on Respondent, requiring him to take prescribed medication prior to transport and requiring his counsel to schedule a contempt hearing if Respondent is found uncooperative, based on an affidavit from Dr. Gottfried, MUSC staff, or the Detention Center. Additionally, all relevant statutory deadlines were tolled until Respondent complied with the evaluation. (Order Granting States Motion to Compel Cooperation, pp. 1-2.)

9. To the best of Respondent’s knowledge, the provisions of the July 31 Order have not been followed. To date, there has been no communication with Respondent’s counsel or guardian ad litem, and no affidavit has been submitted by MUSC, Dr. Gottfried, or the detention center in accordance with Paragraphs 2, 4, 6, 7, and 8 of the July 31 Order. Nor has another attempt been made to complete Respondent’s evaluation. The record also suggests that Respondent is not being properly medicated. (See Dr. Gehle’s Pre-Commitment Evaluation, pp. 24-25.)

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10. On or about January 16, 2025, Judge Hall held a telephone conference with the parties. Respondent's counsel requested that the Court clarify, reconsider or amend the July 31 Order. Judge Hall declined to do so in light of his impending retirement, instead directing counsel to bring the matter before the Chief Administrative Judge of York County. As such, this Court has jurisdiction over the parties and subject matter and possesses the authority to enforce or alter the July 31 Order.
11. To the best of the undersigned's knowledge, Respondent remains incompetent to stand trial; he has been confined in this sexually violent predator matter for more than three (3) years since his original booking on May 19, 2022.<sup>2</sup>

#### **ARGUMENT IN SUPPORT OF RESPONDENT'S MOTION TO RECONSIDER**

Respondent respectfully requests that the Court reverse or reconsider the July 31, 2024 Order, which is based on the mistaken belief that he is willfully non-compliant rather than mentally incompetent. The Order's key conditions remain unmet, and it authorizes the PPG without any finding of necessity. The Order also conflicts with statutory, constitutional, and professional standards, leaving Respondent indefinitely confined without a viable path forward.

#### **I. Grounds for Relief**

##### **A. Relief Is Proper and Appropriate Under Rule 60(b)(1), (2), (3), and (5) of the South Carolina Rules of Civil Procedure**

This Court has full authority to revisit the July 31, 2024 Order under Rule 60(b), SCRPC, which allows for relief from a final order due to mistake, newly discovered evidence, misconduct, or inequitable prospective application. Relief is warranted under Rule 60(b)(1) because the Order

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<sup>2</sup> Respondent was also detained in the underlying criminal matters.

was based on assumptions that have not held true—namely, that compelled cooperation would lead to a completed evaluation and that procedural safeguards would be followed if issues arose. Since February 2, 2024, no progress has been made on the evaluation, and key procedural steps, such as required affidavits and reports from MUSC and the detention center, have not been followed. These omissions amount to mistake or inadvertence under the Rule.

Reconsideration is also justified under Rule 60(b)(2), (b)(3), and (b)(5). After the Order, it became clear that MUSC, Dr. Gottfried, and the detention center failed to act in accordance with its terms—inaction that could not have been anticipated and constitutes newly discovered evidence. Their noncompliance with mandated duties, including providing notice and affidavits, qualifies as misconduct under Rule 60(b)(3).

Finally, the Order should be set aside under Rule 60(b)(5) because it no longer operates equitably. The evaluation has stalled. Respondent remains indefinitely detained without further efforts to complete the process. He has not wilfully refused to cooperate. Continuing to enforce an Order that authorizes indefinite confinement, even as the evaluation process remains inactive, is no longer fair or consistent with due process. Relief is therefore warranted under Rule 60(b)(5).

**B. Review Under Rule 59(e), SCRCF Is Not Barred if done to Prevent Manifest Injustice, thus the Court should Consider Granting Respondent Relief Under Rule 59.**

Although Rule 59(e) generally requires that motions to alter or amend a judgment be filed within ten days of receiving notice of the Order, South Carolina courts may hear an untimely Rule 59(e) motion to prevent manifest injustice. The facts in this case present such exceptional circumstances. The very nature of Dr. Gottfried and the detention center's noncompliance (i.e. their affirmative and ongoing failure to notify the Court and Respondent's counsel) prevented Respondent's action within the time permitted by Rule 59(e). Moreover, when Respondent's

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counsel sought clarification about this misstep, Judge Hall expressly encouraged counsel to present the motion to the Chief Administrative Judge in light of his impending retirement.

Respondent primarily invokes Rule 60 as his means of reconsideration. However, given the unique procedural posture of this case and the significant liberty interests at stake, Respondent also believes that to ensure fundamental fairness, the Court should consider the issues raised under Rule 59(e).

**II. The July 31 Order Should Be Reconsidered Because Respondent's Actions Were Not Willful and Did Not Justify Forcing His Compliance.**

The July 31 Order compels Respondent's evaluation based on his presumed willful failure to cooperate. Yet, the evidence suggests the contrary. Respondent fully cooperated with his initial pre-commitment evaluation conducted by Dr. Gehle, who had no difficulty forming a clinical opinion. Respondent also appeared for his first scheduled meeting with Dr. Gottfried, wherein he signed consent forms and completed a full battery of psychological testing. Dr. Gottfried herself described him as "generally cooperative" and reported no behavioral concerns during the initial meeting.

Respondent was fully cooperative until his second meeting on February 2, 2024. At that time, Respondent became agitated, attempted to grab a firearm, and required restraint. This was not an act of defiance, it was a psychotic episode. Respondent's actions must be viewed through the lens of his psychiatric diagnoses, which includes schizoaffective disorder (bipolar type), and narcolepsy, both of which impair behavioral regulation under stress. Given the circumstances, the July 31 Order should be revised to reflect this cooperation.

**III. The Court's Order Should Be Reconsidered Due to Its Indefinite Duration and Because Third-Party Noncompliance Has Rendered it Impossible to Execute.**

The July 31 Order allows Respondent's case to persist indefinitely, tolling all relevant deadlines until he cooperates with the evaluation. (Order ¶ 9.) This is contrary to the SVP statute, which sets strict deadlines. S.C. Code § 44-48-80(D) allows 180 days maximum for court-ordered evaluations and 90 days for any independent evaluation thereafter, with one extension for "extraordinary circumstances." The Order ignores all such deadlines.

The Order has also been rendered unenforceable. Despite the Court's detailed instructions, Dr. Gottfried, MUSC and the York County Detention Center, have failed to comply in nearly every respect. No affidavits have been submitted as required. No affidavits have been submitted as required. Nor has any effort been made to complete the evaluation or to communicate with Respondent's counsel or guardian ad litem. These failures violate multiple provisions of the Order and are not minor or technical defects. They go to the heart of the Court's intended process. As a result, the evaluation has not simply been delayed, it is at a complete standstill. Continuing to enforce the Order under these conditions serves no purpose other than to prolong Respondent's confinement. Accordingly, the July 31 Order should be reconsidered.

#### **IV. The July 31 Order Compels the PPG Without Meeting the Statutory Requirements of Necessity and Reasonableness**

Respondent does not challenge the State's authority to conduct an independent evaluation under the Sexually Violent Predator Act. That authority is clear, and Respondent has already participated in substantial portions of the evaluation process. Instead, Respondent challenges the Order because it compels him to undergo the penile plethysmograph (PPG).

The PPG is a controversial test that involves attaching sensors to the subject's genitals while exposing them to audio and visual sexual stimuli, with the goal of measuring arousal through changes in blood flow. Courts have criticized the PPG for its lack of standardization, vulnerability

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to manipulation, and minimal scientific reliability. See, *In Re Bilton*, 432 S.C. 157, 162, 851 S.E.2d 442 (Ct. App. 2020); See also, *In Re Daily*, 443 S.C. 557905 S.E.2d 310 (Ct. App. 2024).

South Carolina Code § 44-48-90(C), applicable in this case, permits only those tests that are both (1) reasonable and (2) deemed necessary by the qualified evaluator. These two requirements, necessity and reasonableness, have not been met.

Here, the State's evaluator Dr. Gottfried has failed to state that the PPG is necessary for her evaluation. She simply described it as part of a evaluation process and requested that Respondent be made to cooperate. If Dr. Gottfried believed the test was necessary, she could have used the proper statutory language. She did not. That omission is critical.

The State tried to bridge this gap by stating in its Motion to Compel that Dr. Gottfried "advised the undersigned" that the PPG would be necessary. (State's Motion to Compel, ¶ 15.) But that assertion cannot replace a sworn statement by the evaluator. The statute does not authorize necessity to be established through secondhand representations. It requires a direct finding from the evaluator herself. Without it, the Order exceeds the Court's statutory authority to compel the evaluation.

Given the circumstances in this case, the PPG is also not reasonable. Reasonableness is not judged in a vacuum. It must be tailored to the respondent's psychiatric profile, level of functioning, and medical limitations. Respondent suffers from severe mental illness. Dr. Gottfried admitted in her affidavit that the restraining him made the evaluation "impossible." Yet the Order compels Respondent's participation, even if restraints must be used. Nothing explains how the previous barriers would be addressed or avoided. Moreover, no evaluator has stated that the PPG is safe, clinically effective, or appropriate for Respondent given his diagnoses.

The statute is clear: a test must be both necessary and reasonable to be court-ordered. The PPG meets neither standard. It was never found to be necessary by the evaluator, and it is plainly inappropriate for Respondent given his mental health history. Accordingly, the Court's Order authorizing the PPG exceeds statutory limits and must be reconsidered or amended.

**V. The Order Violates Respondent's Constitutional Rights Including Due Process, the Fourth Amendment, and the Eighth Amendment**

In *Jackson v. Indiana*, 406 U.S. 715 (1972), the United States Supreme Court held that a mentally incompetent criminal defendant may not be held indefinitely without a realistic path toward restoration or release. The argument applies in this case, even though it is civil. Respondent has been evaluated and found not to have met the definition of an SVP. Rather than accept the finding or pursue less coercive alternatives, the State sought a second evaluation that included the PPG. When Respondent, due to his mental illness, could not complete that procedure, the July 31 Order allowed the State to toll all deadlines and continue Respondent's confinement indefinitely.

Such actions violate both procedural and substantive due process. Procedurally, Respondent is confined without adjudication, resolution, or a lawful path forward. Substantively, the State seeks to force a highly invasive test on a mentally ill person without any determination that the procedure is necessary, safe, or tailored to his condition. Imposing such a severe and disproportionate burden on someone who cannot meaningfully consent or comply is arbitrary and unconstitutional.

The July 31 Order also violates Fourth Amendment protections against unreasonable searches.<sup>3</sup> Courts recognize that bodily intrusions, particularly those involving genital contact and sexual stimuli, constitute unreasonable searches. The PPG falls squarely within that category. Forcing such a procedure on a mentally incompetent person, without clinical justification or safeguards, is unreasonable and unconstitutional.

Finally, although the Eighth Amendment does not formally apply to civil cases, the type of conduct it prohibits, cruel, punitive, and unnecessary punishment, is reflected here. The State seeks to hold Respondent in a jail facility as punishment for his failure to comply with the PPG. The goal is not treatment or rehabilitation. It is indefinite confinement and compelled evidence gathering. While this case is civil in name, the constitutional violations are real. As such, the Court should reconsider and reverse the July 31 Order.

#### **VI. The Order Violates Respondent's Disability Protections Under Federal and State Law**

Respondent is currently the subject of a pending SVP petition, but he has not yet been civilly committed. Given his mental illness, he is afforded special rights pursuant to The Rights of Mental Health Patients Act.<sup>4</sup> S.C. Code § 44-22-10(11). As such, he is protected from forced "major medical treatments," which include diagnostic procedures that involve significant invasion of bodily integrity or cause substantial pain, discomfort, or debilitation. S.C. Code § 44-22-10(8). The PPG fits squarely within this definition. It is not a routine diagnostic measure, but an intrusive and distressing procedure that implicates both physical and psychological integrity.

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<sup>3</sup> Article I, Section 10 of the South Carolina Constitution also guarantees the right to be free from "unreasonable invasions of privacy," and courts have long recognized that this right includes enhanced protection of medical and bodily autonomy.

<sup>4</sup> The Rights of Mental Health Patients Act excludes committed sexually violent predators, but does not expressly exclude individuals like Respondent who are undergoing evaluation and have yet to be adjudicated.

The July 31 Order authorizes this procedure without any individualized assessment of Respondent's capacity to consent or tolerate the test, and without evidence that less intrusive methods were considered. That approach disregards both federal protections for individuals with disabilities and the guiding principles reflected in state law. By compelling the PPG, especially given Respondent's disabilities, the July 31 Order imposes unjustified risk and coercion in violation of Respondent's fundamental rights as a disabled person.

**VII. The July 31 Order Conflicts with Professional Standards and Ethical Norms**

The July 31 Order also conflicts with nationally recognized standards of practice, including those established by the Association for the Treatment of Sexual Abusers (ATSA), the leading professional authority in this field. ATSA guidelines provide a compelling basis to conclude that use of the PPG in this case is ethically and psychologically inappropriate.

ATSA's guidelines caution against using phallometric testing like the PPG on individuals with developmental disabilities or acute major mental illness, noting that the results are unreliable and the risks are substantial (ATSA Guidelines, Appendix B, p. 71). ATSA also stresses that evaluators must recognize when a procedure lacks validation for a specific population—such as those with serious psychiatric disorders—and should avoid its use unless there is a clear and well-supported justification (*id.* at 43).

Dr. Gottfried, the State's evaluator, is not only a Clinical Member of ATSA, she serves on the ATSA Board of Directors as Chair of its Research Committee. (Gottfried Affidavit ¶ 3.) As such, she is bound by ATSA's Practice Guidelines. Dr. Gottfried's decision to schedule and pursue the PPG despite these known guidelines, and without documenting necessity or safety, violates the ethical framework of her own professional organization.

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Even more troubling is that the Order gives Dr. Gottfried sweeping discretion to use whatever restraints she deems necessary to conduct the PPG. This contradicts ATSA's ethical requirement that evaluations be conducted in conditions that consider the dignity, mental state, and treatment limitations of the individual. Accordingly, the July 31 Order should be reconsidered so as not to offend the ethical guidelines that ATSA itself has implemented.

**VIII. The July 31 Order Ignores Other Alternatives for Respondent to Receive an Independent Evaluation.**

There are less invasive and equally reliable alternatives to the approach taken by Dr. Gottfried—options that do not involve the PPG. Under S.C. Code § 44-48-80(D), SVP evaluations must be conducted by independent, qualified evaluators. Experts such as Dr. Donna Maddox and Dr. Geoffrey McKee, both of whom have extensive experience performing SVP assessments in South Carolina, are fully capable of conducting a complete and professionally sound evaluation without using administering the PPG. The July 31 Order should be amended to allow for these less intrusive methods, which also satisfy the legal requirements for an SVP evaluation.


**CONCLUSION**

For the reasons set forth above, Respondent respectfully requests that the Court:

1. Reconsider and vacate the July 31, 2024 Order compelling Respondent to undergo a penile plethysmograph (PPG).
2. Amend the Order to prohibit use of the PPG as part of Respondent's SVP evaluation, as it is not required by statute, lacks necessity, and violates Respondent's rights;
3. Affirm that Respondent's inability to complete the PPG shall not be treated as noncooperation or grounds for continued confinement.

4. **Direct the State to proceed with a second evaluation, if it so chooses, using alternative evaluators who are qualified and capable of conducting an sexually violent predator evaluation, or by using reasonable, non-invasive methods that accommodate Respondent's mental condition.**
5. **Reinstate or impose a clear time limit for the evaluation process to be completed to ensure that Respondent is not subjected to indefinite detention.**
6. **Deem Respondent's motion timely and properly before the Court, and waive any applicable deadlines, as any delay was caused by factors beyond Respondent's control, including third-party noncompliance.**
7. **Grant all other and further relief as the Court deems just and proper.**

Respectfully Submitted,

  
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Mailing Address  
K. JOHNSON LAW FIRM  
223 E Main St, Suite 500  
Rock Hill, SC 29730  
803.329.1900

July 31, 2025

ATTORNEY FOR RESPONDENT

# Exhibit 6

Order Dated August 12, 2025

**EXHIBIT B**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE MATTER OF THE CARE AND  
TREATMENT OF

TYRELL NEELY,

RESPONDENT

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

**RECEIVED**

Sep 18 2025

ORDER

SC Court of Appeals

DOCKET NO. 2021-CP-46

ANGIE BRYANT  
Clerk, P. & GS  
YORK COUNTY, SC

LED-RECEIVED  
2025 AUG 12 PM 12:00

This matter is before the Court on Kindle K. Johnson, Esquire's Motion to Reconsider. Respondent requests reconsideration of an order issued by Judge Hall, who is now retired, and the parties have consented to the Motion being heard by a judge other than Judge Hall.

This Motion was filed under both Rule 59(e) and 60 regarding the Order filed July 31, 2024, and requests reconsideration and reversal of the portion of that decision which mandates Respondent's continued confinement to compel compliance with certain mental health evaluations. This Motion, being filed exactly a year from the Order, is untimely under Rule 59(e) and does not meet the requirements of Rule 60. After carefully considering the arguments set forth in Respondent's motion, the Motion was filed well outside of the 10-day deadline provided by Rule 59(e), and the basis of the Motion does not present any sufficient mistake, surprise, inadvertence, excusable neglect, newly discovered evidence, or misconduct by the State as to permit reconsideration under Rule 60.

**THEREFORE** this Motion is **HEREBY DENIED**.

Date: 8/12/2025



The Honorable William A. McKinnon  
Circuit Judge 16<sup>th</sup> Circuit

**RECEIVED**

**Nov 17 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

The Honorable Daniel Dewitt Hall, Circuit Court Judge

The Honorable William A. McKinnon, Chief Administrative Judge

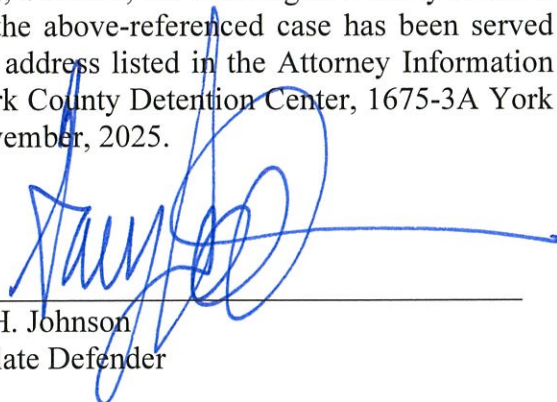
IN THE MATTER OF THE CARE AND  
TREATMENT OF TYRELL JERMAINE NEELY,

APPELLANT

APPELLATE CASE NO. 2025-001916

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Motion to Dismiss in the above-referenced case has been served upon Joseph Corrao , Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Tyrell Neely, #1341762, at York County Detention Center, 1675-3A York Highway, York, SC 29745-7431, this 17th day of November, 2025.

  
\_\_\_\_\_  
Gary H. Johnson  
Appellate Defender

David Alexander  
Deputy Chief Attorney for Capital Appeals

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

## **Bast, Daniel**

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**From:** Bast, Daniel  
**Sent:** Monday, November 17, 2025 1:51 PM  
**To:** josephcorraro@scag.gov  
**Cc:** Alexander, David; Johnson, Gary; abigailhawley@scag.gov  
**Subject:** 2025-001916 - In The Matter and Treatment of Tyrell Jermaine Neely  
**Attachments:** 2025-001916 - In The Matter and Treatment of Tyrell Jermaine Neely - Return to Motion to Dismiss.pdf

Good afternoon,

Attached is a copy of the Return to Motion to Dismiss in the above referenced case which will be filed today, November 17, 2025, with the Court of Appeals.

All the best,

Daniel Bast  
Administrative Assistant  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
(803) 734-1330