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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Certiorari to the Court of Appeals
Appeal from Florence County
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2024-001781

IN THE MATTER OF THE CARE AND TREATMENT OF
ANDY EUGENE HYMAN,

RESPONDENT.

PETITION FOR REHEARING

COMES NOW the State of South Carolina, by and through the Office of the Attorney General, Petitioner in the Court of Common Pleas for Florence County and Appellee in the Court of Appeals, and petitions the South Carolina Supreme Court for rehearing pursuant to Rule 221(a), SCACR, for the reasons stated below.

INTRODUCTION

Male sexual arousal is not only "an inherently subjective experience" (Op.p.38)[1] and "a private and subjective human emotion" (Op.p.56). Male sexual arousal is also a physiological state of readiness to engage in sexual activity demonstrated by certain observable, measurable physical signs in response to stimuli. (R.pp.37, line 17–p.40, line 18; pp.312–316; App.pp.40,

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[1] *In the Matter of the Care and Treatment of Andy Eugene Hyman*, Op. No. 28330 (S.C. Sup. Ct. filed May 13, 2026) (Howard Adv. Sheet No. 18 at 37), hereinafter the "Opinion" and cited as "Op.p.__" at the Advance Sheet page number.

line 17 p.43, line 18; pp.315–319).[2] When that state can be induced in response to stimuli representing persons with whom, or circumstances in which, sexual activity is prohibited by law, such male sexual arousal is a significant indicator that, when analyzed together with other psychological, physiological, and social assessment measures, may reliably indicate a dangerous propensity to engage in illegal sexual behavior. (R.p.37, lines 4–16; p.135, lines 4–16; App.p.40, lines 4–16; p.138, lines 6–9). Such "dangerous propensities are the focus of the SVP Act." *Care & Treatment of Ettel v. State*, 377 S.C. 558, 562, 660 S.E.2d 285, 287 (Ct. App. 2008) (quoting *In re Corley*, 353 S.C. 202, 207, 577 S.E.2d 451, 454 (2003)).

This Court's opinion filed on May 13, 2026 in the instant matter (hereinafter the Opinion) is founded upon undocumented assertions and one-sided assumptions such as the two quoted in the first sentence above. Rehearing is appropriate when any material fact or principle of law has been either overlooked or disregarded. *See, e.g., Brailey v. Michelin N. Am., Inc.*, 443 S.C. 468, 469, 906 S.E.2d 83 (2024), reh'g denied (Oct. 2, 2024) ("[T]he Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing."). Respectfully, material facts have been overlooked and principles of law disregarded here. Rehearing is warranted.

MATERIAL FACTS AND PRINCIPLES OF LAW

Material facts and principles of law overlooked or disregarded in the Opinion include,

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[2] Although not specifically identified in testimony, the research reports about which Dr. Gottfried testified include R.K. Hanson and M.T. Bussiere, *Predicting relapse: A meta-analysis of sexual offender recidivism studies*, 66(2) J. Consulting and Clinical Psych. 348, 351 (1998), an early meta-analysis of 61 scientific research studies analyzing information on 28,972 sex offenders which concluded, "[s]exual interest in children as measured by phallometric assessment was the single strongest predictor [of pedophilic recidivism]. . . ." This finding is confirmed in later works such as R.E. Mann, R.K. Hanson, & D. Thornton, *Assessing risk for sexual recidivism: Some proposals on the nature of psychologically meaningful risk factors,* 22(2) Sexual Abuse 191, 199 (2010), which also informed Dr. Gottfried's testimony.

and are not limited to:

1. **"The [penile plethysmograph (PPG)] procedure . . . requires a man to sexually stimulate himself. . . ." (Op.p.39).**

Sexual self-stimulation–generally referred to as masturbation–is not only absent from the Medical University of South Carolina Sexual Behaviors Clinic and Lab (MUSC) PPG protocol, but would invalidate the PPG results were it to take place. (R.p.40, line 19–p.41, line 7; App.p.43, line 19–p.44, line 7; p.442 n.7). The cases cited in the Opinion condemning a requirement of masturbation (or perhaps the entire PPG procedure) as "Orwellian," *United States v. Weber*, 451 F.3d 552, 554 (9th Cir. 2006), and "especially unpleasant and offensive," *Berthiaume v. Caron*, 142 F.3d 12, 16 (1st Cir. 1998), are twenty years old and older; the record below makes clear these old opinions do not reflect procedures in use at MUSC when Respondent was evaluated. *See* R.p.38, line 8–p.42, line 13; App.p.41, line 8–p.45, line 13 for a summary of MUSC's relevant PPG evaluation procedure.

Further, the Opinion fails to note that *Weber* addressed the propriety of requiring submission to periodic PPG testing as a condition of supervised release, a fact at the heart of the Ninth Circuit panel's analysis, 451 F.3d at 566–68, and absent from *Hyman*, which focuses on the utility of the PPG procedure in diagnosis and risk-assessment; that the characterization "Orwellian" is applied by Judge Noonan in a concurrence joined by no other member of the panel, 451 F.3d at 570; and that the *Weber* panel concluded, "we cannot say categorically that, despite the questions of reliability, plethysmograph testing can never reasonably promote at least one, if not all three, of the relevant goals laid out in § 3553(a)(2)–namely, deterrence, public protection, and rehabilitation." 451 F.3d at 566.

Similarly, the Opinion fails to note that *Berthiaume* addressed the propriety of requiring PPG testing as a condition for retention of a nursing license following the nurse's conviction for

importing obscene materials, not as a diagnostic or risk-assessment tool, 142 F.3d at 13–14; and that,

> Berthiaume's own expert does not even begin to assert that the penile plethysmograph is quack science and that its use would be considered outlandish in the medical community. Rather, he admitted that the device is an accepted tool in the *assessment* and treatment of, for example, known child molesters. He called it 'pretty much a standard practice in treatment programs for sex offenders,' and said that by the late 1980s, the test 'had gone from a procedure that was experimental ... [to one] being used all over North America by large numbers of professionals.'
>
> This expert's testimony shows a dispute in the scientific community as to how far the device is useful in assessing people not previously shown to have deviant sexual interests. The expert said that the plethysmograph is not useful to identify pedophilia because the test has a high rate of false negatives, that is to say, it will pass as normal many persons who are actually pedophiles. The expert said that this lack of 'sensitivity,' combined with its intrusiveness, made it inappropriate for use in cases (like this one) where it is used for screening rather than treatment.
>
> But Berthiaume's expert admitted that, while he had criticized the use of the device for screening purposes in a monograph, the issue had not been definitively resolved in the scientific community. Further, he conceded that the device was the most sensitive of all tools that are employed to screen for pedophilia–the least worse of a bad lot, in his opinion. Finally, he agreed with O'Donohue's lawyer that the decision whether to administer the plethysmograph test was a question of 'professional judgment.'

142 F.3d at 17 (emphasis added). Respectfully, omission from the Opinion of any acknowledgement of, or reference to, these clarifying comments is troublesome.

2. "[N]o universal standards exist for administering the PPG or interpreting the test results." (Op.p.39).

Pursuant to *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), "[w]hen admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable. The trial judge should apply the *Jones* factors to determine reliability." *Id.* at 20, 515 S.E.2d at 518. "The *Jones*

reliability factors take into consideration: (1) the publications and peer reviews of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *State v. Jones,* 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001) (citing *Council, id.,* and *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979)).

Nothing in *Council* or *Jones* requires "universal standards for administering" the PPG or "universal standards . . . for interpreting the test results" unless the *Jones* requirement of "consistency" is interpreted to mean "uniformity." It is respectfully submitted that recasting the *Jones* factors in this way is both a substantial change to the law of South Carolina that should be clearly announced and thoroughly explained rather than imposed by implication as in the Opinion, and also conflicts with science itself, which progresses by degrees of variation and is stultified when a requirement of "universal standards" or uniformity is imposed by judicial fiat.

3. **"[S]ome experts have focused on the high rate–around twenty percent–of false positives and false negatives associated with men's ability to willfully suppress or display arousal." (Op.p.39).**

The Opinion appears to anchor this assertion in Jason R. Odeshoo, *Of Penology and Perversity: The Use of Penile Plethysmography on Convicted Child Sex Offenders*, 14 Temp. Pol. & Civ. Rts. L. Rev. 1, 12–13 (2004) (hereinafter Odeshoo), a reference that appears in the preceding paragraph of the Opinion and seems intended to justify the entire following section without further indication or attribution. The Odeshoo article was written by single law firm associate over 20 years ago, the studies it cites are necessarily older, and even Odeshoo himself provides no support for the assertion that "some subjects are able to display physical arousal to stimuli that they do not find erotic, thus allowing someone with deviant tendencies to appear more 'normal.'" (Odeshoo at p.12). More recent scholarship in the fields of sex offender

diagnosis and risk assessment demonstrates the reliability and validity of the PPG in modern usage; substantial references are before the Court. *See* Brief of Petitioner received 14 March 2025, pp.24–29.

Further, the Opinion fails to note that Odeshoo acknowledges,

> [r]esearchers have proffered a number of alternative methods for assessing individuals' sexual interests. Some of these, such as galvanic skin responses, cardiovascular responses, or changes in respiration are helpful in measuring general arousal, but are less clear in specifically detecting erotic arousal. Other techniques, such as pupil dilation and electroencephalography (EEG), show promise in measuring erotic arousal, but have yet to be subjected to rigorous study. Hence, none of these tests currently appears preferable to PPG.

(Odeshoo at p.13) (footnotes omitted). The record shows that MUSC includes several of these alternative methods in its PPG protocol to enhance the reliability and verify the validity of PPG results. (R.p.41, line 8–p.42, line 13; App.p.44, line 8–p.45, line 13).

4. The Opinion asserts, "the manner in which the PPG was administered to Hyman reveals further reliability concerns associated with its results." (Op.p.40 n.4).

The Opinion subsequently fails to mention, much less discuss, "the manner in which the PPG was administered to Hyman," leaving this bold assertion as unsubstantiated in the Opinion as it is in the record. (R.p.123, line 17–p.145, line 3; p.151, line 24–p.154, line 20; p.235, line 1–p.250, line 17; App.p.126, line 17–p.148, line 3; p.154, line 24–p.157, line 20; p.238, line 1–p.253, line 17).[3]

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[3] Footnote 22 of the Opinion implies–without citing supporting authority, testimony, or data–that the Office of the Attorney General exercises its statutory authority pursuant to section 44-48-90(C) to refer SVP cases to independent evaluators who perform PPGs when the State is not "content" with, or "disagrees" with, the OMH evaluation. This is not correct. Rather, in performing its duties under Art. IV, Section 15 of the Constitution of this State, the Attorney General seeks independent evaluation when, in its considered opinion, the OMH evaluation is not legally sufficient to survive scrutiny in a court of law. Foreseeing this possibility, the Act makes clear the OMH evaluation is not dispositive. Further, as the State noted in oral argument, the State does not preferentially rely on independent evaluators who perform PPGs in these

5. **The Opinion acknowledges that, "the scientific community . . . agrees the PPG is a reliable treatment tool for sexual offenders [because] it provides treating clinicians a starting point to open dialogue with patients regarding their sexual attraction." (Op.p.40 n.5) (emphasis omitted), yet ignores MUSC's implementation of the same principle of contextualization.**

Having thus acknowledged the reasonable reliability of PPG evaluation results in the context of a broader assessment of the individual, the Opinion ignores the substantial evidence of record that MUSC uses PPG evaluation results in just this way: as one data point in the context of a substantially broader assessment of the individual's sexual propensities and risk of future reoffense. (R.p.35, line 18–p.36, line 9; p.43, line 5–p.44, line 23; p.51, line 11–p.52, line 15; p.62, line 22–p.63, line 12; App. p.38, line 18–p.39, line 9; p.46, line 5–p.47, line 23; p.54, line 11–p.55, line 15; p.65, line 22–p.66, line 12).

Although the Opinion's assertion that "the scientific community disagrees about the utility of the PPG as a diagnostic tool" (Op.p.40 n.5; emphasis omitted) may have expressed the state of the art in former times,[4] this sentiment is contradicted by the current Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). The DSM-5-TR, published by the American Psychiatric Association in 2022, identifies the PPG as "[t]he most thoroughly researched and longest used of [psychophysiological] measures. . . ." (DSM-5-TR, p.795; R.p.316; App.pp.316, 386, 444). The DMS-5-TR notes that, "although the sensitivity

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circumstances. *See* archived argument of December 16, 2025, in *In the Matter of Andy E. Hyman*, Appellate Case No. 2024-001781, at timestamp 23:34–24:20 ("We have contracts with Dr. Donna Maddox, we have used Dr. Geoff McKee in a case in the past, and we are in discussions with Dr. Rozanna Tross to start performing some of these."). Footnote 22 is inaccurate, unfair, and unnecessary; the State respectfully requests it be withdrawn from the Opinion.

[4] *See* Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (American Psychiatric Association, 1994), p.524 ("The reliability and validity of this procedure in clinical assessment have not been well established, and clinical experience suggests that subjects can simulate response by manipulating mental images.").

and specificity of diagnosis may vary across sites, which frequently use different stimuli, procedures, and scoring. . . . the diagnostic marker is *relative* sexual response to stimuli depicting children compared with stimuli depicting adults, rather than absolute response to child stimuli." (DSM-5-TR p.795) (emphasis added). In other words, when using the PPG, it is not the individual's absolute response to representations of illegal or disordered sex acts that supports a valid diagnosis, but rather the individual's responses to such representations compared to the same individual's responses to representations of legal sex involving consenting adults. (R.p.37, line 17–p.38, line 7; App. p.40, line 17– p.41, line 7). This fact also undergirds the following point.

6. The Opinion misapprehends the role of standardization in psychological assessment. (Op.pp.42–43).

Just as not all sports are team sports, not all tests are standardized tests. As Dr. Gehle testified, standardization is crucial to the development and administration of standardized tests such as IQ tests. (R.p.11, line 7–p.13, line 8; App.p.14, line 7–p.16, line 8). However, just as boxing, singles tennis, and fly fishing are individual sports rather than team sports, the PPG is an individualized test, not a standardized test. Whereas standardized tests such as IQ tests characterize each test-taker by reference to "normative" or "comparison" groups of test-takers who went before, the PPG classifies each test-taker's sexual inclinations by reference to that individual's own physiological responses, concerning which the physiological responses of other individuals–and the stimuli that elicited those responses–are irrelevant. This is why MUSC's protocol for PPG administration focuses so thoroughly on gauge calibration (R.p.40, lines 2–18; App.p.43, lines 2–18): because the reference set for PPG interpretation is the individual test-taker's own physiological responses, not the behaviors of norm groups, as with IQ tests. (R.p.53, line 1–p.55, line 17; App. p.56, line 1–58, line 17; DSM-5-TR p.795).

This is also why the "parade of horribles" at Op.p.40 is irrelevant to the reliability and validity of the PPG. Because the PPG's indications of an individual's sexual interests are compared to each other rather than to those of other individuals–that is to say, the PPG is individualized and relative–it matters not whether the individual is old or young, more or less intelligent, or what his testosterone level might be at the time of testing; the individual's greatest arousal will be expressed in response to the stimulus of greatest interest to the individual. (R.p.38, line 17–p.38, line 2; pp.312–316; App.p.41, line 17–p.42, line 2; pp.315–319).

7. **Contrary to the Opinion, MUSC's use of a conservative "cut score" to distinguish significant physiological arousal from random variation in measurements, and MUSC's use of both the Real Child Voices and Marshall stimulus sets, rather than only one stimulus set, are appropriate (Op.pp.43–44).**

Both elements of MUSC's PPG protocol help maximize the likelihood that "true" and "false" indications are properly identified as such (R.p.43, line 5–p.45, line 2; p.51, line 11–p.52, line 8; App.p.46, line 5–p.48, line 2; p.54, line 11–p.55, line 8). The fact that other labs may approach these matters differently–or, unfortunately, not at all–are not weaknesses of the PPG; rather, MUSC implements them to maximize the validity and reliability of the PPG as applied to each individual evaluated by MUSC. As Dr. Gottfried suggested, greater consistency among PPG labs would facilitate other goals of science (R.p.59, line 22–p.60, line 15; App.p.62, line 22–p.63, line 15); however, such consistency is not necessary to obtain valid and reliable indications of an individual's sexual propensities, and it is the specific individual's sexual propensities that are the subject of PPG testing and of the SVP Act. It is, therefore, not valid criticism of PPG use in SVP evaluations to observe that "no independent agency . . . certifies or oversees PPG laboratories" (Op.p.44 n.11), particularly in light of the fact that PPG use and administration are certified by the manufacturer of MUSC's PPG device and MUSC holds the highest level of such certification. (R.p.36, line 12–p.37, line 1; p.59, lines 6–21; App.p.39, line 12–p.40, line 1; p.62,

lines 6–21).

8. The Opinion accepts at face value Dr. Gehle's statement that [PPG] "test/retest reliability is very poor and test subjects can (and do) get wildly different results if they are given multiple PPGs *several months apart*. . . ." (Op.p.42-43) (emphasis added), but demands Dr. Gottfried "specify exactly what was peered [and] how the meta-analysis resolved particular concerns." (Op.p.44).

Not only is this double standard[5] unfairly biased against MUSC and the State, it further betrays lack of understanding concerning the nature of PPG testing. This misapprehension is easily clarified by observing that physiological signs, such as one's body temperature, vary across time when validly and reliably measured. Nothing in the record suggests that the physiological sign that is male sexual arousal should be any more unvarying over time than one's body temperature. The variation of which Dr. Gehle complains may just as easily demonstrate that, like a properly used certified mercury thermometer, MUSC's certified penile plethysmograph is doing its job correctly.

9. The Opinion misrepresents Dr. Joseph Plaud's sentence, "Civil commitment of sexual offenders should never be based upon PPG findings in any context." (Op.p.49 n.20 continued).

When Dr. Plaud's sentence is read in isolation, "in any context" appears to mean "under any circumstances." However, a quite different meaning emerges when one reads the paragraph from which this sentence is taken. Dr. Plaud wrote:

> In the final analysis, the PPG as both a research and clinical tool is here to stay. Like any tool or assessment procedure, the PPG has its plusses and minuses, its accomplishments and controversies. PPG data should always be

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[5] The phrase "double standard" is used advisedly; insertion of the word "purported" in the Opinion's sentence ". . . Dr. Gottfried purported to use the PPG results as a single data point in her diagnosis rather than the sole data point," (Op.p.44), demonstrates that use of the phrase here is appropriate. *See also* Op.p.46 n.18, where Dr. Gehle's lack of familiarity with the Multidimensional Inventory of Development, Sex, and Aggression (MIDSA) is assumed to indicate the MIDSA has no role in evaluating Respondent's mental abnormality, personality disorder, or risk to reoffend, rather than indicating a shortfall in Dr. Gehle's awareness of developments in her field.

> used as one piece of information in making clinical (and legal) decisions in SVP proceedings. Civil commitment of sexual offenders should never be based upon PPG findings in any context. The PPG is a useful tool in attempting to understand the specific patterns of sexual arousal for individuals involved in the SVP process; and it can also be useful as an adjunct to cognitive-behavioral treatment programs. When utilized validly and ethically, the PPG can have a significant role to play in the civil commitment of sexual offenders.

Joseph J. Plaud, *The Use of Penile Plethysmography in SVP Assessment and Treatment Decision Making*, in Sexually Violent Predators: A Clinical Science Handbook, 243, 253 (O'Donohue & Bromberg, eds., 2019). In context, it seems clear that Dr. Plaud intended his sentence to mean, "[c]ivil commitment of sexual offenders should never be based ***solely*** upon PPG findings in any context."[6] The record amply demonstrates that MUSC did not base its recommendation solely upon PPG findings in Respondent's case, and does not do so under any circumstances. (R.p.35, line 18–p.36, line 9; p.43, line 5–p.44, line 23; p.51, line 11–p.52, line 15; p.62, line 22–p.63, line 12; App. p.38, line 18–p.39, line 9; p.46, line 5–p.47, line 23; p.54, line 11–p.55, line 15; p.65, line 22–p.66, line 12).

STANDARD OF REVIEW

The State concurs that the admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may disturb a ruling admitting or excluding evidence only upon a showing of an abuse of discretion accompanied by probable prejudice.[7]

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[6] Dr. Plaud's sentence is also fairly open to the interpretation, "[c]ivil commitment of sexual offenders should never be based upon PPG findings [divorced from consideration of the] context." Regardless which corrected reading one favors, it is clear the natural reading of this sentence, apart from its textual context, is grossly misleading. Insertion of this sentence in the opinion without contextual clarification is very troubling.

[7] The State avers that, in the context of the State's closing argument as a whole, and further in the context of the testimony at trial as a whole, Respondent Hyman was not prejudiced by the unobjected remarks of counsel during closing (R.p.263, line 21–p.264, line 2; App.p.266, line 21–p.267, line 2). However, should this Court determine these remarks merit a new commitment

State v. Commander, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011); *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). (Op.p.47) (quotations omitted).

ANALYSIS

The Opinion's analysis of the *Jones* factors, Op.pp.48–52, relies on the outdated Odeshoo article and the errors and misapprehensions discussed above, and is therefore fundamentally flawed and deserves reconsideration.

The testimony of record before the circuit court into admissibility of the State's PPG evidence (R.pp.10, line 7–p.69, line 19) addressed and satisfied each of the *Jones* Factors **(Factor 1 (Publications and Peer Review)**: R.p.27, line 20–p.28, line 4; p.38, lines 3–11; p.45, line 3–p.46, line 21; p.49, line 11–p.50, line 7; App.p.30, line 20–p.31, line 4; p.41, lines 3–11; p.48, line 3–p.49, line 21; p.52, line 11–p.53, line 7; **Factor 2 (Prior Use)**: R.p.27, line 20–p.28, line 4; p.38, lines 3–11; p.51, line 11–p.52, line 8; App.p.30, line 20–p.31, line 4; p.41, lines 3–11; p.54, line 11–p.55, line 8; **Factor 3 (Quality Control)**: R.p.36, line 10–p.37, line 1; p.39, line 1–p.42, line 13; p.45, line 3–p.46, line 21; p.56, line 12–p.58, line 7; p.63, line 13–p.64, line 3; App.p.39, line 10–p.40, line 1; p.42, line 1–p.45, line 13; p.48, line 3–p.4p, line 21; p.59, line 12–p.61, line 7; p.66, line 13–p.67, line 3; **Factor 4 (Consistency with recognized Scientific Practices)**: R.p.38, lines 3–11; p.45, line 3–p.48, line 14; p.56, line 12–p.58, line 7; App.p.41, lines 3–11; p.48, line 3–p.51, line 14; p.59, line 12–p.61, line 7).

Exercising its role as gatekeeper, *K.S. by & through Seeger v. Richland Sch. Dist. Two*, 445 S.C. 111, 125-26, 912 S.E.2d 240, 247-48 (2025), the circuit court observed the witnesses,

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proceeding, the State respectfully but strongly suggests they do not justify a blanket ban on admissibility of PPG evidence for the foreseeable future. (Op.pp.38, 56).

heard the arguments of counsel, and determined that "the probative value outweighs the prejudice." (R.p.69, lines 14-19; App.p.72, lines 14-19). In these circumstances, appellate courts "may only disturb a ruling admitting or excluding evidence upon a showing of manifest abuse of discretion accompanied by probable prejudice." *State v. Commander*, 396 S.C. at 262-63, 721 S.E.2d at 417. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); *see also State v. Robinson*, 426 S.C. 579, 607, 828 S.E.2d 203, 217 (2019) ("[T]wo different trial courts could examine the same [evidence], evaluate the same . . . factors, and perhaps reach opposite conclusions as to the admissibility of the [evidence]. In such an instance, it is conceivable that under our standard of review, both trial courts would be affirmed.").

Here, the circuit court's ruling on Respondent's motion *in limine* did not lack evidentiary support and was not controlled by an error of law. The State offered sufficient evidence in the hearing on Respondent's motion *in limine* to meet the *Council* requirements and satisfy the *Jones* factors. Although the scientific community may not be unanimous in its support of using the PPG in assessing probable sexual predators, the record of this case contains ample evidence of support to meet the requirements of *Council* and *Jones*, and the circuit court so ruled. In these circumstances, it is not the province of the appellate courts to set aside the ruling of the circuit court.

The Opinion implies OMH's evaluation should be dispositive. (Op.pp.48–52). The SVP Act clearly states it is not. In section 44-48-90(C), the SVP Act specifically grants to both the State and the individual the right to obtain an independent evaluation in the face of a challengeable OMH recommendation. The appellate courts' reversal of the circuit court's ruling

on admissibility of the State's PPG evidence suggests substitution of the appellate courts' own credibility determinations for those of the trial court; the unfortunate language discussed at footnote 5 and accompanying text, above, further supports this view.

The Opinion, which appears to have been guided by errors of fact and law, does not support the determination that the circuit court erred in admitting the State's PPG evidence, nor the sweeping bar on admission of PPG evidence for the reasonably foreseeable future.

CONCLUSION

WHEREFORE, the State respectfully petitions the Supreme Court of South Carolina to withdraw the opinion filed on May 13, 2026; to rehear argument limited, if the Court wishes, to questions of science that clearly trouble the Court (or to thoroughly reexamine the record in this case without further hearing); and to issue a superseding opinion in this matter.

In the alternative, the State respectfully suggests that the record in *In the Matter of the Care and Treatment of Jeremiah James Pough*, App. Case No. 2023-001950 now pending before this Court, is more fully developed to address the questions of science that trouble the Court. It may be advantageous to the parties, the citizens of South Carolina, and this Court if the Court were to take *Pough* as it's reference case on PPG admissibility rather than *Hyman*.

Respectfully submitted,

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May 28, 2026