

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

RESPONDENT.

APPELLATE CASE NO. 2024-001781

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

Opinion No. 28330 (S.C. Sup. Ct. filed May 13, 2026)

RETURN TO
PETITION FOR REHEARING

On May 13, 2026, this Court affirmed the Court of Appeals' opinion reversing Respondent's involuntary commitment to the Office of Mental Health pursuant to the Sexually Violent Predator Act. Matter of Hyman, Opinion No. 28330 (S.C. Sup. Ct. filed May 13, 2026) (Howard Adv. Sh. No. 18 at 37). Pursuant to Rule 221(a), SCACR, the state filed a petition for rehearing on May 28, 2026. On May 29, 2026, this Court requested Respondent file a return to the petition for rehearing. This return follows.

In its published opinion, this Court agreed with the Court of Appeals' finding that the trial court erred in determining Respondent's PPG results were reliable and, therefore, admissible. Id. at 48. This Court further held that Respondent's PPG results were inadmissible under Rule 403, SCRE, because any probative value of the PPG results was substantially

outweighed by the danger of unfair prejudice given the “dubious reliability of the ‘scientific’ evidence” and its “natural tendency to confuse and mislead the jury.” Id. at 54. The Court also found the error in admitting Respondent’s PPG results was “clearly prejudicial” and therefore the error was not harmless. Id. at 55-56. Finally, this Court concluded that PPG results are not sufficiently reliable and, thus, are inadmissible in judicial proceedings in South Carolina under Rule 702, SCRE, and State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). Id. at 53, 56.

In its petition for rehearing, the state generally complained that this Court’s opinion “is founded upon undocumented assertions and one-sided assumptions.” Pet. at 2. Respondent disagrees. This Court correctly affirmed the Court of Appeals’ opinion holding the trial court erred by admitting Respondent’s PPG results based on the overwhelming evidence presented at trial that PPG results are unreliable. Respondent presented extensive evidence during the pretrial hearing through Dr. Gehle’s testimony and the cross-examination of Dr. Gottfried establishing that PPG results are unreliable. This Court thoroughly summarized and analyzed this evidence in support of its opinion. Based on this analysis and a comprehensive review of the PPG literature and caselaw from other jurisdictions, this Court correctly held that PPG results are not sufficiently reliable and, thus, are inadmissible in South Carolina under Rule 702, SCRE, and State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). As the Court noted, this Court’s “decision comports with the overwhelming majority of jurisdictions that have similarly examined the reliability of the PPG.” Hyman at 53 n. 25. Consequently, Respondent respectfully contends the state’s assertion that this Court’s opinion “is founded upon undocumented assertions and one-sided assumptions” is disingenuous.

This Court’s opinion is also consistent with prior South Carolina case law. Most recently, the Court of Appeals in Matter of Daily, 443 S.C. 557, 905 S.E.2d 310 (Ct. App. 2024),

held the trial court erred by admitting PPG results during a precommitment trial because the PPG is unreliable under Rule 702, SCRE, and Council. Additionally, in Matter of Bilton, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020), the Court of Appeals asserted that the PPG “test is controversial and has been criticized for a lack of standardization and for being subject to manipulation.” Id. at 162, 851 S.E.2d at 444 (citing United States v. Rhodes, 552 F.3d 624, 626-627 (7th Cir. 2009) and United States v. Weber, 451 F.3d 552, 565 (9th Cir. 2006)). The Court of Appeals noted that “with limited exceptions . . . courts have ‘uniformly’ declared that PPG test results are ‘inadmissible as evidence because there are no accepted standards for this test in the scientific community.’” Id. at 162-163, 851 S.E.2d at 444 (quoting Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1266 (9th Cir. 2000)).¹

The state specifically complained about this Court’s assertion that “no universal standards exist for administering the PPG or interpreting the test results.” Pet. at 4-5. However, importantly, the state does not dispute the accuracy of this statement likely because the overwhelming evidence presented at trial and the PPG literature support it. Rather, the state complains that neither Council nor State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979), require such universal standards. Pet. at 5. The Jones reliability factors take into consideration “the consistency of the method with recognized scientific laws and procedures.” Council, 335 S.C. at 19, 515 S.E.2d at 517. This Court correctly concluded that “the current lack of standardization makes PPGs inconsistent with generally recognized scientific practices.” Hyman at 51. In so finding, this Court stated, “the lack of standardization in administering and scoring the PPG seemingly give rise to the possibility (or, more likely, the probability) that an examinee could be

¹ The Court of Appeals also held PPG results were unreliable and thus inadmissible in at least two other unpublished opinions, excluding the Court of Appeals’ unpublished opinion in this case. See Matter of Williford, 2024-UP-270 (S.C. Ct. App. filed July 24, 2024); Matter of Gregg, 2022-UP-336 (S.C. Ct. App. filed August 10, 2022).

sent to two different laboratories and get two different results based purely on the laboratories' variable and unregulated use of different protocols or stimuli sets. This is wholly inconsistent with recognized scientific practices, preventing any possible finding that the PPG is reliable scientific evidence." Hyman at 52. This Court simply (and correctly) applied the evidence of the lack of standardization to the Jones reliability factors outlined in Council. The state's claim that this Court's analysis somehow "recast the Jones factors" or substantially changed the law is respectfully absurd. See Pet. at 5.

In Footnote 3, the state complained that this Court "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." Return at 6 n. 3. The state claimed this implication was "not correct" and that "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*." Pet. at 6 n. 3 (emphasis added). First, the OMH evaluation would never be subjected to "scrutiny in a court of law" unless and until the state sought an independent evaluation and that evaluation produced a different opinion.

Second, the assistant attorney general who represented the state at Respondent's trial informed the jury during her opening statement that "if anybody [the state or the respondent] doesn't like the [OMH] opinion they have the right to get a second opinion. That . . . happened in this case." The assistant attorney general proceeded to tell the jury that after she reviewed Dr. Gehle's report she believed "there might be something more to this" and wanted a "second opinion," which is when she contacted Dr. Gottfried to "do her own independent evaluation." The state's own words during Respondent's trial support this Court's assertion that the state

seeks a second opinion from an evaluator who will perform a PPG when it disagrees with the decision of the OMH evaluator.

Additionally, this Court's assertion is supported by the fact that when the Office of the Attorney General disagreed with the opinion of the OMH evaluator, not only in this case, but also in Matter of Shawn Daily, Appellate Case No. 2024-001707; Matter of James Williford, Appellate Case No. 2024-001782; Matter of Jeremiah Pough, Appellate Case No. 2023-001950; Matter of Robert Sharp, Appellate Case No. 2024-000553; and Matter of Ronald Gregg, Appellate Case No. 2022-001710, it sought a second opinion from Dr. Gottfried, who performs a PPG in every precommitment evaluation she completes. During the subsequent commitment trials in these cases, the state then sharply criticized the OMH evaluator because he or she did *not* perform a PPG. Respectfully, Footnote 22 is accurate and fair and this Court should deny the state's request that it be withdrawn from the Court's opinion.

The state further complained that this Court failed to discuss the manner in which the PPG was administered to Respondent, merely stating its administration "reveals further reliability concerns." Pet. at 6. However, this Court thoroughly discussed how the PPG was administered to Respondent and why its administration created additional reliability concerns. The Court discussed Dr. Gottfried's testimony "that the PPG literature indicates a 2.5-millimeter increase in circumference is the threshold for finding true, physiological arousal" yet "in interpreting PPG results, MUSC sets its own cut score at 5 millimeters." The Court noted that MUSC's cut score, which was used during the PPG performed on Respondent, is "arbitrary" and there are "no studies that indicate a 5-millimeter cut score leads to fewer false positives than a 2.5-millimeter cut score." Hyman at 51-52. This Court also discussed Dr. Gottfried's testimony that she essentially conducted two PPGs on Respondent back to back using a different stimulus


set in each, thereby doubling the length of the typical PPG test. The Court asserted, “Problematically, the impact of MUSC’s unusual, protracted testing has not been studied in the scientific community. Moreover, the fact that MUSC feels the need to subject an examinee to multiple stimuli sets undermines any claim that either set, taken on its own, will produce reliable results.” Hyman at 52. Accordingly, the state incorrectly asserts that this Court did not discuss how the PPG was conducted on Respondent.

The state also contended that this Court, like the Court of Appeals, failed to apply the correct standard of review. However, the overwhelming evidence before the trial court, along with the PPG literature and caselaw presented to the trial court, established that PPG results are unreliable and thus inadmissible pursuant to Rule 702, SCRE, and Council. Accordingly, this Court correctly held the trial court abused its discretion by admitting Respondent’s PPG results.

Finally, the state’s suggestion in its conclusion that this Court should reference the record in In the Matter of the Care and Treatment of Jeremiah James Pough, Appellate Case No. 2023-001950, which is pending before this Court, “to address the questions of science that trouble the Court, is improper, and such review is unnecessary as the record before this Court fully addresses the underlying reliability and validity of PPG results.

Based upon the above argument, Respondent respectfully requests this Court deny the state’s petition for rehearing. This Court correctly held the trial court erred by admitting evidence of Respondent’s PPG results because the evidence is unreliable in violation of Rule 702, SCRE, and Council, and that the error was not harmless.

Respectfully Submitted,



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This 10th day of June, 2026.