

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Charleston County

Honorable Thomas J. Rode, Circuit Court Judge

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IN THE MATTER OF THE CARE AND  
TREATMENT OF ANTHONY DONNELL BROWN,

APPELLANT

APPELLATE CASE NO. 2025-001754

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INITIAL BRIEF OF APPELLANT

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### **STATEMENT OF ISSUE ON APPEAL**

In this SVP case, did the trial court err in allowing the Attorney General's hired expert to testify about bad acts and charges that did not result in a conviction?

## **STATEMENT OF THE CASE**

As petitioner's criminal sentence came near its end, the Attorney General petitioned to have appellant committed as a sexually violent predator and on July 28, 2025, appellant was tried before the Honorable Thomas J. Rode and a jury. Tr. 1. Christopher Runyan and Joseph Corrao appeared for the Attorney General. Tr. 1. Nancy C. Fennell represented appellant. Tr. 1. The jury found appellant was a sexually violent predator. Tr. 440. This appeal follows.

### **STANDARD OF REVIEW**

The evidentiary issues raised in this appeal are reviewed under the abuse of discretion standard. Matter of Bilton, 432 S.C. 157, 161-62, 851 S.E.2d 442, 444 (Ct. App. 2020).

## ARGUMENT

In this SVP case, the trial court erred in allowing the Attorney General's hired expert to testify about bad acts and charges that did not result in a conviction.

### *The Key Factual Dispute at Trial*

Dr. Marie Gehle from the Department of Mental Health testified that appellant Anthony Brown ("Brown") did not meet the definition of a sexually violent predator. Tr. 315. The Attorney General's hired expert, Dr. Emily Gottfried from MUSC, opined the opposite. Tr. 222-24. Both experts agreed that Brown's risk to commit another criminal offense was high, but the key fact in dispute was the experts' disagreement over whether Brown had a relevant personality disorder or mental abnormality.

Dr. Gottfried told the jury that MUSC was paid \$5,600.00 based on a "flat rate" from the Attorney General's office and that her salary at MUSC "remains the same" regardless of the conclusions she reaches. Tr. 149. Her opinion "is based on the data and not who's paying MUSC." Tr. 149.

She diagnosed Brown with three disorders. Tr. 194-98. She said Brown had "paraphilic coercive disorder" and "exhibitionistic disorder." Tr. 194-95. Dr. Gottfried also said Brown had antisocial personality disorder ("ASPD"). Tr. 198.

Dr. Gehle agreed that Brown had exhibitionistic disorder, but said that disorder does not predispose someone to commit a sexually violent offense. Tr. 299. Indecent exposure is not listed as a qualifying sexually violent offense in the SVP Act. S.C. Code Ann. § 44-48-30(2).

As for paraphilic coercive disorder, Dr. Gehle strictly interpreted this disorder as not just committing a criminal rape, but arousal specifically tied to a person's refusal to consent to sex. Tr. 312-14. To have this disorder, just committing a rape is insufficient. Tr. 312-14. The

psychologist must look for the arousal pattern. Tr. 312-14. The defendant must be aroused by the nonconsensual element of the sex—not just the sex itself. Tr. 312-14. Dr. Gehle did not see a pattern of this behavior sufficient to justify this diagnosis. Tr. 312-14.

Dr. Gehle testified that she could not diagnose Brown with ASPD because the DSM precludes the diagnosis of a personality disorder when a person suffers from lead poisoning. Tr. 301. In the DSM-5's instructions for diagnosing personality disorders, it states that it begins with a "general definition of personality disorder that applies to each of the 10 specific personality disorders." DSM-5 at 645. ASPD is listed is one of these ten disorders. Id. Under the criteria for the general definition, it lists "Criterion F," which states that "the enduring pattern is not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition (e.g., head trauma). Id. at 647. In the further explanation of Criterion F, it lists "exposure to a toxin" as an example. Id. Dr. Gehle read from these sections of the DSM. Tr. 302-03.

Dr. Gehle saw Brown's lead poisoning mention in the records from DJJ. Tr. 303. The records said Brown had "too much lead in his system as a result of lead-based products in the home" when he was about six or seven years old. Tr. 304. Another report listed Brown's medical conditions and said "lead poisoning." Tr. 304. Dr. Gehle said the symptoms of lead poisoning are intellectual disabilities, behavior problems, reduced attention span, increased antisocial behaviors or behavioral problems." Tr. 305. She said the lead poisoning precluded the diagnosis of any personality disorder. Tr. 305.

Dr. Gottfried testified that Brown was intellectually disabled. Tr. 159. He was in a class for "emotionally disabled" students when he was in school. Tr. 156. She cited Browns's report during their interview that he had to repeat the fourth and fifth grades for fighting. Tr. 157.

DMH records showed Brown had anger issues, problems getting along with co-workers, and would “walk off jobs.” Tr. 157-58.

The Attorney General asked his hired expert on direct whether lead poisoning was the “cause of his personality pathology.” Tr. 199. Dr. Gottfried answered, “I don’t.” Tr. 199. She explained that exposure to lead in childhood “can cause low IQ, intellectual disability.” Tr. 199-200. “It can cause nerve damage; it can cause problematic or antisocial behaviors.” Tr. 200. But she said she discounted lead poisoning because there was only this one notation from the DJJ record, which she attributed to Brown’s mother, and nothing about lead poisoning or blood tests for lead levels in any other medical records. Tr. 200. She also wanted to know whether Brown’s behavior changed after exposure to the lead. Tr. 200. Dr. Gottfried disagreed with Dr. Gehle’s interpretation of the DSM and said the preclusion for exposure to a toxin was “not in the criterion for antisocial personality disorder” and said that while the exclusion was in the general definitions, it was not specifically listed as an exclusionary criteria for ASPD. Tr. 250-51. The Attorney General echoed Gottfried’s analysis of the DSM’s approach to diagnosing personality disorders when a person has been exposed to lead in his closing argument. Tr. 406-409.

#### Brown’s Objection and the Trial Court’s Ruling

Prior to trial, Judge Rode heard extensive argument and a proffer from Dr. Gottfried on the admissibility of Brown’s prior arrests or charges that did not lead to a conviction.<sup>1</sup> Tr. 67. Brown argued Rule 403, SCRE, prohibited admission of this evidence. Tr. 69. The Attorney General argued that the hearsay evidence was admissible under Rule 703, SCRE because Dr. Gottfried relied on it. Tr. 72. Judge Rode immediately picked up on the link between the Rule

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<sup>1</sup> Brown also objected to the admission of evidence concerning charges that did result in convictions, but were not of a sexual nature. Judge Rode ruled those admissible and Brown does not contest that ruling on appeal.

403 argument and hearsay and asked the parties about the application of State v. Jenkins, 436 S.C. 362, 872 S.E.2d 620 (2022). Tr. 74-75. Judge Rode asked an insightful question about the reliability of charges that did not result in a conviction and wanted to know what the evidentiary standard for their admission would be and gave Rule 404(b), SCRE's example of the clear and convincing evidence burden of proof for the proponent. Tr. 76. The Attorney General argued there was no applicable standard to judge the reliability of the hearsay coming in through the expert because in the SVP realm, the only concern is propensity. Tr. 77.

The next day, the court returned to the issue and asked for a proffer from Dr. Gottfried concerning the Attorney General's evidence. Tr. 83-86. Dr. Gottfried testified that essentially all arrests or charges were relevant to her evaluation. Tr. 92-119. The trial judge ruled the non-conviction conduct was admissible, did not violate Rule 403, and that Dr. Gottfried did not go into "any particularly graphic detail." Tr. 123. At an in camera discussion during Dr. Gottfried's testimony before the jury, Judge Rode confirmed that Brown had a continuing objection to any uncharged conduct and the Attorney General agreed. Tr. 202-09.

Dr. Gottfried told the jury about several charges that were not the result of a conviction that Brown specifically opposed in the motion in limine. She told the jury that Brown was arrested for entering premises after a warning. Tr. 166. Tr. 68. She told the jury that Brown was charged with a sex offender registry violation in 2021. Tr. 166. Tr. 68.

The trial court erred in allowing these charges that did not result in a conviction before the jury. Judge Rode accurately identified the hearsay and Rule 403 problems, but ultimately reached the wrong conclusion on what the law allows. Rule 703, SCRE does not stretch so far as to allow this violation of the rules prohibiting hearsay. See State v. Jenkins, 436 S.C. 362, 872 S.E.2d 620 (2022). In Jenkins, the Court stated, "This Court and our court of appeals have made

it clear that—in South Carolina—Rule 703 allows admissibility of otherwise inadmissible evidence only in limited circumstances. In other words, the mere fact an expert relies on inadmissible evidence does not make the evidence admissible.” Id. The Jenkins Court essentially required a Rule 403 balancing test of facts relied upon by an expert when the hearsay statements could serve two purposes. Id.

The South Carolina SVP cases most frequently relied upon by the Attorney General do not go as far as the hearsay admitted in this case. Corley dealt with prior convictions. See Corley at 204-07, 577 S.E.2d at 452-54. The SVP defendant in Corley offered to stipulate to his prior convictions to avoid their details being discussed by the expert. Id. The Court held that it was proper for the expert to talk about the details of the convictions because the defendant’s past criminal history was relevant to the elements of the statute and evaluating his risk. Id. While that assessment of relevance can be also urged here (or in any case), the salient point is that Corley only discussed admission of the details of the defendant’s convictions.

Ettel allowed testimony about offenses that did not result in convictions, but the important distinguishing factor is that the defendant admitted to the offenses during his interview with the expert. Ettel at 560, 660 S.E.2d at 286. Ettel also was not a hearsay case, but a Rule 403, SCRE case. Id. Manigo was a hearsay case, but there the expert relied on a statement made by the SVP defendant to another doctor about discussing his prior sex offenses. Manigo at 105, 697 S.E.2d at 633. The questioned statement was whether the defendant told the doctor about all of his sex offenses. Id.

Virginia does not allow experts to testify about the underlying details of other offenses considered by the expert if the details are inadmissible hearsay. Commonwealth v. Wynn, 671 S.E.2d 137, 139-142 (Va. 2009). The Virginia Supreme Court upheld the exclusion of details of

children's allegations other than the victim from Wynn's two convictions. Id. The state argued that the details were admissible because the expert relied on them, but the Wynn court rejected that argument. Id.

In a case cited with approval by this Court in In the Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), the New York Court of Appeals examined the admission of hearsay in an SVP trial. State v. Floyd Y., 979 N.Y.S.2d 240 (2005). The court determined that it was necessary to strike a balance between allowing enough evidence for the jury to assess the expert's methods versus allowing the expert to become a conduit for otherwise inadmissible hearsay. Id. The court determined that any hearsay must first be reliable and then pass a Rule 403 balancing test. Id. This Court in Bilton used a reliability analysis to determine that the hearsay evidence regarding a PPG test was inadmissible. Bilton at 164-66, 851 S.E.2d at 445-46.

The conduct here that did not result in a conviction was not admissible and the trial judge erred in admitting it. The evidence was not reliable and does not pass the Rule 403 balancing test required by Jenkins and Bilton. This case had competing experts who had a disagreement over whether Brown could be diagnosed with a sexually relevant mental abnormality or personality disorder. Therefore, the admission of these charges was prejudicial and cannot be harmless. This Court should reverse.

### **CONCLUSION**

For the foregoing reasons, this Court should reverse Brown's commitment and grant him a new trial.



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This 11th day of September, 2026.