

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal From Greenville County  
The Honorable Robin B. Stillwell, Circuit Court Judge  
Appellate Case No. 2014-001181

**RECEIVED**

AUG 26 2015

**S.C. Supreme Court**

IN THE MATTER OF THE CARE AND TREATMENT OF  
JEFFREY ALLEN CHAPMAN,

Appellant.

**RESPONDENT'S MOTION TO STRIKE MATTER FROM  
APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL AND TO  
HOLD APPEAL IN ABEYANCE**

Respondent hereby moves to strike portions of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal as outside the circuit court record. This motion is based on the following:

1. Appellant's Designation of Matter includes the "Forensic Psychological Evaluation of Jeffrey Chapman conducted by Dr. Marie E. Gehle dated Dec. 1, 2013." As evidenced by the trial transcript exhibit list, attached hereto as Exhibit A, this document was never presented as evidence at trial, and contrary to Appellant's assertion the report was submitted to the court, there is no indication it was ever included in the circuit court record at any point. (Initial Brief of Appellant, pp. 24-25; Trial Transcript, pp. 51-53).

Pursuant to S.C. Code Ann. §44-48-90 (C) (Supp. 2014), and the circuit court order for the evaluation, the court appointed evaluator's report is provided to the person

and the Attorney General, not the court. (Order for Evaluation attached hereto as Exhibit B). If an evaluation report is ever submitted to the court, prior to or during trial, it must be submitted under seal pursuant to S.C. Code Ann. §44-48-150 (Supp. 2014), which did not occur in this case. Therefore, the report is not appropriately designated for inclusion in the appellate record. *See* Rule 210(c), SCACR (Record on Appeal “shall not, however, include matter which was not presented to the lower court or tribunal”).<sup>1</sup>

2. Appellant’s Initial Brief includes multiple citations to the contents of Dr. Gehle’s report. (Initial Brief of Appellant, pp. 24-25). Since the report is inappropriate for inclusion in the appellate record, those citations and any report content not discussed during trial should be struck from Appellant’s Initial Brief.

3. In Appellant’s Issue 7, he references a pre-trial agreement between counsel “not to mention the lack of treatment in the SVP program,” and “the State’s expert opened the door” to inquiry regarding that treatment. He then alleges trial counsel was ineffective in various aspects regarding the pre-trial agreement and cross-examination of the State’s expert. (Appellant’s Initial Brief, p. 43). The Respondent’s brief will address the validity, or lack thereof, of Appellant’s contentions regarding the pre-trial agreement and the effect of the expert’s testimony.

Appellate counsel then states, however, he “is mindful of his duty not to violate the boundaries of the record before this Court,” but proceeds to do precisely that which he acknowledges he cannot do under the guise of drawing the Court’s attention to

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<sup>1</sup>To the extent Appellant may contend the report is necessary to this appeal because it did not make any reference to psychopathy, that fact was clearly established during trial counsel’s cross-examination of Dr. Gehle. In addition, Dr. Gehle testified regarding the mental abnormalities she ruled out during the evaluation. (Trial Transcript, pp. 138-139).

“several reasonable inferences.” Counsel’s basis for those “inferences” is the following:

Chapman has now been confined in the SVP program since May 2014. It also follows that Chapman has now received a year’s worth of treatment since his commitment. The Court can assume that appellate counsel has communicated with his client about his case and the treatment he has received. The Court can also assume that appellate counsel would not seek a remand on an issue that counsel deemed frivolous.

(Appellant’s Initial Brief, p. 44). These statements constitute a blatant disregard for appellate procedures.

The statements set forth above clearly go to events **after** Appellant’s commitment trial, and therefore, are not, and cannot be, supported by any definition of the record in this appeal. Even more shocking, appellate counsel is essentially testifying about blatant hearsay from Appellant as a way to supplement the record, using his position as an officer of the court to say “you can just trust me,” and infer the State is not doing what appellate counsel thinks it should. Appellant counsel is certainly free to argue any inferences he believes are reasonable **from the record**, but he is **not** free to supplement the record to **create** inferences. Therefore, this portion of Appellant’s Initial Brief should be struck.

4. Exclusion of the matter referenced above will require Appellant to submit an amended Initial Brief and Designation. Respondent’s arguments will be impacted if the matter is excluded or remains. Therefore, Respondent also moves to hold all timelines in abeyance until this Court rules on this Motion.


WHEREFORE, Respondent requests that this Court strike the matters set forth above from the Appellant’s Initial Brief and Designation of Matter; that all filing deadlines be held in abeyance pending resolution of this Motion; and for such other and

further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

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ATTORNEYS FOR RESPONDENT

August 26, 2015

# **EXHIBIT A**

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**COURT EXHIBITS**

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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2

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Statement

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# **EXHIBIT B**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) CASE NO. 2013-CP-23-02749

2013 JUL 10 AM 10:25  
IN THE MATTER OF THE CARE )  
AND TREATMENT OF ) OF ORDER FOR EVALUATION PURSUANT  
JEFFREY ALLEN CHAPMAN, ) TO THE SEXUALLY VIOLENT PREDATOR  
RESPONDENT ) ACT  
\_\_\_\_\_ )

This matter comes before me on petition of the State of South Carolina for an order requiring the Respondent, Jeffrey Allen Chapman, to submit to an examination and to be detained in an appropriate secure facility pending a trial pursuant to the Sexually Violent Predator Act (S.C. Code Ann. Sections 44-48-10 *et seq.*; hereafter "the Act"). A Probable Cause hearing was scheduled for July 10, 2013 in the Greenville County Court of Common Pleas. The State was represented by Assistant Attorney General Nicole T. Wetherton, and the Respondent was personally present and represented by Mills Ariail, Jr., Esquire.

Prior to the hearing, Respondent informed the Court he desired to waive his right to a Probable Cause hearing and consent to an evaluation. The Court inquired of the Respondent whether he was making this decision after consultation with his attorney, and if he was satisfied with his attorney's services. The Court also inquired whether Respondent was aware he would not be giving up any rights he may have pursuant to the Act, including but not limited to the right to an independent evaluation or the right to a jury trial on the merits. Respondent responded in the affirmative to the inquiries of the Court.

I find Respondent has freely, voluntarily, intelligently and without coercion waived his right to contest the probable cause determination and has consented to an evaluation pursuant to the Act.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED

That the Respondent shall be:

- (a) Confined once he has been released from the South Carolina Department of Corrections, in the Greenville County Detention Center until a final disposition of this action; and
- (b) Examined and observed at an appropriate facility of the South Carolina Department of Mental Health 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.

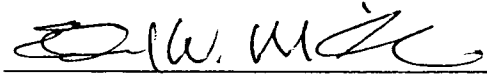
The ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility as soon as possible. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the staff of the

examining facility. The Respondent continues under jurisdiction of this Court.

The qualified expert appointed by the Court is Marie E. Gehle, Psy.D., to examine the Respondent.

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.



Presiding Judge  
for the 13<sup>th</sup> Judicial Circuit  
Court of Common Pleas

July 10, 2013  
Greenville, South Carolina

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal From Greenville County  
The Honorable Robin B. Stillwell, Circuit Court Judge  
Appellate Case No. 2015-001424

IN THE MATTER OF THE CARE AND TREATMENT OF  
JEFFREY ALLEN CHAPMAN,

Appellant.

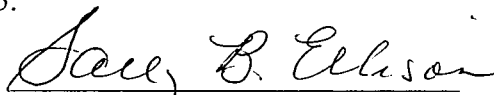
**PROOF OF SERVICE**

I, Sally B. Ellison, certify I served the Respondent's Motion to Strike Matter from the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal, and to Hold Appeal in Abeyance, by depositing a copy in the United States mail, postage prepaid, addressed to:

David Alexander  
Assistant Appellate Defender  
SC Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.

This 26<sup>th</sup> day of August, 2015.



SALLY B. ELLISON  
Legal Assistant

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