

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

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

APPELLANT

Appellate Case No. 2014-001181

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**RETURN TO 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**

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The State's motion concerns the striking of two separate portions of Appellant's brief and a supporting portion of the record. First, the state seeks to have the citations to and the report prepared **by the court's expert** stricken. Second, the state seeks to strike **inferences** from appellant's brief in a section where appellant **asked for a remand** to make a record. Appellant will address each in turn.

First, the state takes the extreme position that the report prepared by the trial court's own expert is not a proper matter to be included in the record on appeal. Dr. Gehle was appointed by the court. She was not an independent expert hired by the state or the defense. The state made certain on numerous occasions to tell the jury that Dr. Gehle was appointed by the court and was not the state's expert.

In its opening statement, the state told the jury that Dr. Gehle “is the only person in the . . . State of South Carolina that’s appointed by the courts to conduct evaluations pursuant to this Sexually Violent Predator Act. Tr. 43, ll. 8 – 11. During her direct-examination, the state asked Dr. Gehle:

Q. Is there anyone else in the State of South Carolina that gets **appointed by the Courts** to evaluate individuals for commitment into the sexually violent predator treatment program?

A. No. Currently I’m the only one.

Q. How long have you been **the sole court appointed expert** for pre-commitment evaluations pursuant to the sexually violent predator about [sic]?

A. Since roughly December 2013.

Q. Now, doctor **when you are appointed by the Court** to conduct this evaluation, what are you ordered to do?

A. I’m **ordered** to determine. . . .

Tr. 51, ll. 11 – 22 (emphasis added). Dr. Gehle later described herself as getting “a Court Order naming me as the evaluator. . . .” Tr. 52, ll. 5 – 10.

The state also appears to argue that the SVP Act only requires the court’s expert to send the report to the defendant and the Attorney General. That is incorrect. See S.C. Code Ann. §§ 44-48-80(D) and 44-48-90(B) and (C). Section 44-48-80(D) states that if a probable cause determination is made, an evaluation “must be conducted by a qualified expert appointed by the court at the probable cause hearing.” S.C. Code Ann. § 44-48-80(D). The expert has a deadline of sixty days to complete the report. S.C. Code Ann. § 44-48-80(D). The court may grant an extension to the expert. S.C. Code Ann. § 44-48-80(D). It makes no sense that the court would not get its own expert’s report, especially when the statute mandates a deadline for completion and that extensions are granted by the court.

Furthermore, the section of the SVP Act relied upon by the state only says that the Attorney General or the defendant may obtain their own expert after receipt of the court's expert's report. S.C. Code Ann. § 44-48-90(C). It does not state that the expert shall only send the report to the Attorney General and the defendant and not the court that appointed the expert.


The purpose of including the report is to show that trial counsel had the report, it does not mention whether appellant is a psychopath, and trial counsel still failed to object when Dr. Gehle speculated that appellant was a psychopath and compared him to Ted Bundy. There can be no question trial counsel had the report. Trial counsel made several references to Dr. Gehle's report during cross-examination. Tr. 118, l. 21 – 119, l. 2 (“I’ve gone through and I’ve looked at your report”); Tr. 119, ll. 3 – 6 (“you put a lot of statements that was [sic] my client has made through this report and read them to the Court today”); Tr. 121, ll. 10 – 14 (“from my reading of your report”). This issue asserts an error was committed by trial counsel, not the judge. In this unusual case where appellant asks this Court to address the issue of ineffective assistance of counsel on direct appeal, the court's own expert's report—that was clearly in possession of trial counsel—is properly part of the record.

As for the second portion of appellant's brief to which the state objects, it asserts that appellant used a “blatant disregard” for appellate procedures by inviting the Court to make basic inferences from matters which are obvious. A “blatant disregard” for appellate procedures would have been to tell the Court precisely what counsel has learned about the lack of treatment in the SVP program. Counsel would very much like to inform the Court about the specifics of the lack of treatment in the SVP program, but will not do so, even in response to the Attorney General's current attack. Instead, appellant will emphasize that

appellant seeks a remand on this issue precisely because of the constraints of direct appeals as they currently stand. Appellant desires to make a proper record on this issue, which should have been performed by trial counsel below.

This entire case is about deficient representation and the inadequacy of current remedies in SVP cases. In its motion, the state again attempts to hide behind procedure to cover up deficiencies in how defendants in SVP cases are represented and how they are treated once they are committed. These procedures should exist to promote justice, not prevent it. See Hormel v. Helvering, 312 U.S. 552, 557 (1941). The Court should deny the state's motion.

WHEREFORE, appellant asks that the state's motion to strike be denied and this appeal removed from abeyance.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

September 2, 2015

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Return to the 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 in the above referenced case has been served upon Deborah R. J. Shupe., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jeffrey Allen Chapman, this 2nd day of September, 2015.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 2nd day of September, 2015.

Maia Mendel (L.S.)  
Notary Public for South Carolina

My Commission Expires: July 3, 2023.