

RECEIVED

SEP - 3 2015

S.C. Supreme Court

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

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

Appellant.

**REPLY TO APPELLANT'S 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**

In response to Respondent's Motion to Strike, Appellant again ignores the very clear requirements of the South Carolina Appellate Court Rules regarding matter to be included in the Record on Appeal and discussed in the parties' brief. *See* Rule 208(b)(4), SCACR (briefs shall contain references to "materials which may be properly included in the Record on Appeal"); Rule 210(c), SCACR (Record on Appeal "shall not, however, include matter which was not presented to the lower court or tribunal").

1. As to the expert's report, Appellant focuses on the fact the expert was appointed by the circuit court and the circuit court can grant extensions for completion of the evaluation, which is undisputed. He cites to nothing in the circuit court record indicating the report itself was ever filed with the court, and argues "it makes no sense that the court would not get its own expert's report."

Even though it "makes no sense" to Appellant, the fact is the statute only requires

that the expert's report be provided to the Attorney General and opposing counsel, and it does not have to be submitted as an exhibit at any stage of the proceeding.¹ The circuit court is made aware of the report's general contents during subsequent hearings, or as in this case, through the expert's testimony at trial.

Appellant also asserts "[t]he 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." Respondent vehemently disagrees with Appellant's characterization of Dr. Gehle's testimony regarding psychopathy and Ted Bundy, but for purposes of the pending Motion, Appellant **admits** "trial counsel had the report," and "made several references to Dr. Gehle's report during cross-examination." The transcript also establishes trial counsel knew the report did not mention psychopathy, which he brought out before the jury. (Trial Transcript, pp. 138-139, attached hereto as Exhibit A).

Contrary to Appellant's assertion, trial counsel's mere possession of the report does not make the report "properly part of the record." Taken to its logical conclusion, Appellant's argument effectively eviscerates Rule 210(c), SCACR, and makes **any** document possessed by a party appropriate for inclusion in the Record on Appeal, even if it was not "**presented to** the lower court or tribunal." (emphasis added).

Applying the Rule as written, however, requires that any document properly

¹Unlike an evaluation report regarding a defendant's competency to stand trial, the expert's report in a sexual predator case does not require the circuit court to make any determination regarding the person before the case can proceed. Further, the statute regarding competency evaluation expressly requires the evaluator(s) to report to the court. S.C. Code Ann. §44-23-410(D) (Supp. 2014). Clearly, the Legislature knew how to require court appointed experts to submit their findings to the court, and the fact it did not put such a requirement in the SVP Act indicates filing the report with the court is **not** required.

designated for inclusion in the Record on Appeal and discussed in the briefs must have been presented to the lower court. Dr. Gehle's written report, while discussed during trial, was never presented to the circuit court, and therefore, it is not proper for inclusion in the Record on Appeal, or citation in Appellant's brief.

2. Appellate counsel contends his statements regarding inferences the Court should make based on his communications with Appellant regarding the treatment he has received after commitment, were "obvious." To the contrary, nothing occurring after Appellant's commitment is "obvious," and the fact counsel made the statements in connection with his remand argument makes them no less inappropriate and a violation of appellate procedure.

Overlooking the blatant hearsay nature of the statements, counsel is clearly attempting to impugn the SVP treatment program based on nothing more than Appellant's extraordinarily biased reports (whatever they were). Appellant is not a mental health practitioner, and his version of the treatment provided is irrelevant for purposes of this appeal.

Counsel indicates he "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." As a threshold matter, the undersigned did not "attack" counsel, but merely pointed out he was essentially testifying about blatant hearsay as a way to supplement the record and create inferences that do not exist in the record.

Further, if the Court allows counsel's statements and "inferences," the undersigned should have similar leeway in responding to them. The end result will be an

expansion of this appeal far beyond what is necessary to address the issues raised in Appellant's brief.

Rather than attempting 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," the undersigned submits seeking compliance with appellate rules and procedures is not hiding. The legal issues regarding the existence of a right to effective assistance of counsel in SVP cases, and how ineffective assistance claims could be raised, which counsel concedes is the "entire case," can and should be addressed without going outside the circuit court record in this case.

WHEREFORE, based on the arguments set forth in the pending Motion and above, Respondent again requests that this Court grant the Motion.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

BY: 
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0087

ATTORNEYS FOR RESPONDENT

September 3, 2015

EXHIBIT A

MARIE GEHLE-CROSS BY MR. ARIAIL

1 seeing what's going on and understanding what his life is
2 at this time?

3 A Well, I think those documents are more important
4 because those are objective. And if I went and talk to
5 his girlfriend, I would assume that she would, you know,
6 have some bias. She would, you know, want to see him do
7 well and get out of the program or get out of prison and
8 be released and move back with her. She, you know, might
9 not be real forthcoming in my questions. And she might
10 not even know about his sexual offending and things like
11 that. Because, you know, this stuff happened while he was
12 in relationships and those people presumably didn't know
13 about the sexual offending or, you know, they -- so, I
14 don't know in these cases how helpful that would be.

15 Q I guess what I'm asking is are you concerned at all
16 to base your opinion solely on a five hour interview and
17 reviewing documents rather than going and understanding
18 and talking to people that are dealing with him on a daily
19 basis and know what he's doing at that time?

20 A No, I'm not.

21 Q Now, you also did a review of him and ruled out
22 certain other mental abnormalities that, I guess, came out
23 during the evaluation, correct? Page 16 of your report.

24 A Thank you.

25 Q Fifteen, excuse me.

MARIE GEHLE-CROSS BY MR. ARIAIL

1 A Yes, I ruled some things out that were indicated by
2 his sexual history.

3 Q Okay. Now, you ruled out pedophilia and
4 exhibitionism are two items you ruled out there?

5 A Correct.

6 Q And at no point during this whole entire review did
7 you get into anything about being a psychopath or anything
8 in here, correct?

9 A I didn't evaluate him psychopathy directly, no.

10 Q So, I don't know where that came from but that was
11 not part of your report when it came to the AG's office,
12 right?

13 A Well, psychopathy is kind of considered on a spectrum
14 with the anti-social personality disorder, but no, I
15 didn't talk about that in my report.

16 Q Okay. Now, you also go into the one issue that -- I
17 guess we've got the -- I guess, the mental abnormality
18 which is, I guess, non-consenting coercive sexual
19 assaults. That's pretty much, I guess, what it is, how
20 you pronounce it?

21 A Yeah, biastophilia.

22 Q Biastophilia. I never pronounce it right, Okay.
23 Biastophilia is, my understanding is, non-consenting sex;
24 is that correct?

25 A Yes.

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, Deborah R.J. Shupe, certify I served the Reply to Return to 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 3rd day of September, 2015.


DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727