STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Georgetown County
Honorable Steven J. John, Circuit Court Judge
Appellate Case No. 2017-001033

IN THE MATTER OF THE CARE AND TREATMENT OF
DARYL T. SNOW,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals properly affirm the circuit court's denial of Petitioner's directed verdict and post-trial motions because the expert's diagnosis of Other Specified Personality Disorder is recognized in the mental health field, and the credibility of the expert's diagnosis and testimony was a matter for the jury?

STATEMENT OF THE CASE

Prior to Petitioner's release from prison, Respondent State of South Carolina ("the State") filed a Petition Pursuant to the Sexually Violent Predator Act (the "SVPA"), seeking Petitioner's civil commitment for long term control, care and treatment as a sexually violent predator. The matter was called for a jury trial on February 9, 2015, before the Honorable Steven H. John, Circuit Court Judge.

After a pre-trial hearing regarding her qualifications and testimony, Marie Gehle, PsyD, testified before the jury, and was qualified as an expert in forensic psychology without objection. She stated she had conducted approximately ninety SVPA pre-commitment evaluations, and approximately ninety annual review evaluations, but she currently conducts only pre-commitment evaluations. (Record on Appeal [R.], pp. 85-90).

Dr. Gehle outlined the protocol she follows in pre-commitment evaluations, which includes a very detailed review of all documentation she receives in the case, to determine if there are any discernible behavior patterns and identify risk factors for reoffending. After reviewing the documents, she interviews the person extensively about things revealed in the documents, as well as his family, school history, employment history, medical and mental health history, and a detailed sexual history to determine if the person has any sexual deviance. She may then request additional records if necessary. Once she has all the information she can get, she writes a report and reaches her conclusions. (R., pp. 90-92).

Dr. Gehle testified she had extensive documentation regarding Petitioner, and she interviewed him for two hours. The documentation included police reports, prison

records, witness statements, sentencing sheets, warrants, and indictments, and Dr. Gehle testified this was the type of information typically and reasonably relied on by experts in her field. She stated a person's past behavior, sexual or nonsexual, is the best predictor for future behavior because if the person has already engaged in the behavior, it is more likely he will do it again. (R., pp. 92-94).

After identifying the documents related to his qualifying sexually violent offenses, Dr. Gehle testified she also considered Petitioner's nonsexual offenses to determine how much time he was out in the community to actually commit sexual offenses, and how the sex crimes and nonsexual offenses fit together, *i.e.*, common victims, similar elements, etc. For purposes of assessing Petitioner's risk to reoffend sexually, Dr. Gehle also considered criminal charges against him that did not result in convictions to determine how those charges fit into the timeline of his convictions, what consequences Petitioner faced, and how he conducted himself afterwards. She asked Petitioner about those charges during the interview because it was important to hear his version of the events, as well as whether he admitted or denied committing the offenses, and to determine his general attitude toward those offenses. (R., pp. 94-98).

Dr. Gehle described Petitioner's sexual offenses and other charges associated with those offenses. One thing she looked for in the evaluation process was patterns of behavior, which are essential in assessing future risk. She testified she found a pattern of extreme hostility toward women, resorting to sexual violence if the victims did not comply with his demands, as well as continuing to offend even in the face of legal sanctions. (R., pp. 98-112).

She also considered Petitioner's behavior during periods of incarceration because it was necessary to see how he behaved in a very controlled environment, and any sexually related disciplinary infractions were particularly important to the risk assessment. Petitioner's prison records revealed he was disciplined twice for sexually related offenses, which included masturbating in the recreation yard and grabbing the buttocks of a female staff member. The records also revealed Petitioner was offered sex offender specific treatment in prison, but he refused it because it was not mandatory, and he did not believe he needed any treatment. (R., pp. 112-114).

Dr. Gehle testified she completed a Static-99R risk assessment, which is an actuarial tool based on research involving thousands of sex offenders, and consists of ten questions related to known risk factors for reoffending sexually. The scores range from negative three to twelve, and Petitioner's score was seven, which Dr. Gehle stated is in the high risk category and is higher than 94.9% of the sex offenders included in the research. The assessment only considers risk factors that are static and generally not changeable through treatment, such as the number of convictions. (R., pp. 115-120).

Dr. Gehle then testified about dynamic risk factors, which are not factored in the Static-99R and can be changed through treatment, but research shows they are strongly associated with sexual offending. She stated Petitioner had many of the known dynamic risk factors, including: 1) hostile beliefs about women; 2) blaming women for all his problems; 3) a long history of violence toward women; 4) sexualized violence; 5) a lack of steady, emotionally intimate relationships with adults not involving hostility and violence; 6) a history of poor problem solving and dealing with problems through violence; 7)

resistance to rules and supervision as evidenced by resisting arrest, escape from jail, violating probation and behavioral infractions in prison; 8) attempts to control others through violence; and 9) negative social influences arising from him surrounding himself with people who either help him violate the law or violate it with him. (R., pp. 120-121).

Dr. Gehle diagnosed Petitioner with Other Specified Personality Disorder, which is used when someone does not meet all the criteria for a specific personality disorder. She testified Petitioner has a very antisocial personality and world view, marked by a consistent and pervasive history of violating and disregarding the rights of others. She explained she could not render a diagnosis of antisocial personality disorder (ASPD) because it requires evidence the person had conduct problems before the age of fifteen, and she had no records or information regarding Petitioner's childhood behavior other than his self-report that he had no behavior problems at all in his life, which was dubious at best given his criminal history, but she still had no evidence. She stated Other Specified Personality Disorder is a diagnosis found in the Diagnostic and Statistical Manual, Fifth Edition (DSM-5), which is the book used by psychiatrists and psychologists for diagnosing mental abnormalities and personality disorders. (R., pp. 121-123).

Dr. Gehle testified to a reasonable degree of psychological certainty Petitioner's personality disorder affected his emotional or volitional control such that he is disposed to commit future acts of sexual violence, he has serious difficulty controlling his dangerous propensities, and he poses a menace to the health and safety of others. She stated Petitioner disregards and violates the rights of others, primarily women, his disorder has manifested itself in sexual violence numerous times, and his score on the Static-99R put

him in the high risk to reoffend category. She further testified Petitioner was not a candidate for outpatient treatment, he had no probation hanging over his head, and women or girls of any age would be at risk if Petitioner was released. (R., pp. 123-127).

On cross-examination, Dr. Gehle testified Other Specified Personality Disorder is not a catch-all diagnosis. She stated she believed Petitioner has an ASPD, but reiterated she could not render the diagnosis without evidence he had a conduct disorder before the age of fifteen. (R., pp. 129-130). She stressed that having a mental abnormality or disorder associated with sexual offending does not necessarily make a person a sexually violent predator, and each case has to be based on the individual person. (R., pp. 129-138).

Dr. Gehle again testified her diagnosis and opinion regarding Petitioner and his risk to reoffend were based on Petitioner's pattern of pervasive attitudes, his tendency to blame other people for his problems and refusal to take responsibility for his behavior. She stated he did not show or express any signs of remorse or empathy for others, and he was unable to maintain lawful behaviors or fit in with social norms. (R., pp. 139-145).

On re-direct, Dr. Gehle testified she also evaluated Petitioner for possible paraphilic diagnoses, and while he met some criteria for a paraphilia, she found no clear pattern in his behavior. As a result, she did not render any paraphilic mental abnormality diagnosis. (R., pp. 145-147).

The circuit court denied Petitioner's motion for a directed verdict, finding "there is more than sufficient evidence in the record, under the standard of beyond a reasonable doubt," to submit the case to the jury. (R., pp. 149-154). The court also denied

Petitioner's directed verdict motion at the close of the evidence, again finding there was "more than sufficient evidence to carry the State's burden of proof." (R., pp. 207-208). The jury found Petitioner is a sexually violent predator beyond a reasonable doubt, the court denied his motion for judgment notwithstanding the verdict, and committed Petitioner to the South Carolina Department of Mental Health for long term control, care and treatment. (R., pp. 243-247). This appeal followed.

The Court of Appeals affirmed the circuit court's findings and Petitioner's commitment in an unpublished opinion filed January 11, 2017. (Appendix, pp. 1-2). The Court denied Petitioner's Petition for Rehearing by Order filed March 27, 2017. (Appendix pp. 3-10). Petitioner now seeks review of the Court of Appeals' decision.

ARGUMENT

The Court of Appeals properly affirmed the circuit court's denial of Petitioner's directed verdict motion because the expert's diagnosis of Other Specified Personality Disorder is recognized in the mental health field, and the credibility of the diagnosis was a matter for the jury.

Petitioner contends the circuit court erred in denying his motion for a directed verdict because the Other Specified Personality Disorder diagnosis is legally insufficient as a basis for commitment under the SVPA.[1] He further contends the State's evidence was insufficient because Dr. Gehle did not diagnose any mental disorder of a sexual nature. To the contrary, Other Specified Personality Disorder is expressly recognized in the DSM-5, Dr. Gehle's testimony sufficiently linked Petitioner's personality disorder to his risk to commit future acts of sexual violence, and the SVPA does not require a mental abnormality or personality disorder "of a sexual nature" as a basis for commitment.

The circuit court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference, or its inference is in doubt. Jones v. Builders Inv. Grp., LLC, 415 S.C. 321, 781 S.E.2d 737, 741 (Ct. App. 2015) (*citing* Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439, 440 [1994]). When reviewing the circuit court's ruling on a directed verdict motion, appellate courts must apply the same standard as the circuit court, and view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Id.*; *see also* State v. Larmand, 415 S.C. 23, 780 S.E.2d 892, 895 (2015) (same).

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[1]For the first time, Petitioner frames the issue in this case as "a novel question of constitutional law." Rather than presenting a unique constitutional issue, however, at its core this case is simply a sufficiency of the evidence case, and the Court of Appeals properly treated it as such.

A. Other Specified Personality Disorder

Petitioner's argument regarding the validity of Dr. Gehle's diagnosis blatantly ignores the fact the DSM-5 not only expressly includes Other Specified Personality Disorder as a valid diagnosis, it explains the circumstances under which a clinician could use the diagnosis.[2] Recognizing the complexity of mental health disorders cannot be reduced to simple summaries of symptoms covering every situation practitioners face, the DSM-5 authors provided two categories designed to "enhance diagnostic specificity."

> To enhance diagnostic specificity, DSM-5 replaces the previous NOS [not otherwise specified] designation with two options for clinical use: *other specified disorder* and *unspecified disorder*. The other specified disorder category is provided to allow the clinician to communicate the specific reason that the presentation does not meet the criteria for any specific category within a diagnostic class. This is done by recording the name of the category, followed by the specific reason. For example, for an individual with clinically significant depressive symptoms lasting 4 weeks but whose symptomatology falls short of the diagnostic threshold for a major depressive episode, the clinician would record "other specified depressive disorder, depressive episode with insufficient symptoms."
>
> * * * *
>
> The symptoms contained in the respective diagnostic criteria sets do not constitute comprehensive definitions of underlying disorders, which encompass cognitive, emotional, behavioral and physiological processes that are far more complex than can be described in these brief summaries. Rather, they are intended to summarize characteristics syndromes of signs and symptoms that point to an underlying disorder with a characteristic developmental history, biological and environmental risk factors, neuropsychological and physiological correlates, and typical clinical course.

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[2]Petitioner acknowledged at trial the DSM-5 is a recognized "authoritative source" in the field of mental health. (R., p. 145). On appeal, however, he dismisses the impact of the DSM-5, and argues the fact a diagnosis is in the DSM-5 does not make it a valid diagnosis.

* * * *

> Although decades of scientific effort have gone into developing the diagnostic criteria sets for the disorders included in Section II, it is well recognized that this set of categorical diagnoses does not fully describe the full range of mental disorders that individuals experience and present to clinicians on a daily basis throughout the world. As noted previously in the introduction, the range of genetic/environmental interactions over the course of human development affecting cognitive, emotional and behavioral function is virtually limitless. As a result, it is impossible to capture the full range of psychopathy in the categorical diagnostic categories that we are now using. Hence, it is also necessary to include "other specified/unspecified" disorder options for presentations that do not file exactly into the diagnostic boundaries of disorders in each chapter.

* * * *

> Following the assessment of diagnostic criteria, clinicians should consider the application of disorder subtypes and/or specifiers as appropriate. Severity and course specifiers should be applied to denote the individual's current presentation, but only when the full criteria are met. When full criteria are not met, clinicians should consider whether the symptom presentation meets criteria for an "other specified" or "unspecified" designation.

DSM-5, pp. 15-16, 19, 21 (emphasis in original).

In the DSM-5's personality disorder section, Other Specified Personality Disorder (301.89) is described as "presentations in which symptoms characteristic of a personality disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any of the disorders in the personality disorders diagnostic class." DSM-5, p. 684. "The other specified personality disorder is used in situations when the clinician chooses to communicate the specific reason that the presentation does not meet the criteria for any specific personality disorder." *Id.* Therefore, contrary to Petitioner's contention Other

Specified Personality Disorder is merely a "catch-all" diagnosis, it is a legitimate diagnosis contained in what Petitioner acknowledged is the leading authority used for diagnosing mental health issues, and it is recognized by the vast majority of mental health practitioners.

In support of his argument, Petitioner cites a quote from United States v. Antone, 742 F.3d 151 (4th Cir. 2014), but takes the cited quote completely out of context, and attempts to elevate dicta to the level of binding authority. In Antone, using the clear error doctrine, the court reversed Antone's civil commitment under the federal sexual predator statute, finding the district court (as factfinder) focused almost exclusively on Antone's pre-incarceration conduct, and failed to properly consider the substantial evidence indicating he had rehabilitated himself while incarcerated. Id. at 167-169. Noting the commitment was premised on two mental disorders (paraphilia not otherwise specified and ASPD) prevalent in the prison population, the court concluded the government failed to distinguish Antone from a typical recidivist in light of the rehabilitation evidence. Id. at 169-170. Contrary to Petitioner's implication, the court did **not** criticize the use of ASPD as a predicate to civil commitment, but merely emphasized the government's burden to prove how a potential committee differs from the typical recidivist.

Petitioner also cites a 2015 law review article to make the sweeping claim that the American Psychiatric Association has "'vociferously opposed SVP laws since their enactment.'" (Petition, p. 13). While it is true the APA opposed the Kansas SVP law at issue in Kansas v. Hendricks, 521 U.S. 346 (1997), the cited article is a result of the

author's obvious distaste for SVP laws, rather than a consensus of the mental health community as it exists today.

Indeed, the very title of the article, Dangerous Diagnoses, Risk Assumptions, and the Failed Experiement of "Sexually Violent Predator" Commitment, starkly reveals the author's inherent bias. Given the number of states with SVP laws, calling it a "failed experiment" in general, without any real exploration of the experience in each state, is very telling. As with any state program, the SVP success/failure rates are affected by numerous factors, including when the SVP process begins how the process progress, and the resources devoted to the program.[3]

In any event, the validity of SVP laws in general is not the issue in this case. Given the DSM-5 inclusion of Other Specified Personality Disorder as a diagnosis, and the discussion regarding when it can be used, it cannot be seriously disputed the diagnosis is a valid one recognized by the mental health community. Thus, the true issue before the circuit court, the Court of Appeals, and this Court, is the sufficiency of the State's evidence to support the diagnosis and Petitioner's risk to reoffend.

B. Sufficiency of the Evidence

Petitioner encourages this Court to adopt the reasoning of the New York Court of Appeals in State v. Donald DD, 24 N.Y.3d 174 (2014), rejecting the premise that ASPD alone is sufficient to support civil commitment as a sexually predator, and asserts the

[3]For instance, South Carolina's experience with the SVPA belies the multiple assumptions the article's author makes to support his pre-formed conclusions. Under the SVPA, less than 4% of all inmates reviewed have been committed, and over 33% of those committed have been released based on mental health professionals' opinions. Of those released, to date only five have reoffended sexually.

State's evidence failed to distinguish him from any other person convicted of a violent crime, or establish any link between Dr. Gehle's diagnosis and his risk to reoffend sexually. His argument ignores relevant differences between the New York statute at issue in Donald DD and the SVPA, and is premised on an **extremely** truncated version of Dr. Gehle's testimony.

1. Donald DD

In Donald DD, the New York Court of Appeals, in a 4-3 decision, held ASPD was legally insufficient to support civil commitment as a sexually dangerous person because it "establishes only a general tendency toward criminality, and has no necessary relationship to a difficulty in controlling one's sexual behavior." As a threshold matter, the New York statute at issue in Donald DD is different from the SVPA. Further, three judges joined in a thoughtful and compelling dissent revealing fundamental flaws in the majority opinion's rationale, and recognizing cases from other jurisdictions holding ASPD is a legally sufficient predicate diagnosis for sexual predator proceedings.

One major difference between the New York and South Carolina statutes is the New York law does **not** expressly reference "personality disorder," while South Carolina's statute expressly includes "personality disorder." *Compare* N.Y Mental Hygiene Law §10.03(e) and (i) (2016) (defining "dangerous sex offender requiring confinement" as a person "suffering from a mental abnormality," and "mental abnormality" as "a congenital or acquired condition, disease or disorder" predisposing the person to commit a sex offense) *with* S.C. Code §44-48-30(1) (Supp. 2016) (defining sexually violent predator as a person who has been convicted of a sexually violent offense

and "suffers from a mental abnormality **or personality disorder** that makes the person likely to engage in acts of sexual violence") (emphasis added). South Carolina's statute does not limit "personality disorder" in any way, and therefore, **any** diagnosable personality disorder may serve as a predicate to civil commitment under the SVPA if the other statutory elements are established.

As discussed extensively in the Donald DD dissenting opinion, the majority opinion essentially foreclosed the use of ASPD as a predicate disorder for civil commitment, which improperly narrowed the statutory language, and "implicitly injects a requirement that the underlying disorder be "sexually-related" into [the sexually dangerous person statute] on the mistaken premise that such a requirement is necessary to distinguish an offender subject to civil management from a 'typical recidivist convicted in an ordinary criminal case.'". 24 N.Y.3d at 196-197 (Graffeo, J., dissenting). Finding the prevalence of ASPD in the general prison population irrelevant, the dissent indicated the State was only required to prove the specific offender's ASPD affected his emotional, cognitive, or volitional capacity such that it predisposed him to commit sexual offenses and have serious difficulty controlling his sexual impulses. *Id.* at 198. "Although a certain percentage of the incarcerated may meet the diagnostic criteria for ASPD, the disorder concededly manifests in such a manner as to predispose the individual to the commission of sex offenses in a limited subset of ASPD sufferers," and evidence through expert testimony linking the offender's ASPD to a predisposition for the commission of sex offenses and an inability to control his conduct sufficiently establishes the statutory requirement. *Id.* at 198-199.

The dissent further noted "courts of other states have upheld civil confinement on an ASPD diagnosis standing alone." *Id.* at 199 (citations of cases).[4] Additional jurisdictions have also found an ASPD diagnosis is a sufficient mental abnormality to support sexually violent predator determinations when combined with evidence of a nexus between the ASPD and the person's risk to reoffend sexually. *See* Mays v. State, 982 N.S.2d 387, 392 (Ind. 2014) (expert testimony person suffered from ASPD and was likely to reoffend sexually was sufficient support for sexually violent predator determination); Commonwealth v. Fuentes, 991 A.2d 935, 943-944 (Pa. 2010) (ASPD diagnosis sufficient mental abnormality or personality disorder for sexual predator classification); In re: Care and Treatment of Miller, 210 P.3d 625, 633-634 (Kan. 2009) (sexually violent predator statute did not require diagnosis of a sex-related mental abnormality or personality disorder, and ASPD with narcissistic personality traits was a sufficient mental abnormality or personality disorder to satisfy element of sexually violent predator definition); In re: Care and Treatment of Murrell, 215 S.W.3d 96, 103-108 (Mo. 2007) (ASPD diagnosis qualifies as mental abnormality under sexual predator statute, and is sufficient to support civil commitment when combined with other evidence of sexually violent behavior and predisposition to commit future acts of sexual violence); In re: Anderson, 730 N.W.2d 570, 577-582 (N.D. 2007) (sexually violent predator statute does not require sex-related diagnosis, and ASPD diagnosis is sufficient mental abnormality to support SVP

[4]The dissent indicated the majority opinion was really premised on "the majority's dissatisfaction with the implications of [the sexually dangerous person statute]." *Id.* Thus, much like the law review article Petitioner cites, the majority opinion was more about a bias against SVP laws, and was written to reach a preferred result.

determination when combined with evidence of a nexus between the diagnosis and risk to reoffend sexually); In re: Barnes, 689 N.W.2d 455, 457-461 (Iowa 2004) (same). In short, virtually all jurisdictions with sexually violent predator laws have held an ASPD diagnosis is a sufficient mental abnormality or personality disorder for SVP purposes, and the Donald DD analysis stands alone.[5]

The DSM-5 criteria for ASPD requires "evidence of conduct disorder with onset prior to age 15 years." DSM-5, p. 659. Dr. Gehle testified she believed Petitioner probably exhibited signs of a conduct disorder during his childhood in light of his adult criminal history, but she did not have **evidence**, such as school records or family sources, establishing he displayed such conduct. Petitioner's parents are deceased, and any records of a possible juvenile offense were destroyed, so Dr. Gehle had no independent source for information regarding Petitioner's childhood. During the interview with Dr. Gehle, Petitioner denied having any conduct problems as a child, but he also denied having **any** conduct problems at all in his life, even in the face of his extensive criminal history. As a result, Dr. Gehle testified she believed Petitioner had ASPD, but she had to diagnose Other Specified Personality Disorder, with the specifier "current evidence of conduct disorder is insufficient."

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[5]By way of footnote, Petitioner implies the California court of Appeals relied on Donald DD in remanding a case for consideration of whether a particular diagnosis (not ASPD) was legally sufficient for civil commitment. (Petition, p. 12, n. 1). When read in context, however, the California court merely cited Donald DD to illustrate the premise that the validity of the diagnosis was hotly debated. People v. LaBlanc, 238 Call. App. 4th 1059, 1072 (2015). The court then concluded the existence of psychiatric debate of the validity of a diagnosis was a matter to be weighed by the factfinder, and remanded the case to give the committee the opportunity to present evidence on the issue. *Id.* at 1073-1075. To date, no jurisdictions have adopted the Donald DD analysis.

This case provides a perfect example of why the authors included Other Specified Personality Disorder in the DSM-5, and when a practitioner should use it. But for the passage of time making records unavailable, and having to rely solely on Petitioner's self-report, which was highly suspect at best, it is clear Dr. Gehle would have diagnosed Petitioner with ASPD. Notwithstanding Petitioner's version of the evidence (discussed below), Dr. Gehle's testimony detailed the evidence supporting the remaining ASPD criteria, Petitioner's documented history fully supports her diagnosis, and she explained why his diagnosis made him a significant risk to reoffend sexually.

2. Dr. Gehle's Testimony

Petitioner summarizes Dr. Gehle's testimony into six bullet points, citing thirty lines out of approximately sixty-three pages of testimony, asserts those six characteristics apply to almost any person convicted of a violent crime, and then denigrates the basis of her opinion as simply a dislike of his "attitude." Petitioner takes Dr. Gehle's testimony completely out of context, and ignores the full substance of her testimony, which belies his entire argument.

After describing Petitioner's sexual offenses, other charges associated with those offenses, and Petitioner's nonsexual offenses, Dr. Gehle testified she found **a pattern of extreme hostility toward women, resorting to sexual violence if the victims did not comply with his demands**, and **continuing to reoffend** even in the face of legal sanctions. (R., pp. 98-112).

She also testified Petitioner's behavior during incarceration was necessary to evaluate how he behaved in a very controlled environment, and any sexually related

disciplinary infractions were particularly important to the risk assessment. Petitioner was disciplined twice for **sexually related offenses** in prison, which included masturbating in the recreation yard and grabbing the buttocks of a female staff member (demonstrating his sexual attitude toward women). Further, Petitioner was offered sex offender specific treatment in prison, but refused it because it was not mandatory, and he did not believe he needed any treatment. (R., pp. 112-114). Petitioner's score on the Static-99R risk assessment was seven, which Dr. Gehle stated is in the high risk to reoffend category, and is higher than 94.9% of the sex offenders included in the research. (R., pp. 115-120).

She then testified about dynamic risk factors, which are strongly associated with sexual offending. She stated Petitioner had many of the known dynamic risk factors, including: 1) **hostile beliefs about women**; 2) blaming women for all his problems; 3) a **long history of violence toward women**; 4) **sexualized violence**; 5) a lack of steady, emotionally intimate relationships with adults not involving hostility and violence; 6) a **history of poor problem solving and dealing with problems through violence**; 7) **resistance to rules and supervision** as evidenced by resisting arrest, escape from jail, **violating probation (sometimes by committing another sexual offense)** and behavioral infractions in prison; 8) attempts to **control others through violence (frequently sexual violence)**; and 9) negative social influences arising from surrounding himself with people who either help him violate the law, or violate it with him. (R., pp. 120-121).[6]

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[6]Petitioner's attempt to dismiss Dr. Gehle's opinion as simply the result of her dislike of his attitude is unavailing. The "attitude" Dr. Gehle referenced and relied on related to the attitudes Petitioner expressed about women and his criminal offenses, not her personal opinion of his attitude in the interview.

Contrary to Petitioner's assertions, for which he cites no authority, the vast majority of people incarcerated for violent crimes do **not** exhibit all these characteristics, even if they have a full-blown ASPD diagnosis. Someone with ASPD may well have a lengthy criminal history, and may be likely to commit an armed robbery, but may never commit a sexual offense, which removes him from the sexually violent predator arena. On the other hand, someone with ASPD, or Other Specified Personality Disorder, like Petitioner, may have a pattern of sexual offenses as well as non-sexual offenses. As discussed in the Donald DD dissent, the confluence of ASPD (or as in this case, Other Specified Personality Disorder), and sexual offending is the critical distinction between the routine offender and the sexually violent predator.

The circuit court found, and the Court of Appeals agreed, there was evidence in the record to meet the State's beyond a reasonable doubt burden of proof. The record amply supports those findings, and the Petition for Writ of Certiorari should be denied.

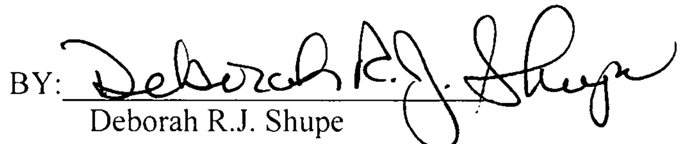
CONCLUSION

Based on the foregoing, Respondent respectfully submits this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

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

BY: 
Deborah R.J. Shupe

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

ATTORNEYS FOR RESPONDENT

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IN THE MATTER OF THE CARE AND TREATMENT OF
DARYL T. SNOW,

Petitioner.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies in the United States mail, postage prepaid, addressed to:

David Alexander
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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

This 15th day of June, 2017.

SALLY B. ELLISON
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727