

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal From Richland County  
The Honorable Allison Renee Lee, Circuit Court Judge  
Appellate Case No. 2011-199986

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IN THE MATTER OF THE CARE AND TREATMENT OF  
CHRISTOPHER TAFT,

Appellant,

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**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

### I.

The circuit court properly exercised its discretion in denying Taft's directed verdict and post-trial motions because there was evidence from which the jury could, and did, find Taft is a sexually violent predator as defined by the SVP Act.

### II.

The circuit court properly exercised its discretion in granting the State's continuance motion to afford the State sufficient time to obtain an independent evaluation as authorized by the SVP Act, and denying Taft's summary judgment motion in light of the clear issues of material fact in dispute.

**STATEMENT OF THE CASE**

Respondent concurs with Appellant's procedural Statement of the Case.

## STATEMENT OF FACTS

On June 22, 2006, Appellant Christopher Taft (“Taft”) pled guilty in family court to three counts of assault and battery of a high and aggravated nature, arising from his 2005 sexual molestation of his five year old sister, six year old sister and twelve year old male cousin. Taft was fifteen years old at the time of the offenses. He was committed to the SC Department of Juvenile Justice (“DJJ”) for six months, suspended upon placement in a sex offender treatment facility; and probation after his release. (State’s Exhibit 3; Record on Appeal [R.], pp. 214-219).

Taft entered the Generations treatment facility on November 16, 2006, and was discharged after “successfully” completing the program on June 25, 2007. He was subsequently released from DJJ on July 7, 2008. Approximately one month later, Taft started sexually molesting the same two sisters he molested in 2005, who were eight and nine years old in 2008. (Trial Transcript [TT], pp. 28-35; R., pp. 92-99).

In July 2009, the Richland County Grand Jury indicted Taft on two counts of criminal sexual conduct with a minor. On March 18, 2010, Taft pled guilty to two counts of lewd act, and received concurrent sentences of fifteen years, suspended to three years incarceration and five years probation. (State’s Exhibits 1 and 2; R., pp. 207-212).

In accordance with the Sexually Violent Predator Act (“SVP Act”), prior to Taft’s release from incarceration, Respondent State of South Carolina (the “State”) commenced a civil commitment proceeding in the Richland County Court of Common Pleas on July 27, 2010. On October 6, 2010, the circuit court found probable cause to believe Taft met the criteria for commitment as a sexually violent predator, and appointed Rebecca Jackson, Ph.D.,

to conduct a mental health evaluation of Taft. Dr. Jackson concluded Taft has the mental abnormality of pedophilia, limited to incest, but opined he was a low risk to re-offend provided he did not live with his family, and therefore, he did not meet the criteria for commitment under the SVP Act. (TT, pp. 84-88; R., pp. 148-152).

Dr. Jackson issued her report on November 19, 2010. The State exercised its statutory right to obtain an independent evaluation, and retained R. Gregg Dwyer, M.D., on November 30, 2010.

On February 17, 2011, the State served a Motion for Continuance on Taft's counsel, asserting Dr. Dwyer would not be able to complete the evaluation within the statutory ninety day period. The Motion was filed in the Richland County Clerk of Court's Office on February 18, 2011. (Motion for Continuance, filed February 18, 2011; R., pp. 228-230).

On February 22, 2011, Taft served and filed a Motion for Summary Judgment pursuant to Rule 56, SCRPC. The Motion asserted there were no genuine issues of material fact, and Taft was entitled to judgment as a matter of law. (Motion for Summary Judgment filed February 22, 2011; R., pp. 231-232). Taft did not submit a supporting memorandum with the Motion.

On March 1, 2011, the State filed and served a Return to Motion for Summary Judgment. The Return included copies of two 2009 psychological evaluations performed at the request of Taft's defense counsel during the criminal proceedings, both concluding Taft was a sexual predator. (Return to Motion for Summary Judgment, with Exhibits, filed March

1, 2011; R., pp. 233-246).<sup>1</sup>

The motions were called for a hearing on March 2, 2011, before the Honorable Alison Renee Lee, Circuit Court Judge. At the hearing, Taft submitted a Return to Motion for Continuance, asserting the State failed to establish good cause for the continuance. (Return to Motion for Continuance, filed March 2, 2011; R., pp. 247-248). He also submitted a Memorandum Against the Petitioner's Motion for Continuance and in Support of his Motion for Summary Judgment. (Memorandum Against the Petitioner's Motion for Continuance and in Support of Motion for Summary Judgment, filed March 2, 2011; R., pp. 249-256).

The State explained the circumstances leading to its request for a continuance beyond the ninety day period for trial under the SVP Act. After receiving and reviewing the court appointed evaluator's report on November 19, 2010, the State exercised its right under the SVP Act to obtain an independent evaluation, and on November 30, 2010, retained Dr. Gregg Dwyer, a board certified forensic psychiatrist with the University of South Carolina, to perform that evaluation. Thereafter, Dr. Dwyer left the University and joined the Medical University of South Carolina in Charleston, and experienced delays in setting up his forensic testing lab. As of March 2, 2011, Dr. Dwyer was in the quality control testing stage of setting up the lab, and was ready to begin work on Taft's evaluation, which could be completed by May 15, 2011. The State also informed the court that Dr. Dwyer was working on evaluations for the State with Dr. Bill Mulbry, a member of his staff who would also be conducting evaluations pursuant to the SVP Act. (March 2 Hearing Transcript [3/2 HT], pp. 3-7; R., pp.

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<sup>1</sup>Exhibits C and D are mental health records, which are submitted under seal pursuant to the SVP Act. *See* S.C. Code §44-48-150 (Supp. 2011). Therefore, these Exhibits must be transported to the Court under seal.

3-7).

Taft argued the SVP Act required a trial within ninety days of the court appointed evaluator's report, and the State could have retained a different expert when Dr. Dwyer was unable to complete his evaluation within that time period. He asserted the State failed to show good cause for the continuance, Taft was prejudiced by his continued detention, and since the ninety day deadline for trial had passed, his previously filed summary judgment motion should be granted. (3/2 HT, pp. 8-9; R., pp. 8-9).

The court inquired about the two 2009 evaluations, both concluding Taft was a sexually violent predator, and stated a fourth evaluation may not shed any additional light on Taft's mental status. The State acknowledged the prior evaluations, arguing they, at a minimum, created issues of material fact, but asserted the SVP Act gave the Attorney General the right to seek an independent evaluation. (3/2 HT, pp. 9-10; R., pp. 9-10).

The court granted the continuance, but set the case for trial on May 23, 2011. The court further ordered that Dr. Dwyer complete the evaluation by May 2<sup>nd</sup>, with a report issued and provided to Taft's counsel no later than May 9<sup>th</sup>. (3/2 HT, pp. 10-17; R., pp. 10-17). By Order filed March 7, 2011, the court found there was good cause for the continuance in order for the State to obtain an independent evaluation, and while Taft was prejudiced by the continued detention, it did not rise to the level of substantial prejudice, particularly in light of the deadlines the court imposed on completion of that evaluation and the date certain set for trial. (Order of Continuance filed March 7, 2011; R., pp. 257-261).

The case was called for trial on May 23, 2011. Prior to selection of the jury, Taft moved to exclude the report and testimony of L. William Mulbry, M.D., who was listed as

the State's expert witness. In a pre-trial hearing, the State explained that Dr. Mulbry worked with Dr. Dwyer, and when Dr. Dwyer was unable to meet the deadlines imposed by the court's March 7 Order of Continuance, the State elected to proceed with Dr. Mulbry, who was also a forensic psychiatrist, and he was available and able to complete the evaluation within the deadlines. Dr. Dwyer participated in the evaluation by conducting certain tests, and he signed off on the final evaluation report, but did not perform the full evaluation. The court excluded Dr. Mulbry's testimony on the ground the Order of Continuance specifically referenced Dr. Dwyer, and the State failed to come back to the court for approval of the change from Dr. Dwyer to Dr. Mulbry. (May 23, 2011 Trial Transcript [5/23 TT], pp. 11-29; R., pp. 33-51).

The State proffered Dr. Mulbry's twenty-seven page report as a court exhibit. Dr. Mulbry diagnosed Taft with pedophilia, limited to incest, and opined Taft was a high risk to re-offend sexually if not confined for long term control, care and treatment. (Court's Exhibit 1; R., pp. 220-221).<sup>2</sup>

Geoffrey McKee, Ph.D., a board certified forensic psychologist, testified for the State and was qualified as an expert in forensic psychology. He testified Taft's defense counsel contacted him during Taft's criminal proceedings, and asked him to conduct an evaluation of Taft for sentencing purposes, specifically the likelihood of sexual recidivism, necessity of putting Taft on the sex offender registry, and likelihood of success on probation. (May 24 Trial Transcript [5/24 TT], pp. 20-27; R., pp. 84-91).

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<sup>2</sup>Pursuant to the SVP Act, since the report is a mental health record, it was submitted under seal. Therefore, it will be transported to this Court under seal.

As part of the evaluation, Dr. McKee reviewed all the documentation regarding Taft's criminal offenses and sex offender treatment, interviewed Taft, and administered extensive psychological tests designed to assess a sex offender's risk of re-offending. He testified that after his convictions in 2006, Taft successfully completed the Generations sex offender treatment program through DJJ, but he sexually re-offended against two of his previous victims just a few weeks after he was released from DJJ, which indicated he still struggled with controlling his sexual urges. (5/24 TT, pp. 27-53; R., pp. 91-117).

Dr. McKee diagnosed Taft with the mental abnormality of pedophilia, sexually attracted to females, nonexclusive type, and concluded Taft was a high risk to re-offend sexually, was unlikely to successfully complete a probationary sentence, and needed treatment in an inpatient or confined setting. He further testified that when he issued his report on September 27, 2009, it was his opinion Taft met the SVP Act's definition of a sexually violent predator. Dr. McKee stated he could not render a current opinion regarding Taft's mental status because he had not seen or talked to Taft since the 2009 evaluation, but assuming Taft had not been out in the community, had not committed any sexual violations while incarcerated, and had received no sex offender treatment during his incarceration, his scores on the sexual recidivism guides, which were a basis for Dr. McKee's 2009 opinion, would not change. (5/24 TT, pp. 52-56; R., pp. 116-120).

The State also presented the testimony of Rebecca Jackson, Ph.D., who was appointed by the court to evaluate Taft, and was qualified as an expert in forensic psychology. Dr. Jackson diagnosed Taft with the mental abnormality of pedophilia, sexually attracted to

females, limited to incest. She opined that even though he “does present a certain degree of risk” to re-offend, his risk could be managed without confinement by “removing his access to [his] siblings,” and “providing treatment.” (5/24 TT, pp. 71-92; R., pp. 135-156).

At the conclusion of the State’s case, Taft moved for a directed verdict on the ground the State failed to present any evidence he met the statutory definition of a sexually violent predator as of the date of trial. The State argued the evidence that Taft had the mental abnormality of pedophilia was undisputed, and there was evidence from which the jury could determine he was a sexually violent predator, specifically Dr. McKee’s testimony Taft was a high risk to re-offend and needed in-patient treatment, and the fact Taft had received no sex offender treatment since Dr. McKee’s 2009 evaluation. The court denied the motion, finding there was sufficient evidence in the record to submit to the jury the issue of whether Taft’s pedophilia made him likely to commit future acts of sexual violence. (5/24 TT, pp. 98-113; R., pp. 162-177).

The jury found beyond a reasonable doubt that Taft is a sexually violent predator. (5/24 TT, p. 174; R., p. 201). The circuit court denied Taft’s post-trial motions, and committed him to the South Carolina Department of Mental Health for long term control, care and treatment. (5/24 TT, pp. 178-180, Order on Respondent’s Post-Trial Motions, filed August 20, 2011, R., pp.202-204,317-321). This appeal followed.

## ARGUMENT

### **I. The circuit court properly exercised its discretion in denying Taft's directed verdict and post-trial motions because there was evidence from which the jury could, and did, find Taft is a sexually violent predator as defined by the SVP Act.**

Taft contends the circuit court erred in denying his directed verdict and post-trial motions, because the SVP Act uses the word "suffers," which means "current," and since Dr. McKee testified he was unable to render a "current" opinion as of the date of trial, the State failed to present any evidence Taft met the statutory requirements for commitment. This contention is meritless.

In reviewing the denial of a directed verdict, the court should consider the question of whether any evidence existed in favor of the non-moving party. S.C. Fed. Credit Union v. Higgins, 394 S.C. 189, 714 S.E.2d 550, 552 (2011). The court should be concerned only with the existence or nonexistence of evidence. *Id.*; *see also* Hamilton v. Charleston County Sheriff's Dept., 399 S.C. 252, 731 S.E.2d 727, 728 ( Ct. App. 2012) (same).

The trial court must deny a motion for a directed verdict or judgment notwithstanding the verdict ("JNOV") if the evidence yields more than one reasonable inference, or its inference is in doubt. RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 732 S.E.2d 166, 171 (2012). A JNOV motion should be granted only if no reasonable jury could have reached the challenged verdict, and the appellate court will reverse the trial court's ruling only if no evidence supports it. Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct.App.2000). In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues, or to resolve conflicts in the testimony or the evidence. *Id.* at 419.

Considered in the light most favorable to the State, the evidence presented in this case clearly warranted submitting the case to the jury for determination. Further, the evidence amply supported the jury's determination that Taft is a sexually violent predator as defined by the SVP Act.

Taft's primary argument is that Dr. McKee's testimony was "unreliable" because he evaluated Taft in 2009, and testified he could not offer a "current" opinion at the 2011 trial since he had not interviewed Taft since 2009. He does not contend the evaluation was "unreliable" in 2009, or question Dr. McKee's expert opinion he met the statutory criteria for commitment as a sexually violent predator at that time. As the circuit court found, Dr. McKee's testimony regarding his 2009 evaluation of Taft was relevant to the jury's determination of Taft's SVP status in 2011, particularly in light of the evidence regarding Taft's prior sex offender treatment and subsequent sexual offenses, and his lack of any sex offender treatment since the 2009 evaluation.

Further, as an additional sustaining ground, the State submits the circuit court erred in excluding the testimony of Dr. Mulbry, which would have provided the most current and comprehensive assessment of Taft's mental status. The court's only reason for excluding Dr. Mulbry's testimony was that he was not Dr. Dwyer, and the State failed to come back to the court when Dr. Dwyer indicated he would not be able to meet the deadlines imposed by the court's March 7 Order. (5/23 TT, pp. 16-29; R., pp. 38-51).

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” State v. Brown, 2012 WL 6608102, 2 (S.C. Sup. Ct. 2012) (quoting State v. Saltz, 346 S.C. 114,

551 S.E.2d 240, 244 [2001]). ““An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support .”” *Id.* (quoting State v. Jennings, 394 S.C. 473, 716 S.E.2d 91, 93 [2011]).

The court abused its discretion in this case. The State complied with the court imposed deadlines for completion of the evaluation and providing the report to Taft’s counsel, and the State was ready to proceed with trial on the date set by the court. Taft was not prejudiced if Dr. Mulbry testified at trial rather than Dr. Dwyer, especially since the State referenced Dr. Mulbry’s association with Dr. Dwyer during the March 2<sup>nd</sup> hearing on the State’s request for a continuance. Further, Dr. Dwyer worked with Dr. Mulbry on the evaluation, and signed off on the final report.

Considering Taft’s argument at the directed verdict and post-trial stages, and on appeal, that he was entitled to a directed verdict because the State failed to present evidence at trial regarding his “current” mental status, the relevance of Dr. Mulbry’s testimony cannot be seriously disputed. Rather, the exclusion of his testimony provided the **sole** basis for Taft’s directed verdict motion. Dr. Mulbry’s evaluation was more current than Dr. Jackson’s, which Taft claimed was the only valid evaluation before the jury.

Under the circumstances, excluding Dr. Mulbry’s testimony based solely on the State’s failure to seek the court’s approval of the change to Dr. Mulbry, a change necessitated by the court imposed deadlines, was an error of law and an abuse of discretion. In essence, the court punished the State for doing exactly what the court faulted the State for not doing prior to

moving for a continuance - finding an expert who could meet the deadlines.<sup>3</sup>

As discussed above, however, even without Dr. Mulbry's testimony, the evidence was sufficient to submit the case to the jury. Therefore, the circuit court's denial of Taft's directed verdict and post-trial motions should be affirmed.

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<sup>3</sup>Prior to his involvement with Dr. Dwyer, the State was unaware of Dr. Mulbry, who Dr. Dwyer was training to do sexual predator evaluations precisely to avoid delays in sexual predator cases. Dr. Dwyer is now training a third person in his department to do sexual predator evaluations.

**II. The circuit court properly exercised its discretion in granting the State's continuance motion to afford the State sufficient time to obtain an independent evaluation as authorized by the SVP Act, and denying Taft's summary judgment motion in light of clear issues of material fact in dispute.**

Taft asserts the circuit court erred in granting the State's request for a continuance because the State did not obtain its independent evaluation and set the case for trial within ninety days after receiving the court appointed evaluator's report as required by the SVP Act. He further asserts the court erred in denying his motion to dismiss the case due to the purported violation of the ninety day requirement.

Motions for continuance are addressed to the sound discretion of the trial judge, and the trial court's ruling will not be reversed on appeal absent an abuse of discretion. Bridwell v. Bridwell, 279 S.C. 111, 302 S.E.2d 856, 858 (1983); Grant v. Grant, 288 S.C. 86, 340 S.E.2d 791, 793 (Ct. App. 1986). Reversals of a continuance are as "rare as the proverbial hens' teeth." State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850, 855 (2002) (quoting State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857, 859 [1957]).

In this case, the State promptly reviewed the court appointed evaluator's report, and quickly took steps to retain an independent evaluation as provided by the SVP Act.<sup>4</sup> The subsequent delays caused by Dr. Dwyer's change in employment and location were outside the State's control, and the State timely moved for a continuance beyond the ninety day

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<sup>4</sup>Given the fact that two evaluators retained by Taft's defense counsel during the criminal proceedings reached diametrically opposite conclusions from the court appointed evaluator on the issue of Taft's likelihood to re-offend, the State's decision to seek another evaluation was virtually mandated.

deadline for trial under the SVP Act.<sup>5</sup> Such motions are expressly contemplated by the SVP Act itself. S.C. Code §44-48-90(A) (Supp. 2011) (the trial may be continued at the request of either party upon a showing of good cause if the respondent will not be substantially prejudiced).

Taft's reliance on the circuit court's assumptions regarding Dr. Dwyer's ability to conduct the evaluation prior to the motion for continuance, and the State's ability to retain another expert, is misplaced. There is nothing in the record to support the court's assumptions that Dr. Dwyer had ample time to complete the evaluation by simply using another laboratory, or the State could have simply found another expert. The practical reality is there are very few experts in South Carolina qualified to conduct sexually violent predator evaluations, and even fewer laboratories where the type of comprehensive testing conducted by Dr. Dwyer and his associates can be completed.<sup>6</sup> Dr. Mulbry's availability was a fortunate consequence of his new association and work with Dr. Dwyer.

In any event, even in the face of its erroneous assumptions, the circuit court expressly concluded there was good cause for the State's request for a continuance, but set specific deadlines for completion of the evaluation and trial. As a result, the case was continued for approximately ninety days. (3/2 HT, pp. 15-17, Order of Continuance, pp. 4-5; R., pp. 260-261). There was no substantial prejudice to Taft, and the circuit court's ruling on the Motion for Continuance should be affirmed.

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<sup>5</sup>The State's motion was served on February 17, 2011, and filed the next day. The circuit court expressly found the motion was timely. (Order of Continuance, p. 4; R., p. 260).

<sup>6</sup>As noted above, Dr. Dwyer is training more people in his department to conduct sexual predator evaluations.

As to Taft's contentions regarding denial of the "motion to dismiss" he filed, the only filed motion Taft had before the circuit court on March 2, 2011, was his motion for summary judgment, which the court denied based on the two prior evaluations concluding Taft was a sexually violent predator. (3/2 HT, pp. 13, 19-20; Order of Continuance, p. 4; R., p. 260). It is well established in South Carolina that denial of a motion for summary judgment is never reviewable on appeal. Bank of N.Y. v. Sumter County, 387 S.C. 147, 691 S.E.2d 473, 477 (2010) (noting it is well settled that an order denying summary judgment is never reviewable on appeal); Holloman v. McAllister, 289 S.C. 183, 345 S.E.2d 728, 729 (1986) (denial of a motion for summary judgment before trial is not reviewable after a trial of a case on its merits). This appeal arises from the trial on the merits, and the denial of Taft's summary judgment motion is not properly before the appellate court for review.

Even if appellate review was appropriate, however, the two 2009 evaluations concluding Taft was a sexual predator and needed to be confined for treatment were contrary to the conclusions of the court appoint evaluator. These contradictions clearly created material issues of fact in dispute, and the circuit court properly denied Taft's summary judgment motion.

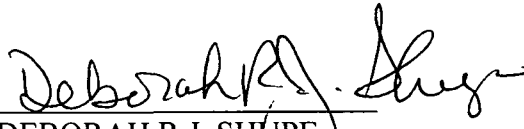
**CONCLUSION**

Based on the foregoing, the State respectfully submits the jury verdict finding Taft is a sexually violent predator as defined by the SVP Act, and the Order of Commitment based on the jury verdict, should be affirmed.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal From Richland County  
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IN THE MATTER OF THE CARE AND TREATMENT OF  
CHRISTOPHER TAFT,

Appellant,

---

**CERTIFICATE OF COUNSEL**


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The undersigned certifies that this Final Brief of Respondent complies with  
Rule 211(b), SCACR.

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CHRISTOPHER TAFT,

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**PROOF OF SERVICE**

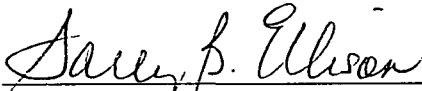
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I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing three copies in the United States mail, postage prepaid, addressed to:

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

This 31st day of January 2013.

  
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