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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County
The Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case No. 2016-001566
(Opinion No. 2016-UP-198, S.C. Ct. App., filed June 28, 2016)

IN THE MATTER OF THE CARE AND TREATMENT OF
KENNETH CAMPBELL,

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
SC Bar No. 5098

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

ATTORNEYS FOR RESPONDENT

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STATEMENT OF QUESTIONS ON APPEAL

I. Did the Court of Appeals properly find Petitioner failed to preserve any undue prejudice claim in connection with the State's cross-examination of Petitioner's expert when Petitioner never asserted before the circuit court that the evidence was unduly prejudicial.?

II. Did the Court of Appeals properly find the circuit court did not abuse its discretion in allowing the State to impeach Petitioner's expert with evidence directly relevant to the credibility and reliability of her evaluation after Petitioner opened the door to such evidence?

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 September 8, 2014, before the Honorable R. Knox McMahan, Circuit Court Judge.

The State presented testimony from Ana Gomez, M.D., a board certified forensic psychiatrist, who was qualified as an expert in forensic psychiatry. Dr. Gomez was retained by the State to conduct an independent evaluation of Petitioner after the court appointed evaluator did not recommend commitment. Dr. Gomez testified she evaluated Petitioner using a protocol established by the Association for the Treatment of Sexual Abusers, and the Sexual Behaviors Clinic and Lab at the Medical University of South Carolina. (Record on Appeal [R.], pp. 32-39).

As part of the evaluation, Dr. Gomez reviewed records regarding Petitioner's sexual and non-sexual offenses, interviewed Petitioner, and conducted multiple tests, including psychological and physiological assessments. She testified this was the type of information experts reasonably rely on for psychosexual evaluations. (R., pp. 38-41).

On April 7, 2003, Petitioner was convicted of first degree criminal sexual conduct with a minor, arising from an incident involving a nine year old girl, and sentenced to twenty years incarceration, suspended to twelve years incarceration and three years probation. Records indicate Petitioner went to where the child was sleeping, masturbated in front of her and ejaculated on her stomach and thigh. He also touched her vagina with his fingers and performed oral sex on her. A medical examination confirmed the presence of semen on the child's stomach

and thigh. Petitioner originally denied the allegations, and told Dr. Gomez the child made up the story. (R., pp. 44-46, 159).

On April 24, 2003, Petitioner pled guilty to one count of lewd act on a minor, and sentenced to twelve years incarceration to run concurrent with the criminal sexual conduct with a minor sentence. The offense occurred in January 2001, while Petitioner was out on bond for the 1999 criminal sexual conduct offense, and involved a seven year old girl. While the child was sleeping, Petitioner woke her up, took off his pants, asked her to touch his penis, and tried to kiss her. He also asked her to get on top of him and "hunch" him, and offered her money to do it. He then rubbed her vagina for "a long time." Petitioner originally denied the incident happened, and continued to deny the allegations during the interview with Dr. Gomez. (R., pp. 41-44, 158).

Dr. Gomez testified Petitioner was also charged with lewd act on a child in 1993. The charge arose from an incident involving Petitioner's four year old nephew. Records indicated Petitioner, who was not wearing any underwear, went to where the child was watching television, picked the child up by his feet and had the child touch Petitioner's penis with his mouth. The child also reported Petitioner then laid on top of him, and tried to get him to take his pants off. The records further indicated the child later recanted, and Petitioner told Dr. Gomez the charges were dropped. Dr. Gomez testified she considered the allegations as part of the basis for her ultimate opinion. (R., pp. 47-48).

Dr. Gomez also considered Petitioner's convictions for simple assault and criminal domestic violence. She testified non-sexual offenses are relevant to a sex offender evaluation because they are considered on one of the assessment tools, and they go to a pattern of behavior. (R., pp. 47-49).

Dr. Gomez further testified Petitioner did not accept accountability for any of his sexual offenses, which was part of what she considered in reaching her opinion. She stated Petitioner either claimed the events did not happen, or the child made up the story. (R., p. 49).

Dr. Gomez identified seven different assessment tools she used in Petitioner's evaluation, all of which provided additional data points for her to consider in reaching a conclusion, but she stated none of the tools should be used alone. She testified about each tool individually, and related the results on each. Petitioner's result on several tools could not be scored because of concerns he was manipulating his responses. (R., pp. 50-62).

Based on all the data she collected, Dr. Gomez concluded Petitioner has the mental abnormality of pedophilia, non-exclusive type, sexually attracted to both male and female children. She opined to a reasonable degree of medical certainty Petitioner's pedophilia causes him serious difficulty in controlling his sexual behavior toward children, and considering his failure to accept responsibility and lack of sex offender treatment, he is likely to commit future acts of sexual violence against children if not confined for treatment. (R., pp. 63-70).

Petitioner presented Marie Gehle, PhD., as his expert witness.[1] She was originally appointed by the circuit court as the evaluator in Petitioner's case, and was qualified without objection as an expert in forensic psychology. She testified she had conducted more than 160 evaluations under the SVPA. (R., pp. 81-84).

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[1]Her name is spelled "Gale" in the transcript, but "Gehle" is the proper spelling.

Dr. Gehle testified she had the same information Dr. Gomez had in evaluating Petitioner, and also interviewed him. She also concluded Petitioner has the mental abnormality of pedophilia, non-exclusive type, attracted to minor females.[2] (R., pp. 84-85).

In her evaluation, Dr. Gehle only used one risk assessment tool, the Static-99R, which consists of ten questions the evaluator answers primarily based on information in the records, such as prior sexual offenses and non-sexual offenses, and has a score range of negative three to twelve. Based on Dr. Gehle's answers, Petitioner scored two on the Static-99R, which is in the low to moderate risk of reoffending category. Premised primarily on the Static-99R score, Dr. Gehle opined Petitioner did have the relevant mental abnormality of pedophilia, but was not a risk to reoffend, so she did not recommend commitment. (R., pp. 85-97).

On cross-examination, Dr. Gehle conceded she did not perform any testing other than the Static-99R in connection with Petitioner's evaluation, but stated she looked at a list of risk factors found in a large meta-analysis. She disagreed with Dr. Gomez's testimony regarding an established protocol for evaluating sex offenders, and stated the protocol she uses was not developed by any professional organization, but she personally developed it from books, her own research, and consultation with other professionals.

Dr. Gehle agreed Petitioner did not take responsibility for his sex offenses, and testified he admitted to her he was preoccupied with sex in the past. She acknowledged Petitioner planned to live with his sister where he would be exposed to young children, and testified his "relapse prevention plan" was to just walk away and not be around children, which she did not

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[2]She limited his pedophilia as "attracted to females," rather than attracted to both females and males, because she did not consider the 1993 charge involving Petitioner's nephew.

think was "an ideal relapse prevention plan." She further acknowledged having access to children puts Petitioner at risk to reoffend. (R., pp. 98-105).

On re-direct, Petitioner characterized Dr. Gehle's experience doing sexual predator evaluations as "routine," and she testified conducting such evaluations is her full time job at the South Carolina Department of Mental Health. (R., pp. 110-111). On re-cross, the State asked Dr. Gehle if her opinion had ever been wrong in a sexual predator case, and when she stated she did not know, the State asked her about a sexual predator evaluation she did in August 2012, in which she opined the person did not meet the criteria for commitment. (R., pp. 111-113).

The State then showed Dr. Gehle an arrest warrant for that same person from March 2014. Petitioner objected on relevancy grounds, and the State responded the issue "goes to the reliability of her reports," because the person "quickly reoffended after she authored that report." The circuit court overruled Petitioner's objection. (R., pp. 113).

The warrant alleged the person raped someone, and his DNA was identified by a direct match on the national DNA database. (R., pp. 113-114). The State then asked Dr. Gehle: "And based on the information you have another woman has now been raped, is that correct?" The circuit court sustained Petitioner's objection to the question.

Petitioner testified he just wanted to get out and be left alone, go to church and change his life. He said he was "sorry" about things in the past, and promised he was not going to bother a child. (R., pp., 116-121).

On cross-examination, Petitioner denied sexually assaulting any of the victims for which he was convicted. When asked why he was sorry if he did not do anything to the victims, Petitioner said he was sorry "they accused [him] of what they said I did, but [he] didn't do it."

He also admitted he did not go to sex offender treatment when it was offered to him in prison because it was not court ordered. (R., pp. 122-127).

In closing arguments, the State told the jury "one of the things that a juror must decide is how to consider and weigh the evidence that has been brought before you." (R., pp. 133). The State further asked the jury to look at the entirety of the case, and to focus on the different evaluations between Dr. Gomez and Dr. Gehle. (R., pp. 134).

The jury found Petitioner is a sexually violent predator beyond a reasonable doubt, and he was committed to the South Carolina Department of Mental Health for long term control, care and treatment. (R., pp. 153, 157). This appeal followed.

ARGUMENT

I. The Court of Appeals properly found Petitioner did not preserve the issue of unfair prejudice in connection with the admission of impeachment evidence during cross-examination of Petitioner's expert.

Using a tortured factual and legal analysis, Petitioner asserts the Court of Appeals erred in finding he failed to preserve the issue of purported unfair prejudice under Rule 403, SCRE, in connection with the State's cross-examination of Petitioner's expert regarding the validity of her conclusions in a previous evaluation. He basically contends all a party needs to present in the circuit court is a relevancy objection under Rule 402, SCRE, which **automatically** includes an allegation of undue prejudice under Rule 403. Petitioner's argument essentially turns issue preservation analysis on its head.

An issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review. *E.g.*, State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691, 693-694 (2003). A party may not raise one argument at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213, 216 (2001); State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645, 661 (2013).

Citing State v. Hendricks, 408 S.C. 525, 759 S.E.2d 434 (Ct. App. 2014), and State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), Petitioner argues those cases somehow altered well established issue preservation law. The issue preservation holding in both cases was dependent on the specific facts of the cases, which are very different from this case. In Hendricks, the defendant objected to admission of a 911 tape. Significantly, the State sought a ruling on admissibility prior to the witness' testimony, arguing the tape was admissible "as either a present sense impression or an excited utterance." Acknowledging the defendant's objection was not specific, the court found the hearsay basis of the objection was "**apparent from the**

context" because the State's response to the objection included a case dealing with hearsay exceptions, as well as the excited utterance and present sense impression arguments. 759 S.E.2d at 438 (emphasis added).

In Kromah, the preservation issue hinged on the timing of the defendant's objections.[3] She objected in full prior to the challenged testimony, and thereafter made form objections during the testimony. The court found the original objection prior to the testimony sufficiently apprised the trial court of the nature of the objection, and therefore, the issue was preserved for appellate review. 737 S.E.2d at 495-497. Again, the context of the objection was critical.

Contrary to Hendricks and Kromah, the only objection raised to the cross-examination at issue was relevancy, unfair prejudice was **never** mentioned, and nothing in the record suggests the context necessarily raised that issue. (R., pp. 111-115). In the face of that omission, Petitioner asserts the circuit court should have just known the relevancy objection included unfair prejudice under Rule 403, and requiring counsel to specifically reference unfair prejudice "places too onerous a burden on trial counsel." Petitioner apparently believes it is more appropriate to place that "onerous" burden on the trial judge, and require the judge to do counsel's work for him. This reasoning completely ignores the very purpose of issue preservation rules.

Petitioner's reliance on the circuit court's reference to State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), as indicating the court understood the relevancy objection to include unfair prejudice is also misplaced. It appears from the court's Cheeseboro opinion, the

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[3]Given the number of times it is cited, and the multitude of issues it is cited as impacting, the defense bar apparently sees Kromah as a panacea for virtually any issue in any case, even when it is clearly inapplicable or distinguishable.

defendant, unlike Petitioner, objected on **both** relevance and unfair prejudice grounds, and issue preservation was not before the court. *Id.* at 309-310. Further, Cheeseboro also involved a party's right to impeach the opposing party's witnesses, which was the exact issue before the circuit court in this case, and may well have been the basis for the court's reference to that case.

This case is virtually on point with State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013), which the Court of Appeals cited in support of its conclusion the issue was not preserved. In Brockmeyer, the defendant objected to admission of a photograph on relevancy grounds irrelevant. On appeal, however, he argued the photograph was unfairly prejudicial. In finding the issue was not preserved, this Court stated:

> As an initial matter, it is our view this matter is not preserved for appellate review because the basis of the objection at trial was relevance, but Brockmeyer argues on appeal that the probative value was substantially outweighed by the prejudicial effect under Rule 403. Because a party may not argue one ground at trial and another on appeal, this issue is not preserved for appellate review.

Id. at 661.

Like the defendant in Brockmeyer, Petitioner only objected to the cross-examination at issue on relevancy grounds, and did not raise the prejudice argument until this appeal. The only difference between Brockmeyer and this case is Petitioner's attempt to expand a relevancy objection to include unfair prejudice, which is simply not the law in South Carolina. Therefore, the Court of Appeals properly found Petitioner's unfair prejudice claim was not preserved for appellate review, and the Petition for Writ of Certiorari should be denied on this issue.

II. The circuit court properly allowed the State to cross-examine Petitioner's expert about an issue directly related to the expert's credibility and the reliability of her opinion.

Petitioner contends the circuit court erred in allowing the State to cross-examine Dr. Gehle about her opinion in another case, the subject of which was released based on her opinion, but was arrested approximately eighteen months later for rape, arguing it was irrelevant and unduly prejudicial. As discussed above, the unfair prejudice issue was not preserved for appeal. Further, Petitioner's contention takes the testimony completely out of context, and ignores its direct relevance and high probative value regarding Dr. Gehle's credibility and the reliability of her report.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court, and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice, which occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Kromah, 737 S.E.2d at 495. The scope of cross-examination is also within the discretion of the trial court, and the court's decision will not be reversed on appeal absent a showing of prejudice. State v. Colf, 337 S.C. 622, 525 S.E.2d 246, 247–48 (2000); State v. McEachern, 399 S.C. 125, 731 S.E.2d 604, 609-610 (Ct. App. 2012) (same).

A. Expert Credibility/Reliability

Mere procedural consistency by an expert witness does not ensure reliability absent some evidence demonstrating the individual expert is able to draw **reliable results** from the procedures he or she consistently applies. State v. Chavis, 412 S.C. 101, 771 S.E.2d 336, 339

(2015).[4] Thus, Dr. Gehle's qualification as an expert in forensic psychology did not insulate her ultimate opinion in this case from scrutiny regarding the reliability of her protocol or opinion.

1. Protocol/Methodology

Dr. Gomez testified she uses the sex offender evaluation protocol established by the Association for the Treatment of Sexual Abusers, and the Sexual Behaviors Clinic and Lab at the Medical University of South Carolina. Dr. Gomez also testified the Static-99R risk assessment tool is widely accepted, but it should not be used as a stand-alone tool because it only indicates one data point for evaluation.[5] She utilized the Static99-R, as well as a records review, her interview with Petitioner, and six other psychological tests and risk assessment tools, which provided her multiple data points to consider in reaching a conclusion. (R., pp. 38-70).

In contrast, Dr. Gehle testified her evaluation consisted of reviewing records, interviewing Petitioner, and completing the Static99-R. (R., pp. 84-96). On cross-examination, she stated there is no established protocol for a sexual predator evaluation, and she personally developed the protocol she uses for an evaluation. She did not perform any psychological or physiological tests on Petitioner, but used the Static-99R as the **sole** risk assessment data point for her opinion. (R., pp. 100-104).

This stark discrepancy in protocols and methodology reasonably brought into question the reliability of Dr. Gehle's report in this case, particularly in light of her admitted failure to use

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[4]*But see*, 771 S.E.2d at 342 (expert's testimony was reliable based on her extensive experience using the well-established and recognized RATAC method for interviewing child victims, and her specific training, education and knowledge of the RATAC method) (Toal, C.J., concurring/dissenting opinion).

[5]Dr. Gomez testified the developers of the Static99-R do not intend for it to be used as a stand-alone tool. (R., pp. 52-53).

a recognized, peer-reviewed protocol, or even recognize there is an established protocol. The State's initial cross-examination of Dr. Gehle went directly to that issue, and during closing argument, the State emphasized the importance of weighing the risk assessment protocols used by the two experts in order to determine whether there was a likelihood Petitioner would re-offend if not confined for treatment.

2. Petitioner opened the door.

Significantly, the State did not raise the issue of Dr. Gehle's previous evaluations until **after** Petitioner attempted to rehabilitate her reliability on re-direct examination. When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially. State v. Jackson, 364 S.C. 329, 613 S.E.2d 374, 377 (2005).

As discussed above, the State's initial cross-examination focused on the inadequacy of Dr. Gehle's methodology. In an obvious attempt to rehabilitate her credibility on re-direct, Petitioner stressed the fact Dr. Gehle "routinely" does sexual predator evaluations as her full-time job at the Department of Mental Health. (R., pp. 110-111). Thereafter, the State was entitled to present evidence Dr. Gehle's "routine" sexual predator evaluations have not always been correct, and at least one person she found was not likely to re-offend if released, was arrested for another sex offense shortly after he was released based on her evaluation. (R., pp. 111-114). Contrary to Petitioner's assertion this evidence was not a challenge to Dr. Gehle's

methodology or ability to conduct a sexual predator evaluation, it went **directly** to her credibility and the reliability of her "routine" opinion in this case.

Petitioner contends the State's closing argument establishes the evidence regarding Dr. Gehle's prior inaccurate evaluation was presented to encourage the jury to render a verdict based on fear. Petitioner's contention glosses over part of the State's argument, cherry-picks other parts out of context, and ultimately misconstrues the intent of the State's argument by "look[ing] over the heads of the crowd and pick[ing] out its friends." Roper v. Simmons, 543 U.S. 551, 616, (2005) (SCALIA, J., dissenting).

By way of example, Petitioner partially quotes the statement "are you really satisfied that a pedophile should be released out into this community" from the State's closing argument, but conveniently fails to quote the most significant part of the statement. (Brief of Petitioner, p. 11). The entire statement was:

> So in conclusion at the end of the day the ultimate question you have to ask yourself is despite the fact that another doctor came to the conclusion that [Petitioner] should not be committed, as a juror and a member of this community, are you really satisfied that a pedophile should be released out into this community **when he's never had any sexually (sic) offender treatment, doesn't even think he has a problem, is going to live in a house with a family that I submit to you that enables him and gives him access to children just like he did before**?

(R., pp. 135-136) (emphasis added). Read in context, it is clear the State did **not** focus on the mere fact Petitioner is a pedophile, or even Dr. Gehle's prior incorrect evaluation, to play on the jurors' fear, but pointed to the evidence regarding his lack of treatment for his pedophilia, his refusal to acknowledge he even had a problem, and his unrealistic living plans if released as a

basis for the verdict.[6] Rather than an emotional appeal for a verdict based on fear, these were legitimate facts, supported by the evidence, for the jury's consideration in determining whether Petitioner was likely to re-offend if not confined.

In addition, Petitioner points to the State's final statement to the jury, which concluded with the question "[w]hat do you think is going to happen," as evidence the State was playing on the jury's fear rather than relying on the evidence. Again, read in context, and considered in light of the issue before the jury, the question was entirely appropriate.

During his closing argument, Petitioner urged the jury to "not be subjects and fall prey to the fear that the State hopes to have you in," and argued the State wanted the jury to "just rely on the smoke screen and cloud of fear." (R., pp. 139, 141). In reply, the State argued the case was not about fear, but was about "a very serious evaluation, very serious crimes and a very thorough evaluation by Dr. Gomez." In conclusion, the State argued:

> So I leave you with this: You have a person who **on more than one occasion who has sexually assaulted children**. He **takes no accountability to (sic) what he's done** and he **hasn't had sex offender treatment** and he's **refused it when it has been offered**. He's going to go live in a house **where people are going to allow him to be around children**. You heard the testimony. What do you think is going to happen?

(R., pp. 142) (emphasis added). Again, these were legitimate facts supported by the evidence rather than appeal for a verdict based on fear.

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[6]In fact, the State only referred briefly to Dr. Gehle's prior incorrect evaluation once during closing argument, and simply stated: "If [Petitioner] gets out and if [he] is wrong -- and he's been wrong before, and in fact, I submit his own expert has been wrong before -- and Dr. Gomez is right, he's going to get out and he's going to hurt another kid." (R., pp. 136).

Further, the only issue in dispute at trial was whether his pedophilia made him **likely to engage in acts of sexual violence if not confined**. Asking the jury to think about what would happen if Petitioner was **released** in light of all the evidence presented merely paraphrased **exactly** what the jury had to determine, and Petitioner's attempt to construe it as intended solely to invoke fear not only takes it out of context, it is a gross misrepresentation.

3. Probative/Prejudice

Finally, Petitioner contends the probative value of Dr. Gehle's inaccurate conclusion in a previous routine evaluation was little to none, but the prejudice to him was substantial. As discussed in Issue I above, the unfair prejudice issue was not preserved for appellate review, but assuming preservation for purposes of argument only, Petitioner's contention is meritless.

The State's inquiry had nothing to do with emotion, but was in direct response to Petitioner's re-direct examination questions, and went directly to the reliability of Dr. Gehle's "routine" evaluation. Further, unless he is a mind-reader, there is no way Petitioner could possibly know this one piece of evidence, as opposed to all the other evidence, played on the emotions of the jury.

Undue prejudice does not mean the damage to a defendant's case from the legitimate probative force of the evidence, but instead comes from evidence tending to suggest a decision on an improper basis. State v. Lee, 399 S.C. 521, 732 S.E.2d 225, 229 (Ct. App. 2012). While all evidence is in some way meant to be prejudicial, only **unfairly** prejudicial evidence is subject to this evaluation. *Id.*

The only disputed issue for jury determination in this case was whether Petitioner's pedophilia made him likely to commit future acts of sexual violence if not confined for treatment. Two experts had differing opinions on that issue, making the reliability of their

methodologies and opinions highly relevant and probative. Petitioner attacked Dr. Gomez's credibility and reliability based on the number of sexual predator evaluations she had performed, and her conclusions in those cases, while touting Dr. Gehle's "too numerous to count," "routine" evaluations. (R., pp, 76, 110-111, 139-140). In determining Dr. Gehle's credibility and reliability, evidence she reached an arguably incorrect conclusion in a prior "routine" evaluation was appropriate for the jury's consideration.

Beyond the reliability of Dr. Gehle's opinion, it was undisputed Petitioner had been convicted of a sexually violent offense, and had the relevant mental abnormality of pedophilia. The jury also had undisputed evidence Petitioner had no sex offender treatment and refused it when afforded an opportunity to take it, he had no realistic prevention plans, and he took no direct accountability for his offenses. Finally, the jury could consider the circumstances of Petitioner's sexually violent convictions, including evidence he committed one of those offenses (lewd act) while out on bond for the previous offense (criminal sexual conduct with a minor). It is more likely the jury's verdict was based on the extensive evidence indicating Petitioner would re-offend if not confined for sex offender treatment, rather than an emotional response to one piece of evidence.

The circuit court properly allowed the State to pursue relevant inquiries into Dr. Gehle's credibility and the reliability of her conclusion in this case, Petitioner opened the door to those inquiries, and any prejudice to Petitioner from evidence regarding Dr. Gehle's incorrect conclusions in a previous case did not **substantially** outweigh its probative value to the credibility and reliability of the opposing experts' opinions, especially in light of all other

relevant evidence before the jury.[7] The Court of Appeals properly found the circuit court did not abuse its discretion in allowing this evidence, and the Petition for Writ of Certiorari should be denied on this issue.

[7]Petitioner's extreme rhetoric about the emotion and stress of a sexual predator trial does not change the analysis. There are many types of trials, such as wrongful death and survivor actions, not to mention death penalty trials, that are extraordinarily emotional and stressful for jurors, but the admissibility of evidence legal analysis remains the same.

CONCLUSION

Based on the foregoing, Respondent submits the Petition for Writ of Certiorari to the Court of Appeals should be denied in its entirety.

Respectfully submitted,

ALAN WILSON
Attorney General

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

BY: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

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

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IN THE MATTER OF THE CARE AND TREATMENT OF
KENNETH CAMPBELL,

Petitioner.

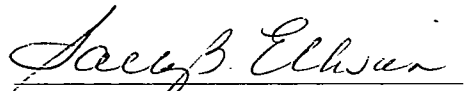
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Return to Petition for Writ of Certiorari to the Court of Appeals on Appellant depositing a copy in the United States mail, postage prepaid, addressed to:

Susan B. Hackett
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

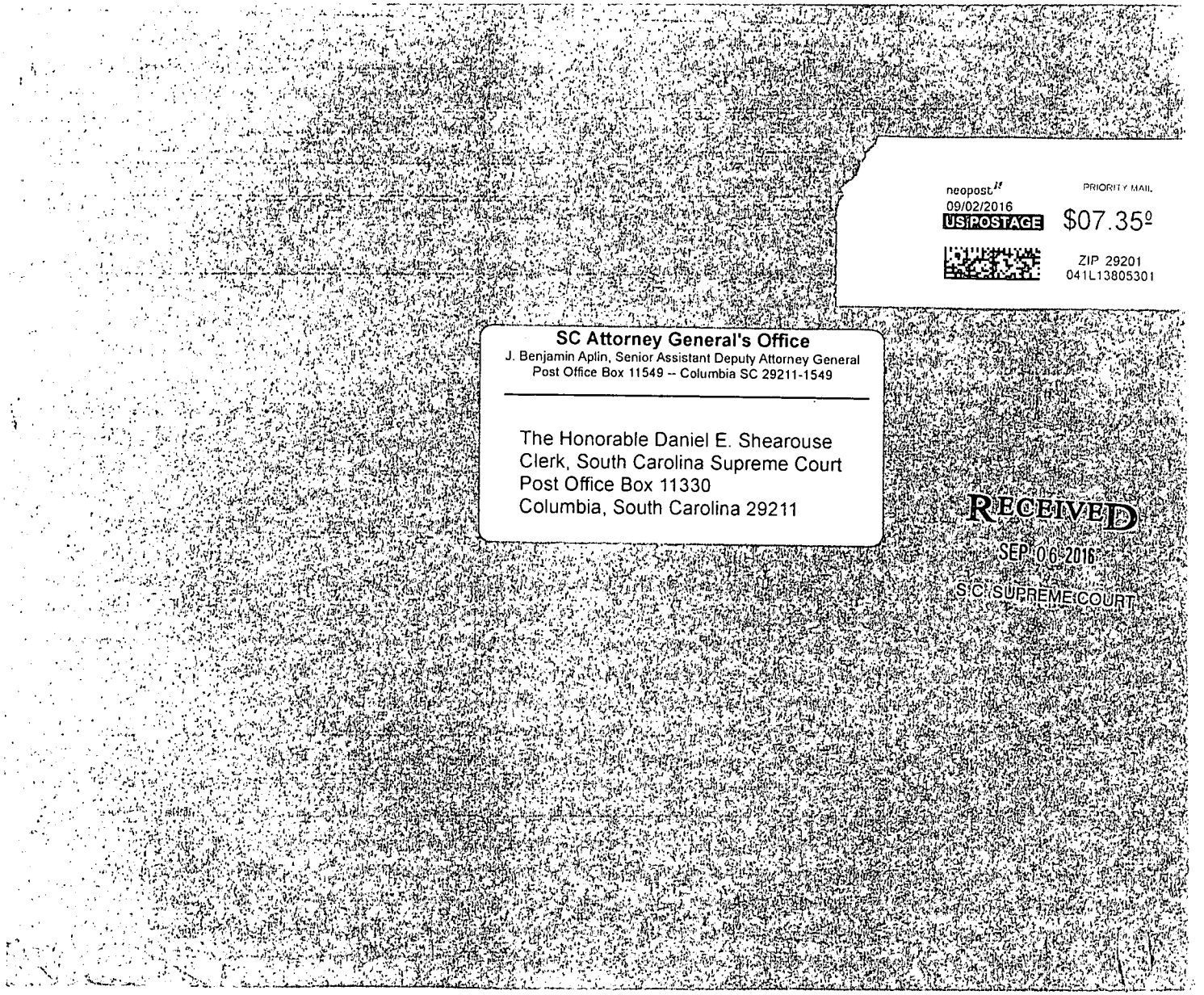
I further certify all parties required by Rule to be served have been served.

This 2nd day of September, 2016.



SALLY B. ELLISON
Legal Assistant

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



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J. Benjamin Aplin, Senior Assistant Deputy Attorney General
Post Office Box 11549 -- Columbia SC 29211-1549

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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