

**RECEIVED**

**Jun 09 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Charleston County  
The Honorable Jennifer B. McCoy, Circuit Court Judge  
Appellate Case No. 2020-001551

---

In the Matter of the Care and Treatment  
of Kevin Lamar Wright,

Appellant.

---

**INITIAL BRIEF OF RESPONDENT**

---

ALAN WILSON  
Attorney General

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

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

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....3

STANDARD OF REVIEW .....12

ARGUMENT .....13

    The record amply supports the circuit court’s finding of no probable cause  
    to believe Appellant’s mental status had so changed he is safe to be at  
    large.....13

CONCLUSION.....17

## **TABLE OF AUTHORITIES**

### **CASES:**

<u>Care &amp; Treatment of Brown</u> , 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007) .....	12, 13, 14
<u>Care &amp; Treatment of Chandler v. State</u> , 382 S.C. 250, 676 S.E.2d 676 (2009) .....	13
<u>In re Care &amp; Treatment of Corley</u> , 365 S.C. 252, 616 S.E.2d 441 (Ct. App. 2005).....	12
<u>In re Care and Treatment of Harvey</u> , 355 S.C. 53, 584 S.E.2d 893 (2003).....	12
<u>In re Care and Treatment of Tucker</u> , 353 S.C. 466, 578 S.E.2d 719 (2003) .....	12, 13, 15, 16
<u>In re Matthews</u> , 345 S.C. 638, 550 S.E.2d 311 [2001] .....	12
<u>In re Miles</u> , 276 P.3d 232 (Kan. Ct. App. 2012).....	15
<u>In re Sipe</u> , 239 P.3d 871 (Kan. Ct. App. 2010).....	15
<u>In re Treatment and Care of Luckabaugh</u> , 351 S.C. 122, 568 S.E.2d 338 (2002).....	12
<u>State v. Keith</u> , 356 S.C. 219, 588 S.E.2d 145 (Ct.App.2003).....	14
<u>Texas v. Brown</u> , 460 U.S. 730 [1983] .....	13

### **STATUTES:**

S.C. Code. Ann. §44-48-110 (2018).....	13, 14
S.C. Code Ann. §44-48-120(A) (2018) .....	3
S.C. Code §44-48-80 (2018).....	14
S.C. Code §§44-48-90.....	14

### **RULES:**

Rule 702, SCRE .....	13
----------------------	----

## **STATEMENT OF ISSUE ON APPEAL**

The record amply supports the circuit court's finding of no probable cause to believe Appellant's mental status had so changed he is safe to be at large.

## STATEMENT OF THE CASE

In April 2017, a jury found Appellant Kevin Lamar Wright is a sexually violent predator beyond a reasonable doubt, and he was civilly committed pursuant to the South Carolina Sexually Violent Predator Act (SVPA). As required by the SVPA, the Department of Mental Health (DMH) reviewed Appellant's mental status annually, and in July 2019, a DMH psychologist issued an annual review report concluding Appellant's mental status had not so changed he is safe to be at large.

After an evidentiary hearing, at which Appellant appeared and was represented by counsel, the Honorable Jennifer B. McCoy, Circuit Court Judge, found there was no probable cause to believe Appellant's mental status had so changed he is safe to be at large, and continued Appellant's civil commitment for long term, control, care and treatment. This appeal followed.

## STATEMENT OF FACTS

In April 2017, a jury found beyond a reasonable doubt Appellant met the criteria for civil commitment as a sexually violent predator pursuant to the SVPA, and he was committed to DMH's Sexually Violent Predator Treatment Program (SVPTP) for long term control, care and treatment. Thereafter, as required by the SVPA, DMH reviewed Appellant's mental status annually, and each review found Appellant's mental status had not so changed he is safe to be at large.

Appellant sought, and was granted, an independent evaluation after DMH's 2018-2019 annual review report recommended continued confinement for treatment. Appellant retained E. Selman Watson, Ph.D, to perform the independent evaluation, which was not completed until August 2020, and Appellant sought release from the SVPTP without DMH authorization.<sup>1</sup> In the interim, DMH issued a 2019-2020 annual review report prepared by Christopher Gillen, Ph.D., which also recommended continued confinement for treatment. With all parties' consent, the court conducted an annual review evidentiary hearing via video/Webex on October 2, 2020.

Appellant presented Dr. Watson, who was qualified as an expert in forensic psychology and sexually violent predator evaluations. Dr. Watson testified he interviewed Appellant several times (July 2018, June 2019 and February 2020) for a total of seven to eight hours, during which they discussed Appellant's sex offender history, his mental health and legal history, his progress in treatment, and the exercises included in each level of the treatment program. Dr. Watson also administered a couple of psychological tests, and reviewed "group notes" provided to him in June 2020. (Hearing Transcript [HT], pp. 13-16; Record on Appeal [R.], pp. \_\_\_\_\_).

---

<sup>1</sup>The DMH Director did not authorize Appellant to file a release petition. *See* S.C. Code Ann. §44-48-120(A) (2018) (Director certifies in writing the resident is safe to be at large and authorizes resident to petition the court for release).

Dr. Watson opined that Appellant's mental status had changed such that he was not likely to reoffend sexually if released. He further testified that Appellant is a pedophile, but he did not believe Appellant ever met the statutory criteria for civil commitment under the SVPA. He stated Appellant has only a few dynamic risk factors for reoffending, but does still have the dynamic risk factor of "emotional congruence with children." (HT, pp. 16-21; R., pp. \_\_\_\_).

As to Appellant's future plans if released, Dr. Watson testified Appellant "mentioned he would like to live at Shields Ministries," but Dr. Watson understood that facility might not accept sex offenders as residents. Dr. Watson testified there was a family member Appellant "might be able to live with," Appellant expressed an interest in continuing treatment on an out-patient basis, he would be on lifetime GPS monitoring if released, and Dr. Watson hoped Appellant "would be able to find a mental or an accountability partner" who "would be available to him if he were to have any change in his dynamic risk factors." (HT, p. 21; R., p. \_\_\_\_).

Dr. Watson stated Appellant actively participated in group therapy sessions, and had never missed a group meeting or refused an assignment while in the SVPTP. Appellant provided Dr. Watson with "a huge binder full of homework assignments, articles, scales that he submitted, [and] coping log[s]." Based on the contents of the binder and his interviews with Appellant, Dr. Watson opined Appellant was "learning skills to manage" his pedophilic urges if released, and he would learn additional skills if he continued in an outpatient treatment setting. He stated Appellant had certain cognitive disorders when he entered the SVPTP, but now he "feels shameful," and "feels sorry that he engaged in [pedophilic] behavior." (HT, pp. 21-27; R., pp. \_\_\_\_).

On cross-examination, Dr. Watson stated there were some annual review reports and documents from the original commitment proceeding he did not review because "they were not made available" to him. He also acknowledged he performed a "brief psychological" evaluation

of Appellant in 2011 while Appellant was in the South Carolina Department of Corrections (SCDC), which included a personality assessment indicating Appellant strongly underreported symptoms and concerns, and tended “to present himself in an overly positive light.” He also acknowledged at least one of the multiple SVPA evaluation reports he reviewed specifically referred to that 2011 evaluation. In spite of his 2011 findings, Dr. Watson testified he “thought [Appellant] had a genuine interaction” with him during the evaluation, and he did not think deception was part of Appellant’s personality. In addition, even though his report stated Appellant did “not appear overly deceptive” during the interviews, Dr. Watson testified he “just didn’t find [Appellant] to be a deceptive individual.” (HT, pp. 28-44; R., pp. \_\_\_\_).

Dr. Watson ultimately acknowledged there were discrepancies between Appellant’s sexual offense disclosures to previous evaluators and his disclosures to Dr. Watson about those offenses. One significant disclosure involved the ending of Appellant’s relationship with a girlfriend, which Appellant claimed led to some of his sexual offenses. He told previous evaluators the relationship ended when the girl moved away, but told Dr. Watson it ended when he caught her having sex with his best friend. Another discrepancy involved a behavioral infraction involving possession of contraband, specifically pictures of children. Appellant told Dr. Watson the infraction involved possession of one magazine containing a picture of a child, but the available documentation indicated Appellant possessed six magazines and a news article, all containing pictures of children of various ages. Dr. Watson stated he did not recall an annual review report that discussed a behavioral infraction involving Appellant sharing with another resident a floppy disk that included pictures of women in G strings, pictures of children, pornographic movie titles and descriptions, so of which described deviant content. (HT, pp. 44-51; R., pp. \_\_\_\_).

Over the course of the four interviews with Dr. Watson, with the last one in February 2020, Appellant told Dr. Watson he never missed a group meeting or refused an assignment. Dr. Watson acknowledged the most recent annual review report by Dr. Gillen, which Dr. Watson received two weeks before the probable cause hearing, indicated Appellant had five unexcused absences from group meeting in the 2019-2020 review period. Dr. Watson testified he did not recall any annual review reports indicating Appellant got some homework assignments completed by another resident and then presented them as his work. (HT., pp. 51-52; R., pp. \_\_\_\_).

Dr. Watson testified there are thirteen identified risk factors for sexually reoffending, and acknowledged a person does not have to have all thirteen risk factors to be considered a risk to reoffend. Dr. Watson did not address specific dynamic risk factors in his report, but previous evaluations identified seven dynamic risk factors associated with Appellant, including: sexual preoccupation; a sexual preference for pubescent or pre-pubescent children; offensive supportive attitudes; an emotional congruence with children; a lack of emotionally intimate relationships with adults; poor problem solving; and resistance to rules and supervision. Dr. Watson agreed with the listed dynamic risk factors, but testified Appellant no longer exhibited some of them and had progressed on the others. (HT, pp. 52-61; R., pp. \_\_\_\_).

Dr. Watson acknowledged he did not attempt to discuss Appellant's mental status or treatment progress with any treatment providers or the doctors who completed the pre-commitment or annual reviews regarding Appellant. His opinion was primarily based on Appellant's statements during the four interviews, Dr. Watson's assessments of the written documents he reviewed, and the binder of "work" Appellant provided him as evidence of Appellant's participation in and commitment to treatment. Dr. Watson ultimately acknowledged the underlying premise of his

opinion was his belief Appellant never met the criteria for commitment under the SVPA, which was a factor in every part of the evaluation he performed. (HT., pp. 62-64; R., pp. \_\_\_\_).

The State presented Dr. Gillen, who was also qualified as an expert in forensic psychology. Dr. Gillen testified he was assigned to complete Appellant's annual review, and had no previous contact with Appellant. His evaluation protocol includes an extensive file review (original commitment documents, criminal records, SCDC records, SVPTP treatment records that include treatment assignments, group notes, case management notes, treatment plans and annual treatment summaries), and a clinical interview of the individual he is evaluating. In addition, he will contact collateral sources as necessary, and review prior annual review reports. (HT, pp. 71-89; R., pp. \_\_\_\_).

After reviewing all relevant records, Dr. Gillen interviewed Appellant for approximately three hours on July 10, 2020. During the interview, Appellant recounted his offenses against six pre-pubescent girls, and stated he started molesting the children because of feelings of betrayal and loneliness, fear of rejection and perceived rejection, and feelings of trust at the children's level. Appellant also endorsed several offense supportive attitudes, including a belief children wanted to engage in sex with him, or they liked sex, or their wearing of certain types of clothing indicated they were interested in sex with him, and he had difficulty controlling his sexual arousal to children. Appellant also "explicitly endorsed a sexual attraction to two of the victims." (HT, pp. 89-91; R., pp. \_\_\_\_).

Dr. Gillen also reviewed records regarding Appellant's behavioral infractions at the SVPTP, which included a 2018 citation for an interpersonal relationship with another SVPTP resident that was deemed problematic and inappropriate, and he possessed letters containing

romantic content from the resident. He was also cited in 2018 for possessing several newspapers and magazines that contained pictures of children. (HT, pp. 91-92; R., pp. \_\_\_\_).

During the 2019-2020 review period, Appellant was cited in 2020 for exchanging contraband material with the same resident, which was captured on video, even though they had been physically separated within the facility, and for possessing another depiction of a child. Dr. Gillen found these recurring behavioral issues problematic in light of Appellant's history. (HT, pp.91-94; R., pp. \_\_\_\_).

Dr. Gillen testified he completed the Static-99R and Static-2002R actuarial risk assessment tools, and Appellant scored a four on the Static-99R, and a five on the Static-2002R. He stated the two scores are combined to generate an absolute risk number when compared to a specific reference sample of sex offenders who were charged or convicted of a new sex offense within a designated timeframe. He testified the risk assessment tools do not make any allowances for unreported offenses, so the absolute risk score generated is 'likely an underestimation [of actual risk] given that it only follows a five year period and it only counts with charges and convictions.' (HT, pp. 94-96; R., pp. \_\_\_\_).

Dr. Gillen further testified Appellant has multiple dynamic risk factors that increase his likelihood of reoffending, including a sexual preference for pre-pubescent or pubescent children, sexual preoccupation, dysfunctional and sexualized coping, poor problem solving, and resistance to rules and supervision. As to his sexual preoccupation with pre-pubescent and pubescent children, the 2019-2020 treatment records included a notation Appellant "denied that pedophilic disorder was a disorder or that his sexual behaviors were a product of or influenced by that diagnosis." In addition, Dr. Gillen stated Appellant "hasn't learned any specific arousal management techniques in his treatment to date or at least to the time I reviewed his record that

would allow him to manage that deviant arousal when he is exposed to high risk situations out in the community.” (HT, pp. 96-98; R., pp. \_\_\_\_).

Dr. Gillen also indicated another risk factor was Appellant’s “lack of intimate emotional relationships and emotional congruence with children.” Appellant told Dr. Gillen “these were resolved and historical issues in his life,” but was unable to state how or why the issues were resolved, or talk about any strategies he developed in treatment to work on them, which was problematic in light of his behavioral record involving another resident in the treatment program. Appellant also stated he tried to form relationships with and talk to treatment program staff members, which was “directly contradictory to what is reported in the record about his engagement and social interaction with staff on the unit.”

Appellant did identify specific coping skills he learned in treatment to deal with his risk factor of dysfunctional and sexualized coping, but admitted “those skills have not helped him target some of the specific emotions that were most directly related with his offending to include feelings of perceived rejection, loneliness, [and] fear of rejection.” Dr. Gillen testified Appellant’s difficulty managing those emotions “was one of the reasons that led [Appellant] to sexually act out against children,” and the coping skills Appellant had developed “have insufficiently addressed those.” Independent ability in the community to identify those types of thoughts, recognize them as distortions, challenge them and restructure them is “what is going to be important for someone like [Appellant].” (HT, pp. 98-100; R., pp. \_\_\_\_).

Dr. Gillen testified another risk factor for Appellant is “poor problem solving.” While Appellant had made some progress on that risk factor and seemed to understand some of the factors involved in his sexual offending, Dr. Gillen stated Appellant needed further work on this factor, particularly in developing an ability “to apply those risk factors to his current behavior, future

risks,” . . . and “come up with a wide variety of potential solutions to manage high-risk situations.” Specifically, while Appellant showed some insight into potential barriers in the community (i.e., his tendency to be stubborn or feeling ignored), he was unable “to articulate how he would overcome those barriers out in the community outside of relying on external supports and constraints.” (HT, pp. 100-101; R., pp. \_\_\_\_).

Dr. Gillen testified Appellant’s participation in treatment was “variable” during the period Dr. Gillen reviewed. A positive indication was Appellant “largely attending his treatment groups outside of those five unexcused absences that were documented in the record,” and “[a]t times he is providing relevant commentary in groups,” and there were “a few indications that he was able to link up some of his feedback with his offense history.” (HT, pp. 101-102; R., pp. \_\_\_\_).

On the negative side, there were “instances spanning the review period that talked about minimal engagement,” and staff asked Appellant to increase the consistency of his participation. Also, there were some notable problems during the review period, including Appellant shutting down emotionally and stopped participating when a peer or facilitator challenged him about sexually problematic behaviors, or the discussions turned to Appellant’s own offenses, he stopped participating. (HT, pp. 102-103; R., pp. \_\_\_\_).

Dr. Gillen testified Appellant needs to continue in the treatment program to work on developing arousal management techniques that are directly relevant to his sexual attraction to pre-pubescent and pubescent children, and how to manage some of that arousal when it becomes difficult to handle out in the community where he has access to children. Appellant also needs to develop strategies and skills to handle his feeling of perceived rejection, betrayal and inadequacy, and work on problem solving beyond “simply avoiding high-risk situations and relying on others to further develop coping skills.” (HT, pp. 103-105; R., pp. \_\_\_\_).

Dr. Gillen diagnosed Appellant with pedophilic disorder. He testified to a reasonable degree of psychological certainty that Appellant's mental abnormality "has not so changed that he is safe to be at large," if released, he "is likely to engage in acts of sexual violence," and Appellant "needs to remain in the program for further treatment." (HT, pp. 105-108; R., pp. \_\_\_\_).

The circuit court found there was sufficient evidence presented to support the State's contention Appellant still met the criteria for confinement and continued treatment under the SVPA. The court discussed the testimony of both Dr. Watson and Dr. Gillen, and found Dr. Gillen was more credible. In addition, the court "carefully considered the document received into the record, and the arguments of counsel." Based on its review of the record, the court found Appellant failed to meet his burden of proof to establish probable cause that his mental abnormality has so changed he is safe to be at large, and ordered his continued confinement in a DMH secure facility for long term control, care and treatment. (Order Denying Annual Review Trial for 2018-2019 and 2019-2020, filed October 28, 2020; R., pp. \_\_\_\_). This appeal followed.

## STANDARD OF REVIEW

“On review, the appellate court will not disturb the hearing court's finding on probable cause unless found to be without evidence that reasonably supports the hearing court's finding.” In re Care and Treatment of Tucker, 353 S.C. 466, 578 S.E.2d 719, 721 (2003); *see also* In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338, 342 (2002) (on appeal of a non-jury law case, the findings of fact will not be disturbed unless found to be without evidentiary support); In re Care & Treatment of Corley, 365 S.C. 252, 616 S.E.2d 441, 444 (Ct. App. 2005) (trial court's probable cause ruling in SVPA annual review hearing will not be disturbed unless there is no evidence reasonably supporting it). When reviewing a trial court's rulings in a SVPA case, the appellate court will only reverse the trial court if there is no evidence to support the trial judge's ruling. In re Care and Treatment of Harvey, 355 S.C. 53, 584 S.E.2d 893, 896 (2003) (*citing* In re Matthews, 345 S.C. 638, 550 S.E.2d 311, 315 [2001]); Care & Treatment of Brown, 372 S.C. 611, 643 S.E.2d 118, 120–21 (Ct. App. 2007) (same). The appellate court is concerned with the existence of evidence, not its weight. Brown, 643 S.E.2d at 121.

## ARGUMENT

**The record amply supports the circuit court’s finding of no probable cause to believe Appellant’s mental status has so changed he is safe to be at large.**

Appellant contends the circuit court erred in finding no probable cause to believe his mental status has so changed he is safe to be at large. Appellant maintains the mere fact he presented expert testimony indicating he was safe to be at large mandates a finding of probable cause, and the circuit court “went beyond its gatekeeper role [under Rule 702, SCRE] and usurped the authority of a jury to determine whether it was safe to release Appellant. This argument both undermines the purpose of an annual review hearing under the SVPA, and renders the presiding judge irrelevant by reducing the probable cause determination to a mere ministerial act.

In a SVPA annual review probable cause hearing, the committed person has the burden to show there is probable cause to believe his mental condition has so changed he can safely be released from civil commitment. Tucker, 578 S.E.2d at 722; S.C. Code. Ann. §44-48-110 (2018).<sup>2</sup> “In the context of probable cause to believe someone to be a sexually violent predator, probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person meets the definition of a sexually violent predator.” Care & Treatment of Chandler v. State, 382 S.C. 250, 676 S.E.2d 676, 680 (2009) (*quoting In re the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118, 122-23 [Ct.App.2007]). “Probable cause ‘does not demand any showing that such a belief be correct or more likely true than false.’” Brown, 643 S.E.2d at 123 (*quoting Texas v. Brown*, 460 U.S. 730,

---

<sup>2</sup>Appellant’s brief indicates he “is unaware of any published South Carolina decision addressing the appropriate probable cause standard under S.C. Code §44-48-110.” (Brief of Appellant, p. 8). To the contrary, Tucker expressly addresses that issue.

742 [1983]). “The very term itself, ‘probable cause,’ does not import absolute certainty.” *Id.* at 118, 122.

Under the SVPA, the original commitment proceedings establish the person has a mental abnormality or personality disorder that makes him likely to commit future acts of sexual violence if not confined for long term, control care and treatment. S.C. Code §§44-48-90, -100 (2018). After commitment, the person is entitled to annual reviews of his mental status, and probable cause hearings on those reviews. At an annual review hearing, the committed person has the burden to present evidence that his mental status has so changed he is safe to be at large, and circuit court must determine whether the person’s evidence would lead a reasonable person to believe and conscientiously entertain a suspicion the person’s mental status has so changed he is now safe to be at large. S.C. Code §44-48-110 (2018).

Unlike the probable cause determinations under S.C. Code §44-48-80 (2018) (pre-commitment), making a probable cause determination in annual review hearings necessarily requires consideration of more than the mere existence of evidence. Rather, the court must consider the credibility of the witnesses and evidence presented. *See State v. Keith*, 356 S.C. 219, 588 S.E.2d 145, 147 (Ct.App.2003) (probable cause determination requires a practical, common-sense decision based on the totality of evidence presented, “including the veracity and basis of knowledge of persons supplying information”).

If, as Appellant argues, merely presenting an expert at an annual review hearing mandates a finding of probable cause, conducting the hearing itself becomes a meaningless exercise, and the circuit court’s role is reduced to a ministerial function. Such a result would be absurd in light of the SVPA’s express public safety purpose.

Appellant's reliance on In re Sipe, 239 P.3d 871 (Kan. Ct. App. 2010), and In re Miles, 276 P.3d 232 (Kan. Ct. App. 2012), is unavailing. In both cases, the lower court's annual review probable cause determinations were based solely on the reports prepared and submitted by experts for the state and the committed person, and the appellate court applied a *de novo* standard of review.<sup>3</sup> Sipe, 239 P.3d at 877; Miles, 276 P.3d at 236.

As in this case, SVPA annual review probable cause hearings are generally full evidentiary hearings with witness testimony rather than determinations based solely on expert reports, and South Carolina appellate courts apply a deferential standard of review for circuit court annual review probable cause determinations. *See Tucker*, 578 S.E.2d at 721-722. Given the circuit court's ability to hear direct and cross-examination of witnesses as well as review submitted reports, the circuit court has an inherent ability to consider the credibility and weight of the evidence before it, and the deferential standard of review recognizes that ability.

In this case, the circuit court received evidence from Dr. Gillen detailing Appellant's progress in treatment since he entered the treatment program, including specific notes by his direct treatment providers, the current status of his mental abnormality and personality disorder, his numerous dynamic risk factors, and the multiple issues he needed to continue addressing in treatment to reduce his risk of reoffending sexually. Dr. Gillen's report and testimony referenced specific parts of Appellant's treatment records, and called Appellant's self-serving statements to Dr. Gillen in doubt. Like the expert in *Tucker*, Dr. Gillen testified that although Appellant had

---

<sup>3</sup>Appellant correctly asserts South Carolina's SVPA was originally premised on the Kansas sexually violent predator statute, and South Carolina appellate courts relied heavily on Kansas case law in interpreting the SVPA. Since originally enacted, however, both the Kansas and South Carolina statutes have been significantly amended, and South Carolina's case law regarding the SVPA no longer relies as heavily on Kansas law. One major difference is South Carolina's appellate standard of review for probable cause determinations.

made some progress in treatment, there were treatment goals he needed to meet before his mental abnormality and personality disorder have so changed he could be safe to be at large and released from the SVPTP. Tucker, 578 S.E.2d @ 722. (Order Denying Annual Review Trial, p. 2; R., p. \_\_\_\_).

In contrast, Dr. Watson relied primarily on Appellant's version of his treatment progress and current status, reviewed limited records regarding Appellant's treatment progress that did not include treatment staff notes regarding Appellant's participation, or lack thereof, in treatment, and he never addressed Appellant's dynamic risk factors. When asked about reviewing the treatment records, Dr. Watson claimed he only received treatment summaries a couple of months before he issued his report, and he did not receive the staff notes. When pressed, Dr. Watson admitted he did not believe Appellant ever met the criteria for commitment under the SVPA, which further called his opinion regarding Appellant's risk to reoffend sexually into doubt.

The totality of the evidence presented substantiated Dr. Gillen's findings questioning Appellant's self-report regarding his treatment progress and current mental status, determining Appellant's mental status had not so changed he is safe to be at large. The evidence also seriously undermined Dr. Watson's opinion and credibility. The circuit court properly considered the totality of the evidence presented, including the credibility of the witnesses, in concluding there was no probable cause to believe Appellant failed to meet his burden to establish probable cause to believe his mental status has so changed he is safe to be at large.

There is ample evidence in the record supporting the circuit court's finding of no probable cause to believe Appellant's mental status has so changed he is safe to be at large. Accordingly, the Court should affirm the circuit court's ruling and Appellant's continued confinement under the SVPA for long term control, care and treatment.

## CONCLUSION

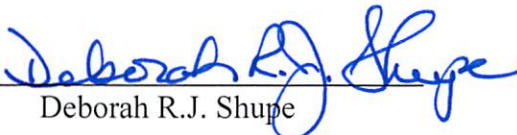
Based on the foregoing reasons, the State respectfully submits the Court should affirm the circuit court finding of no probable cause and Appellant's continued commitment for treatment pursuant to the SVPA.

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, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 9, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**RECEIVED**

**Jun 09 2021**

**SC Court of Appeals**

Appeal from Charleston County  
The Honorable Jennifer B. McCoy, Circuit Court Judge  
Appellate Case No. 2020-001551

In the Matter of the Care and Treatment  
of Kevin Lamar Wright,

Appellant.

**DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

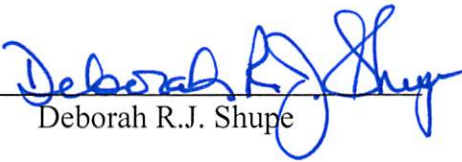
- (1) **Annual Review Report dated March 27, 2019;**
- (2) **Annual Review Report dated July 21, 2020;**
- (3) **October 2, 2020 Hearing Transcript, pp. 1-134;**
- (4) **Order Denying Annual Review Trial, filed October 28, 2020.**

To facilitate preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter irrelevant to this appeal.

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, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 9, 2021

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

**RECEIVED**  
**Jun 09 2021**  
**SC Court of Appeals**

Appeal from Charleston County  
The Honorable Jennifer B. McCoy, Circuit Court Judge  
Appellate Case No. 2020-001551

---

In the Matter of the Care and Treatment  
of Kevin Lamar Wright,

Appellant.

---

**PROOF OF SERVICE**

---


I, Sally B. Ellison, certify I served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James K. Falk, Esquire  
Falk Law Firm, LLC  
PO Box 1058  
Charleston, SC 29211

The Initial Brief and Designation of Matter has also been filed with the Court of Appeals through the AIS system.

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

This 9<sup>th</sup> day of June, 2021.



---

SALLY B. ELLISON  
Legal Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29402  
(803) 734-3727

## **Sally Ellison**

---

**From:** Sally Ellison  
**Sent:** Wednesday, June 9, 2021 8:54 AM  
**To:** 'jfalklaw@gmail.com'  
**Cc:** Deborah Shupe; Sally Ellison; Victim Services  
**Subject:** In the Matter of the Care and Treatment of Kevin Lamar Wright Appellate Case No. 2020-001551  
**Attachments:** WRIGHT Kevin Lamar In the Matter of. IBOR and DOM (PDF) (02604651xD2C78).pdf; WRIGHT Kevin Lamar In the Matter of. Cover Letter Serving IBOR and DOM (02604649xD2C78).pdf

Good Morning:

Attached for service this date are the Initial Brief of Respondent and Designation of Matter in the above appeal. Copies of the Brief and Designation of Matter will also be served as indicated on the attached Proof of Service.

Please confirm receipt of this email and attachments. Thank you.

*Sally Ellison*  
*Legal Assistant*  
SC Attorney General's Office  
1000 Assembly Street  
Columbia, South Carolina 29201