STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

Opinion No. 2017-UP-137 (S.C. Ct. App. Filed Apr. 5, 2017)
Indictment No. 2013-CP-23-1543
Appellate Case No. 2014- 001735

IN THE MATTER OF THE CARE AND
TREATMENT OF CALVIN JOE MILLER,

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 19, 2017.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming Petitioner's commitment as a sexually violent predator ("SVP") where the trial court failed to conduct the requisite analysis under Rule 401, SCRE, and Rule 403, SCRE, and admitted testimony regarding Petitioner's prior charges and convictions for non-sexual conduct?

STATEMENT OF THE CASE

On March 15, 2013, the State filed a petition to involuntarily commit Petitioner Calvin Joe Miller pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. § 44-48-10, *et seq.* ("SVP Act"). The immediate predicate conviction was a guilty plea for lewd act upon a child entered on August 3, 2010. R. 197 – 198. Miller was sentenced to eight years imprisonment, with credit for time served of 470 days. R. 197 – 198; R. 207 (Pet'rs Ex. C to State's Petition).

On July 14-15, 2014, the SVP action was tried before the Honorable R. Lawton McIntosh and a jury. Miller was represented by R. Mills Ariail, Jr., and the State was represented by assistant attorney generals James G. Bogel and Nicole Wetherton. R. 1. The jury concluded that Miller was a sexually violent predator. R. 188, l. 8 – 189, l. 7. On July 15, 2014, Judge McIntosh signed an Order of Commitment placing Miller in the custody of the Department of Mental Health. R. 196.

A timely notice of appeal was filed and perfected in the Court of Appeals. On April 5, 2017, the Court of Appeals filed an unpublished, *per curiam* opinion affirming Miller's SVP commitment. App. 1. Miller filed a petition for rehearing on April 13, 2017. App. 3. By order dated May 19, 2017, the Court of Appeals denied the petition for rehearing. App. 14.

ARGUMENT

The Court of Appeals erred in affirming Petitioner's commitment as a sexually violent predator ("SVP") where the trial court failed to conduct the requisite analysis under Rule 401, SCRE, and Rule 403, SCRE, and admitted testimony regarding Petitioner's prior charges and convictions for non-sexual conduct.

Introduction

The trial judge erred as a matter of law in allowing the state's expert witness to testify at the commitment trial regarding Petitioner Miller's prior charges and convictions for non-sexual conduct based on the expert's averment that she considered them in reaching her opinion on whether Miller was a sexually violent predator. On the contrary, an expert's consideration of information in their evaluation does not make it automatically relevant and substantially more probtaive than prejudical such that it should be admissible before a jury. Rather, the trial judge must consider both the relevance of the information and balance the probative value versus the danger of unfair prejudice. See State v. Slocumb, 336 S.C. 619, 627, 521 S.E.2d 507, 511 (1999) ("Even if admissible under Rule 703[, SCRE] or Rule 705, [SCRE,] however, the determination of whether an expert may testify to the facts underlying an opinion must include an analysis under Rule 403, SCRE."). Based upon the prosecutor's averments, the trial judge misinterpreted In re Ettel, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008) and In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003), as holding that all non-sexual charges and convictions are relevant and admissible in SVP proceedings. The unfettered admission of non-sexual charges and convictions in these proceedings presents a substantial danger that the jury will find in favor of commitment based upon a general criminal propensity rather than because it found that the state proved beyond a reasonable doubt that the offender was *likely* to engage in acts of *sexual violence* if he was not

confined. This error necessitates reversal of the order of commitment and a new trial where the jury can consider only properly admitted evidence.

This Court should grant certiorari pursuant to Rule 242, SCACR, because of the important issue raised regarding what evidence may be used to subject an offender, who has completed service of his criminal sentence, to the further deprivation of liberty via a civil commitment proceeding. A misinterpretation of our State's current precedent as allowing automatic admission of an offender's entire criminal history of charges and convictions risks that SVP commitment will not be limited to the small and distinct class of persons whose "propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others" "if not confined in a secure facility for long-term control, care, and treatment." S.C. Code Ann. § 44-48-20; S.C. Code Ann. § 44-48-30 (1) and (9); see In re Harvey, 355 S.C. 53, 61 n.7, 584 S.E.2d 893, 897 n.7 (2003) ("[T]he purpose of the requirements in the SVP Act is to ensure that these involuntary commitment procedures are **only** used to control a limited subclass of dangerous persons and **not to broadly subject any dangerous person to what may be indefinite terms.**" (emphasis in original) (internal quotations omitted)). As will be discussed more fully *infra*, a review of the applicable case law further reveals internal inconsistencies in the way that the Rule 403, SCRE, analysis is being conducted in SVP proceedings. This Court should take this opportunity to clarify for the trial courts the proper method of determining whether such evidence is admissible in SVP proceedings and caution against allowed the State to use such evidence to detract from its burden of proof.

Relevant Facts

This case involved yet another SVP commitment trial for a man who pled guilty to his charge, who had no disciplinary problems in prison, and who the court-appointed evaluator

found not to be a sexually violent predator. R. 25, l. 16 – 29, l. 3; R. 128, l. 23 – 130, l. 3; R. 159, l. 19 – 160, l. 10; R. 162, ll. 6-18. Miller's conviction for lewd act qualified as a sexually violent offense and he suffered from the mental abnormality of pedophilia. Thus, the only element of the "sexually violent predator" definition that was in dispute at trial was whether Miller's pedophilia made him "likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." See S.C. Code Ann. § 44-48-30(1); S.C. Code Ann. § 44-48-100(A).

Miller was previously convicted in North Carolina in 1996 of one count of incident liberties with a child, arising from a 1994 incident. R. 29, l. 4 – 31, l. 4. There was no objection to the admissibility of that prior sexual offense conviction. Rather, the basis of Miller's direct appeal was the trial court's admission of testimony regarding the following non-sexual charges and convictions: 1992 charges for breaking and entering and larceny, both of which were dismissed; 1995 and 2009 convictions for criminal domestic violence; 2005 conviction for possession of marijuana; and 1999, 2003, and 2005 convictions for failure to register as a sex offender. R. 31, l. 5 – 36, l. 17

Dr. Kimberly Harrison, formerly a chief psychologist at the Department of Mental Health, was the original court-appointed evaluator assigned to Miller's case. R. 142, l. 7 – 148, l. 8. Dr. Harrison diagnosed Miller with pedophilia, but found that there was not sufficient data to render any other diagnosis with any degree of certainty. Specifically, she did not find that Miller demonstrated a "pervasive lifelong pattern of antisociality" to diagnose him with a personality disorder. R. 153, l. 14 – 156, l. 6. Based on his diagnosis and risk level, Dr. Harrison could not say that Miller was "likely to engage in acts of sexual violence." R. 162, ll. 1-5. She testified: "[T]he [SVP] statute specifies that this Act is intended for an extremely dangerous group of sex offenders, and I don't believe -- based on all the other evaluations that I have done under this

Act, I don't believe that Mr. Miller falls into that small, but extremely dangerous group." R. 162, ll. 6-14. Thus, Dr. Harrison said that Miller did not meet the criteria for commitment under the SVP Act. R. 162, ll. 15-18.

The State's expert, Dr. Susan Knight, was a consultant from the Medical University of South Carolina. She had been qualified as an expert on only three prior occasions in regards to sexually violent predator cases, all of which were as a state's witness. R. 13, l. 24 – 15, l. 20; R. 17, l. 22 – 19, l. 8. Dr. Knight interviewed and conducted testing on Miller for a total of four hours and reviewed his court and prior treatment records. R. 21, l. 19 – 23, l. 23. Like Dr. Harrison, Dr. Knight diagnosed Miller with pedophilia and determined that he was in the moderate-low risk category for reoffending based upon the Static-99 assessment. Offenders with that score have a sexual recidivism risk of twelve percent (12%) over the next five years and eighteen (18%) percent over the next ten years. R. 44, l. 15 – 46, l. 18; R. 156, l. 17 – 160, l. 17.

However, Dr. Knight also diagnosed Miller with a personality disorder with antisocial traits, which she claimed increased his risk to reoffend. The basis of Dr. Knight's additional diagnosis related to her findings regarding Miller's "failure to conform [his] behavior to the law," "pattern of irresponsibility," and "pattern of physical aggressiveness." R. 57, ll. 5-20; R. 84, l. 16 – 86, l. 24; R. 91, ll. 13-20. Dr. Knight suggested that Miller's criminal history was relevant to all of these findings. R. 87, l. 10 – 89, l. 7; R. 90, l. 21 – 91, l. 12; R. 123, l. 19 – 124, l. 14; R. 138, l. 5 – 139, l. 5. She testified that the diagnosis of a personal disorder can elevate one's risk to re-offend. R. 93, ll. 7-19; R. 125, l. 10 – 126, l. 7. However, she agreed that a high percentage of individuals in the Department of Corrections have some antisocial traits. R. 124, l. 15-22. Dr. Knight said that her combined diagnoses revealed that Miller has serious difficulty in controlling his behavior. R. 94, ll. 2-20. She opined that Miller has "the propensity to commit

future sexually violent offenses" based "primarily" on "his offense history and difficulty controlling his sexual behavior." R. 94, l. 21 – 95, l. 7. Thus, Dr. Knight suggested that Miller requires long term control, care, and treatment and met the definition to be found a sexually violent predator. R. 95, ll. 8-25. Dr. Harrison opined that Miller's non-sexual criminal history was already a factor in the Static-99's risk score. R. 160, ll. 11-17.

When it became apparent that the State was eliciting testimony from Dr. Knight regarding Miller's nonsexual criminal charges and offenses, defense counsel objected and the jury was sent out of the courtroom. The trial judge then asked the State what authority there was for admitting evidence of nonsexual offenses. R. 31, l. 5 – 32, l. 7. The prosecutor cited In re Ettel, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008) and In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003). He argued that Ettel's prior murder conviction was nonsexual but admissible regarding his likelihood of success in treatment. The judge noted that success in treatment was not an issue in the case, a result of the state's own motion *in limine*. However, the judge agreed that "there was a nonsexual murder case" brought up in In re Ettel. R. 32, l. 8 – 33, l. 7. The prosecutor also averred that the details of a prior ABHAN conviction were found relevant and admitted in In re Corley, implying that it was nonsexual in nature. R. 33, ll. 8-12. Defense counsel did not agree with the prosecutor's descriptions of the holdings of the cases discussed. Ultimately, the trial judge overruled the defense's objection, but noted it for the record. R. 33, l. 17 – 34, l. 17.

Discussion

As discussed more fully in the brief and reply brief of appellant filed below, there is no case that stands for the proposition that non-sexual offenses or convictions are automatically relevant to whether an individual is a sexually violent predator. See In re Corley, 353 S.C. 202, 577

S.E.2d 451 (2003) (finding no error in admission of prior ABHAN conviction that was *sexual in nature* in SVP trial); White v. State, 375 S.C. 1, 649 S.E.2d 172 (Ct. App. 2007) (finding error in failure to consider past unadjudicated sexual offenses at SVP probable cause hearing but specifying: **"In so holding, we are not stating past convictions and prior offenses not resulting in convictions that have no bearing on whether a person is a sexually violent predator should be admissible."**). The concern at an SVP trial is with the likelihood to commit **sexual** violence, not just violence generally. See S.C. CODE ANN. § 44-48-30(9)) (defining "[l]ikely to engage in acts of *sexual* violence" as "the person's propensity to commit acts of *sexual* violence is of such a degree as to pose a menace to the health and safety of others." (emphasis added)).

Notably, a review of the cases cited by the prosecutor in support of his position that the non-sexual charges and convictions were admissible reveals that he misrepresented both their facts and holdings. In In re the Care and Treatment of Corley, 353 S.C. 202, 577 S.E.2d 451 (2003), this Court found that "past criminal history" is relevant to establishing section 44-48-30(1)(a) of the SVP Act. That is, whether the offender "had been convicted of a sexually violent offense." S.C. Code Ann. § 44-48-30(1)(a). Corley was convicted in March 1993 of assault and battery of a high and aggravated nature (ABHAN) and sentenced to ten years. In re Corley, 353 S.C. at 204, 577 S.E.2d at 452. Then, in August 1993, he pled guilty to criminal sexual conduct (CSC) in the second degree and was sentenced to 14 years, concurrent. Id. Corley argued that the underlying details of the offenses should not have been admitted due to his willingness to stipulate to the convictions. Id. However, the State used the details surrounding the conviction "to prove that appellant's likelihood to re-offend was based in part upon the fact that his previous offenses were similar to one another." Id. at 207, 577 S.E.2d at 454. The State's expert testified

that the similarity between the two offenses, including the age, race, and gender of the victims, "evinces a pattern of behavior which in turn indicates the person would be at an increased risk to commit future offenses." Id. Notably then, it appears that the ABHAN offense was sexual in nature, distinguishing Corley from the present case. Here, Miller did not dispute the admission of his prior sexual offenses, which included the 1996 and 2010 convictions for indecent liberties with a child and lewd action with a child. Rather, he challenged admission of his **non-sexual** charges and convictions.

In affirming Miller's commitment, the Court of Appeals cited In re Ettel, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008), which affirmed the admission of the appellant's prior murder conviction, finding it relevant "because [the expert] relied on [it] in evaluating Ettel's need for and likelihood of success in treatment as well as his ability to control his behavior in the future." Ettel is distinguishable from the present case in that the state had successfully moved to exclude evidence regarding the likelihood of success in treatment from Miller's SVP trial. See R. 32, ll. 13-24. Further, contrary to the trial judge's statement in this case, there was evidence that Ettel's prior murder conviction was sexually motivated:

> In 1962, Ettel was convicted in Michigan of murdering his girlfriend's mother with a pair of sewing scissors. Dr. Crawford testified the arresting officers told her the mother's shirt was pulled above the mother's head, and Ettel allegedly told the officers he tried to sexually assault the mother before he killed the mother. No incident report was available for Dr. Crawford to substantiate the officers' testimony.

377 S.C. at 560 n.2, 660 S.E.2d at 287 n.2; R. 33, ll. 4-7. Additionally, with respect to the relevance of the murder conviction in Ettel, the Court noted "the crime's **level of violence**" and cited the expert's testimony that "[w]hether or not [the murder] was a sexual crime... it goes to [Ettel's] propensity to commit further **violent crimes**." Id. at 563, 660 S.E.2d at 288 (emphasis

added). Further, the doctor noted that the possible sexual motivation behind the crime "would aid in her diagnosis." Id.

In the present case, there was no testimony that the disputed charges and offenses had any sexual motivation or that they were violent in nature. The state's expert, Dr. Susan Knight, testified that the prior charges and convictions were considered in the evaluation because "[i]t gives me an idea of any other criminal behavior they may have been involved in, the nature of that behavior. It can also go to diagnosis, things like that." R. 35, ll. 2-9. She later cited the charges as part of the basis of her antisocial personality disorder diagnosis of Miller. R. 36, ll. 6-17; R. 88, l. 13 – 89, l. 4; R. 138, l. 5 – 139, l. 5. The non-sexual offenses were also taken into account in the Static-99 assessment, the score from which corresponds to a risk level for reoffending, and which was administered by both experts.[1] R. 47, ll. 8-13; R. 160, ll. 11-17. On cross-examination, Dr. Knight admitted that she did not review any records regarding the failure to register offenses. Thus, she was unaware of any underlying facts related to the infractions. R. 134, l. 16 – 135, l. 9.

The only of the disputed prior charges and convictions that were potentially relevant to the jury's analysis were the three convictions for failure to register as a sex offender. However, even their admission was likely improper under Rule 403, SCRE, in light of the expert's lack of knowledge regarding anything more than their existence. Both S.C. CODE ANN. § 23-3-470 and

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[1] The experts agreed that the risk to reoffend sexually based on the Static-99 test was 12% over the next 5 years and 18% over the next ten years. R. 45, l. 6 – 47, l. 13; R. 156, l. 17 – 162, l. 18; R. 176, l. 8 – 177, l. 16. Obviously troubled by the low statistic, Assistant Attorney General Bogel posed a question to the defense expert, Dr. Kimberly Harrison, regarding whether she would get on her plane to fly back home if she found out it had a twelve percent chance of crashing. R. 177, ll. 9-16. The implication was that *any* risk to reoffend is too high. However, the SVP Act requires a finding that the person is "*likely to engage* in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." S.C. CODE ANN. § 44-48-30.

N.C. GEN. STAT. ANN. § 14-208.11 provide a myriad of possible conduct that can serve as the basis for a failure to register charge. Thus, it cannot be assumed that such a conviction is the result of some nefarious purpose by the accused. While Respondent cited the failure of the assistant attorney general or expert to "dwell" on the offenses, the lack of any testimony regarding the underlying facts left the jury to speculate the worst.

Assuming *arguendo* that the prior non-sexual offenses were relevant to the anti-social personality disorder diagnosis, they should have been excluded because their probative value was substantially outweighed by the danger of unfair prejudice. "Even if admissible under Rule 703[, SCRE] or Rule 705, [SCRE,] . . . the determination of whether an expert may testify to the facts underlying an opinion must include an analysis under Rule 403, SCRE." State v. Slocumb, 336 S.C. 619, 627, 521 S.E.2d 507, 511 (1999); see also United States v. Gillis, 773 F.2d 549, 554 (4th Cir. 1985) ("In determining whether to allow an expert to testify to the facts underlying an opinion, the court must inquire whether, under Fed.R.Evid. 403, the testimony should be excluded because its probative value is substantially outweighed by the danger of unfair prejudice."). Rule 403, SCRE, provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...."

"Probative" means "[t]ending to prove or disprove." State v. Gray, 408 S.C. 601, 6090, 759 S.E.2d 160, 165 (Ct. App. 2014). "'Probative value' is the measure of the importance of that tendency to the outcome of a case." Id. at 610, 759 S.E.2d at 165. "It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." Id. "The more essential the evidence, the greater its probative value." Id. (quoting United States v. Stout, 509 F.3d 796, 804 (6th Cir.2007)). "Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates." Id.

The probative value of the evidence must be balanced against "the danger of unfair prejudice." Rule 403, SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998).

The Rule 403, SCRE, analysis in State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002), and In re Ettel, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008), seem to have led the trial court and the Court of Appeals to an improper analysis of probative value versus unfair prejudice in SVP cases. In Gaster, this Court affirmed the SVP court's admission of a 1998 motion filed by Gaster titled "Motion for Ruling on the Legal Age of Sexual Consent in South Carolina."[2] 349 S.C. at 556, 564 S.E.2d at 93. The Gaster Court ruled that the motion was relevant because Dr. Watts used the motion in evaluating appellant's need for and probability of success in treatment, which were facts relevant to determining appellant's need for commitment. Id. at 557, 564 S.E.2d at 93. With respect to the Rule 403 analysis, the Court ruled:

> [T]he possibility of unfair prejudice did not substantially outweigh the probative value of the motion. As for its probative value, Dr. Watts felt the motion was significant in her evaluation because it indicated appellant's need for and probability of success in treatment. Regarding possible prejudice to appellant, the motion was not the only source Dr. Watts used to evaluate appellant. Dr. Watts used many sources besides the motion to find that appellant suffered from the sexual disorders of sadism and paraphilia. Because the motion was relevant and its probative value outweighed any prejudicial effect on appellant, the trial court properly admitted the motion within its discretion.

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[2] Gaster testified he filed the motion in an attempt to have the proper age of consent in South Carolina clarified, and not because he was intending to pursue minors. State v. Gaster, 349 S.C. 545, 556, 564 S.E.2d 87, 93. In the motion, Gaster stated he did "not want to be arrested or harassed by the police if a woman 14 years of age or older chooses him as a sexual partner." Id. at 557, 564 S.E.2d at 93. Gaster testified he made that statement in an effort to show he had standing to bring the suit. Id.

Id. at 557, 564 S.E.2d at 94 (internal citations omitted). Respectfully, that analysis was flawed, as the fact that there were other sources to substantiate the doctor's opinion made admission of the contested evidence less necessary to the action.

In Ettel, the Court of Appeals panel conducted a similarly misguided Rule 403 analysis regarding the prior murder conviction. 377 S.C. at 563, 660 S.E.3d at 288. Regarding probative value, the Court found that "Dr. Crawford used the information to develop her 'opinion in terms of [Ettel] not being able to control his behavior' and to diagnose Ettel with paraphilia." Id. In discussing prejudiced, the Court again focused on the impact to the doctor's analysis rather than the impact upon the jury. The Court noted that the prior charges and conviction were "not the only sources of Dr. Crawford's diagnosis" and that Dr. Crawford testified that her diagnosis would have stayed the same even without consideration of the disputed evidence. Id.

In both cases the analysis is contradictory, as it finds that the objected to evidence was "significant" to the evaluation for the purposes of determining probative value but notes the use of many other sources of information underlying the diagnoses for the purpose of determining prejudice. In so far as other factors were considered in addition to the objectionable information, such would appear to weigh against admission because its reference was less necessary to explain the related diagnosis. Moreover, the Courts evaluated prejudice from the wrong perspective, failing to look at whether the admission of the evidence tended to suggest to the jury that it render its decision on an improper basis. In this case, reference to Miller's non-sexual offenses presented a substantial danger that the jury would find in favor of commitment based upon a general criminal propensity rather than because it found that the state proved beyond a reasonable doubt that Miller was *likely* to engage in acts of *sexual violence* if he was not confined.

To be clear, Appellant is not suggesting that the non-sexual charges and convictions could not be considered by the evaluators. Rather, he is arguing that the evaluators should not have discussed them during their testimony in front of the jury. Automatic admission of such testimony promotes a serious danger that the State will seek to bolster feeble evidence of a person's risk to reoffend sexually by introducing evidence of the person's prior, non-sexual conduct, as it did in the present case. This Court has emphasized that "[a] civil proceeding to commit an individual, perhaps for life, following service of his criminal sentence, is an extraordinary remedy." In re Taft, 413 S.C. 16, 774 S.E.2d 462 (2015). "Although this Court has repeatedly held the Act constitutional, we decline to construe it in a manner which would lessen the State's burden of proof. The General Assembly has carefully written our SVP Act to lay out exactly what is required to establish that someone is a sexually violent predator; the State must prove, beyond a reasonable doubt that the individual is *presently* a sexually violent predator." Id. (additional emphasis added)).

The Court of Appeals erred in failing to reverse the trial court's flawed application of our case law as automatically permitting admission of a person's entire criminal record, including charges and convictions of both a sexual and non-sexual nature, merely if considered by an expert witness. The trial court was required instead to make a twofold inquiry. First, were the charges and convictions relevant to the determination of whether Miller was a sexually violent predator? Second, was the probative value of the offenses outweighed by the danger of unfair prejudice? See Ettel, 377 S.C. at 563, 660 S.E.2d at 288; Rule 401, SCRE; Rule 403, SCRE. In this case, the SVP trial judge misconstrued the consideration of the information by the expert as the only relevant question and improperly admitted the evidence of the non-sexual charges and convictions. Miller is accordingly entitled to a new trial.

CONCLUSION

Based on the foregoing, Petitioner Calvin Joe Miller respectfully requests that this Court grant certiorari to review the Court of Appeals' decision in this case.

Respectfully Submitted,

Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of June, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Honorable R. Lawton McIntosh, Circuit Court Judge

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2013-CP-23-1543

IN THE MATTER OF THE CARE AND
TREATMENT OF CALVIN JOE MILLER,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Calvin Joe Miller, at Correct Care, 1700 St. Andrews Terrace, Bldg. A, Columbia, SC 29210, this 29th day of June, 2017.

Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 29th day of June, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2017 .