

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2008-CP-23-2449
Appellate Case No. 2013-000533

In The Matter Of The Care And Treatment Of
James A. Miller.....Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
JAMES A. MILLER,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-23-2449

ORDER OF CONTINUED COMMITMENT

CLERK OF COURT
GREENVILLE COUNTY
PAUL B. WICKINS
2013 FEB 20 AM 11:44

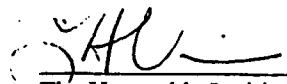
The trial of this case was held in the County of Greenville in the Court of Common Pleas the week of February 19, 2013. A jury of citizens from Greenville County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Lloyd V. Flores, Jr., represented the State. Elizabeth P. Wiygul, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-10 through 44-48-110:

The State has proven beyond a reasonable doubt that Respondent's mental abnormality or personality disorder remain such that he is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

Respondent is to remain committed to the Department of Mental Health for his long-term control, care and treatment.

AND IT IS SO ORDERED.



The Honorable Letitia H. Verdin,
Presiding Judge for the Thirteenth Judicial Circuit
Court of Common Pleas

2/20, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
JAMES A. MILLER,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-23-249

VERDICT FORM

2009 FEB 20 A 1:44
PAUL B. WICKLISSIMEN
CLERK OF COURT
GREENVILLE CO. S.C.

Has the Petitioner, the State of South Carolina proven beyond a reasonable doubt that James A. Miller's mental abnormality or personality disorder remain such that he is not safe to be at large and, if released, likely to commit acts of sexual violence?

We, the jury, unanimously answer the question as follows:

YES, the State of South Carolina has proven beyond a reasonable doubt that James A. Miller's mental abnormality or personality disorder remain such that he is not safe to be at large and, if released, likely to commit acts of sexual violence. Mr. Miller should remain civilly committed to the Sexually Violent Predator Treatment Program.

NO, the State of South Carolina has not proven beyond a reasonable doubt that James A. Miller's mental abnormality or personality disorder remain such that he is not safe to be at large and, if released, likely to commit acts of sexual violence. Mr. Miller should be released from the Sexually Violent Predator Treatment Program.

[Signature], 2013
Greenville, South Carolina

[Signature]
Foreperson

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Case No(s):2008CP2302449
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
James A. Miller,)	
)	
Respondent.)	
)	

February 19, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

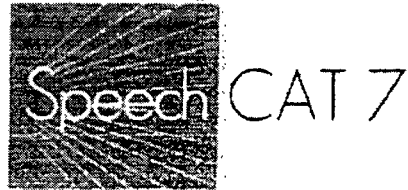
A P P E A R A N C E S:

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Attorney for Respondent

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P R O C E E D I N G S

1
2 (WHEREUPON, the proceedings begin on the 19th day of
3 February, 2013 at approximately 9:41 a.m.)

4 THE COURT: Good morning.

5 MR. FLORES: Good morning.

6 THE COURT: Thank y'all for coming on up
7 here getting this done. I was hoping we could get
8 this done before we went down and looked at the
9 jury. All right. You got a motion here for
10 additional monies to be paid for an expert in the
11 amount of \$1750. It's my understanding from my
12 clerk that that expert will not testify until funds
13 are approved.

14 MS. WIYGUL: Well, Your Honor, he's here.
15 He may just have stepped out to call his office.

16 THE COURT: Sure.

17 MS. WIYGUL: He's driven up from Columbia.

18 THE COURT: Sure.

19 MS. WIYGUL: He's been involved in this case
20 throughout.

21 THE COURT: Okay.

22 MS. WIYGUL: In general, the amount
23 previously requested of \$8000 is plenty to cover.
24 But usually, Dr. Martin only comes up to testify at
25 one hearing. He came up to testify at the probable

1 cause hearing. Due to the delay in this, there
2 were updated medical records or mental health
3 records. He had to review those and prepare for
4 this.

5 **THE COURT:** All right.

6 **MS. WIYGUL:** So there is a \$3600 fee for him
7 coming up and testifying and spending the day up
8 here. Unfortunately, that just leaves us \$1750
9 short.

10 **THE COURT:** I see. The State have any
11 objection to it?

12 **MR. FLORES:** No objection.

13 **THE COURT:** All right. I'm signing the
14 order.

15 **MS. WIYGUL:** Thank you, Your Honor.

16 **THE COURT:** All right. Thank you. Anything
17 else we need to take up before we go down and take
18 a look at the jury?

19 **MS. WIYGUL:** Your Honor, we both provided
20 witness lists. I have no objection to the voir
21 dire that was provided by Mr. Flores.

22 **THE COURT:** All right. Okay.

23 **MS. WIYGUL:** I think that's it.

24 **THE COURT:** All right. Very well then.

25 And, uh, y'all think it's going to take today. You

1 don't think we'll go into tomorrow?

2 **MS. WIYGUL:** I think we'll be out by 3:00,
3 Your Honor.

4 **THE COURT:** Oh, you do? All right.

5 **MS. WIYGUL:** But Mr. Flores disagrees with
6 me.

7 **MR. FLORES:** I have no basis for that
8 disagreement. I -- just out of an abundance of
9 caution.

10 **THE COURT:** Okay.

11 **MR. FLORES:** But I do believe a day. We'll
12 be finished today.

13 **THE COURT:** Okay. All right. Well, very
14 good. We'll plan on getting that done. As soon as
15 the -- I got some matters I need to take care of,
16 so I'm not going to be in roll call. But I'll come
17 as soon as roll call is over. As soon as we finish
18 that, we'll just come right up here and pull a jury
19 panel and start.

20 **MS. WIYGUL:** Okay.

21 **THE COURT:** All right. I'm trying to think
22 if there's anything else to bring up. I got your
23 proposed jury charge, your internet charge and all
24 that. I give kind of a general talk about that.
25 So I'll do that. But your introduction, I

1 understand you all both agree that that's a fine
2 introduction to what this case is. I appreciate
3 that. We were sort of talking this morning on how
4 we're were getting --

5 **MS. WIYGUL:** Yeah, I have no objection to
6 that.

7 **THE COURT:** All right. And, uh, I don't --
8 I didn't look through, Mr. Flores. But do you have
9 a proposed charge for the end of trial when I give
10 the charge on the law?

11 **MR. FLORES:** I believe the charge that I
12 submitted with the introduction and everything else
13 beyond is what I've sent you as the proposed end of
14 trial.

15 **THE COURT:** If it's going to be so short.

16 **MS. WIYGUL:** I scanned through it. With the
17 clerk's permission, I will look through it
18 throughout the day.

19 **THE COURT:** Okay. That sounds good. All
20 right. All right. I'm going to take -- I'm going
21 to look at that a little bit more and see if we
22 can't get together a charge so we'll be ready to go
23 this afternoon. All right?

24 **MS. WIYGUL:** Thank you, Judge.

25 **MR. FLORES:** Thanks, Judge.

1 **THE COURT:** Do you need this -- uh, do you
2 need this order to file or anything?

3 **MS. WIYGUL:** Actually, we don't even file
4 these, Your Honor.

5 **THE COURT:** Oh, okay.

6 **MS. WIYGUL:** Thank you.

7 **THE COURT:** Okay.

8 **(WHEREUPON,** a recess is taken from approximately
9 9:45 a.m. to 10:58 a.m.)

10 **THE COURT:** All right. I need to tell -- I
11 really like your introduction about what kind of
12 case this is and all. I really like it a lot. I'm
13 going to need to tell the jury just the briefest
14 synopsis of what this case is about. I've written a
15 two-line page just to tell them. I'm going to
16 charge them before we start with what we're talking
17 about.

18 But just so they can go -- so we can find out
19 if the folks could be fair and impartial, how about
20 this? This case involves a person who has been
21 civilly committed under the Sexually Violent
22 Predator Act for treatment. This trial is to
23 determine whether Mr. Miller should remain civilly
24 committed. Is that fair enough?

25 **MS. WIYGUL:** Yes, Your Honor.

1 **MR. FLORES:** Yes, Your Honor.

2 **MS. WIYGUL:** May we approach?

3 **THE COURT:** Sure, yeah.

4 **(WHEREUPON,** a bench conference is held off the
5 record.)

6 **THE COURT:** All right. I've asked for -- and
7 you probably heard me tell the clerk that I'd like
8 30 jurors just because I felt like we might have
9 some folks that would respond to some of these --
10 some of these questions, we might have a few more
11 than normal.

12 **(WHEREUPON,** the jury panel enters at approximately
13 11:14 a.m.)

14 **THE COURT:** Good morning again, Ladies and
15 Gentlemen. I spoke with you this morning, of
16 course, just went through with you about being
17 qualified as jurors to serve this week generally in
18 Greenville county. Now, what I need to do is find
19 out if you were qualified to serve on a trial of
20 this particular case.

21 This is a case -- and it is encaptioned In the
22 Matter and the Care and Treatment of James A.
23 Miller. I want to introduce you to some folks who
24 are involved in this case. I'm going to tell you
25 just the barest bones about the case. Then I'm

1 going to have some questions for you about who you
2 may or may not know related to this case.

3 I'm going to ask you some questions about maybe
4 your background that might, uh, -- if you have any
5 particular feelings one way or another about a case
6 like this. Some of this might call from time to
7 time for personal information. For the most part,
8 I'm just going to have you stand, let me know. Most
9 of my questions are if you know a witness or
10 something like that. Stand, give me your name and
11 juror number and tell me what you need to speak with
12 me about.

13 If, however -- and I want to stress this -- if,
14 however, either you don't want to stand up and speak
15 in front of anybody or my question might ask for
16 something of a personal nature that you don't want
17 to discuss in front of anybody, any reason at all,
18 any reason at all, you would like to come up and
19 speak with me, the two attorneys will come up, I'll
20 be here and you can speak with me privately up at
21 the bench and not have to give your information in
22 front of everybody. Okay. If, on the other hand,
23 you don't mind speaking about it, it's fine. You'll
24 just give me your name and juror number. It's a
25 little different procedure than we followed just a

1 few minutes ago.

2 All right. Let me first tell you a little bit
3 about this case. This case involves a person who
4 has been civilly committed under the Sexually
5 Violent Predator Act for treatment. This trial is
6 to determine whether Mr. Miller, the person we are
7 discussing, should remain civilly committed. That's
8 what this case is about and a jury will determine
9 that.

10 Now, I first want to introduce you to the
11 attorney for the state. I'm going to ask him to
12 stand and introduce himself please.

13 **MR. FLORES:** Thank you, Your Honor.

14 **THE COURT:** Thank you.

15 **MR. FLORES:** My name is Lloyd Flores.

16 (Inaudible.)

17 **THE COURT:** Thank you so much. Any member of
18 the jury panel related by blood or marriage or
19 otherwise acquainted with Mr. Flores or do you -- or
20 you are acquainted with someone in the Attorney
21 General's office? If so, please stand.

22 (No response.)

23 And none are standing.

24 Ms. Wiygul, would you stand please and
25 introduce yourself and tell us about your firm and

1 introduce your client?

2 **MS. WIYGUL:** I'm Elizabeth Wiygul. I
3 practice law here in Greenville. This is James
4 Miller. We're here to decide what happens to him.

5 **THE COURT:** Thank you. Any member of the
6 jury panel related by blood or marriage or otherwise
7 acquainted with Ms. Wiygul, Elizabeth Wiygul? If
8 so, please stand. (No response.)

9 And none are standing.

10 Any member of the jury panel related by blood
11 or marriage or otherwise acquainted with in any way
12 James A. Miller? Please stand. (No response.)

13 And none are standing.

14 Any member of the jury panel ever been
15 represented by Ms. Wiygul or been in a case in
16 opposition to Ms. Wiygul? If so, please stand.
17 (No response.)

18 And none are standing.

19 Okay. I've asked you all if you know Mr.
20 Miller. Any member of the jury panel know anything
21 about the sexual offense for which Mr. Miller was
22 convicted some years ago? If so, please stand.
23 (No response.)

24 And none are standing.

25 Would the fact that Mr. Miller has been

1 convicted of a sexual offense and has completed his
2 criminal sentence related to that conviction in any
3 way prevent you from being able to be a fair and
4 impartial juror in the trial of this case? If so,
5 please stand. (No response.)

6 And none are standing.

7 I'm going to ask you that question a few
8 different ways. So if you will, bare with me
9 please. Would the fact that James Miller has been
10 involuntarily civilly committed to the Sexually
11 Violent Predator Treatment Program in any way
12 prevent you from being a fair and impartial juror in
13 the trial of this case? If so, please stand.
14 (No response.)

15 And none are standing.

16 Has any member of the jury panel or member of
17 your immediate family -- and by immediate family, I
18 mean brother, sister, spouse, mother, father,
19 children -- ever been the victim of a sexual
20 assault? If so, please stand. You are certainly
21 welcome to speak with me about it at the bench.

22 Yes, ma'am. I'll tell you what, would you come
23 forward please. Would you like to come forward?

24 Will the attorneys approach please?

25 **(WHEREUPON,** a bench conference is held off the

1 record.)

2 **THE COURT:** Has any member of the jury --
3 well, I'll ask that question again. Anyone else
4 need to respond to that question? Any member of the
5 jury panel or member of your immediate family ever
6 been the victim of a sexual assault? If so, please
7 stand. (No response.)

8 Has any member of the jury panel or a member of
9 your immediate family ever been charged with or
10 convicted of a sexual offense? If so, please stand.
11 (No response.)

12 And none are standing.

13 Does any member of the jury panel have any
14 training or experience in the fields of psychiatry,
15 psychology or the law? If so, please stand.

16 Yes, ma'am. Tell me your name and juror number
17 please.

18 **THE JUROR:** I'm Sarah Wallace. Uh, I'm a
19 dance therapist and an activity therapist. I
20 actually work on the psych unit in Hendersonville.

21 **THE COURT:** Okay. You do? And what is your
22 juror number?

23 **THE JUROR:** I have absolutely no idea.

24 **THE COURT:** It's on your little tag.

25 **THE JUROR:** Oh, okay. 132.

1 **THE COURT:** 132. By the end of this week,
2 you will know 132 so well it will be imprinted in
3 your brain. Let me ask you this. Is the fact that
4 you work in this unit and, in your work that you do
5 as a dance therapist, do you believe --
6 understanding a little bit about the nature of this
7 case, do you believe you would be a fair and could
8 be a fair and impartial juror in the trial of this
9 case?

10 **THE JUROR:** I absolutely do. Thank you.

11 **THE COURT:** All right. All right. Thank you
12 so much. I appreciate your honesty.

13 Yes, sir. Tell me your name and juror number
14 please.

15 **THE JUROR:** My name is Rod Mays.

16 **THE COURT:** Yes, sir.

17 **THE JUROR:** 80.

18 **THE COURT:** Number 80. Yes, sir.

19 **THE JUROR:** I have two graduate degrees in
20 counseling and I actually teach counseling.

21 **THE COURT:** You do teach counseling. All
22 right. You -- you've heard a little bit about the
23 nature of this case. Is there any reason -- do you
24 believe you could be a fair and impartial juror in
25 the trial of this case?

Jury Qualification

1 **THE JUROR:** I do.

2 **THE COURT:** Okay. I thank you so much for
3 letting me know that. Anyone else need to respond
4 to that? Psychiatry, psychology or the law, any
5 training in those areas? All right.

6 Yes, sir. Tell me your name and jury number
7 please.

8 **THE JUROR:** David Helton.

9 **THE COURT:** Yes, sir.

10 **THE JUROR:** Juror number 57.

11 **THE COURT:** Yes, sir.

12 **THE JUROR:** I have training and was working
13 in the Sheriff's Department of Greenville County
14 back in the late '70s and early '80s.

15 **THE COURT:** Okay. Tell me this, sir. The
16 fact that you worked in the Sheriff's Department and
17 have had training in the law, do you believe you
18 could still be a fair and impartial juror in the
19 trial of this particular case?

20 **THE JUROR:** I'd have a lot of trouble with
21 that.

22 **THE COURT:** Okay. Okay. All right. All
23 right. You said your juror number is what?

24 **THE JUROR:** 57.

25 **THE COURT:** 57. All right. Okay. Thank you

1 so much. You can have a seat.

2 All right. Anyone else need to respond to that
3 question whatsoever? (No response.)

4 All right. If you already responded to this
5 question -- this question, we ask it a number of
6 different ways to kind of get to it. If you've
7 already responded to the last question, then you
8 don't need to respond to this next question. Any
9 member of the jury panel currently or formerly
10 worked in the fields of psychiatry, psychology or
11 the law? If so, please stand.

12 Yes, ma'am. Tell me your name and juror number
13 please.

14 **THE JUROR:** Uh, 142, Margaret Winter.

15 **THE COURT:** All right. Yes, ma'am.

16 **THE JUROR:** I used to be a legal secretary
17 for several years. And I worked for a state
18 attorney back home.

19 **THE COURT:** Okay. And when you say a state
20 attorney, by that, do you mean prosecutor?

21 **THE JUROR:** Uh, he was the state attorney for
22 a small county in Illinois.

23 **THE COURT:** Okay. Is he what we might call
24 the district attorney in another --

25 **THE JUROR:** Uh-huh.

1 **THE COURT:** Okay. Tell me this. Do you
2 believe you would be able to be a fair and impartial
3 juror in the trial of this particular case?

4 **THE JUROR:** Yes.

5 **THE COURT:** I thank you so much. Thank you.
6 Any member of the jury panel ever been involved
7 in a case in which the Attorney General was
8 involved? In other words, were you on the other
9 side of the case or ever been involved in any kind
10 of case where the Attorney General was involved? If
11 so, please stand. Involved as a party in.

12 (No response.)

13 None are standing.

14 All right. I'm going to read you a list of
15 witnesses. See if you know any of these witnesses.
16 Some of these folks have common names. Some of
17 these folks do not have common names. If you think
18 you know any of these witnesses, if you would,
19 please stand. Let's talk about it. There's
20 probably not two Letitia Verdins in the world, but
21 there are a lot of Lisa Smiths. I don't think Lisa
22 Smith is on this list. But if you think you know
23 somebody with this name, if you would, just please
24 stand and let's talk about it. All right.

25 Any member of the jury panel related by blood

1 or marriage or otherwise acquainted with Dr. Allyson
2 M. Sipes, Sipes, S-I-P-E-S, Dr. Allyson M. Sipes,
3 Thomas E. Martin, M.D., Tonya Miller, Cory Miller or
4 Don Thompson: Is that correct?

5 **MS. WIYGUL:** Doris.

6 **THE COURT:** It would help if I put my glasses
7 on, wouldn't it? It's not Don Thompson. It's Doris
8 Thompson. Doris Thompson. Any member of the jury
9 panel related by blood or marriage or otherwise
10 acquainted with in any way any of these witnesses
11 that I just read to you. And I don't mind rereading
12 the list if I need to. Anyone need to respond?

13 (No response.)

14 And none are standing.

15 All right. Has any member of the jury panel
16 been involved in a prison ministry, prison outreach
17 program or any other program involving contact with
18 incarcerated persons? If so, please stand.

19 Yes, ma'am.

20 **THE JUROR:** Margaret Winter, Juror 142. I
21 was employed back in the state of Illinois working
22 in a medium security prison as a Job Preparedness
23 Coordinator. I taught classes to pre-releasing
24 inmates.

25 **THE COURT:** Oh, okay. All right. Do you

1 believe that based on this work you could be a fair
2 and impartial juror in the trial of this case?

3 **THE JUROR:** I believe so.

4 **THE COURT:** All right. Thank you so much.
5 Yes, ma'am. Tell me your name and juror number
6 please.

7 **THE JUROR:** Amy Hopkins, 61. When I
8 graduated from college, I worked at a halfway house
9 for federal inmates here in town.

10 **THE COURT:** Oh, okay. Do you believe that
11 you would be able to be a fair and impartial juror
12 in the trial of this case?

13 **THE JUROR:** Yes.

14 **THE COURT:** Thank you so much.

15 Anyone else need to respond to that? Been
16 involved in any prison outreach or prison? Okay.
17 (No response.)

18 Has any member of the jury panel or any of your
19 close personal friends or relatives ever been
20 subject to civil commitment proceedings or been
21 voluntarily or involuntarily committed? Again, if
22 anybody wants to talk to me about this at the bench,
23 I'd be happy to. Does any member of the jury panel
24 or any of your close personal friends or relatives
25 ever been subject to civil commitment proceedings or

1 been voluntarily or involuntarily civilly committed?

2 If so, please stand. (No response.)

3 And none are standing.

4 All right. Ladies and Gentlemen, I've
5 introduced you to the attorneys in this case, you've
6 met Mr. Miller involved in this case, I've read a
7 list of witnesses to you, I've told you a little bit
8 about what this case would be about and we've talked
9 a little bit more about the nature of this case.
10 Any juror who believe for any reason that he or she
11 would not be able to be a fair and impartial juror
12 in the trial of this particular case? And if so,
13 please stand. (No response.)

14 Any juror need to respond? (No response.)

15 All right. And no further are standing.

16 And we spoke.

17 Uh, and let me just say, Ladies and Gentlemen,
18 I've asked some questions of a personal nature. If
19 anybody at this point had some hesitation about
20 answering any of those questions or if there's
21 anything you need to call to my attention right now,
22 personal or not, and you'd like to approach the
23 bench to speak with me about it, now would be a good
24 time. Anybody need to discuss with me any of their
25 previous answers, anything like that.

1 Ma'am, you want to -- the two of you -- I'll
2 tell you what. Sir, if you will come on up here and
3 if the attorneys will approach too and then, ma'am,
4 I'll speak with you.

5 (WHEREUPON, bench conferences are held off the
6 record.)

7 **THE COURT:** All right. Anyone else?

8 (No response.)

9 All right, Ladies and Gentlemen. Anyone else
10 need to respond to me, speak to me? We had a couple
11 of folks that just needed some clarification on the
12 question. So if you need that, you can come speak
13 to me. Anybody? Uh, anybody at all that needs to
14 speak to me? (No response.)

15 Okay. No further are standing.

16 Now, we're getting to the point -- this is
17 taking a little while to kind of get through our
18 questions. I will tell you when we start to pick,
19 it goes pretty quick. I'm going to give these
20 attorneys just a quick five-minute break to step
21 outside and look at their lists for just a minute.

22 While they are out -- and I will tell you we
23 will have the record running. All I'm going to do
24 is explain to them the procedure that we'll go
25 through about picking. All right. If y'all want to

1 step outside. There's an attorney outside waiting.
2 He needs me to sign something. If you will, send
3 him in while you're walking out.

4 (WHEREUPON, the attorneys exit the courtroom.)

5 THE COURT: All right, Ladies and Gentlemen.
6 In just a few minutes, these attorneys will come
7 right back in. This is how it's going to go.
8 You've got a juror number assigned to you. You're
9 going to hear the attorneys call out numbers back
10 and forth. Certain jurors they are going to strike.
11 If you hear your number called, it's not you. We've
12 reassigned your numbers. So nobody even knows who's
13 struck and who is not struck, okay. Then we're
14 going to get to our 12 that we will seat. Then
15 we're going to have one alternate.

16 I'll talk to you. If you serve on this jury,
17 I'll talk to you a little bit about it. So 13 of
18 you will be picked. If you are not picked, it may
19 be that you just didn't come up on the list. Okay.
20 Or it could be that you were struck for one reason
21 whatsoever. I don't think anybody will do this.
22 Don't take it personally. All right. Jurors are
23 never struck for anything personal, I assure you.

24 But if you are picked, then you'll hear your
25 name and juror number called. You will be directed

1 to come up here and sit in the jury box and bring
2 all your belongings with you because you won't get a
3 chance to go back and get your -- well, we would
4 give you a chance. But you know what I mean. It's
5 better just to bring it with you. Okay.

6 All that being said, I will tell you that these
7 attorneys -- we have two excellent attorneys trying
8 this case today. These two attorneys told me they
9 believe this case will finish today. So we'll have
10 a short case. It's an important case, but a short
11 case. An important case to all sides, but a short
12 case. All right. Give them just one minute more
13 and I'm going to go tell them they've got to come
14 back in here since we are getting close to the lunch
15 break. (Pause.)

16 All right. You can tell our attorneys we're
17 ready for them. Thank you, sir.

18 If you serve on the jury this week, these folks
19 in the red jackets will become your best friends.
20 They are so great and look out for everybody here,
21 our bailiffs. We're very fortunate in Greenville
22 county.

23 (WHEREUPON, the attorneys enter the courtroom.)

24 THE COURT: I didn't give y'all five minutes,
25 but y'all are ready. All right. Anything we need

1 alternates would come from 23, 24 and 26.

2 **MR. FLORES:** The State would strike number
3 26.

4 **THE CLERK:** State strikes 26.

5 **MS. WIYGUL:** Respondent strikes 24.

6 **THE CLERK:** Respondent strikes 24. Counsel,
7 I will call these back to you. Plaintiff strikes 2,
8 9, 10, 16, 26. Respondent strikes 6, 12, 13, 18 and
9 24.

10 **MR. FLORES:** That's what I have.

11 **MS. WIYGUL:** That's correct for Respondent.

12 **THE CLERK:** Ladies and Gentlemen, when I call
13 your name, please bring your things and have a seat
14 in our jury box. Barry Welborn, John Barnes, Jeremy
15 Green, Sara Wallace, William Fitzpatrick, Kathy
16 Dockins, William Milligan, Michael Howell, Joseph
17 Dockery, Amy Hopkins, Scriven Brunson, Robert Boyd,
18 and our alternate is Steven Lee.

19 **THE COURT:** Any objection to the manner in
20 which the jury was selected from the plaintiff?

21 **MR. FLORES:** None, Your Honor.

22 **THE COURT:** Any from Respondent?

23 **MS. WIYGUL:** No, Your Honor.

24 **THE COURT:** All right. Ladies and Gentlemen
25 who were not selected to serve on this particular

1 case, I ask you now to step back down to the Jury
2 Assembly Room for some further instructions. Thank
3 you so much.

4 **(WHEREUPON, the jury exits at approximately**
5 **11:45 a.m.)**

6 **THE COURT:** All right. Madam Clerk, will
7 you please swear our jury?

8 **THE CLERK:** Ladies and Gentlemen, please
9 stand and raise your right hand for the oath. The
10 proper response will be "I will". You shall well
11 and truly try case number 2008-CP-23-2449, the
12 State of South Carolina versus James A. Miller and
13 a true verdict render according to the law and the
14 evidence so help you God?

15 **(WHEREUPON, each juror responds.)**

16 **THE CLERK:** Thank you. Please be seated.

17 **THE COURT:** Ladies and Gentlemen, what I
18 will say now is meant to serve as an introduction
19 to the trial in this case. These remarks are not a
20 charge on the law. I will instruct you on the law
21 at the end of the trial before you retire to decide
22 the case. We believe that will likely be some time
23 later today. But I do want to explain to you the
24 procedure we'll follow so you can better understand
25 what's going on. Let me move my microphone so I

1 won't do that again.

2 All right. I need to give you some background
3 on this case. The State of South Carolina has
4 brought this case under the Sexually Violent
5 Predator Act of our Code of Laws. Our General
6 Assembly has determined that those persons who are
7 found to be sexually violent predators under the
8 law require involuntary civil commitment in a
9 secure facility for long-term control, care and
10 treatment. Additionally, the General Assembly has
11 determined that a separate involuntary civil
12 commitment process independent of the probate
13 process is necessary for these individuals. The
14 involuntary civil commitment of a sexually violent
15 predator for control, care and treatment is not a
16 criminal proceeding seeking incarceration for
17 purposes of punishment.

18 To be committed, the State, in a prior
19 proceeding, had to prove beyond a reasonable doubt
20 that Mr. Miller had been convicted of at least one
21 sexually violent crime as there listed in the act
22 and that he suffers from a mental abnormality or
23 personality disorder that makes him likely to
24 engage in sexually violent crimes in the future
25 unless he is committed to a secure facility for

1 long-term care, control and treatment.

2 The petitioner, James Miller, was committed
3 under this law on November 2008. He has resided at
4 the Sexually Violent Treatment Program administered
5 by the South Carolina Department of Mental Health
6 since that time. This jury trial is to determine
7 whether Mr. Miller should remain civilly committed
8 at the Sexually Violent Predator Treatment Program.

9 The State bears the burden in this case to
10 prove beyond a reasonable doubt that Mr. Miller's
11 mental abnormality or personality disorder remain
12 such that he is not safe to be at large and that,
13 if released, is likely to be engaged in acts of
14 sexual violence. You will make that decision on
15 the basis of the evidence which you have seen and
16 heard and the law which I am instructing you or I
17 will instruct you at the end of the trial.

18 If the State is able to meet its burden of
19 proof, it is entitled to a finding that Mr. Miller
20 should remain admitted to the Sexually Violent
21 Predator Treatment Program. If the State is unable
22 to meet that burden of proof, the respondent is
23 entitled to a finding that he be released from
24 commitment at the Sexually Violent Predator
25 Treatment program.

1 It's especially important that you perform
2 your duty of determining the facts diligently and
3 conscientiously because, ordinarily, there is no
4 way to correct an erroneous determination of the
5 facts by a jury. When you comply with your oath to
6 impartially determine the facts of this case, you
7 will have fulfilled your duty as jurors and no one
8 will have the right to criticize your' verdict in
9 any way.

10 On the other hand, and with equal emphasis,
11 the same law that makes you the judge of the facts
12 makes me the judge of the law. The law as given by
13 the court is the only law that you may consider.
14 You must accept it and follow it even if you
15 disagree with it. I can't tell you about what the
16 facts are and you don't have the right to disagree
17 with me in this trial about what the law is or
18 should be. Your job is to take the law as I give
19 it to you, apply it to the facts as you find them
20 from the testimony and the witnesses and other
21 evidence presented. After doing that, you will
22 render your verdict.

23 Until I advise you to begin your
24 deliberations, you must not discuss this case with
25 anyone. That includes your fellow jurors. I

1 always like to know why. I always ask why about
2 everything. The reason is this, we want you to
3 have a complete picture of this case from both
4 sides before you make up your mind about any fact.
5 If you begin to discuss it with someone, you may
6 become influenced by what they say, even your
7 fellow jurors. You might become influenced to make
8 a decision on something before it's time to begin
9 deliberating. You must not discuss it with your
10 friends or family members or anyone like that.
11 We'll have a lunch break.

12 We probably -- you probably won't have this
13 case over night. But if you do, you can not
14 discuss it with anyone. If anyone asks you what
15 kind of trial you are on, then you should just say
16 I can't discuss it. You don't want anyone to even
17 make any comment to you about the facts of the
18 case.

19 Now, in this day and age, I have to tell you
20 you can't blog about this case while it's ongoing,
21 you can't put anything on your FaceBook page. You
22 can not tweet about this case. My law clerk
23 assures me she's going to tell me what Twitter is
24 at some point, but I'm not entirely sure. But you
25 can not -- you can not discuss it electronically,

1 so to speak, or digitally or whatever the word is
2 supposed to be used today. You can't discuss it
3 with anybody in anyway until this trial is
4 completely concluded.

5 Do not listen to any media reports, if there
6 are any, about this case. That includes anything
7 that might be in the newspapers or on the radio,
8 anything like that. I do not anticipate there to
9 be whatsoever, but do not read any newspaper
10 articles or anything about it if there were any.

11 All right. In just a moment, the attorney for
12 the plaintiff or petitioner will make what is
13 called an opening statement. He's going to explain
14 to you what he believes the issues in this case to
15 be. Then the attorney for the Respondent, Mr.
16 Miller, is going to make an opening statement and
17 tell you what she believes the issues in the case
18 will be. What they tell you is not evidence. It's
19 merely a contention as to what they believe this
20 case is going to be about.

21 From time to time, you may hear the attorney
22 say they need to approach on a matter of law, they
23 need to speak with me about a matter at the bench
24 or may even ask that you all be excused for a
25 moment. Again, I would like to know why. We are

1 not hiding the ball from you in any way. It's just
2 this, I told you I can't comment on the facts of
3 this case in any way to you. In ruling on a matter
4 of law, I might have to comment on the facts of a
5 case. So that I don't influence you or your
6 decision in any way, if it's something we can take
7 up real quickly at the bench, we'll do it. If it's
8 something we'll need to excuse you for just a
9 moment, then I make you this solemn promise, we
10 will take no more time than we absolutely have to
11 to discuss the matter of law.

12 All right. You have to determine -- talk to
13 you a little bit about witnesses. You'll have to
14 determine the believability of witnesses. You will
15 have to determine which witnesses, if any or all,
16 that you believe. You can believe part of a
17 witness' testimony or none of a witness' testimony
18 or all of a witness' testimony. You can believe
19 one witness over a number of witnesses. You can
20 believe one -- you can believe any witness that you
21 believe deserves credibility.

22 Credibility just means believability. To do
23 that, you determine a witness' believability the
24 same way you do in your daily lives. You look at
25 how they act when they are telling it. You compare

1 it to what other folks are saying or other evidence
2 that's been presented in court. You think about if
3 that person has any bias or interest in any way in
4 the outcome of this case. From that, you decide
5 who you will believe. You can consider anything in
6 the record to determine whether or not you believe
7 a particular witness.

8 All right. Uh, I do ask you to pay close
9 attention throughout the trial. It's not going to
10 be a long trial by any means. But I do ask you to
11 pay close attention.

12 Here's what we're going to do. We've moved
13 along a little quicker than we do sometimes, so I'm
14 going to allow the attorneys to make their opening
15 statements. We will probably be at a good point
16 for lunch. At that point, we'll break, come back
17 and resume the trial in the afternoon. All right.

18 Mr. Fitzpatrick, if you do not mind, I'm going
19 to ask you to serve as foreperson of this jury.
20 That means, when we come back from our break at
21 lunch, this lady that's sitting right beside you,
22 if y'all will just switch seats. But if you will,
23 remain in that seat throughout the balance of the
24 trial.

25 Let me explain to you what your duties as

1 foreperson will be. They are simply this, to sign
2 the -- to write your verdict. When the juror comes
3 up with its unanimous verdict and also to sign and
4 date the verdict form. And it will also be your
5 duty to lead the discussions in the jury room.
6 Your verdict will have to be a unanimous one. So
7 nobody's opinion is any more important than anybody
8 else's opinion. I just need somebody to lead the
9 discussions and I'd ask you to serve in that
10 capacity if you would. Thank you so much, sir.

11 And Mr. Lee, you are our alternate. You will
12 stay with us through the balance of this trial and
13 listen to all the evidence and testimony just as if
14 you were one of the 12 jurors. If I had to remove
15 a juror for some reason or if there were an
16 emergency, you could just step right into their
17 shoes as if you had been one of the 12 jurors all
18 along. If we get to the end of the trial today and
19 your services aren't needed anymore, I'll excuse
20 you before the jury begins to deliberate. I thank
21 you so much for your service.

22 One thing I didn't get to tell everybody --
23 and you could have a seat. Thank you so much.

24 Something I forgot to tell everyone. These
25 attorneys in this case that we've got trying this

1 case, I told you this when they were outside the
2 courtroom, I'm very familiar with both of these
3 attorneys and they are excellent attorneys. We
4 will -- they will no more try to speak to you about
5 this case or influence you in any way outside this
6 courtroom in a billion years. I don't believe
7 anybody else involved in this case will try to do
8 that either.

9 But if someone did approach you and try to
10 speak to you about this case, identify yourself as
11 a juror. If that person does not immediately quit
12 talking to you about the case and walk off, then if
13 you would, let these fine fellows in the red
14 jackets know. They will let me know. And I assure
15 you I will deal with that person in the strongest
16 manner that the law allows me to, which they won't
17 like. I can assure you. So if you would, please
18 pass along if anyone tries to do anything like
19 that. But I have -- I would be so surprised if
20 that happened. But just as a forewarning, if
21 somebody did do it, that's how you handle it. All
22 right.

23 Mr. Flores, you ready to proceed?

24 **MR. FLORES:** Yes, Your Honor.

25 **THE COURT:** All right.

1 **MR. FLORES:** Your Honor, may it please the
2 Court?

3 **THE COURT:** Yes, sir.

4 **MR. FLORES:** Ms. Wiygul. Mr. Miller.

5 Good morning, Ladies and Gentlemen of the
6 jury. I introduced myself before. My name is
7 Lloyd Flores. I'm employed by the Office of the
8 Attorney General. I along with another attorney in
9 the office, Jim Bogle, conduct sexually violent
10 predator cases across the state. We have split up
11 in half. I am responsible for Greenville county.

12 As Your Honor has stated already, this case is
13 about whether or not Mr. Miller should be released
14 from the Sexually Violent Predator Treatment
15 Program. In a commitment proceeding or a
16 proceeding that happened prior to this one, Mr.
17 Miller was found to be a sexually violent predator.
18 Our law defines a sexually violent predator as an
19 individual who has, first, been convicted of a
20 sexually violent offense and, second, suffers from
21 some mental abnormality or personality disorder
22 that makes them more likely to engage in those kind
23 of acts if not committed for long-term control,
24 care and treatment. This happened in November 2008
25 and Mr. Miller has resided at that location since

1 that time.

2 Our legislature passed this particular law
3 about 15 years ago providing for the civil
4 commitment of these individuals. You will hear
5 more about the number of individuals who have been
6 committed, those who have been released. You will
7 learn more about this program, probably more than
8 you thought when you walked in this courthouse
9 today.

10 At that prior proceeding, an individual was
11 appointed by the court to conduct an independent
12 examination, an independent evaluation of a
13 psychiatric nature. At that time, that person gave
14 testimony that Mr. Miller suffers from two
15 conditions of relevance in a sexually violent
16 predator proceeding. One is called paraphilia not
17 otherwise specified and the second is antisocial
18 personality disorder. Those two conditions were
19 what a doctor opined is what would make him commit
20 further acts of sexual violence if he was not
21 confined. So he was committed to that program in
22 Columbia so he could receive treatment for those
23 conditions.

24 The State bears the burden in this case to
25 prove to you beyond a reasonable doubt that those

1 conditions remain such that he's not safe to be at
2 large at this time. If he were released, he would
3 be likely to engage in those acts of sexual
4 violence. You will hear testimony today from a
5 forensic psychologist, Dr. Allyson Sipes who is
6 located here on the second row to your left, uh --
7 to your right. She will testify today concerning
8 an evaluation she performed on Mr. Miller last year
9 and her opinions concerning his progress and
10 treatment and whether or not he should be released
11 from the program at this time. That would be the
12 State's case.

13 Mr. Miller, as you heard, has witnesses for
14 this case as well. Listen to all the evidence in
15 this case. Listen to what his expert may have to
16 say, to whatever witnesses he may call. We believe
17 that at the end of this case, the State will have
18 proven to you that Mr. Miller's mental abnormality
19 and personality disorder remains such that he needs
20 to remain committed to the Sexually Violent
21 Predator Treatment Program and he needs to remain
22 there because at this time, he is still likely to
23 commit acts of sexual violence. Thank you for your
24 attention. Thank you for your time.

25 **THE COURT:** Okay, Mr. Flores.

1 Ms. Wiygul.

2 **MS. WIYGUL:** These are real confusing cases.
3 They are not just confusing for you. They are
4 confusing for the attorneys. They are confusing
5 for the judges. They are confusing for the clerk's
6 office. They are very confusing for the
7 respondents sitting where Mr. Miller is sitting.

8 Everyone has kind of a different view of what
9 the most important thing is. But when you break
10 it down, there's only one question that you, the
11 jury, need to ask today and need to have answered
12 today. Is Mr. Miller safe to be at large?

13 He has convictions on his record for sexually
14 violent offenses. Those are not going to go away.
15 He suffers from a mental abnormality and there's a
16 debate amongst the doctors whether there is a
17 personality disorder or not. But you are going to
18 hear about the treatment and the way these doctors
19 came up with their diagnoses and you are going to
20 hear about the treatment he's received.

21 Keep in mind, Mr. Miller finished his jail
22 sentence for these charges. After entering a
23 guilty plea, he went to prison for a number of
24 years. Not until he had absolutely completed his
25 prison sentence was he sent into this program for

1 treatment. Well, they've been treating him now for
2 four years.

3 Under the statute, Mr. Miller has the right
4 every year to try and get out to say, "I don't want
5 to be here anymore. I want out." He has the right
6 to be evaluated. He has the right to ask the court
7 for an independent evaluator. In 2009, Mr. Miller
8 did not do that. Mr. Miller is a very rare
9 individual. He actually looked inside himself and
10 recognized that he needed help. In 2009, he did
11 not check the box that would have given him a
12 chance to get out. In 2010, he did not ask to be
13 released. He kept working the program.

14 In 2011, he said I been here for three years,
15 I really would like to go on and talk to a doctor.
16 I'd like a chance to get out now. In 2012, they
17 addressed that request. He was evaluated by Dr.
18 Sipes. He got an independent evaluation from Dr.
19 Martin. That is what brought us here today.

20 All of that to say this is not a man who says
21 I'm perfect, I did my time, I need to be let go.
22 This is the man who has been getting up every
23 morning and putting on that uniform or one just
24 like it. He doesn't have the right to wear jeans
25 or whatever he feels like. He can't sleep in PJs.

1 He's held in a cell. He gets out. He goes to
2 group. He talks to the doctors and he does his
3 assignments. He has done everything to come to an
4 understanding within himself as to why he committed
5 the acts he committed and how he can avoid ever
6 doing anything like that again.

7 We're confident that at the end of the day,
8 you're going to recognize what I recognize, that
9 Mr. Miller has done the work. He's put in the
10 effort. He's put in the time and the emotional
11 effort. He is safe to be at large.

12 **THE COURT:** Do you believe your witness to
13 be a lengthy witness? If you do, we'll break.
14 We'll break for lunch.

15 **MR. FLORES:** Yes, Your Honor. I believe it
16 will be a lengthy witness.

17 **THE COURT:** All right. All right then.

18 Ladies and Gentlemen, we have come to a good
19 point for a lunch break. I'm going to ask you,
20 because we moved along so quickly, for you to see
21 your jury deliberation room so you will know where
22 to reassemble when you come back from lunch. If
23 you would, please be back in your jury room about
24 1:25 so we'll begin promptly at 1:30.

25 Please -- I'll sound like a broken record

1 every time we break, but please don't discuss this
2 case with anyone. Thank you again for your
3 service. Have a good lunch.

4 (WHEREUPON, the jury exits at approximately
5 12:07 p.m.)

6 THE COURT: Let's all be back in here about
7 1:25 so we can start at about 1:30.

8 MS. WIYGUL: Thank you, Your Honor.

9 THE COURT: Any matters we need to take up
10 before we break? Anything we need to take up?

11 MS. WIYGUL: If we can approach, Judge.

12 THE COURT: Sure.

13 (WHEREUPON, a lunch recess is taken from
14 approximately 12:08 to 1:34 p.m.)

15 THE COURT: Our fellow with the knee
16 problems, he's very thankful to you all for
17 thinking of him. I spoke to him but only about
18 that, of course. All right. We're ready to bring
19 the jury back in?

20 MR. FLORES: Yes, Your Honor.

21 MS. WIYGUL: Yes, Your Honor.

22 THE COURT: All right then. Yes, sir.

23 (WHEREUPON, the jury enters at approximately
24 1:38 p.m.)

25 THE COURT: All right. Plaintiff ready to

1 proceed?

2 **MR. FLORES:** Yes, Your Honor.

3 **THE COURT:** All right. Yes, sir.

4 **MR. FLORES:** The State would like to call
5 Dr. Allyson Sipes.

6 **THE COURT:** All right. Ma'am, if you would,
7 come forward and be sworn.

8 **DR. ALLYSON SIPES**

9 having first been sworn, testifies as follows:

10 **THE COURT:** Thank you.

11 Yes, sir.

12 **MR. FLORES:** May it please the Court.

13 **THE COURT:** Yes, sir.

14 **DIRECT EXAMINATION**

15 **BY MR. FLORES:**

16 **Q** Good afternoon, Dr. Sipes.

17 **A** Good afternoon.

18 **Q** Would you please just state your name and
19 please spell your last name.

20 **A** Allyson Sipes, S-I-P-E-S.

21 **Q** And Doctor, how are you currently employed?

22 **A** I'm employed with the South Carolina Department
23 of Mental Health as the Clinical Chief Psychologist.

24 **Q** All right. Let's talk about first what kind of
25 professional degrees do you possess.

1 **A** I have a Bachelors Degree in Psychology, a
2 Masters Degree in Psychology and a Doctorate in Clinical
3 Psychology.

4 **Q** Can you briefly describe for the jury what the
5 study of psychology is?

6 **A** Psychology is basically kind of studying and
7 understanding, assessing and treating mental
8 abnormalities, kind of mental illness, mental health
9 issues and diagnoses.

10 **Q** Have you had any specialized training or
11 experience within the field of psychology?

12 **A** Uh, yes. I have. Uh, most recently, probably
13 my work experience. I've been with the department for
14 coming up on two years, uh, working with this population.
15 Before that, I was employed with the Virginia Center for
16 Sexually Violent Predators doing treatment and
17 evaluations and assessments for approximately two years.
18 I also worked for the Washington, D.C. Parole and
19 Probation conducting psychosexual risk assessments for
20 about a year.

21 Then I also -- in Virginia, the Board of
22 Psychology offers a certification for sex offender
23 treatment providers. It requires an additional 2000
24 hours of supervised experience as well as an educational
25 component. And then I also worked in a maximum security

1 forensic facility with general forensic patients and sex
2 offenders.

3 Q Doctor, you used the word "forensic". Have you
4 ever heard of the field of forensic psychology?

5 A Yes.

6 Q Could you describe for the jury what that field
7 is?

8 A Basically, it's applying concepts of psychology
9 to legal issues such as this.

10 Q Could you say what your job title is again?.

11 A Clinical Chief Psychologist.

12 Q Can you describe for the jury what your job
13 responsibilities are and what you do for the department
14 in that capacity?

15 A Sure. As far as supervision, I supervise the
16 other psychologists, as well as our, I want to say about
17 18 therapists. I supervise all of those people. I'm
18 responsible for working with the program as far as
19 treatment, developing, implementing, making changes.
20 Those are my biggest assignments. The other one is also
21 doing things like this, doing evaluations of our
22 residents. I do have a function in treatment and
23 assessment. I also work as a management member for the
24 program.

25 Q Doctor, have you previously been recognized as

1 and testified as an expert witness in the field of
2 forensic psychology in the courts of law of this state?

3 **A** Yes.

4 **Q** And, uh, have you been recognized as an expert
5 in any other areas as it relates to sex offenders?

6 **A** Just in the state of Virginia, I was also
7 recognized as an expert.

8 **MR. FLORES:** Your Honor, at this time, we
9 would move for Dr. Sipes to be recognized as an
10 expert in the field of forensic psychology.

11 **THE COURT:** Any objection?

12 **MS. WIYGUL:** No objection.

13 **THE COURT:** All right. Ladies and Gentlemen,
14 normally a witness can not give opinion testimony.
15 They have to testify as to something they heard or
16 saw or otherwise sensed. There is an exception
17 under the law for an expert witness. An expert
18 witness is someone who through education or
19 experiences become so qualified in an area that they
20 can give their expert opinion. Dr. Sipes will be
21 qualified as an expert in the area of forensic
22 psychology. Her opinion may be used in any way that
23 you see fit.

24 Yes, sir.

25 **MR. FLORES:** Thank you, Your Honor.

1 **BY MR. FLORES:**

2 **Q** Doctor, is Mr. Miller a resident at the
3 Sexually Violent Predator Treatment Program?

4 **A** Yes, he is.

5 **Q** And when was Mr. Miller committed to the
6 program?

7 **A** November 10th of 2008.

8 **Q** Have you evaluated Mr. Miller in connection
9 with these proceedings?

10 **A** Yes, I did.

11 **Q** Could you identify him please.

12 **A** The gentleman in the yellow suit over there.

13 **MR. FLORES:** Your Honor, we would just ask
14 that the record reflect that Dr. Sipes identified
15 Mr. Miller.

16 **THE COURT:** I'm sorry? I apologize.

17 **MR. FLORES:** We would just ask that the
18 record reflect that Dr. Sipes identified Mr. Miller.

19 **THE COURT:** Oh, I'm so sorry. Yes. The
20 record will so reflect. I apologize. Yes, sir.

21 **BY MR. FLORES:**

22 **Q** Doctor, before we discussed your report and the
23 opinions you reached in this case, when Mr. Miller was
24 committed to the Sexually Violent Predator Treatment
25 Program back in 2008, when he arrived at that program,

1 did he undergo a psychological evaluation prior to his
2 commitment?

3 **A** Yes.

4 **Q** And what was the purpose of that evaluation?

5 **A** To determine if he met the criterias for
6 commitment as a sexually violent predator which was
7 discussed earlier. At least one sexually violent offense
8 and a mental abnormality or personality disorder that
9 made him more likely to commit offenses if he was not
10 committed for treatment, care and confinement.

11 **Q** Was that evaluation part of the information you
12 reviewed in preparing your report for today's hearing?

13 **A** Yes, I did review that.

14 **Q** Is -- that prior evaluation, is that the type
15 of information that other experts used in your field when
16 reaching their opinions in this matter?

17 **A** It's one piece of information, yes.

18 **Q** Based on your review of that evaluation, what
19 was Mr. Miller diagnosed with at that time?

20 **A** Paraphilia not other otherwise specified, --
21 I'll just make sure I get it -- antisocial personality
22 disorder, exhibitionism and alcohol dependence.

23 **Q** And for what is he being treated for at the
24 program?

25 **A** Currently, he's receiving treatment for, uh,

1 behaviors related to his sex offender. Similar, uh, the
2 diagnosis would again be paraphilia not otherwise
3 specified, antisocial personality disorder, uh, and
4 exhibitionism. It's not necessarily diagnosis you are
5 treating, but the behaviors, the attitudes and the
6 thoughts that brought him in related to that.

7 **Q** Doctor, before we move on, I want to discuss
8 these particular diagnoses in this case. You said
9 treatment is about the behaviors surrounding these
10 diagnoses, I think we need to explore that a little bit
11 further for the jury. Let's take paraphilia not
12 otherwise specified. What is paraphilia not otherwise
13 specified?

14 **A** Paraphilia is intense recurrent sexual urges,
15 thoughts or fantasies that the individual experiences and
16 they act on for a period over at least six months. In
17 this case, the "not otherwise specified" piece, which may
18 sound a little confusing basically means it doesn't fit,
19 uh, neatly into the categories of the other diagnoses.

20 We have the Diagnostic Statistics Manual, which
21 is the Bible of diagnoses that we use. It's that piece
22 that designs the diagnoses. So he doesn't fit neatly
23 into one of those categories. The paraphilia not
24 otherwise specified for him would define that it relates
25 to non-consenting individuals. So his sexual acting out

1 relates to those people.

2 Q Doctor, the DSM as you've stated it, the
3 Diagnostic Statistics Manual, is that a learned treatise
4 of your field?

5 A Yes.

6 Q It looks like this?

7 A Yes.

8 Q And this book contains what exactly?

9 A , It contains very lengthy definitions,
10 information related to the diagnoses in the field of
11 psychology and psychiatry.

12 Q Is it the only diagnostic manual that you refer
13 to?

14 A The only one I refer to. There are other ones
15 that do exist, but that's the main one in the United
16 States for this field.

17 Q Other psychologists and psychiatrists use this
18 as well?

19 A Correct.

20 Q Why would they use a book such as this with
21 these diagnoses?

22 A Mainly so that we can try and be a little bit
23 on the same page and so that there are defined criteria
24 for diagnoses so we're not just making things up as we go
25 along. We could probably come up with all sorts of names

1 for things. This gives us a common -- a common thread to
2 work with.

3 Q How does an individual, a psychologist like
4 yourself diagnose someone with a mental abnormality like
5 paraphilia?

6 A Uh, a lot of it has to do with looking at the
7 history. It could be looking at the criminal record,
8 which tells you what some of the behaviors may be,
9 looking at legal records, looking at, uh, treatment
10 records, in this case, from our program and also talking
11 with Mr. Miller himself. He's been pretty honest about a
12 lot of things. So he's actually a very good source of
13 information also.

14 Q Is that common in your experience?

15 A Yes. Common information or common to be open
16 and honest?

17 Q Common to be open and honest.

18 A Uh, it depends on the individual. It's not
19 always the case.

20 Q Is it common to rely upon all that information
21 in your experience?

22 A Yes.

23 Q Now, doctor, what are the types of conditions
24 that need to be present to diagnose an individual with
25 paraphilia not otherwise specified?

1 **A** Again, the thoughts, urges, and in this case,
2 the behaviors that were acted upon for a period of over
3 six months involving nonconsenting individuals.

4 **Q** Now, is that condition curable?

5 **A** No. It's considered a chronic condition. It's
6 not curable, but it can be managed with treatment or just
7 individual growth. They can learn to manage some of
8 those symptoms.

9 **Q** And Mr. Miller is undergoing that treatment
10 right now; is that correct?

11 **A** Yes.

12 **Q** Now, Doctor, you also mentioned the diagnosis
13 of exhibitionism.

14 **A** Yes.

15 **Q** Could you explain to the jury what an
16 exhibition is?

17 **A** Sure. Again, it's current intents, thoughts,
18 feelings, urges, behaviors lasting for a period of over
19 six months willing to exposing oneself, uh, genitalia to
20 unsuspecting individuals.

21 **Q** Has Mr. Miller had a problem with that at the
22 program?

23 **A** Uh, actually, he has not had a problem with
24 that in our program. Again, it's a historical diagnosis
25 from -- I believe the behavior was primarily when he was

1 incarcerated in South Carolina Department of Corrections.
2 There were at least, I think, three documented incidents
3 over a two-year period where he exposed himself and
4 masturbated to ejaculation in the prison towards female
5 staff.

6 Q Let me ask you about that, Doctor. You
7 mentioned that he's not exhibiting those particular
8 symptoms or conditions at the Sexually Violent Predator
9 Treatment Program. Why do you continue to list
10 exhibitionism as one of his diagnoses?

11 A Again, these are all chronic conditions.
12 Although acting out on it is not present right now, a lot
13 of times the thoughts and behavior, thoughts and feelings
14 are still there and the urges. So it's still something
15 good for us to be aware of in treatment. Mr. Miller will
16 discuss that with us if he's having any urges or
17 fantasies and might bring that up in treatment so we
18 could address it before we could move to an acting out
19 behavior. He's done well to control those behaviors in
20 our program.

21 Q Would you ever -- when you are referring to
22 historical diagnosis, such as, exhibitionism in this
23 case, would you ever use a modifier such as in remission
24 or in recovery for a condition like that?

25 A Not for the paraphilias. Those specifiers are

1 used in other diagnoses such as substance abuse as far as
2 alcohol dependence, something like that might be used in
3 that case. In the DSM, that is not a specifier listed.

4 Q Why is that?

5 A You have to ask the people that developed it.
6 They have not offered that as an option. Likely because
7 it is a very chronic condition. Even though some
8 symptoms may not be there again, it still is something
9 that needs to be kind of in the forefront and something
10 they need to be paying attention to because those
11 thoughts are always there.

12 Q Okay. Now, Doctor, the third diagnosis you
13 mentioned was antisocial personality disorder.

14 A Yes.

15 Q Could you discuss what antisocial personality
16 disorder is for the jury.

17 A Just briefly, it's diagnosed in adults. It's
18 -- antisocial, in particular, is a long-standing, uh,
19 character logical disorder involving adaptive thoughts
20 and behaviors related to a sense of entitlement,
21 disrespecting the rights of others. Lots of times,
22 there's issues with authority. There could be legal
23 issues. There could be relationship issues. There could
24 be violence. In Mr. Miller's case -- there also has to
25 be a history in early adolescence.

1 In Mr. Miller's case, he has a history dating
2 back to, I think, 1994, '96. When he was a juvenile, he
3 was adjudicated for Burglary, I believe, as well as
4 Assault and Battery of a High and Aggravated Nature. So
5 he had a childhood history which likely would have meant
6 a conduct disorder, which is one of the specifiers for
7 antisocial personality disorder. His behaviors obviously
8 continued into adulthood with the sexual offenses. There
9 may have been some other legal charges. So that's one
10 piece. He had some relationship difficulties as well as
11 a lot of manipulative behavior.

12 **Q** Now, is that -- is that a condition that can be
13 cured?

14 **A** Personality disorders are probably among the
15 most chronic and difficult to treat. They are very
16 persistent and considered to be lifelong.

17 **Q** Are they conditions that can be managed?

18 **A** Depending on the individual. I would say it's
19 difficult, but they can learn to kind of understand their
20 behaviors a little more and keep things under control
21 with treatment. Also with age, sometimes will grow out
22 of some of these behaviors. But Mr. Miller is still
23 fairly young as far as age.

24 **Q** Doctor, based on your evaluation of Mr. Miller,
25 did you reach an independent diagnosis of Mr. Miller?

1 **A** Yes.

2 **Q** To a reasonable degree of psychological
3 certainty, from what mental abnormality or personality
4 disorder does Mr. Miller suffer from?

5 **A** Paraphilia not otherwise specified,
6 exhibitionism and antisocial personality disorder.

7 **Q** So these are the same conditions he was
8 diagnosed with when he entered the program in 2008?

9 **A** Correct. I didn't include any substantive use
10 diagnoses because just with the minimal data that I had
11 from when we talked, it didn't seem to quite meet the
12 criteria. It could be diagnosed from history, but I
13 didn't want to stack that on since I didn't have enough
14 information.

15 **Q** Doctor, you testified that paraphilia not
16 otherwise specified and antisocial personality disorder
17 are both somewhat treatable conditions?

18 **A** Uh, manageable.

19 **Q** Manageable. We'll use manageable for this.
20 What is the typical course of management of these
21 conditions? When you go -- Mr. Miller is at the
22 Treatment Program, he's going through his treatment, what
23 is he being treated -- how is he being treated to manage
24 these conditions?

25 **A** Generally, it would be the same for Mr. Miller

1 or other residents as they come in. First of all, we
2 need to get to know them to figure out what some of their
3 individual treatment issues will be. But generally, all
4 the residents come in. They go to, uh, a prep group
5 which kind of explains some of the basic concepts of sex
6 offender treatment. Gets them kind of familiar to being
7 a group member.

8 For those people that haven't had that
9 experience before, it's very strange to sit in a therapy
10 room with eight other guys and talk about your history
11 very personally. We assign that group to kind of break
12 them in a little bit, to get a little bit more
13 comfortable with it. From there, it's usually anywhere
14 from an eight-to-twelve or fifteen-week kind of a group.

15 From there, they are then assigned to a process
16 group which is what some people just call kind of talk
17 therapy. It can include educational components, but
18 that's where they do the majority of their work under sex
19 offender years. That group meets once a week for about
20 two and a half hours. Mr. Miller has been an active
21 participant in that since he been there.

22 Then we also added some psycho-educational
23 groups, which are more targeted for specific needs. In
24 Mr. Miller's case, I believe he's done the, uh, cognitive
25 distortion group. So I'm kind of looking at how to

1 change those aspects. I'm not sure -- I think he may
2 have done a substance abuse group as well, but I'm not
3 quite sure. That's the main component of his treatment.
4 It may sound kind of like, well, that's not very much
5 treatment. It's only a couple of hours a week.

6 The point of doing that amount of treatment is
7 that in the time away from group, you are supposed to be
8 kind of studying, learning, reflecting, doing homework
9 assignments and also learning to apply those skills in
10 the daily environment. So we try to document behavior so
11 that they have a time that they can demonstrate that they
12 have changed. It's difficult because they are not in the
13 community so they don't really have the ability to say,
14 look, I've changed, I'm back in the community, I'm doing
15 really well. But their time to do that is when they
16 participate in activity therapy, if they have a job in
17 the work/pay program and then in their day-to-day
18 relationships with their peers and other staff members.

19 Q It's your understanding from reviewing all the
20 records in your interview of Mr. Miller that he's
21 actually undergoing this treatment process to manage his
22 condition, is that --

23 A Yes, he is.

24 Q Does the program put time limits or set dates
25 for completion of goals for individuals who have been

1 committed for long-term control, care and treatment?

2 **A** As far as goals, on treatment plans, we may
3 have a target date for a goal. You may say present this
4 assignment or work on this aspect of treatment by this
5 amount of time. That can change. If they haven't met
6 that goal, then we just keep addressing that need until
7 it's been met.

8 As far as the overall treatment and when
9 someone would be considered completing, uh, I think
10 treatment is lifelong. So it's difficult to say
11 someone's completed treatment. And there's no update, no
12 specific way of saying you're going to be ready by next
13 August. It's determined by the evaluator. The treatment
14 team just kind of focuses on treatment and maintaining
15 that relationship. And then evaluators take a look at do
16 they think that they have met the criteria that they are
17 safe to be at large.

18 **Q** I'm going to ask you a little bit to follow up
19 on that response. You said that, uh, it's the evaluators
20 who make that determination as to whether or not an
21 individual is so changed that they -- whether or not
22 they've changed or would remain since they need to be
23 further committed. Does the treatment team ever become
24 involved in that process of the evaluator and in what
25 capacity?

1 **A** The treatment team is available and most
2 evaluators, including myself, do consult with the
3 treatment team, get as much information as we can about
4 their impressions of how he's doing in treatment, what
5 things have -- what assignments has he presented, what
6 things seem to be going well, what does he need to
7 continue to work on. That's how we involve the treatment
8 team.

9 The reason they are not assigned to make any
10 decision about discharge is because they may not
11 necessarily have the training or the expertise in that
12 particular area. So we try to keep that very separate so
13 that, one, they don't have that pressure, they can really
14 focus on treatment. But do try to involve them. At
15 least myself, I'll just speak for myself. I do consult
16 with the treatment team when I complete these
17 evaluations.

18 **Q** Doctor, are you familiar with the ways in which
19 an individual can be discharged from the Sexually Violent
20 Predator Treatment Program?

21 **A** The ways in which they can be discharged?
22 Typically, for us, it's when -- if the mental health
23 evaluator, such as myself, would recommend that they go
24 through a process, the discharge review board. We set up
25 a discharge plan. And depending on what the Attorney

1 General's Office decides to do, there may be a trial.

2 There may be a second opinion.

3 In this case, if there are differing opinions
4 and we haven't recommended, they may have a second
5 opinion evaluation, an independent evaluation. If
6 there's a differing opinion, we end up in this situation,
7 which is a jury trial, have both sides kind of present
8 the information and let you guys make the decision.

9 Q And so the Department of Mental Health has not
10 recommended his release at this time?

11 A No.

12 Q Doctor, you described for the jury the
13 responsibilities of the treating individuals in the
14 program. And you mentioned that you are involved in the
15 assessment and evaluation of individuals in the program.
16 I want to move on to the assessment portion and what your
17 involvement in this case is. Let me ask you first,
18 because you've been very clear in your testimony that an
19 individual should not both evaluate and treat an
20 individual. Did you do that in this case with Mr.
21 Miller?

22 A It would be ideal that we -- excuse me. It
23 would be ideal that someone in my role doesn't do both.
24 Unfortunately, I'd been the only psychologist for a
25 period of time. Then we added a new one approximately a

1 year ago. So given that there's only two of us and
2 approximately 157 residents, there is a little bit of
3 overlap sometimes.

4 In this case, I have had conversations with Mr.
5 Miller. I'm not sure. I may have seen him in May. I'm
6 not quite sure though. If I did see him, it was general
7 treatment team. And again, sometimes, it happens. It's
8 just not the ideal circumstance. I may have seen him in
9 early May for a treatment team meeting to talk about
10 goals.

11 Q How did you become the evaluator in this case?

12 A That's another one of my roles. I assign who
13 evaluates. Typically, we just kind of go down the list.
14 Whoever is next up on the list is who you get. That's
15 how I was assigned Mr. Miller.

16 Q Okay. Were you paid any additional
17 compensation to conduct your evaluation of Mr. Miller?

18 A No.

19 Q Are you being paid for your testimony here
20 today?

21 A No, just regular part of my job.

22 Q You are a salaried employee for the State of
23 South Carolina?

24 A Correct.

25 Q Could you describe the evaluation process when

1 you are assigned to conduct an annual evaluation for an
2 individual in Mr. Miller's position?

3 **A** Sure. When you get assigned a resident, you
4 obtain the legal chart. Look through that. Any history,
5 you want to get before you meet with the resident. Then
6 meet with the resident and interview him. Talk with him
7 about very specifics, about the offense history, about
8 his personal history.

9 From there, I may go through the medical chart,
10 which is a separate chart. It kind of documents the day-
11 to-day. It may have information about any medications
12 they take, any day-to-day stuff as far as nursing, any
13 behavioral issues. We have what we call behavioral
14 observation notes, which is a way that we can document
15 positive or negative behaviors. Those will be in there,
16 as well as group progress notes. So what are they doing
17 in group, what are they talking about. Those are the big
18 cases.

19 Then I consult with the treatment team, which
20 could be one case manager. It could be two individuals.
21 In this case, I consulted with his primary case manager
22 but also an individual who worked with him in other
23 groups, the individual he worked with in cognitive
24 distortions group.

25 **Q** All this information, is this the type of

1 information that's reasonably relied upon by experts in
2 your field to render opinions in these matters?

3 **A** Yes.

4 **Q** Is there any information that you could not
5 get?

6 **A** I can't think of anything specific off the top
7 of my head. You always want more information. But it
8 was pretty thorough.

9 **Q** Doctor, after you conducted your interview with
10 Mr. Miller and you consulted all the information you just
11 spoken about and after you consulted his treatment team,
12 how do you reach your professional opinion in these
13 matters?

14 **A** I review all the data including the interview
15 with Mr. Miller and come to a decision, consult the DSM,
16 looked at the history. Sometimes consult with colleagues
17 if there's something I'm not sure about just to kind of
18 check myself on the information and I make the diagnosis
19 and come to an opinion. I try to look at research to
20 look at which variables as far as risk factors have been
21 shown to be more helpful in predicting whether someone
22 may re-offend. I try and look at those factors
23 specifically.

24 In these cases, also doing what we call an
25 actuarial measure, which is kind of a checklist of

1 information. It's all historical variables which assigns
2 a score based on historical variables that helps you
3 estimate. It's not completely 100 percent in predicting
4 but gives you an estimate of how likely he is to re-
5 offend in a five-year period or ten-year period. So
6 looking at historical variables but also dynamic factors
7 which are those things that he can change that hopefully
8 he's addressing in treatment.

9 Q Doctor, on how many occasions did you sit down
10 and talk with Mr. Miller in conducting your evaluation?

11 A Uh, I met with him once on March 12th.

12 Q And about how long did you sit down with him?

13 A I think it was maybe about an hour and a half,
14 an hour and 20 minutes approximately.

15 Q Is that typically the length of time you take
16 in conducting your direct interview with an individual?

17 A Uh, it can vary depending on how active and
18 open the resident is. In this case, for someone who is
19 open and very cooperative, that's a good time. He was
20 very open in answering questions.

21 Q Doctor, is it common for experts in your field
22 to rely upon an individual's criminal history to reach an
23 opinion in these cases?

24 A Not a criminal history alone. It's a piece of
25 information that you may use.

1 **Q** Why would it be one of the pieces of
2 information in this?

3 **A** First of all, it's a very well documented
4 history. So it's something you can count on as mostly
5 factual. Again, it's good to verify sometimes those
6 records. You want to make sure everything is right.
7 It's a good source of information. It gives you
8 specifics. Also victim statements, police reports,
9 things that may give more details than you may be able to
10 get from other sources. So it can be a very good source
11 of information. It also goes with the criminal history,
12 especially sex offending history. If you've done it
13 before, you're more likely to do it again. In this case,
14 the criminal history started as a juvenile. Again, not
15 the best.

16 **Q** Did you rely upon this type of criminal history
17 in this case?

18 **A** I did use it as a piece of information.

19 **Q** A piece of information, not the sole piece of
20 information?

21 **A** Correct.

22 **Q** With regard to his criminal history and sexual
23 offenses, was it important for you to learn the facts
24 behind those?

25 **A** Yes.

1 **Q** And why was it important for you to use them?

2 **A** Again, it's also what we ask the residents to
3 do in treatment. Take a look at specifically kind of
4 what happened before you offended, what happened during,
5 what happened after. So it's important for us as
6 evaluators and treatment providers to take a look at
7 that. In the evaluation sense, it's good to look for any
8 patterns, look to see if an individual has addressed the
9 specifics of that crime or the specifics of the crimes.

10 In this case, Mr. Miller has a bit of a violent
11 history in his offenses. The details of that are pretty
12 important. If you know a victim versus a stranger
13 victim, that could be a factor that's important. If you
14 are related to a victim, again, those are factors that
15 could make you more likely to offend in the future. So
16 the details are an important part.

17 **Q** Now, with regard to Mr. Miller's victims and
18 the offenses for which he pled guilty, what were the
19 basic facts behind those?

20 **A** Uh, his, uh, most recent -- again, he had a
21 couple of instances in the prison for exposure. So there
22 were a couple of things. The main charge, as far as for
23 his commitment, I think it was in March of 2004. He pled
24 guilty to Criminal Sexual Conduct in the third degree,
25 which probably means not much. So the specifics may be a

1 little more helpful.

2 He was on probation for previous offenses which
3 I can address after. He reportedly grabbed a 19-year-old
4 woman around her neck. Forced her under the bed. Hit
5 her in the face and side with his fist. Forced her to
6 remove her clothing and then forced vaginal intercourse,
7 so forced sex on her at that point. That was the most
8 recent.

9 He was on probation for two offenses that he
10 pled guilty to two counts of Criminal Sexual Conduct with
11 a Minor in second degree from 1997 when he was about 17.
12 There were two victims about a week apart. One was a
13 six-year-old female that he knew. He attempted to fondle
14 her breasts and her vaginal genital area and struck her.
15 Grabbed her by the hair. Choked her and threatened to
16 hit her with a candlestick. She still was not complying.
17 So he pushed her under the bed and forced vaginal
18 intercourse on her.

19 About a week later, he assaulted his 14-year-
20 old female cousin. Held her down. Placed a pillow over
21 her mouth and forced vaginal intercourse on her. And
22 those are the three victims that are on the record.

23 Q And you said 16-year-old; is that correct?

24 A Uh, 6, uh, -- 16-year-old, 14-year-old and 19-
25 year-old.

1 **Q** And how old generally was Mr. Miller around
2 these times?

3 **A** He was around 17 at the time of the first two.
4 He was approximately 24 for the offenses in 2004.

5 **Q** And how old is Mr. Miller now?

6 **A** I believe he had just had a birthday and turned
7 33.

8 **Q** Prior to Mr. Miller's commitment, have you
9 discovered whether Mr. Miller had attended sex offender
10 treatment?

11 **A** He had not had any treatment, I believe, in the
12 community. When he was incarcerated at one point, he was
13 in treatment. That was when he was having difficulty
14 with exposing himself and was taken out of treatment at
15 that point for that. So he didn't have a chance to
16 complete any sex offender treatment.

17 **Q** Doctor, before we continue, uh, are these --
18 the fact that he has these sex offenses and he's failed
19 the sex offender treatment, is that reason alone to
20 recommend he remain in the program?

21 **A** Not alone. Mr. Miller has even expressed
22 himself that he knows that he's more likely or more at
23 risk for re-offending because he did it after being
24 released from incarceration before. Again, having been
25 sanctioned or having some sort of intervention and then

1 getting out and re-offending again does increase your
2 likelihood to offend again in the future. And Mr. Miller
3 is aware of that.

4 Q But the fact that he has these sexual offenses
5 and failed the treatment, that would be the only reason
6 an individual should remain committed?

7 A Yeah, that's something to consider.

8 Q Okay. Now, you mentioned for the jury
9 something called risk factors.

10 A Yes.

11 Q You used both the words static and dynamic.
12 I'll let you go ahead ---

13 A Sorry.

14 Q --- and get water first.

15 A See how well I can multitask? Sorry.

16 Q We're going to talk about some risk factors,
17 static and dynamic. Static, I believe -- and you may
18 tell me if I'm wrong or if I get it wrong. But static
19 factors, as you were mentioning to the jury, were things
20 that can't be changed or historical in nature.

21 A Correct.

22 Q You described an assessment that you performed
23 in engaging risks based on these static factors. Would
24 you describe these static factors for the jury and what
25 you did to, uh, assess Mr. Miller's risks.

1 **A** The specifics for this measure, I'll give you
2 the ones that we got points for. At his age, at this
3 point, it's a bit of a risk. He's still considered
4 younger. As you get older, some research has shown that
5 the risk declines. Mr. Miller hasn't reached that age
6 yet.

7 He's never lived with an intimate partner for
8 two years. He has some intimacy deficits, relationship
9 deficits that have been shown to increase likelihood. He
10 has a prior nonsexual violent conviction. He has prior
11 sex offenses, more than four prior sentencing dates, uh,
12 an unrelated victim and a stranger victim. Those are the
13 historical factors that place his risk in the high risk
14 category. Again, historical factors only.

15 **Q** Now, this is just one piece of information that
16 we're relying on, correct?

17 **A** That's kind of easy to grab on to. It assigns
18 a number. It assigns a category. But it's important to
19 remember that those are the historical factors. You want
20 to look at those dynamic factors that he can change. You
21 want to balance those two.

22 **Q** Now, with regard to the dynamic risk factors,
23 those things that he can address in treatment to manage,
24 could you describe what types of risk factors you
25 discover that Mr. Miller might have or has.

1 **A** I think Mr. Miller has been addressing his. So
2 I think some that he might have come in with, he has
3 really done a good job addressing. The ones that I still
4 kind of see as problematic, difficulty kind of regulating
5 your emotions which means, for Mr. Miller, particularly
6 anger is a big one. So when you get angry, how do you
7 manage it? What do you do with it? How do you cope with
8 it?

9 I think he acknowledges that that still is a
10 bit of an issue. He's done a good job addressing it. I
11 feel like there's still a little bit more room to work
12 with that, particularly since, uh, there's a lot of anger
13 related to his sex offenses. I think he stated I want
14 what I want and I went and got it. I felt entitled to
15 it. That was a lot related to his lifestyle. He felt
16 very entitled to have that. When he couldn't get it and
17 felt rejected, he would get very angry.

18 The rejection is another piece that I'm not
19 quite sure he's dealt with fully yet. Looking through
20 his assignments and also the conversations that we had,
21 the emotional respectors seem to be the piece that he
22 hadn't quite gotten a better understanding that I think
23 would be necessary to help him cope in real life
24 situations when he gets out. Rejection is one he didn't
25 identify for me in my evaluation. So I think that's a

1 very important one.

2 The intimacy deficits. He doesn't have a very
3 good relationship history. This is a difficult one
4 because he doesn't have a huge opportunity to demonstrate
5 relationships with his group of choice, which is adult
6 females. So he doesn't really have an opportunity to
7 show us can I develop healthy relationships with adult
8 females.

9 However, there has been some concern in his
10 tenor in the program about possible -- I want to be
11 careful with my wording -- maybe inappropriate
12 relationships with some of the female staff. There was
13 no documentation and no behavioral incidents. But there
14 were some notes about maybe spending too much time or too
15 much attention on a female staff member. That's one of
16 the ways that we can look at that.

17 Also in the assignments, I didn't feel that
18 there was enough attention paid to the relationships and
19 intimacy deficits. Not to Mr. Miller's fault. He may
20 just need more time and treatment to do that. He has
21 attempted to do that, but I think he needs to go a little
22 bit further.

23 Also kind of understanding his offenses a
24 little bit more, particularly the emotional aspects of
25 it. I think he still needs a bit more understanding as

1 recently as, I think, October. The end of October of
2 2012, which was after my evaluation and Dr. Martin's
3 evaluation. In one of his groups, he was quoted saying
4 "I need to learn the sex offending behavior so I can only
5 explain it in my own words so I can change things."
6 There was still, I think, a little question on his own
7 part about do I have this understanding down. That's the
8 part that I picked up. Those are some of the main ones
9 that concerned me.

10 Also the fact that what information I received
11 versus what I read in Dr. Martin's report, also what was
12 said in group, a lot of those a little bit inconsistent.
13 I'm not sure about the reason for that. It could be
14 being nervous, being uncomfortable. It could be not
15 being genuine. It could be not understanding. But for
16 me, that's a little bit of a concern. I think there
17 needs to be a little bit more treatment to get that
18 understanding kind of consistent.

19 When there is consistent report across
20 situations, that shows a lot more that the individual is
21 really understanding it, not just being able to talk it
22 but talk the talk and walk the walk. It's the walk the
23 walk part that still isn't quite there.

24 Also, his coping skills. When we met, it was
25 very limited what he described. I think he described

1 that his main coping skill was going to be willpower,
2 which is an excellent support, uh, but it can't be
3 everything. As we all know, willpower can't get you
4 everywhere. If you tried to diet or tried to stop a bad
5 habit of smoking, willpower is a really good thing, but
6 you need other things to support you with that. I think
7 he described, uh, -- let's see, more of willpower. He
8 felt he could overcome his distorted thoughts with the
9 willpower. He felt being responsible for himself and his
10 daughter would be something to kind of keep him on the
11 right track. He would reference his anger management
12 book which is something he probably did in group to help
13 manage his impulses and lash out and ask for help if
14 needed.

15 Again, this is a really good start. It's not
16 quite enough for me to say I think he's got the skills to
17 go in the community in a real-life situation and be able
18 to manage those impulses, whether it be anger or, uh,
19 anger that may lead to violence or sexual violence.

20 **Q** Doctor, was there any other information upon
21 which you relied in rendering your opinion regarding Mr.
22 Miller?

23 **A** Uh, let's see here. Just on the legal records,
24 the sexually violent predator records, the SCDC records,
25 uh, forensic psychological assessment, which was the

1 commitment evaluation by that doctor, penile
2 plethysmograph report, which is a PPG. The previous
3 annual reviews, I did take a look at those. His criminal
4 history. Consulting with the treatment team and then
5 again, interview with Mr. Miller.

6 Q Let me ask you this question, Doctor. Based on
7 your review of Mr. Miller's records and the information
8 we've been discussing so far, discuss his progress and
9 addressing risk.

10 A Again, I think it is important to highlight
11 that Mr. Miller -- Mr. Miller has made progress. I think
12 he has shown motivation. He has been a regular --
13 regularly attended his treatment groups. And he's again
14 addressed some of his respectors. I just think he needs
15 a little bit more work.

16 Q Doctor, in your opinion to a reasonable degree
17 of psychological certainty, do you believe Mr. Miller's
18 mental abnormality and personality disorder has so
19 changed that he is safe to be at large?

20 A No, I do not think it's changed.

21 Q Is it your opinion to a reasonable degree of
22 psychological certainty that it remains such that he's
23 not safe to be at large?

24 A Yes.

25 Q Your opinion to a reasonable degree of

1 psychological certainty, do you believe that if Mr.
2 Miller were released at this time, is he likely to engage
3 in acts of sexual violence?

4 **A** Uh, and I can speak to risk. Again, this is
5 kind of applying clinical terms to a legal standard. I
6 can say that I would have concerns.

7 **Q** All right. In your opinion to a reasonable
8 degree of psychological certainty, do you believe Mr.
9 Miller needs continued confinement for treatment?

10 **A** Yes.

11 **Q** Could you explain these opinions for the court
12 and jury?

13 **A** All the things we discussed before. I don't
14 want beat a dead horse for the poor jury.

15 **Q** Try not to.

16 **A** Again, I think it is important to highlight
17 that Mr. Miller is making progress. That absolutely can
18 not be said for all of our residents. He has a job in
19 the program. He regularly attends groups.

20 I think he's become more motivated and more
21 thorough in his assignments recently. I would say
22 probably over the last year. I think he's headed in the
23 right direction. However, I don't think he's quite
24 there. I think there are still some areas he needs to
25 address to be more safe in the community, more prepared

1 to go out and not offend either sexually or just
2 generally in criminal issues.

3 **Q** Doctor, I just want to ask a couple of general
4 questions. Are you aware of how many individuals have
5 been committed to the Sexually Violent Predator Treatment
6 Program?

7 **A** Uh, I think over the history since we've been
8 open in 1998 would be around 300.

9 **Q** And have individuals been released from that
10 program?

11 **A** Yes.

12 **MR. FLORES:** I beg the Court's indulgence.

13 **THE COURT:** Yes, sir.

14 **(WHEREUPON, there is a pause.)**

15 **MR. FLORES:** That's all the questions I have
16 for Dr. Sipes.

17 **THE COURT:** All right.

18 **MR. FLORES:** If you would, answer any
19 questions Ms. Wiygul may have for you.

20 **THE COURT:** Let's take about a five-minute
21 break, Ladies and Gentlemen. Please don't discuss
22 this case in the jury room.

23 **(WHEREUPON, the jury exits at approximately**
24 **2:23 p.m.)**

25 **THE COURT:** Let's be in recess for five

1 minutes.

2 (WHEREUPON, a short recess is taken.)

3 THE COURT: Y'all ready to bring the jury
4 back in? All right.

5 (WHEREUPON, the jury enters at approximately
6 2:37 p.m.)

7 THE COURT: All right. Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. WIYGUL:

10 Q Dr. Sipes, you stated that Mr. Miller did
11 receive treatment for alcohol and drug abuse while in the
12 program; is that correct?

13 A I can double check. I don't have -- let me
14 check. I'm fairly certain that he did in one of our
15 recent psycho-educational groups.

16 Q And you stated that he was open and honest in
17 speaking with you, correct?

18 A In speaking with me, I felt that he was fairly
19 open.

20 Q Okay. At some point in your testimony, you
21 indicated that he was not talking enough or was being
22 guarded and that was one of your concerns. Could you
23 elaborate? What specifically is it that's causing you
24 concern in that area?

25 A That was concern from the treatment team that

1 his participation in group sometimes varied as well as in
2 his assignments. Sometimes he presented as kind of
3 guarded. Afraid to -- or not afraid, but for some reason
4 holding back a little bit. He would -- he generally
5 gives feedback to others, but sometimes has a little bit
6 harder time opening up about himself or sharing personal
7 details about his history. His treatment team expressed
8 that there was a little bit of concern about that, that
9 his participation was not consistent. Also I reviewed --
10 some were rather short and didn't share again or not
11 share as much detail. So that was a bit of a concern.
12 Also the inconsistency of situations and assignments and
13 things. It's not as bad as other cases, but there's
14 still a little bit of inconsistency.

15 Q Now, are you referencing his general group
16 therapy like his cognitive distortions we talked about?

17 A It seemed to be across groups. I did speak
18 with several of the facilitators but also in the group
19 notes. It kind of showed, again, inconsistency in the
20 presentation. He eventually would do the work. But at
21 times, he again was brief or slower to get into the
22 process and expressed in some of the notes sometimes not
23 as open.

24 Q Okay. Now in speaking with Mr. Miller, you are
25 aware of his history from childhood, correct?

1 **A** He made me aware. We did talk about some of
2 his history. I don't know if I knew all of it but he did
3 let me know a fair amount.

4 **Q** Did Mr. Miller have what you would consider a
5 good childhood, healthy?

6 **A** Uh, I don't think so. I think he described
7 neglect, abuse, very inconsistent kind of parenting.

8 **Q** Sexual abuse?

9 **A** Sexual abuse. From what he described there was
10 some sexual abuse within the family. We didn't go too
11 deep into that, but he definitely did express that.

12 **Q** And do you know when this neglect and abuse
13 began, approximately what age?

14 **A** Uh, I don't know. But it sounded from what he
15 described to me fairly young prior to his difficulties
16 with the criminal system. He described that his mother
17 lost custody of him from alcohol use. Lived with the
18 paternal grandmother and his aunt. Felt like a bit of a
19 loner. Some of his siblings were also locked up. Let me
20 see what else. Described some physical abuse. Again,
21 some sexual abuse. I think it was probably fairly early
22 in his childhood. But that's just from what he
23 described.

24 **Q** And in reviewing all his mental health records,
25 did Mr. Miller ever receive treatment for any of this

1 abuse or neglect prior to going into the program?

2 **A** None that I have seen and documented in records
3 and none that he reported.

4 **Q** To the best of your knowledge, did he ever
5 receive grief counseling after finding his father dead?

6 **A** Not to my knowledge, no.

7 **Q** And that occurred between the ages of 6 and 8
8 thereabouts?

9 **A** I'm not sure about the age.

10 **Q** Okay. But you would agree that he never
11 received treatment, never received any kind of
12 counseling?

13 **A** Not to my knowledge from the documents I have.

14 **Q** When he was arrested as a juvenile as you
15 stated at age 14 or 15 that he likely would have met the
16 criteria for some type of personality disorder at that
17 time, correct?

18 **A** Not a personality disorder. I don't diagnose
19 those in individuals in --

20 **Q** I'm sorry. What were you saying that he --

21 **A** Uh, possibly conduct disorder which would have
22 been related to the criminal history, the acting out, the
23 fights that he got into at school. So it was related to
24 kind of behavior, but not a personality disorder.

25 **Q** But mental health did not give him any

1 treatment at that time either?

2 **A** It doesn't appear that they did, no, not to my
3 knowledge.

4 **Q** To the best of your knowledge, he didn't get
5 any counseling while in the Department of Juvenile
6 Justice, correct?

7 **A** Again, not to my knowledge.

8 **Q** And to the best of your knowledge, he didn't
9 receive any counseling in the Department of Corrections,
10 correct, except for the sex offender treatment you
11 addressed?

12 **A** I don't believe he received any.

13 **Q** Uh, the sex offender treatment that Mr. Miller
14 participated in the Department of Corrections, the
15 gentleman that ran that program, isn't it true that he is
16 one of the people providing treatment to Mr. Miller now?

17 **A** We do have a treatment provider who did run
18 that program and provided treatment. I don't know when
19 he worked there. But I would trust it if he were one of
20 the individuals in the program. It's very possible.

21 **Q** And he's one of the main facilitators of Mr.
22 Miller's group; is that correct?

23 **A** Of the cognitive distortions group. He is one
24 of them.

25 **Q** Would you have expected that individual to have

1 noted in his notes about Mr. Miller's participation if he
2 appeared less than open and honest?

3 A It may be a part of his documentation.
4 Everybody documents differently, but yes.

5 Q Would it surprise you or in the records you
6 reviewed, would you agree that out of 14 cognitive
7 distortion sessions, Mr. Miller missed one due to illness
8 other than that, there was one group in which the
9 facilitator indicated that he felt like he may be a
10 little bit guarded?

11 A Again, it may not be his primary, but there are
12 still some times that he appeared to be holding back.
13 That's what the document said.

14 Q Could you answer my question please?

15 A Would you repeat the question?

16 Q One out of 13 sessions he appeared guarded in?

17 A Again, I don't have all the notes in front of
18 me. That's quite possible.

19 Q Okay. Now you stated that one of the things he
20 was diagnosed with was exhibitionism, correct?

21 A Correct.

22 Q But you also stated that part of the program
23 was to give people kind of enough leeway to show that
24 they could control behaviors, correct?

25 A Yes.

1 Q And you testified that Mr. Miller has done well
2 to control those behaviors, correct?

3 A To our knowledge. We have no documentation
4 that he's had issues with exhibitionism in the program.

5 Q Okay. So his willpower seems to be working out
6 pretty well as far as exhibitionism, doesn't it?

7 A Uh, it could be. I mean, I don't know the
8 reasons behind it. It could be willpower, it could be
9 treatment, but he's controlling his impulses at this
10 time.

11 Q But he is exercising good coping skills in
12 relation to that diagnosis?

13 A Related to that? Yes.

14 Q Okay. Uh, now, you stated that treated is
15 lifelong but sex offender treatment is available without
16 being in this program, correct?

17 A Correct.

18 Q And Mr. Miller actually has five years of
19 probation hanging over his head, correct?

20 A I'm not quite sure.

21 Q Did you review his criminal record?

22 A I did, but the records are sometimes
23 incomplete. I didn't see anything related to probation.
24 But if he has probation, then he has probation.

25 Q Would it surprise you to know that you did not

1 see or speak with Mr. Miller in May, but you did only
2 meet him the once in March?

3 A In March, yes. If I said May, it was an error.
4 March.

5 Q You stated that Mr. Miller had a job in the
6 program.

7 A Correct.

8 Q He's held that job since 2009, isn't that
9 right?

10 A Mr. Miller reported to me -- let me see what he
11 reported. Mr. Miller reported maintaining a job sweeping
12 and mopping since April or May of 2001. He may have been
13 employed prior to that, but that's what he discussed with
14 me.

15 Q 2001, he would have been in the Department of
16 Corrections.

17 A 2011, I'm sorry.

18 Q And you -- so you did not check his record to
19 see what job he held prior to the mopping and sweeping?

20 A No, there's not necessarily consistent records
21 around that. He's held employment and he's done well
22 with his employment.

23 Q Okay. So he has -- he's paid by the program?

24 A Uh, I -- again, that's not my department. I
25 don't know how he gets paid. I know he receives payment

1 for working. There's an inside work/pay program that we
2 provide so that they can build a history of work to show
3 that they are doing well.

4 Q Okay. And he's doing well in that job?

5 A Yes. And I believe his treatment, the most
6 recent treatment plan that we did for him did indicate
7 that he continues to do well with his work.

8 Q One of the things that you mentioned that you
9 had concerns about were his intimacy deficits and the
10 fact that he needed to learn how to develop normal
11 healthy relationships with adult females; is that
12 correct?

13 A I don't know that I said needs to learn to
14 develop normal healthy relationships. Just addressing
15 some of that more in treatment, yes.

16 Q I'm sorry. Please feel free to clarify.

17 A Again, like I said, it's difficult to have an
18 opportunity to demonstrate that in the program. There's
19 limited interactions with other than female staff.
20 That's about the only time you have to demonstrate an
21 appropriate relationship between staff and him. But he
22 does have a very extensive history of poor interactions,
23 very negative views of women and negative views of
24 relationships. So addressing a bit more, which I think
25 he's been doing in the cognitive distortions group about

1 his views of women, those thoughts about women and what
2 to look for more in healthy relationships, how to develop
3 healthy relationships. Again, you may not be able to
4 demonstrate it, but how to do that.

5 Q Okay. And you stated that female staff are
6 employed within the program, correct?

7 A Yes.

8 Q And you made some type of allegation. I'm not
9 really sure if it was an allegation or if you were -- I'd
10 like you to clarify what you said. You made some type of
11 allegation about Mr. Miller having an inappropriate
12 relationship with one of the staff members.

13 A Inappropriate interactions.

14 Q Inappropriate interaction.

15 A There's been some concern, I believe, in the
16 previous annual review and there was a recent note in the
17 medical chart again. It's somewhat vague. So kind of --

18 Q What --

19 THE COURT: If you will allow her to finish
20 the answer to her question.

21 THE WITNESS: The note indicated that he and
22 a peer were in a common area, the common area where
23 everybody socializes. He and a peer were observed,
24 uh, kind of whispering and following a staff member
25 in and out to the recreational yard and back and

1 forth. That's what was documented. It was a
2 concern. Again, nothing more beyond that was added.
3 It's similar to a concern that was described in the
4 annual review by Dr. Harrison.

5 Again, there were some concerns about that type
6 of behavior, kind of paying more attention to that
7 female staff. The interaction may have been
8 slightly inappropriate. It's just something to keep
9 an eye on. It is something of concern. It is the
10 only opportunity they have to interact with adult
11 females.

12 **BY MS. WIYGUL:**

13 **Q** What date did that occur?

14 **A** Uh, I'd have to have the medical chart. I
15 don't have the medical chart in front of me.

16 **Q** Was it this year? Was it last year? Was it in
17 2008?

18 **A** I believe it was in December of 2012.

19 **Q** Okay. But you're not sure.

20 **A** Two months ago. Again, I'd have to have the
21 medical chart in front of me, but it was in recent
22 documentation on his medical chart.

23 **MS. WIYGUL:** Your Honor, may I approach?

24 **THE COURT:** Sure.

25 **BY MS. WIYGUL:**

1 **Q** Doctor, from the behavioral observation notes,
2 would December 2007 or 2012, where a verbal warning was
3 issued and the date of incident was Christmas Day, would
4 that be what you're referencing?

5 **A** No, there was no behavioral observation note
6 from that incident. It was a progress note. They
7 document on behaviors. There was no behavior observation
8 note.

9 **Q** Okay.

10 **A** Which is how the program deals with behavioral
11 issues. You get kind of a referral. There wasn't one
12 written for that.

13 **Q** Doctor, I'm approaching you. Would referencing
14 these medical notes help refresh your memory? I am
15 handing you the medical notes from the end of December of
16 2012 and January of 2013.

17 **A** Uh, yes. It has December 23rd, 2012.

18 **Q** And would it be the program's policy not to
19 document inappropriate interactions between female staff
20 and residents?

21 **A** If there are concerns, the staff members write
22 behavioral observation notes. It's not consistent. Some
23 of the staff choose not to. In this case, they either
24 did not write one or felt that it didn't meet the
25 threshold prong. I can't speak for the person that wrote

1 it.

2 Q So whatever happened, it wasn't serious enough
3 for anybody to document it except in a scribbled
4 handwritten note.

5 A Actually, it's very clearly written. Again, I
6 said that it was a concern document in a progress note.

7 Q Okay. Doctor, you stated that Mr. Miller's
8 mental abnormality or personality disorder has not
9 changed. Is that correct?

10 A It has not so changed as written in the
11 language of the law to -- for me to feel comfortable
12 saying that he has so changed for him to be safe in the
13 community without confinement and not commit a sex
14 offense.

15 Q But you did feel it's changed; is that
16 correct?

17 A I feel he's making progress and understanding
18 and moving in that direction where he's learning to
19 manage it, yes. But I do not feel that it meets the
20 threshold for that.

21 Q Okay. Are you aware of a behavioral note from
22 May of last year, May second of last year?

23 A Is that related to fighting?

24 Q It is.

25 A Yes.

1 **Q** And that behavioral observation note, isn't it
2 true that staff members documented the fact that Mr.
3 Miller did an excellent job in handling an aggressive
4 situation and actually broke up a fight between other
5 residents?

6 **A** Again, I don't have the documents in front of
7 me. But from reviewing the medical chart earlier, I do
8 recall a positive BON, which is a positive behavior
9 observation note, indicating that he did, uh, intervene
10 and placed himself potentially at harm by separating that
11 fight. It was again a positive behavior for him.

12 **Q** And during the whole time he's been in the
13 program, he's not been involved in any physical
14 altercations, correct?

15 **A** Uh, I do not believe so. There's been threats,
16 intimidation and things of that nature.

17 **Q** No. Could you please specify threats and
18 intimidation?

19 **A** All right. It happened shortly after I met
20 with him. It was on April 8th, 2012. He and his
21 roommate got into a verbal altercation in the
22 recreational yard during a sports activity. They yelled
23 and cursed at each other and were separated by staff.
24 Both residents acknowledged the occurrence and were seen
25 by the behavioral management committee. His roommate was

1 moved to another room due to safety concerns that he had
2 made threats to his roommate.

3 Q Would you agree that that behavioral
4 observation note notes that the roommate denied that Mr.
5 Miller made any threats?

6 A Again, I don't have that in front of me. The
7 documentation I saw, I didn't note that. If you have it,
8 I'd be happy to look that up.

9 Q Doctor, if you would take a note, take a look
10 at this behavioral observation note and the accompanying
11 paperwork regarding the incident from April 8th of 2012.

12 A May have some difficulty reading this
13 handwriting. Sorry. This, I believe, says resident
14 allegedly made threatening remarks.

15 Q Could you please look at the part where it says
16 witnesses heard?

17 A Okay. The witness readily acknowledged a
18 verbal altercation. Both residents were name calling and
19 cursed. Denied making threats and denied Mr. Miller made
20 threats.

21 Q So would you agree that the roommate denied
22 that Mr. Miller made any threats?

23 A According to this paperwork, yes.

24 Q And the result of that was a verbal warning and
25 the roommate was moved to a different room; is that

1 correct?

2 **A** Uh, let's see. Uh, yes. Verbal warning and
3 roommate moved to a different room.

4 **Q** Okay. And you also stated that there was -- so
5 would you agree that the threats, the word "threat" may
6 have been on there, but there was no proof that Mr.
7 Miller made any threats?

8 **A** It was overheard by staff so you also have
9 information from staff and also from the residents'
10 perspective. So there's a possibility. And there's two
11 different stories. Oftentimes residents will say they
12 don't do things so they don't have consequences.

13 **Q** Doctor, how long have you been with this
14 program?

15 **A** Since April of 2011.

16 **Q** And what is the model that the program uses in
17 its treatment methods?

18 **A** Currently, we have a cognitive behavioral
19 model.

20 **Q** Uh-huh.

21 **A** It's been adapted from Rockwood which is a
22 model that was used previously. It's a model that
23 involves these assignments that we talked about from the
24 model but we also have supplemented that with additional
25 material. Our residents are in treatment for a very long

1 time for many cases. And we want to make sure that
2 everything is addressed and that they also have
3 additional assignments to do. So we supplemented that to
4 address kind of those individual, uh, individual
5 treatment needs.

6 Q When did y'all stop using the Rockwood model
7 and switch over to this new mixed breed model?

8 A I think it's always been a mixed breed. The
9 Rockwood model has never been used purely in the program.
10 It was not designed for inpatient (inaudible)

11 Q Are you aware of the method that was used for
12 treatment prior to the Rockwood model?

13 A No, I'm not.

14 Q Are you aware that three separate methods of
15 treatment have been offered through the program or used
16 in the program while Mr. Miller's been there?

17 A It doesn't surprise me that things may change.
18 As research -- this is a very new, kind of still a baby
19 as far as science goes. As research comes out, we try to
20 adapt our methods to what research is saying is most
21 affective. So it doesn't surprise me that changes have
22 been made throughout the program.

23 Q I don't have any further questions. Thank you.

24 THE COURT: Any follow up?

25 MR. FLORES: Just a couple follow up.

1 **THE COURT:** Sure.

2 **MR. FLORES:** May I approach the witness?

3 **THE COURT:** Sure.

4 **THE WITNESS:** Thank you.

5 **REDIRECT EXAMINATION**

6 **BY MR. FLORES:**

7 **Q** Just want to make sure it's clear what your
8 opinion is in this matter based upon all of your
9 information. You testified that Mr. Miller has made
10 progress in treatment, correct?

11 **A** Yes.

12 **Q** But your opinion today to a reasonable degree
13 of psychological certainty is what?

14 **A** Uh, that his mental abnormality has not so
15 changed for him to be safe in the community without
16 committing offenses.

17 **Q** And you believe he needs continued confinement;
18 is that correct?

19 **A** Yes.

20 **MR. FLORES:** That's all I have, Your Honor.

21 **THE COURT:** Anything else?

22 **MS. WIYGUL:** I don't have any further
23 questions.

24 **THE COURT:** All right. Ma'am, you can step
25 down.

1 Anything else from the plaintiff?

2 **MR. FLORES:** Nothing else, Your Honor. At
3 this time, we would rest.

4 **THE COURT:** All right.

5 **MS. WIYGUL:** The respondent would call Dr.
6 Thomas Martin.

7 **THE COURT:** All right.

8 **MR. FLORES:** Your Honor, we would ask that
9 Dr. Sipes be released from her subpoena. She's here
10 under subpoena.

11 **THE COURT:** Any objection?

12 **MS. WIYGUL:** No objection.

13 **THE COURT:** All right. Thank you, ma'am, for
14 being here.

15 **MR. FLORES:** Thank you, Your Honor.

16 **THE COURT:** Thank you.

17 **DR. THOMAS MARTIN**

18 having first been sworn, testifies as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. WIYGUL:**

21 **Q** Dr. Martin, how did you become involved with
22 this case?

23 **A** Uh, your office had contacted me, I believe, in
24 the late spring of 2012 and asked me to perform and
25 evaluation in the risk assessment of Mr. Miller.

1 **Q** And do you know how that comes about that you
2 get involved in a case where a doctor from mental health
3 has already evaluated someone?

4 **A** I know it's provided in the statute in South
5 Carolina. I used to be the Chief Psychiatrist at the
6 Sexually Violent Predator Program. In that, alerted that
7 the statute provides independent or outside mental health
8 evaluation in a situation like this, if someone has
9 petitioned to leave the program prior to where the
10 program ends that they think they are ready to go.

11 **Q** Dr. Martin, could you tell us do you get paid
12 any more or less based on what your opinion is?

13 **A** Well, actually I never get paid for my opinion.
14 My opinion is free. I get paid for time out of the
15 office and that's a flat rate. I don't know exactly what
16 it is. My manager does. But that doesn't depend on
17 anything that I say in here.

18 **Q** Okay. Have you been hired on cases like this
19 previously where your opinion was that people needed to
20 stay in the program?

21 **A** Yes, about a third of my practice is the
22 assessment and actual treatment of folks who are in Mr.
23 Miller's situation. I've been hired by other agencies,
24 private attorneys and so forth to evaluate their client.
25 And I will tell you about 30 percent of them, I'd say,

1 look like they have a good progress report by me and 70
2 percent of them I turn down and tell the attorney I can't
3 help you.

4 Q Okay. Doctor, could you go through and just
5 tell us a little bit about your educational background?

6 A Certainly. I've got a Bachelor of Science at
7 the University of Maryland in Psychology in 1979. Then,
8 uh, I got a Masters of Science in Biomedicine in Maryland
9 in 1984. Then I got accepted to the University School of
10 Medicine in Maryland and completed my medical degree in
11 1988. Then I completed a psychiatry residency in San
12 Antonio, Texas in 1992. I practiced for a number of
13 years. Then I came to South Carolina in 1999 because I
14 wanted to further my education in forensic psychiatry. I
15 completed the forensic psychiatry fellowship in 2000.
16 From then, I've been Board certified by the American
17 Board of Psychiatry in Neurology in both general and
18 forensic psychiatry.

19 Q And have you been qualified as an expert
20 previously?

21 A Yes.

22 Q In this state?

23 A In this state and a half a dozen or more
24 others.

25 MS. WIYGUL: At this time, I would ask that

1 Dr. Martin be qualified in the area of forensic
2 psychiatry.

3 **THE COURT:** Any objection to that?

4 **MR. FLORES:** No objection, Your Honor.

5 **THE COURT:** All right. Thank you. Ladies
6 and Gentlemen, I spoke with you earlier about an
7 expert witness. This witness will be qualified to
8 give his opinion in the area of forensic psychiatry.
9 You can use his opinion in any way that you see fit.

10 Yes, ma'am.

11 **BY MS. WIYGUL:**

12 **Q** Doctor, can you, uh, -- Dr. Sipes, the prior
13 witness was qualified as an expert in the field of
14 forensic psychology. Can you give us just kind of a
15 brief what's the difference between psychology and
16 psychiatry?

17 **A** Well, psychiatry -- a psychiatrist is a medical
18 doctor who's had subspecialty training in mental illness
19 and the treatment of mental illness that is both
20 interactive and therapeutic as well as inpatient versus
21 outpatient treatment as well as the use of medications.
22 A psychologist is not a physician. They are -- they do
23 research oftentimes. And they are clinical in a little
24 bit different way. They are not medically-oriented.

25 **Q** Okay. Uh, could a psychologist prescribe

1 medication?

2 **A** No, ma'am.

3 **Q** Okay. But a psychiatrist could?

4 **A** Yes.

5 **Q** Okay.. Uh, can you tell me a little bit about
6 what your -- when you met with Mr. Miller and what the
7 results of that meeting were?

8 **A** Certainly. I met with Mr. Miller. He was
9 brought to my office August 15th of last year. What I
10 typically do, as I did in his case, is that I reviewed
11 his past criminal record and the documents supporting
12 that as well as any treatment he may have had through
13 mental health or other agencies as well as his
14 incarceration records and, in this particular case, also
15 his records at the Sexually Violent Predator Treatment
16 Program. I do that prior to evaluating him.

17 His, like other evaluations that I've had with
18 these folks, has been three hours long. Then I go over my
19 records again. Compare them to what he's presented to me
20 and then I work on formulating an opinion.

21 **Q** Okay. Were you able to reach an opinion in
22 this case?

23 **A** Yes, ma'am.

24 **Q** What is your opinion?

25 **A** First of all, I made a psychiatric diagnosis.

1 My diagnosis in some fashion actually concurs with the
2 diagnoses presented by the Sexually Violent Predator
3 Treatment Program. That is that he, meaning Mr. Miller,
4 has a paraphilia not otherwise specified. I also gave
5 him the diagnosis of substance dependence in his past,
6 which he does not actively have a problem with now, and
7 that I thought based on his history he also had some
8 antisocial personality traits.

9 A little bit different from what I had read in
10 the treatment reports by the predator program is that you
11 must understand the DSM which Mr. Flores was showing you
12 earlier is our guidebook. It is not the -- it doesn't
13 have to be the exact criteria that will help us formulate
14 an opinion. As Dr. Sipes stated and I agree, it is a
15 form of helping us with communication so that we are not
16 all over the map.

17 I believe in Mr. Miller's case that he is in
18 some form of recovery. The term used earlier was
19 managed. In other words, he has a paraphilia, which is a
20 sexual perversion disorder. He also has a history of
21 substance abuse that actually is closely related to his
22 paraphilia. I could not find that he had a personality
23 disorder. Like testified earlier, those are very, very
24 chronic and very difficult to change. I don't see how
25 Mr. Miller could be performing as well as he does in the

1 predator program with a psychopathic or antisocial
2 personality disorder. So I thought that at least in his
3 past, he's had antisocial traits and those have been
4 proved as well or had been managed, if you will.

5 Q Now, Doctor, did you also receive updated
6 medical records from the program current through the end
7 of this past year?

8 A Yes, I did. I also had the privilege of
9 looking at his chart earlier today.

10 Q Did you have any of the concerns that Dr. Sipes
11 voiced as far as the guarded behaviors she referenced and
12 the threatening? Does that mesh with your interpretation
13 of what you read?

14 A Well, no. I do remember a couple of the
15 sightings that she saw in there. I won't dispute the
16 fact that somebody gets upset when you've been
17 incarcerated and you are kind of stir crazy in one
18 environment for a while. What I look for is patterns of
19 behavior. Back in the day, Mr. Miller had horrible
20 patterns of behavior, a dangerous pattern of behavior.
21 That is what I'm comparing to the way he is today. And I
22 didn't see a pattern of these inappropriate behaviors.

23 When I worked the unit, if somebody was really
24 a problem and they were a sexual predator, they'll have
25 sex with anything that doesn't move fast enough even in

1 the program. I don't recognize what Dr. Sipes was saying
2 about the possible allegation, whatever it was called,
3 with the female staff. I do know from talking with Mr.
4 Miller that he is working on his interpersonal
5 relationships. He's formulated a whole lot of social
6 support, and they are sitting right over there, which he
7 did not have early on. He's trying to do the same with a
8 very limited environment.

9 You can't go out on the weekends and work on
10 social skills and then come back. You just can not
11 leave. This is a maximum security facility. I didn't
12 see those concerns.

13 I let Mr. Miller -- and he's one of the few
14 that comes to my office and actually had a very good,
15 organized presentation and understanding of what I use in
16 my treatment programs. I only run outpatient programs.
17 He had a really good grasp of triggers, high risk
18 situations, cognitive distortions or thinking errors
19 which you've heard about earlier of relapse prevention
20 techniques, where he's gone wrong, how he had poor social
21 attitudes. And I seen to the contrary in last year's
22 notes, by some what I would consider very reputable
23 therapists, state that he had very pro-social attitudes
24 and practices now.

25 You heard a couple of the other sightings that

1 I did see where he actually helped in the program and has
2 been helping other individuals in the program as well. I
3 see those as very positive things. Those are not unlike
4 the folks that I treat. I have 50 guys that have Mr.
5 Miller's history or something similar to it on the
6 outpatient side that are doing very well. So that is
7 part of what I look at. I didn't see a pattern of
8 behavior that concern me. If it wasn't documented in
9 there, I don't know how I would know anyway.

10 Q Doctor, we heard about some of the tools that
11 Dr. Sipes used to prepare for evaluation. One of those
12 was the PPG. One of them was the Static-99. Are you
13 familiar with those forms of testing?

14 A Yes, I've actually been trained on those, not
15 only by the people that developed them -- the Static-99
16 was developed in Canada. I did a lot of my training with
17 the folks up in Canada who developed this scale. That's
18 an actuarial scale. That's not unlike what insurance
19 companies use.

20 To give you an example, an actuarial scale is
21 the same type of scale that a car insurance company would
22 use. If you are a 20-year old single male, you would
23 have high automobile insurance premiums. Not because you
24 had a wreck, but because a bunch of guys like you did.
25 So you will fall into that category and pay a higher

1 premium. That's -- those can be helpful in some ways,
2 but they don't necessarily identify this exact man, but
3 they could be incorporated into considering what his risk
4 for re-offending in the general population.

5 The PPG is the penile plethysmograph. I've
6 been trained on that machine. It's not actually used
7 very much anymore and pretty much not often. And that is
8 a physiological measurement where they attached
9 electrodes to a man's genitalia and then show different
10 types of sexual arousal in pictures. Some of them are
11 considered normal. Some of them are considered violent.
12 Others, you can imagine.

13 There's also audio that can go along with it.
14 They measure arousal changes based on a man's changes in
15 his genitalia. At no time do they say that that predicts
16 somebody will do something, but it's just to give an idea
17 to the treatment provider that this person may become
18 aroused when this type of sexual scenario goes on.

19 Q And was a PPG given to Mr. Miller?

20 A Actually, in 2011, Mr. Miller did voluntarily
21 submit to a PPG.

22 Q And is it significant to you that the rate
23 index results of that PPG stated that Mr. Miller received
24 a negative value indicating greater arousal to consenting
25 sexual activity than to coercive sexual activity?

1 **A** Yes, that was the result of that PPG.

2 **Q** Could you explain that result to us?

3 **A** Certainly. In other words, at the time of the
4 PPG, he doesn't have the same type of sex fantasies and
5 sexual arousal to violent sexual coercion or persuasion
6 that he perhaps -- he didn't have one back when he was
7 younger, but perhaps that he did back when he did commit
8 those violent crimes.

9 **Q** Dr. Martin, how important is it to you in
10 understanding Mr. Miller's case that he was sexually
11 abused by an adult female when he was a child?

12 **A** Mr. Miller -- we can spend all afternoon
13 talking about Mr. Miller's development. It was very
14 chaotic. Dr. Sipes did a great introduction to it. It
15 was very neglectful at times. Had difficulties with
16 attachments. Plus, as Ms. Wiygul just stated, there was
17 an issue with him being sexually abused by a normal
18 female. What this case does and what Mr. Miller and I
19 talked about is it can taint one's early perspective on
20 what sexual relationships are and with what the partner
21 may be like or would like in a sexual relationship. I
22 don't believe that is a direct cause, but I do believe
23 that it is a contributing factor on why he perhaps went
24 down the road he did.

25 **Q** Dr. Martin, how important is it that Mr. Miller

1 began using drugs at a very young age, the age of 11 or
2 12 and that he was actively using drugs and alcohol at
3 the time of each of his offenses?

4 **A** Well, there was a number of years I was
5 practicing before coming to South Carolina. I was also
6 the director of a drug and alcohol treatment facility.
7 Drugs and substances, alcohol are used for different
8 things. I believe in Mr. Miller's case, he was self-
9 medicating. Not unusual. He did feel like he was on his
10 own. He felt unloved. He would essentially get a quick
11 fix, if you will. Also he needed to make money. So he
12 used substances to make money. It actually became a
13 little bit of a business for a time too.

14 As any of us know in here or can at least
15 imagine, substances, addictive substances, including
16 alcohol, will potentially interfere with sound judgement,
17 impulse control, sexual and general behavioral
18 regulations. And Mr. Miller had used substances. I
19 believe we talked about three specific horrific crimes at
20 the time he was using those kind of substances, which I
21 believe contributed to his inappropriate and criminal
22 behavior.

23 **Q** Dr. Martin, can you tell us just a little bit
24 about just from your own knowledge of the program and how
25 it works. Two things. How common is it or uncommon is

1 it for someone to spend almost five years in the -- four
2 years in the program without petitioning for release?
3 And then if you can follow that up with just how you've
4 seen Mr. Miller through his records, what changes he's
5 made while he's been in the program?

6 **A** Okay. The first one. I can only really speak
7 to the folks that I've evaluated. I really don't know --
8 there's about 140 to 150 people in there to this date.
9 There was nine when -- I admitted the ninth person and I
10 left when we had 40. 150, I don't know all of them. But
11 I do know that even since leaving the program, if someone
12 petitions -- and they have the right in the statute to
13 petition every year, as long as it's not a frivolous
14 petition, to be released. I've gotten a number of those.
15 I haven't done anything. I'm in denial with my sex
16 offense and I'd like to go. That's a very painful three-
17 hour interview for me because it doesn't look like
18 there's much I'm going to be able to do to help them
19 because they don't know anything about treatment or
20 relapse prevention.

21 I would say in my practice anyway Mr. Miller
22 has waited like three or four years before even
23 considering leaving. And from the way that he spoke
24 about himself early on, including how he failed a
25 treatment program run by one of the best sex offender

1 therapists in the state of South Carolina in SCDC that,
2 how he saw the error of his ways, how he saw women
3 incorrectly, how he saw his behavior as just horrific and
4 he saw how learning better means of developing
5 relationships was important really was a contrast that
6 when he got in there and he was in the treatment program
7 years earlier back in the Department of Corrections, I
8 think that that is very, very important.

9 And the second question, you want to know what
10 were those changes. Some of the other changes are, I
11 never thought that he had an antisocial personality
12 disorder. I do believe he had a horrible childhood and
13 also I tried to acclimate to that childhood and had quite
14 the criminal-like behavior that, I would say, is very
15 antisocial.

16 But if he had a real antisocial personality
17 disorder, I don't know how he could be doing so well for
18 so long. I mean, they can fake it for a little while.
19 This guy's been in there for like four-plus years. It's
20 only gotten better and better and better. That doesn't
21 sound like an antisocial personality disorder. It's very
22 difficult to treat those. I agree. So I have a feeling
23 that that's not what he has. But he does have a history
24 of traits.

25 He's gone through the substance abuse and the

1 anger management program. Completed them successfully.
2 He's done fine with that. He's also, uh, done better on
3 being self-disclosing, acknowledging responsibility for
4 his actions. He said I was lonely when I was a kid. I
5 looked at women wrong. These are all quotes that I got
6 from him. He would present this to me. He always
7 changed his attitude. That, to me, is a big difference
8 than when he was in the treatment program back in the
9 Department of Corrections and when he got in there.
10 Those are significant things that I look for in terms of
11 changes that will allow him to adapt if given the
12 opportunity. Plus he's got a really nice family over
13 there who are willing to take him back. He's got a place
14 to live, a job to go to.

15 I offered him the opportunity if he wants to
16 come see me for treatment, no problem with that. I've
17 got about six people from Greenville and Spartanburg area
18 that come and see me every two weeks or I can help him
19 find somebody up here. I do agree he needs outpatient
20 maintenance treatment because this is an ongoing process
21 that needs to be maintained. I've got about 50 guys
22 right now that are doing very well in the outpatient
23 setting. He could be one of them if he'd like to be.

24 Q Dr. Martin, were you able to speak with Mr.
25 Miller's family at all?

1 **A** Yes, earlier I did.

2 **Q** Do you believe that they have an understanding
3 that he needs follow up treatment when he is released?

4 **A** Yes, and I give them the options.

5 **Q** Uh, are you aware whether Mr. Miller will be
6 under any other type of oversight if he is released from
7 the program?

8 **A** Yes. Mr. Miller will be on five years of
9 probation. A number of my guys are actually on
10 probation, which is kind of helpful. If you don't mind
11 me saying so, this is a very important piece of aftercare
12 treatment that the statute in South Carolina does not
13 provide for. It just so happens in Mr. Miller's case, he
14 still has five years of probation. He answers to a
15 probation officer.

16 I deal with probation officers every day. I
17 deal with them. About a third of my patients are sex
18 offenders. I deal with them and their probation
19 officers. So it wouldn't be an unusual case in this
20 scenario for him to be released and be in an outpatient
21 treatment program so -- ordered by the probation officer.

22 **Q** To the best of your knowledge, will Mr. Miller
23 have to register as a sex offender?

24 **A** Uh, I don't know if there's a court order to
25 that. I think he might already have done that back when

1 he was released before.

2 Q As a sex offender, he would have to register
3 every 90 days for the rest of his life.

4 A That's correct in South Carolina.

5 Q Is that correct?

6 A Yes.

7 Q Dr. Martin, is there anything else that you
8 feel is important for the jury to hear about Mr. Miller?

9 A I do appreciate that it is an investment on
10 your folks' part to have someone who has a history like
11 Mr. Miller's to be released in the community. The
12 program, and I've gotten to know the program a little bit
13 better. There's a number of people I really respect in
14 the program and have done a great job on helping Mr.
15 Miller.

16 I don't do inpatient treatment or residential
17 treatment anymore, my choice. But he looks like someone
18 I typically see that is ready and safe to be on the
19 outside even if he didn't have a probation clause in his
20 release. I already have a plan in place of any of my
21 guys that I would be on the horn to authorities the
22 second that I thought something was not right. But I
23 actually don't have that concern at this time with Mr.
24 Miller. But it is, and I do appreciate the difficulty in
25 your choice.

1 Q Thank you, Doctor. I don't have any further
2 questions. Please answer any questions Mr. Flores has.

3 A Certainly.

4 THE COURT: Mr. Flores.

5 MR. FLORES: Thank you, Your Honor. I just
6 have a few questions for Dr. Martin.

7 **CROSS-EXAMINATION**

8 BY MR. FLORES:

9 Q I just want to make it clear. Your diagnosis
10 of Mr. Miller is that he suffers from paraphilia not
11 otherwise specified. And you've used the recovery
12 modifier as a form to indicate that he's managing the
13 condition; is that correct?

14 A That is correct, yes.

15 Q Would it ever go into remission?

16 A Remission would mean, uh, pretty much free of
17 any symptoms. What we cover treatment, as does the
18 predator program, is that there's always going to be
19 intentional lapses for deviant fantasies. That's a
20 lapse, meaning you think about it but you don't act on it
21 which means it's always going to be there.

22 I do agree with the practice, both
23 psychological and psychiatric, that a paraphilia or
24 sexual perversion disorder is like alcohol dependence.
25 Alcohol dependence doesn't mean you drink for the rest of

1 your life. It could mean that you always have to be
2 careful and perhaps have the right support in place.
3 That's the same for paraphilia. I believe that Mr.
4 Miller has those kind of stops in place.

5 Q Let me ask you this. Ms. Wiygul discussed
6 whether or not you are a -- you are a trained
7 psychiatrist; is that correct?

8 A Yes, sir.

9 Q You earned your medical degree. You've
10 prescribed medication, correct?

11 A That's correct.

12 Q Is a paraphilia a medical condition that could
13 only be diagnosed by a psychiatrist?

14 A Well, that's kind of a trick question because
15 only a medical condition can be diagnosed by a physician.
16 I believe -- and paraphilia, pediphilia, all of those,
17 are psychiatric or medical diagnoses. But psychologists,
18 I believe, that are trained in that field can also make
19 that diagnosis.

20 Q Thank you, Doctor. Just a couple of other
21 things. You did make the statement to the jury that if
22 -- at the sexual predator program that, uh, really,
23 dangerous sexual predators will have sex with anything at
24 the program. Is that true of everyone who is out at the
25 program?

1 **A** No. That's what my observation was during the
2 few years I was there. Those people, I'm very, very
3 concerned about. They definitely need to be in the
4 program. That doesn't mean everybody does that.

5 **Q** Lastly, Doctor, I'll ask you, does Mr. Miller
6 need to continue to go to treatment to be successful in
7 his life?

8 **A** I believe he needs aftercare on an outpatient
9 basis, yes, sir, for the rest of his life. My program is
10 open-ended. It lasts anywhere from 18 months to five
11 years. They don't live at my office or anything, but
12 they come on a regular basis. I don't think I've had
13 anybody longer than five years. It's usually around 18
14 months to two years. Then, if there's something of a
15 concern, we'll extend it. I wouldn't be able to predict
16 that in Mr. Miller's case right now.

17 **MR. FLORES:** Beg the Court's indulgence.

18 **THE COURT:** Yes, sir.

19 **MR. FLORES:** That's all the questions I have
20 for Dr. Martin.

21 **THE COURT:** All right. Any follow up?

22 **REDIRECT EXAMINATION**

23 **BY MS. WIYGUL:**

24 **Q** Dr. Martin, just to clarify, could you please
25 state your opinion to a reasonable degree of psychiatric

1 medical certainty?

2 **A** . Yes. I believe that Mr. Miller's mental
3 abnormality and personality has so changed that he is now
4 very much less likely to re-offend without being
5 incarcerated or confined in a high security treatment.
6 He is now safe to be released.

7 **MS. WIYGUL:** Thank you, Doctor, no further
8 questions.

9 **THE COURT:** Mr. Flores, anything else for
10 this witness?

11 **MR. FLORES:** No, Your Honor.

12 **THE COURT:** Sir, you can step down.

13 **MS. WIYGUL:** Your Honor, I would ask that Dr.
14 Martin be relieved of his --

15 **THE COURT:** Any objection to that?

16 **MR. FLORES:** No, ma'am.

17 **THE COURT:** Thank you for being here.

18 **THE WITNESS:** Thank you.

19 **THE COURT:** All right. Everybody okay? All
20 right.

21 **MS. WIYGUL:** Could we have about a two-minute
22 break, Your Honor? We just need to decide who's
23 going to testify.

24 **THE COURT:** Okay. That will be fine. All
25 right. Well, let's take a short break.

1 And I ask everybody to remain seated until the
2 jury leaves. That's okay. That's alright.
3 (WHEREUPON, the jury exits at approximately
4 3:30 p.m.)

5 **THE COURT:** All right. Let's be in recess
6 for just five minutes.

7 **MR. FLORES:** Thank you, Your Honor.

8 (WHEREUPON, a short recess is taken.)

9 (WHEREUPON, the jury enters at approximately
10 3:42 p.m.)

11 **MS. WIYGUL:** Your Honor, respondent calls
12 James Miller.

13 **THE COURT:** All right. Sir, if you would,
14 come forward and be sworn please.

15 **JAMES MILLER**
16 having first been sworn, testifies as follows:

17 **THE COURT:** Thank you, sir. If you would,
18 have a seat please.

19 **DIRECT EXAMINATION**

20 **BY MS. WIYGUL:**

21 **Q** James, normally, I would ask you to introduce
22 yourself to the jury. But I think the jury has been
23 introduced to you by the prior witnesses. What I'd like
24 you to do is to think back in your life. If you could,
25 please tell the jury what your earliest memory is.

1 **A** Uh, my earliest memory is around five or six
2 years old. I remember staying with my mother, being
3 alone, not having no one near. I remember not having
4 switch clothes to wear. Being abandoned. I felt
5 abandoned by my mother. Never really felt loved.

6 **Q** James, who tucked you in when you were five or
7 six?

8 **A** No one.

9 **Q** Okay. And at some point between the ages of 6
10 and 8, you found your father killed; is that correct?

11 **A** Yes, ma'am.

12 **Q** He was shot to death?

13 **A** Yes, ma'am.

14 **Q** Did anyone ever take you to get grief
15 counseling or any type of counseling after you found your
16 father?

17 **A** No, ma'am.

18 **Q** Did your mother have a problem that caused
19 difficulties for her?

20 **A** Uh, my mother was an alcoholic.

21 **Q** Okay. Uh, after your father passed away, did
22 the Department of Social Services take you away from your
23 mother and send you to live with your grandmother?

24 **A** Uh, yes. The Department of Social Services,
25 uh, they took us away. Me, my two brothers -- my two

1 brothers and my sister. Me and my two brothers, we went
2 to go stay with my grandmother.

3 Q Did any other family members stay with your
4 grandmother, at least intermittently?

5 A I'm not for sure whether my sister stayed there
6 or not.

7 Q I was talking about another adult. Did your
8 aunt stay there?

9 A My aunt stayed there.

10 Q Was this your father's sister?

11 A Yes, ma'am.

12 Q Did she sexually abuse you?

13 A Yes, ma'am. She used to make me, uh, -- well,
14 after my brothers left, it was just me there. So she
15 used to make me do things like place my mouth on her
16 vagina. She used to fondle me.

17 Q At the time, did you realize you were being
18 abused?

19 A No, ma'am. I thought it was just normal.

20 Q When did you realize that you had been
21 victimized?

22 A Uh, as I got older. Roughly around, you know,
23 when I could fully understand what was going on.

24 Q Okay. Uh, at some point, were you removed from
25 your grandmother's and you went to live with your other

1 aunt, Ms. Thompson?

2 A (Nods head.)

3 Q And was that a safe environment?

4 A Yes, ma'am. It was very safe.

5 Q Were you a teenager by then?

6 A I was a teenager. She was, uh, -- my aunt was
7 a nurse.

8 Q Okay. Were you already using drugs by the time
9 you went to live with Ms. Thompson?

10 A Yes, ma'am. I was already on drugs, selling
11 drugs.

12 Q Okay. And then at the age of 17, you were sent
13 to the Department of Corrections, correct?

14 A Yes, ma'am.

15 Q How many years did you stay there?

16 A I stayed there five years.

17 Q Then you were out for a very brief period and
18 then reincarcerated; is that correct?

19 A Yes, ma'am.

20 Q And how many years did you stay that time?

21 A Uh, stayed there six and a half years.

22 Q Now, you entered a guilty plea whenever you
23 went to the Department of Corrections the last time; is
24 that right?

25 A Yes, ma'am.

1 Q And when you stood up in court and admitted
2 what you'd done and told the court you were guilty, did
3 anyone tell you that the State could come back and try to
4 civilly commit you at the end of your prison term?

5 A No, ma'am.

6 Q When did you find out that the State was trying
7 to place you, civilly commit you to the sexually violent
8 predator program?

9 A I found out about a month before my max out
10 date.

11 Q Okay. At the time, were you upset?

12 A Yes, ma'am.

13 Q Now, how do you feel about it?

14 A Now, I feel I needed treatment. I was dealing
15 with a lot of problems that was going on in my life. At
16 the time, you know, I did feel like if I would have got
17 out, I might not would have never caught any more sexual
18 offenses but I could have caught another charge.

19 Q You talking about if you had just been
20 released --

21 A If I would have got released.

22 Q Now, when you are released from the program,
23 how many years would you be on probation?

24 A I'll be on probation for five years.

25 Q How often would you have to register as a sex

1 offender?

2 **A** I would have to register every 90 days.

3 **Q** For how long?

4 **A** For the rest of my life.

5 **Q** Okay. Are you okay with that?

6 **A** Yes, ma'am.

7 **Q** Do you plan to continue on with sex offender
8 treatment after you are out of the program?

9 **A** Yes, ma'am.

10 **Q** Okay. Why?

11 **A** Because it's a, uh, -- it's something that, you
12 know could help me progress more to become a better man.
13 Because I care now. I don't want any more victims.

14 **Q** Okay. We heard Dr. Sipes testify about some
15 concern about some things that you still needed to work
16 on in the program such as empathy with victims and being
17 guarded. Could you tell us a little bit about how you
18 feel about those issues?

19 **A** Uh, empathy with victims, I fully understand.
20 I was a victim at an early age. I do know what I put my
21 victim through. Being that my victim, the trauma I put
22 them through, the hurt, the pain. On the guarded part, I
23 was probably being guarded, you know, sometimes, you
24 know, I always feel like I'm on the spot like when I'm up
25 under -- when I got to see Dr. Sipes, Dr. Harris. So I

1 be guarded at times.

2 Q Okay. Would you say you're trying to hide
3 things?

4 A Uh, no, ma'am. Since I entered the program, I
5 want to be open and honest as much as possible.

6 Q What's the program taught you just kind of in
7 general?

8 A The program taught me to care, to, uh, -- it
9 taught me to develop myself, you know, uh, dealing with
10 empathy. Before I got into the program, I never knew
11 what empathy was. I fully understand empathy. The
12 program also taught me, you know, uh, to take
13 responsibility, which is a big part of me being in the
14 program. When I first went to the program, I was guarded
15 about not taking responsibility and feeling embarrassed.
16 Now, I take full responsibility. I care now for my
17 actions for the people I've harmed.

18 Q Okay. Mr. Miller, if the jury releases you
19 today, do you have somewhere to live?

20 A Yes, ma'am.

21 Q Do you have a plan for outpatient sex offender
22 treatment?

23 A Yes, ma'am.

24 Q Do you have a plan to go find work?

25 A Yes, ma'am.

1 know what it was for. I told them that, uh, I was still
2 having problems sleeping, dealing with the problem of my
3 mother passing and stuff.

4 Q So you took -- did I understand you to say you
5 took a pill?

6 A It's possible it could have been a depression
7 pill.

8 MR. FLORES: Beg the Court's indulgence.

9 (Pause.)

10 That's all I have for Mr. Miller.

11 THE COURT: All right. Anything else?

12 MS. WIYGUL: I have no further questions.

13 THE COURT: All right. Mr. Miller, you can
14 step down.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 Anything else on behalf of the respondent?

18 MS. WIYGUL: Respondent rests.

19 THE COURT: All right. Any reply testimony
20 from the petitioner?

21 MR. FLORES: No reply.

22 THE COURT: All right then. Will the
23 attorneys approach for a moment please.

24 (WHEREUPON, a bench conference is held off the
25 record.)

1 **THE COURT:** Ladies and Gentlemen, the
2 attorneys informed me that they are now ready to
3 make closing arguments to you. My charge on the law
4 will be about 20 minutes. It will take about 20
5 minutes I don't know how long their arguments will
6 be. We do not anticipate them being lengthy. Let
7 me just say if there's anyone who has any concerns
8 at this point about time or anything like that and
9 you'd like to take a break to discuss it with the
10 foreperson, I'll allow you to take a break at this
11 point. Anybody need to take a break?

12 (No response.)

13 All right then. All right. We'll go ahead and
14 proceed.

15 Yes, sir.

16 **MR. FLORES:** Thank you, Your Honor. May it
17 please the Court?

18 **THE COURT:** Yes, sir.

19 **MR. FLORES:** Ms. Wiygul and Mr. Miller.

20 Good afternoon, Ladies and Gentlemen. Before I
21 start my closing, I'd like to thank you again for
22 being here today performing your civil duty on
23 behalf of my employer, the Attorney General, and on
24 behalf of everyone else here. These questions we
25 present to you often are very difficult for us to

1 decide. This case is no doubt similar in that
2 regard when I came to you this morning to describe
3 to you what we hoped you would see in this case,
4 that Mr. Miller needs to remain committed to the
5 civil -- excuse me, to the Sexually Violent Predator
6 Treatment Program to continue his treatment until
7 such time as he may be released to be safe at large.

8 The judge will charge you. If I get anything
9 wrong in my closing argument, please ignore what
10 I've said. I'm not the judge. I'm just the State's
11 lawyer, much like a State's doctor, don't get paid
12 any extra if you come out committing or recommitting
13 Mr. Miller. We don't get any more if you release
14 him. But I'm here today because the State believes,
15 based on Dr. Sipes' report, Mr. Miller is not quite
16 ready to get out. We must prove that to you beyond
17 a reasonable doubt.

18 Now, all credit to Mr. Miller, of the 200-plus
19 individuals who are committed to the Sexually
20 Violent Predator Treatment Program at this time, a
21 good majority of them do not go to treatment. They
22 don't think they have a problem. They don't see
23 that little child that they are attracted to is just
24 a little child or somebody that they should attack
25 or assault. Mr. Miller has made that commitment to

1 treatment. It's an involuntary commitment program.
2 He doesn't have to go to treatment. But then again,
3 he can't get out unless he goes. What we're asking
4 you today is to determine based on what you heard
5 from Dr. Miller -- excuse me -- Mr. Miller, Dr.
6 Sipes and Dr. Martin is whether or not Mr. Miller's
7 mental abnormality or personality disorder, in fact
8 he has both, remain such that he's not safe to be at
9 large and if released is likely to commit acts,
10 likely to engage in acts of sexual violence.

11 Dr. Sipes testified that she considered all
12 these records. You saw me shuffle through these
13 records that Ms. Wiygul was asking her questions.
14 These are all the records Mr. Miller has generated
15 while he's been at the Sexually Violent Predator
16 Treatment Program.

17 He's not been the best of individuals out
18 there. He's had some behavioral observation notes,
19 if you will. Allegations of stalking or
20 inappropriate interactions, things he needs to
21 develop and work on to make his mental abnormality
22 more manageable. At this point, the doctors agree
23 he does have that mental abnormality, paraphilia not
24 otherwise specified. He's acted upon it against
25 nonconsenting individuals. While Dr. Martin says

1 it's in recovery, that's merely just a modifier to
2 say he's managing it more. It will never be in
3 remission.

4 The doctors have testified. They both
5 interviewed. They both sat down. They looked at
6 all the records. Dr. Sipes says I feel you're still
7 guarded, doesn't give all the information you need
8 at this point. I don't feel comfortable
9 recommending his release at this point. I've
10 consulted with the treatment team, looked at the
11 records. I've looked at the literature in our field,
12 the research-based literature to talk about dynamic
13 and static risk factors.

14 Now, you heard me question Dr. Sipes. I hate
15 to keep going back to it. But was she relying only
16 on this history, only on things he couldn't change
17 to make it so that he should stay in the program.
18 She said no. We know he's never going to be able to
19 make those offenses go away. He's never going to be
20 able to make those static risk factors go away
21 outside of age. She said there's some flexibility
22 range, but those static factors don't change. Dr.
23 Martin referred to them too. Being based upon
24 similar individuals, similar characteristics, static
25 factors, they don't change. We're looking at the

1 dynamic risk factors.

2 Has Mr. Miller done enough to change his mental
3 abnormality at those dynamic risk factors? She
4 talked at great length. Luckily, she cut me off
5 from beating a dead horse and making her repeat
6 everything. She talked about the -- I wrote it
7 down. I forget. She talked about his emotional
8 risk factors. This is particularly important.

9 As Ms. Wiygul has pointed out to you at great
10 length is that he's got a very, very bad childhood.
11 Very bad history. This is someone who was abused as
12 a child. This is someone who was victimized at a
13 very young age. He developed some very difficult
14 coping mechanisms and developed a very difficult way
15 of dealing with the world.

16 Dr. Sipes doesn't think he's ready yet. His
17 emotional deficits haven't quite reached that point.
18 She offers you her opinion that his mental
19 abnormality and his personality disorder remain such
20 as not safe to be at large.

21 The judge will instruct you about expert
22 testimony, what you can rely upon and what you can't
23 rely upon, the way you should weigh that testimony.
24 Do that. Look at what she considered. Think about
25 how she reached her opinions. Did she have any

1 reason to reach a different opinion? Is there a
2 motive behind it? She's not being paid anymore. Is
3 there something else beyond that? If you don't
4 think there is, then agree with that.

5 Now, Dr. Martin, is a well-respected individual
6 in the psychiatric field. He's got a long history.
7 He's been involved in the Sexually Violent Predator
8 Treatment Program. He was there when the ninth
9 person was committed. Does treatment. Does a lot
10 of treatment. He said Mr. Miller would be accepted
11 in his treatment program.

12 But his opinion, if you listen carefully, his
13 opinion was not that Mr. Miller's mental abnormality
14 or personality disorder had so changed that he was
15 safe to be at large. He disagreed first on the
16 personality disorder. He said Mr. Miller only
17 exhibits antisocial personality traits. But he
18 said, and I wrote this down as well, he said that
19 Mr. Miller's mental abnormality and personality have
20 so changed that he's very much less likely to re-
21 offend and he's safe to be released if he continues
22 to go to treatment.

23 I don't play on mere technicalities. But the
24 statute is very clear. Does his mental abnormality
25 remain such that he's safe to be at -- I'm sorry.

1 Does his mental abnormality or personality disorder
2 remain such that he's not safe to be at large? It
3 doesn't say he's got to change and he's got to
4 continue to go to treatment, which he would do if he
5 were released at this time. That's not what the
6 statute says. Ms. Wiygul would point out this
7 statute is taking these individuals off the streets,
8 it's taking their freedom away. He came in a month
9 before his max-out date. He had gotten committed
10 under this program and it's horrible. But you know
11 what, that's what the law says. I can't change
12 that. The judge can't change that. Ms. Wiygul
13 can't change that. Our legislature said this is
14 what the law is and this is what we have to follow.

15 Has -- does Mr. Miller's mental abnormality
16 remain such that he's not safe to be at large and,
17 if released, likely to engage in acts of sexual
18 violence? That's the question you have to answer.
19 We believe we have presented adequate evidence to
20 convince you beyond a reasonable doubt that Mr.
21 Miller's mental abnormality, paraphilia not
22 otherwise specified and his personality disorder,
23 antisocial personality disorder remain such that
24 he's not safe to be at large. And if he's released
25 at this time, he is likely to engage in acts of

1 sexual violence. Thank you for your time.

2 **THE COURT:** Ms. Wiygul?

3 **MS. WIYGUL:** I looked over to Mr. Miller
4 during Mr. Flores' closing and I said, well, maybe I
5 should just stand up and say what he said. It's a
6 messed up statute. He's right. We all recognize
7 that. We all very much appreciate the care and
8 attention that you paid to the witnesses in this
9 case. It's a confusing concept, but there are some
10 things that are real simple.

11 He has the burden of proof to prove beyond a
12 reasonable doubt. And they use that standard
13 because Mr. Miller's liberty's at stake. He has the
14 burden to prove beyond a reasonable doubt that Mr.
15 Miller hasn't done enough. I submit to you that Mr.
16 Miller has done enough. I submit to you that his
17 mental abnormality and personality disorder has so
18 changed that he is now safe to be at large.

19 Dr. Martin could have just dropped his name at
20 the door. He could have just come in with a tag
21 that read reasonable doubt. When you have a doctor
22 with that much experience, with that much training,
23 with that much education telling you this man is
24 safe to be released, I submit to you that more than
25 qualifies as reasonable doubt.

1 Mr. Miller didn't have an easy childhood. A
2 lot of people don't. A lot of those people
3 unfortunately end up in the prison system. A lot of
4 victims of sexual abuse become abusers. Both of
5 those things are cycles. They go around. Some are
6 confused. They don't know how else to treat people
7 so they use somebody else. They grow up in a house
8 where it is common to break the law so they just
9 break the law and they think it's normal. It's a
10 cycle and it goes on and on.

11 Let me tell you what Mr. Miller's done and he
12 did it without much help. He broke the cycle. The
13 people that were supposed to take care of him
14 didn't. His mother was not there to take care of
15 him at night. She was drinking. His father was not
16 there to tuck him in at night. He was shot to
17 death. His siblings weren't there. They were
18 trying to live their own lives and keep themselves
19 safe. His grandmother didn't do it when the State
20 gave her the chance. I don't know where DSS was,
21 not to notice that they put the boy in a home where
22 he'd be sexually abused. Then, the Department of
23 Juvenile Justice had its chance. Yet still, no
24 counseling, no treatment, no grief counseling, no
25 psychiatrist, no psychologist, nothing.

1 So at 17, he ended up at the Department of
2 Corrections which is still pretty typical for,
3 unfortunately, a lot of these types of cases. He
4 was there for years and years and years. One person
5 there tried to help him. Ran the sex offender
6 treatment program. Mr. Miller was just not ready.
7 He didn't recognize it for the opportunity it was.
8 He got a second chance on that one.

9 Unfortunately, he ended up back in the
10 Department of Corrections very quickly. Then he
11 went into the Sexually Violent Predator Treatment.
12 The same guy that ran that program at the Department
13 of Corrections runs his treatment group. So he knew
14 him. He had somebody to trust. Mr. Miller asked
15 for help. He didn't just ask for it, he actively
16 sought it.

17 You've heard testimony, and Mr. Flores told
18 you, a lot of the people down in this program, they
19 don't go to the groups. They are mad. They say,
20 "Look, I already did my time. This is ridiculous.
21 Y'all are just trying to lock me away down here."
22 Mr. Miller didn't do that. He took all that abuse
23 and all that anger and all that neglect and all of
24 those mistakes that he had been making his entire
25 life and he said this is what I've got to work with.

1 Can you tell me how to be a normal human being? For
2 four years, he has been doing what he was told to
3 do.

4 He's been working on being guarded. You can
5 tell that just by the number of times Dr. Sipes told
6 you that he was open and honest. His treatment
7 notes reflect that in group he's open and honest.
8 Open and honest. Open and honest. Forthcoming.
9 Dr. Sipes apparently trusted his word so much that
10 she didn't feel it necessary to look back at certain
11 records. You heard her say over and over Mr. Miller
12 told me, Mr. Miller told me. She knows he's being
13 open and honest. This is not a man that's trying to
14 make himself look good. He's not trying to pretty
15 himself up. He's not trying to say that he didn't
16 just verbalize things. He recognizes he did it, but
17 he paid his debt to society.

18 He more than paid his debt to society. He went
19 into this program and he has been going no holds
20 barred ever since. He has been trying and he has
21 been learning. And what he's been learning has not
22 been fun facts. What he's been learning is himself.
23 He's been learning how to change his behaviors. His
24 paraphilia is not in remission and never will be.
25 It's not cancer.

1 An alcoholic goes to A.A. meetings for the rest
2 of their life. It's a support system. It's a
3 coping mechanism. Mr. Miller will go to sex
4 offender treatment. He can have it outpatient. I
5 wouldn't be surprised if he received more outpatient
6 treatment than the one group meeting a week that he
7 receives in this program, but he will receive
8 treatment.

9 And he will be under the supervision of
10 probation for five years. And if he messes up while
11 he's on probation, he will be back at the Department
12 of Corrections. He will have to register as a sex
13 offender every 90 days for the rest of his life.
14 And he accepts that. And he accepts that he is
15 going to have what most people don't have, but he
16 accepts it and he's embraced it. And he's asking
17 you for an opportunity, the opportunity that Dr.
18 Sipes told you he can't get in the program because
19 it's a controlled environment. So he's asking you
20 for the opportunity to show you that he could do the
21 same thing on the outside that he's been doing in
22 the program for the last four years. He's held down
23 a job and he's stayed out of trouble except for a
24 verbal altercation.

25 I'm asking you to let Mr. Miller go home to his

1 family. They all love him.

2 **THE COURT:** All right.

3 **MR. FLORES:** Nothing in reply, Your Honor.

4 **THE COURT:** All right. Thank you, sir.

5 The State of South Carolina has brought this
6 case under the Sexually Violent Predator Act above
7 code of laws. Our General Assembly has determined
8 that those persons who are found to be sexually
9 violent predators under the law require involuntary
10 civil commitment in a secure facility for long-term
11 control care and treatment. Additionally, the
12 General Assembly has determined that a separate
13 involuntary civil commitment process independent of
14 the probate process is necessary for these
15 individuals. The involuntary civil commitment of a
16 sexually violent predator for control care and
17 treatment is not a criminal proceeding seeking
18 incarceration for purposes of punishment.

19 The respondent, James A. Miller, was committed
20 under this law in November 2008. He has resided at
21 the Sexually Violent Treatment Program administered
22 by the South Carolina Department of Mental Health
23 since that time. This jury trial is to determine
24 whether Mr. Miller should remain civilly committed
25 at the Sexually Violent Predator Treatment Program.

1 The State bears the burden in this case to
2 prove beyond a reasonable doubt that Mr. Miller's
3 mental abnormality or personality disorder remain
4 such that he is not safe to be at large and that, if
5 released, is likely to engage in acts of sexual
6 violence. You will make that decision on the basis
7 of the evidence which you have seen and heard and
8 the law on which I am now instructing you. If the
9 State is able to meet its burden of proof, it is
10 entitled to a finding that Mr. Miller should remain
11 committed to the Sexually Violent Predator Treatment
12 Program. If the State is unable to meet that burden
13 of proof, respondent is entitled to a finding that
14 he be released from commitment at the Sexually
15 Violent Predator Treatment Program.

16 In most civil cases, the petitioner only has
17 the burden of proving that a fact is more likely
18 true than not true such as by the greater weight or
19 preponderance of the evidence. However, in this
20 type of case, the State's burden must be more
21 powerful than that. It must be beyond a reasonable
22 doubt. I will explain to you later in my charge the
23 term "beyond a reasonable doubt".

24 Under the Constitution and laws of South
25 Carolina, you are the sole finders of facts in this

1 case. I may not intimate to you in any way what I
2 may think about the claims in this case. You are
3 the judges of the credibility and believability of
4 the witnesses who had testified. In passing on
5 their credibility, you may take into consideration
6 many things such as, one, what was the manner and
7 appearance of the witness who testified; was he or
8 she straightforward or was he or she hesitant in
9 answering; two, how did the witness come to know the
10 facts that he or she testified to or what was his or
11 her ability to know these facts; three, is there
12 some reason a witness would want to give testimony
13 which would help or hurt one side or the other; in
14 other words, was a witness biased or prejudiced;
15 four, was the testimony of a witness strengthened or
16 weakened by other testimony or evidence.

17 You, the jury, may believe as much or little of
18 each witness' testimony as you think proper. You
19 may believe the testimony of a single witness
20 against that of many witnesses or just the opposite.
21 You may believe part of a witness' testimony and
22 disbelieve the rest. You do not determine the truth
23 merely by counting the number of witnesses presented
24 by each side.

25 The fact that testimony is not controverted

1 does not mean that you must accept it as true and
2 undisputed. You must gauge the credibility of the
3 witness -- witnesses to determine the believability
4 or truth of the facts offered through the testimony.
5 Keep in mind throughout this process you have but
6 one objective, to seek the truth regardless of the
7 source or from where it comes.

8 There are two types of evidence which are
9 presented during a trial, direct evidence and
10 circumstantial evidence. Direct evidence is the
11 testimony of a person who claims to have actual
12 knowledge of a fact, such as an eyewitness. It is
13 evidence which immediately establishes the main fact
14 to be proved.

15 Circumstantial evidence is proof of a chain of
16 facts and circumstances that indicate the existence
17 of a fact. It is evidence which immediately
18 establishes collateral facts from which the main
19 fact may be inferred. Circumstantial evidence is
20 based on inference and not on personal knowledge or
21 observation. The law makes absolutely no
22 distinction between the weight or value to be given
23 to either direct or circumstantial evidence. Nor is
24 a greater degree of certainty required of
25 circumstantial evidence than of direct evidence.

1 You've heard the testimony of witnesses who
2 have special knowledge, skill, experience, training
3 or education in a particular field and who had given
4 their opinion as experts as to matters in which they
5 are skilled. In determining the weight to be given
6 to such an opinion, you should consider the
7 qualifications and credibility of the experts and
8 his or her reasons for giving his or her opinion.
9 You are not bound by such opinion and give it the
10 weight, if any, that you deem them entitled. The
11 value and affect of expert testimony is a matter to
12 be solely estimated by you, the jury. No opinion of
13 an expert can be accepted in and of itself as
14 truthful or reliable but must be relayed by you and
15 convinced your judgement beyond a reasonable doubt
16 and with the same force and effect as any other fact
17 proved in this case before you can rely upon it.
18 You must consider expert testimony in the same
19 manner as you do any other testimony and give it
20 such weight as you believe it to be entitled when
21 considered with all the other evidence in the case.
22 Such testimony is given for the purpose of helping
23 you and not for the purpose of controlling your
24 judgement.

25 Now, the same Constitution and law that makes

1 you the finders of the facts and the evidence, as I
2 discussed with you, makes me as the judge the sole
3 and only instructor of the law. You must accept as
4 correct the law which I charge and apply it to the
5 evidence as you find it and reach a verdict. If I
6 should make an err in the law as I instruct it to
7 you, there's another time and another place and
8 another court in which that err could be considered
9 and, if necessary, corrected. But for the purpose
10 of this case today, you must accept the law as I
11 charge it. In that regard, I tell you that neither
12 you, nor I for that matter, should be concerned
13 about what we think the law ought to be but only --
14 excuse me -- only concern yourself with what I
15 charge you the law in fact to be.

16 The State has the burden of proving that Mr.
17 Miller's mental abnormality or personality disorder
18 remains such that he is not safe to be at large
19 beyond a reasonable doubt. Some of you may have
20 served in jurors -- as jurors in civil cases where
21 you were told that it's only necessary to prove that
22 a fact is more likely true than not true, such as by
23 the greater weight or preponderance of the evidence.

24 In this type of case, the State's proof must be
25 more powerful than that. It must be beyond a

1 reasonable doubt. Reasonable doubt is a kind of
2 doubt that would make a reasonable person hesitate
3 to act. Proof beyond a reasonable doubt is proof
4 that leaves you firmly convinced.

5 There are very few things in this world that we
6 know with absolute certainty. In sexually violent
7 predator care and treatment cases, the law does not
8 require proof that overcomes every possible doubt.
9 If, based on your consideration of the evidence, you
10 are firmly convinced that Mr. Miller's mental
11 abnormality or personality disorder remain such that
12 he is not safe to be at large and, if released, is
13 likely to engage in acts of sexual violence, then
14 you must return a verdict for the State. If, on the
15 other hand, you think there is a real possibility
16 that Mr. Miller's mental abnormality or personality
17 disorder has changed such that he is safe to be at
18 large and, if released, not likely to engage in acts
19 of sexual violence, you must give him the benefit of
20 the doubt and find a verdict for the respondent, Mr.
21 Miller.

22 Reasonable doubt may arise from evidence that
23 is in the case or from the lack or absence of
24 evidence in the case. Facts and circumstances that
25 merely raise a speculation or conjecture that Mr.

1 Miller's mental abnormality or personality disorder
2 remains such that he is not safe to be at large or
3 is likely to engage in acts of sexual violence are
4 not sufficient to authorize a finding that he remain
5 committed.

6 The State must prove beyond a reasonable doubt
7 that Mr. Miller's mental abnormality or personality
8 disorder remain such that he is not safe to be at
9 large and that, if released, is likely to engage in
10 acts of sexual violence. Inherent in this cause is
11 that the State must prove the requirement that
12 respondent's mental abnormality or personality
13 disorder causes him, quote, serious difficulty in
14 controlling his behavior, end-quote. In other
15 words, the State must prove beyond a reasonable
16 doubt that the individual it seeks to commit suffers
17 from a mental illness which he can not sufficiently
18 control without the structure and care provided by
19 mental health facility rendering him otherwise
20 likely to commit a dangerous act.

21 In order for you to better understand the
22 elements of the State's cause of action, I'm going
23 to define for you some of the terms that I just
24 used. "Mental abnormality" means a mental condition
25 affecting a person's emotional or volitional

1 capacity that predisposes the person to commit
2 sexually violent offenses. This mental abnormality
3 or personality disorder must cause respondent
4 serious difficulty in controlling his behavior.

5 "Likely to engage in acts of sexual violence"
6 means the person's propensity to commit acts of
7 sexual violences of such a degree as to pose a
8 menace to the health and safety other others so that
9 he is dangerous to others.

10 Again, I remind you that the burden of proof is
11 on the State to prove that -- to your satisfaction
12 beyond a reasonable doubt that Mr. Miller's mental
13 abnormality or personality disorder remains such
14 that he is not safe to be at large and that if
15 released is likely to engage in acts of sexual
16 violence. If the State carries its burden of proof
17 and convinces you beyond a reasonable doubt as to
18 its cause of action, it is entitled to a finding
19 that Mr. Miller should remain committed to the
20 Sexually Violent Predator Treatment Program. If the
21 State does not meet that burden of proof, respondent
22 is entitled to a finding that he should be released
23 from the Sexually Violent Predator Treatment
24 Program.

25 Ladies and Gentlemen, I am now drawing near to

1 the end of my charge.. I want you to clearly
2 understand that you are not partisans or advocates
3 for the State or the respondent. You do not serve
4 as jurors to reward your friends or punish your
5 enemies. In this regard, you have been selected by
6 both the State and respondent to be fair and
7 impartial jurors. It is your duty by your joint
8 deliberations to determine the truth in this case
9 giving to the respondent the benefit of every
10 reasonable doubt on each and every issue. And then
11 to the facts which you determine to be true, you
12 should take and apply the law which has been given
13 to you by this court and thus arrive at a verdict
14 which speaks the truth in this case. In fact, the
15 word "verdict", which has a Latin derivative, means
16 a true saying. Thus, when you have accomplished
17 these responsibilities, you will have satisfied your
18 oath as jurors and you will have discharged your
19 duty to this court.

20 There are two possible verdicts which you may
21 find in this case. If the State has proved beyond a
22 reasonable doubt that Mr. Miller's mental
23 abnormality or personality disorder remains such
24 that he is not safe to be at large and that, if
25 released, is likely to engage in acts of sexual

1 you a copy of my written instructions. I'm going to
2 give you a copy of these instructions in written
3 form during your deliberations. You may refer to
4 the instructions to guide your decision-making. You
5 must consider the instructions as a whole and not
6 follow some and ignore others. Please return these
7 instructions to the court at the time your verdict
8 is rendered.

9 I now ask that you return to your jury
10 deliberation room. Do not begin deliberating until
11 you are told by the clerk or bailiff to do so.
12 There's some matters that need to be discussed with
13 the attorneys before you begin your deliberation.

14 Now, let me say one other thing to you because
15 our hour has drawn long here. We're at 4:30. I do
16 not want you to feel rushed in any manner
17 whatsoever. Let me tell you that I will allow you
18 to deliberate as long as you would like. If you
19 would like to break for the evening, go home, come
20 back, resume your deliberations in the morning, we
21 will do that. We are now at your disposal. All
22 right. So as long as you understand that, I'll let
23 you go to your jury room. Wait one more minute
24 before you begin deliberating. We'll be with you
25 very shortly. Thank you so much.

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(WHEREUPON, the jury exits at approximately
4:29 p.m.)

THE COURT: Any objection to my charge on the
law from, uh, the petitioner?

MR. FLORES: No, Your Honor.

THE COURT: Any from the respondent?

MS. WIYGUL: No, Your Honor.

THE COURT: All right. Did y'all introduce
any exhibits?

MR. FLORES: We did not.

MS. WIYGUL: We did not.

THE COURT: Then I will send a copy of the
verdict form, which is the verdict form that you
submitted, Mr. Flores, if that's suitable to you.

MS. WIYGUL: Your Honor, there's one -- I
have no objection.

THE COURT: All right then. Then I'll send
it back with a copy of my written charge. All right
then. You can tell them they are ready to begin
deliberating.

MS. WIYGUL: Thank you, Judge.

MR. FLORES: Thank you, Judge.

THE COURT: We'll be in recess pending a
verdict.

(WHEREUPON, deliberation of the jury begins at

1 approximately 4:31 p.m.)

2 (WHEREUPON, the Court resumes at approximately
3 4:44 p.m.)

4 THE COURT: All right. We have a question.
5 Will it be mandated as part of this offender's
6 probation that Mr. Miller continue without patient
7 treatment for his sexual behavior or do we have to
8 take his word for it that he will continue with
9 treatment upon release?

10 MS. WIYGUL: I don't think you can answer
11 that question.

12 THE COURT: I don't think I can answer it
13 either, but it's a good question, is it not? It's a
14 good question. Y'all approach for one second.

15 (WHEREUPON, a bench conference is held off the
16 record.)

17 THE COURT: We'll mark that as Court's
18 Exhibit 2 when it comes back. The instructions
19 being 1.

20 COURT REPORTER: Okay.

21 THE COURT: All right. We're in recess
22 pending a verdict.

23 (WHEREUPON, a recess is taken.)

24 (WHEREUPON, the Court resumes at approximately
25 5:29 p.m.)

1 **THE COURT:** Why don't we just do this. Would
2 y'all have an objection to me having the bailiffs
3 just ask that I'd like to know do they want to break
4 for the evening. Is that alright?

5 **MS. WIYGUL:** I'd have no objection.

6 **MR. FLORES:** No objection to that.

7 **THE COURT:** Y'all are okay? Okay. If they
8 say no, let's just -- I didn't realize he'd have to
9 be transported back and all that. I'm sorry.
10 (Pause.)

11 **THE BAILIFF:** They said give them five
12 minutes. They were very close.

13 **THE COURT:** All right. Well, that answers
14 it. All right then. We'll be in recess pending a
15 verdict.

16 (WHEREUPON, a recess is taken.)

17 **THE COURT:** I thought we had a chance to
18 maybe resolve it today. Unfortunately, I'm going to
19 have to ask you all to drive back again. Sorry
20 about that.

21 Sorry, Mr. Flores.

22 All right. We'll resume tomorrow morning at
23 9:30.

24 (WHEREUPON, the Court recessed for the day at
25 approximately 5:42 p.m.)

P R O C E E D I N G S

1
2 **(WHEREUPON,** deliberation of the jury resumes on the
3 20th day of February, 2013 at approximately 9:34 a.m.)

4 **(WHEREUPON,** the Court resumes at approximately
5 10:26 a.m.)

6 **THE COURT:** Good morning. I've not had this
7 question before. May we have a transcript of the
8 state and respondent's closing arguments. Uh, they
9 must have been pretty impressed with your arguments.
10 I'll bring them back in here and let them listen to
11 them.

12 **MS. WIYGUL:** I have no objection.

13 **MR. FLORES:** I have no objection to them
14 listening to them.

15 **THE COURT:** I will probably give them -- I
16 will probably give them the instruction that while
17 closing arguments -- while arguments of the
18 attorneys are not evidence that they are welcome to
19 hear the closing arguments again. All right.

20 **(WHEREUPON,** Court's Exhibit 3 is marked for
21 identification purposes.)

22 **THE COURT:** Ladies and Gentlemen, it's my
23 understanding, Mr. Foreperson, that you all are
24 asking for a transcript of the state and
25 respondent's closing arguments. While I'm not able

1 to give you a transcript, what I am able to do is
2 play back testimony.

3 Let me just explain to you, my court reporter,
4 when someone -- when an attorney or someone request
5 a transcript of the hearing, she actually goes back
6 and types it. It takes her several days to do that
7 sort of thing. But we do have the recording of it.
8 We can play it back for you here today and are happy
9 to do it.

10 I'll tell you this. I'll just give you this one
11 caveat. Please remember that the arguments of
12 counsel are not evidence in this case. But I'm
13 happy to allow you to listen to their closing
14 arguments if the attorneys can stand to hear
15 themselves talking on the tape recorder.

16 **THE JUROR:** Your Honor?

17 **THE COURT:** Yes, sir.

18 **THE JUROR:** Uh, I think the interest would be
19 in just the last few minutes if it saves time of one
20 of the arguments that we heard.

21 **THE COURT:** Which argument would you like to
22 hear?

23 **THE JUROR:** The state's argument, perhaps the
24 last five minutes or so, some discussion about
25 exactly what was said.

1 **THE COURT:** All right. Will the attorneys
2 approach for just a moment?

3 **(WHEREUPON,** a bench conference is held off the
4 record.)

5 **THE COURT:** I hope I'm not going to
6 disappoint you too much. I think I'm going to need
7 to play both arguments. They are not real lengthy
8 as I remember them to be. If you all do not mind, I
9 believe I'm going to need to play both arguments for
10 you. All right.

11 Are we ready to play those?

12 **COURT REPORTER:** No, ma'am.

13 **THE COURT:** Are they going to need to step
14 out?

15 **COURT REPORTER:** Yes, ma'am.

16 **THE COURT:** I'll tell you what. I'm going to
17 let you all go to your jury room for just a moment.
18 Bear with us. We'll cue this up. That's my fault.
19 I brought y'all in before I asked Teresa if we were
20 to that part of the tape. We'll be right back with
21 you. Thank you.

22 **(WHEREUPON,** the jury exits at approximately
23 10:27 a.m.)

24 **(WHEREUPON,** a short recess is taken.)

25 **(WHEREUPON,** the jury enters at approximately

1 10:28 a.m.)

2 (WHEREUPON, the closing arguments of both parties is
3 replayed for the jury.)

4 THE COURT: All right. Thank you so much.

5 (WHEREUPON, the jury exits and resumes deliberation
6 at approximately 10:41 a.m.)

7 THE COURT: All right. We'll be in recess
8 pending the verdict.

9 (WHEREUPON, a recess is taken.)

10 (WHEREUPON, the Court resumes at approximately
11 11:28 a.m.)

12 THE COURT: All right. I understand we've
13 got a verdict. Let me just say before we bring the
14 jury back in, everybody has been so nice and sweet
15 all throughout this trial. I don't have any reason
16 to think that either way that it goes there will be
17 any problem whatsoever. But let me just say this
18 jury's clearly taking their responsibility very
19 seriously. Although it might be emotional on either
20 side, no matter what their decision is, they deserve
21 our respect. I'm going to insist on that. Okay.
22 All right.

23 (WHEREUPON, the jury enters at approximately
24 11:29 a.m.)

25 THE COURT: Mr. Foreperson, it's my

1 understanding that you've reached a verdict. Is
2 that correct?

3 **THE JUROR:** We have, Your Honor.

4 **THE COURT:** All right. Do you mind handing
5 the verdict form to the bailiff please?

6 (WHEREUPON, the verdict form is passed to the
7 Court.)

8 **THE COURT:** All right. The verdict form
9 appears to be in order. I'll ask you to publish it
10 please.

11 **THE CLERK:** Your Honor, this is case number
12 2008-CP-23-2449, In the Matter of the Care and
13 Treatment of James A. Miller, Respondent, has the
14 petitioner, the State of South Carolina, proven
15 beyond a reasonable doubt that James A. Miller's
16 mental abnormality or personality disorder remains
17 such that he is not safe to be at large and, if
18 released, likely to commit acts of sexual violence?
19 We, the jury, unanimously answer the questions as
20 follows: yes, State of South Carolina has proven
21 beyond a reasonable doubt that James A. Miller
22 abnormality or personality disorder remains such
23 that he is not safe to be at large and, if released,
24 likely to commit acts of sexual violence. Mr.
25 Miller should remain civilly committed to the

1 Sexually Violent Predator Treatment Program.
2 Signed, William Fitzpatrick, February 20th, 2013.
3 This is your verdict so say you all? Please signify
4 by raising your right hand if so.

5 (WHEREUPON, each juror responds.)

6 THE CLERK: Thank you.

7 THE COURT: Thank you so much. I speak on
8 behalf of these attorneys and everyone involved in
9 this case, thank you so much for your service. I
10 want to speak to you one quick minute before you
11 leave. If you don't mind going back to your jury
12 deliberation room, we'll take a moment to get your
13 things back to you. Thank you.

14 (WHEREUPON, the jury exits at approximately
15 11:32 a.m.)

16 THE COURT: Before we let Mr. Miller go, I
17 just wanted to speak to him for just a moment. Mr.
18 Miller, I know this outcome for you today is
19 disappointing. I think I speak for everybody
20 involved in this case, I think Mr. Flores even said
21 it too, the progress that you've made is remarkable.
22 I just wanted to take a minute if I could to
23 encourage you to continue with that progress. Do
24 not let this discourage you in any way because it
25 sounds as if everyone agrees that you are very close

1 to where you need to be. I hope this will be
2 something that will motivate you even more rather
3 than discourage you. You seem like such a nice man.
4 I am happy to see the work that you put into to
5 making yourself get to where you need to be. All
6 right?

7 **MR. MILLER:** Yes, ma'am.

8 **THE COURT:** Good luck to you.

9 **MR. MILLER:** Thank you.

10 **MS. WIYGUL:** Thank you, Judge.

11 **THE COURT:** Thank you.

12 **(WHEREUPON, the proceedings conclude at**
13 **approximately 11:35 a.m.)**

14 **(WHEREUPON, Court's Exhibits 1 and 2 are marked for**
15 **identification purposes.)**

16

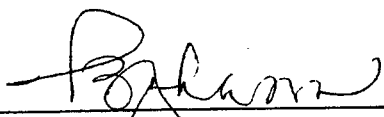
17

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 26th day of September, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

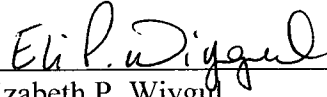


Teresa B. Johnson
Circuit Court Reporter

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 30, 2013



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge


Case No. 2008-CP-23-2449
Appellate Case No. 2013-000533

In The Matter Of The Care And Treatment Of
James A. Miller.....Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Deborah R.J. Shupe by depositing a copy of it in the United States Mail, postage prepaid, on December 30, 2013, addressed to the attorney of record, Deborah R.J. Shupe, SC Attorney General's Office, PO Box 11549, Columbia, South Carolina 29211.

December 30, 2013


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