

RECEIVED

DEC 09 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES A. MILLER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ELIZABETH P. WIYGUL

101 Whitsett Street
Greenville, SC 29601
(864) 608-1059

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES A. MILLER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ELIZABETH P. WIYGUL

101 Whitsett Street
Greenville, SC 29601
(864) 608-1059

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	6
CONCLUSION.....	7
PETITION TO BE RELIEVED AS COUNSEL	8

TABLE OF AUTHORITIES

Cases

State v. Bright, 89 S.C. 228, 71 S.E. 821 (1911)..... 6

Statutes

S.C. Code § 44-48-10 *et seq.* (Supp. 2007) 4

Rules

Rule 701, SCRE..... 11

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in stating the background of the case to the jury during the Court Remarks to the Jury in such a fashion as to favor the State over Appellant?

STATEMENT OF THE CASE

In 1994 James A. Miller pled delinquent as a juvenile in the Greenville County Family Court to Assault and Battery of a High and Aggravated Nature and Burglary 2nd Degree and was committed to the South Carolina Department of Juvenile Justice. As an adult, in October, 1997, Miller pled guilty to two counts of Criminal Sexual Conduct with a Minor 2nd Degree in Greenville County General Sessions Court and was sentenced to concurrent sentences of fifteen years suspended to five years in the South Carolina Department of Corrections followed by five years of intensive probation. In March, 2004, Miller pled guilty in Greenville County General Sessions Court to Criminal Sexual Conduct 3rd Degree and was sentenced to ten years of incarceration in the South Carolina Department of Corrections.

Pursuant to the Sexually Violent Predator Act, S.C. Code § 44-48-10 *et seq.* (Supp. 2007) Miller was civilly committed by the Greenville County Court of Common Pleas on November 10, 2008 and was admitted to the Sexually Violent Predator Program (SVPP) on November 13, 2008. On April 18, 2012, Miller petitioned for release from the SVPP as permitted by S.C. Code §44-48-110 (Supp.2007). This matter proceeded to a jury trial before the Honorable Letitia H. Verdin on February 19, 2013. Miller was represented by Elizabeth P. Wiygul, Esquire. The State was represented by Lloyd Flores, Esquire. The jury found that the State had proven beyond a reasonable doubt that Miller's mental abnormality or personality disorder remained such that he was not safe to be at large and, if released, was likely to engage in acts of sexual violence. Judge Verdin issued an Order of Continued Commitment on February 20, 2013 finding that Miller was to remain

committed to the Department of Mental Health for his long-term control, care and treatment. Miller's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

1.

The trial court erred in expressing its opinion to the jury during the Court Remarks to Jury.

During its Court Remarks to Jury the Court gave the jury background on the case and followed that information with the fact that Miller had already been proven beyond a reasonable doubt to qualify as a sexually violent predator as well as the fact that Miller's civil commitment was not for the purpose of punishment. Tr. 28. ll. 2-25; Tr. 29. ll.1-3.

The Court further used the language that Miller "resided" at the Sexually Violent Treatment Program. Tr. 29. ll. 3-6.

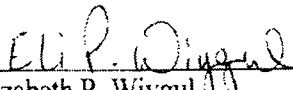
In State v. Bright, 89 S.C. 228, 71 S.E. 821 (1911), the Supreme Court held that the remarks of the judge in that case were in violation of the Constitution, although the expression of opinion in that case did not rise to the level of reversible error.

When the Court addressed the remarks relative to the history of this case to the jury it used such language as could be interpreted by the jury as being in support of the State's case over that of Miller and the Court should have left such comments to the State so as to not appear to favor one side over the other.

CONCLUSION

Based on the above reasons, the order of the trial court should be reversed, and James A. Miller should be released.

Respectfully submitted,


Elizabeth P. Wiygul

ATTORNEY FOR APPELLANT

This 18th day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES A. MILLER.

APPELLANT

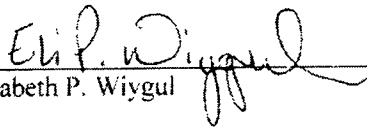
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James A. Miller states:

1. She was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Letitia H. Verdin, which was held on 2-19-13 and 2-20-13, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for James A. Miller

Respectfully submitted,


Elizabeth P. Wiygul

ATTORNEY FOR APPELLANT

This 18th day of November, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES A. MILLER,

APPELLANT

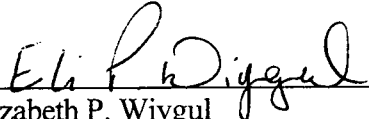
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Transcript of Jury Trial dated February 19 and 20, 2013; and
- (2) Order of Continued Commitment, dated February 20, 2013;

I certify that this designation contains no matter which is irrelevant to this appeal.

December 6, 2013.


Elizabeth P. Wiygul

101 Whitsett Street
Greenville, SC 29601
(864) 608-1059

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
DEC 9 9 2013
SC Court of Appeals

Appeal from Greenville County

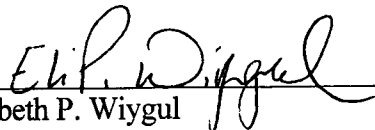
Letitia H. Verdin, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES A. MILLER,

APPELLANT

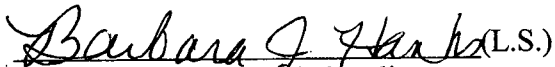
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, via First Class Mail to PO Box 11549, Columbia, SC 29211 and via e-mail to dshupe@scag.gov on today's date.


Elizabeth P. Wiygul

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 6th day of December, 2013.


Notary Public for South Carolina (L.S.)

My Commission Expires: 9-24-20.