

STATE OF MINNESOTA
COUNTY OF ANOKA

FILED

DISTRICT COURT
PROBATE DIVISION
TENTH JUDICIAL DISTRICT

In the Matter of the Civil Commitment of:

APR 23 2010

Ming Sen Shiue,

Jane F. Morrow
Court Administration
Anoka County
Deputy

Respondent,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

Alleged sexual psychopathic personality
and sexually dangerous person.

Court File No.: 02-PR-09-545

The above-captioned matter came on for trial before the Honorable Jenny Walker Jasper, Anoka County District Court, on a petition to commit Respondent as a Sexually Dangerous Person and Sexual Psychopathic Personality. Petitioner was represented by Janice Allen and Robert Goodell, Assistant Anoka County Attorneys, 2100 Third Avenue, Anoka, MN 55303. Respondent was present throughout these proceedings and was represented by Rick Mattox, 16670 Franklin Trail SE., Suite 250, Prior Lake, MN 55372.

Trial in the matter was held on April 19 through April 23, 2010 and April 26 and 27, 2010. Thereafter, the record remained open to allow Petitioner to submit an additional exhibit, marked as Exhibit PP. The parties were ordered to submit proposed Findings of Fact, Conclusions of Law and Order no later than July 1, 2010 and the Court took this matter under advisement as of that date.

Now, therefore, based upon the evidence presented at trial, testimony of the witnesses and exhibits received, this Court makes the following:

FINDINGS OF FACT

1. A petition to commit Ming Sen Shiue (hereinafter Respondent) as a sexually dangerous person (SDP) as defined by Minn. Stat. § 253B.02, Subd. 18c, and as a sexual psychopathic personality (SPP) as defined by Minn. Stat. § 253B.02, Subd. 18b, was filed on October 16, 2009.
2. Respondent is presently age 59 and was born on October 15, 1950 in Taiwan. When Respondent was eight-years-old he moved with his mother and two younger siblings to Minnesota to live with his father, who was a professor at the University of Minnesota.
3. Within three years of moving to Minnesota, Respondent's father died and Respondent became, in his words, "the man of the house."
4. Respondent was physically abusive towards his younger brothers when they were children and continuing into adulthood. For instance, during adolescence, Respondent beat one of his brothers with a broken belt until he was black and blue and placed his youngest brother in an oven, which he then turned on. As an adult, Respondent assaulted one of his brothers.
5. Respondent's relationship with his mother was equally unhealthy. When Respondent was a juvenile: 1) his mother awoke in the middle of the night on a number of occasions and found Respondent in her bedroom; 2) Respondent instructed one of his younger brothers to go into their mother's bedroom and grab her breast; and 3) Respondent cut a hole in his mother's underwear in an attempt to view her genitals while she was sleeping. As an adult, Respondent climbed in bed with his mother and attempted to get her to hold him. The first-examiner, Dr. Powers-Sawyer, described Respondent's behavior towards his mother as "indicative of blurred boundaries and psychosexual disturbance."

6. Respondent engaged in criminal activity as a juvenile; including starting fires in the apartments of three strangers and throwing rocks at vehicles. As a result of the arson, Respondent was adjudicated delinquent at age fourteen and ordered to participate in psychotherapy where he was diagnosed with Adjustment Reaction of Adolescence. Respondent's mother reported to the therapist that: a) Respondent frequently lied and was persistent about being right; b) she could not control Respondent; c) that she was afraid of Respondent because he took no responsibility for his behavior; and d) that Respondent appeared to be absent of feelings, "like a dog."

7. Respondent was placed at Woodview Detention Home when he was fourteen. A staff person who resided in the same area reported that Respondent was a "neighborhood problem" because he was engaging in voyeuristic behavior in the neighborhood.

8. Respondent's child psychiatry records describe him as a "lonely somewhat disturbed youngster." Additionally, Respondent's therapist at the time indicated that Respondent was "more deeply troubled than he has been able to say."

9. After Respondent's juvenile probation expired his mother stopped taking him to therapy. The psycho-therapist at the University of Minnesota opined that Respondent was "resistive" to treatment efforts and needed continued treatment.

10. In the fall of 1965 and spring of 1966, Respondent was a student at Alexander Ramsey High School. That year, Respondent's algebra teacher was Mary Stauffer, hereinafter "M.S."

11. Respondent testified that while he was in high school, he had a "school boy infatuation" or "crush" on M.S. Respondent admitted that as a result of his "infatuation" he began masturbating while fantasizing about M.S.

12. Between approximately 1966 and 1975, Respondent wrote stories surrounding his sexual fantasies. Initially, the stories involved fictionalized characters he had seen in movies.

However, Respondent eventually began writing stories about himself and M.S.

13. Respondent's writings included fantasies about consensual sex, rape and gang rape.

However, even when Respondent wrote about consensual sex there were elements of pain and violence. Respondent's writing became increasingly violent over time and he admitted, at trial in this matter, that there were elements of sadistic sexual behavior in his writings. Respondent wrote about having sex with M.S. that was so rough it caused her vagina to tear. Respondent also wrote that he felt pleasure as a result of causing M.S. pain while they were having sex.

14. Eventually writing about having sex with M.S. was no longer sufficient and Respondent began to formulate a plan to kidnap M.S. and carry out the sexual fantasies he had written about.

15. In 1975, Respondent believed he located M.S.'s residence in Duluth, Minnesota and broke into the residence with a gun in order to kidnap M.S. M.S.'s in-laws actually owned the residence and were home when Respondent broke-in. Respondent forced them to the ground at gun-point, tied them up and threatened to kill them if they ever reported the break-in to police. Respondent was not arrested or charged in the break-in as his involvement only came to light after the kidnapping of M.S., which occurred approximately five years later.

16. Respondent continued to search for M.S. over the course of the next five years. At the time, M.S., whose husband was a minister, was working as a missionary in the Philippines.

17. M.S., her husband and two children returned to Minnesota on a one year furlough sometime in 1979. The family was planning on returning to their mission work in the Philippines the following year. Respondent eventually learned that M.S. and her family were living in an apartment on the Bethel College Campus. Respondent started watching and

following M.S. and her family. Respondent attempted on three separate occasions to break into M.S.'s apartment. He had attempted to get into the apartment by burning the area around the patio door and drilling holes in the floor beneath M.S.'s bed.

18. On May 16, 1980, approximately five days before M.S. was to return to the Philippines, Respondent saw M.S. at Carmen's Beauty Salon in Roseville. Respondent kidnapped M.S. and her daughter, Elizabeth Stauffer (hereinafter "Elizabeth"), at gun point when they exited the salon. Respondent instructed M.S. and her daughter to get into M.S.'s car. Respondent had M.S. drive the vehicle while he sat next to Elizabeth with the gun pointed at her head.

19. Respondent eventually had M.S. stop the car in a deserted area where he tied M.S. and Elizabeth together, gagged them and placed them in the trunk of the vehicle. M.S. attempted to free herself and Elizabeth but Respondent heard the noise and stopped the vehicle on two occasions. The first time he stopped the vehicle he tied M.S. and Elizabeth's bonds more tightly and also taped M.S.'s hands together. The second time, Respondent forced M.S. and Elizabeth to lie on their stomachs and placed the spare tire on top of them.

20. During the course of the second stop, and while Respondent had the lid to the trunk open, a six-year-old boy named Jason Wilkman approached the vehicle to see what was happening. Respondent grabbed the child and placed him in the trunk with M.S. and Elizabeth.

21. Respondent drove to Carlos Avery Wildlife Refuge in rural Anoka County, removed Jason Wilkman from the trunk and murdered him. An autopsy of Jason Wilkman revealed several fractures to his skull. The pathologist who examined Jason Wilkman's remains indicated that the cause of death was severe cerebral trauma caused by at least two blows to the head delivered with a blunt instrument and a great deal of force. During Respondent's trial for the

murder of Jason Wilkman, M.S. testified that Respondent took a one-and-half-foot metal rod with him when he removed Jason Wilkman from the trunk.

22. Respondent took M.S. and Elizabeth to his home in Roseville where he blindfolded them; removed them from the trunk and chained them in a closet. For the first few weeks of their confinement, Respondent kept M.S. and Elizabeth bound and gagged in the closet. Initially, M.S. was only allowed out of the closet when Respondent raped her.

23. During Respondent's trial for the murder of Jason Wilkman, Respondent claimed that he had planned on raping M.S. and then releasing her the day she and her family were scheduled to leave Minnesota for the Philippines. When Respondent was evaluated to determine if he should be committed as SDP/SPP he admitted to one of the evaluators that he planned on killing M.S. after he was done raping her.

24. On the night M.S. was kidnapped, Respondent removed her from the closet, led her to another room, made her lie on the floor and tied her arms above her head to a piece of furniture. Respondent proceeded to talk to M.S. M.S. remained blindfolded the entire time. After talking to M.S. for hours, Respondent raped her. Respondent recorded the conversation and rape on a videotape.

25. During Respondent's initial conversation with M.S. he refused to tell her his name. M.S. eventually guessed that Respondent was a former student. Respondent told M.S. that she gave him a B in algebra and that as a result of this grade he had been unable to get a scholarship to college and had been forced to join the Army. Respondent told M.S. that he was sent to Viet Nam where he was captured and became a prisoner of war. Respondent also indicated to M.S. that he was angry at her because she had not shown any interest in a mathematical theorem he

had discovered in high school and because she did not recognize him when they had run into each other after he had graduated from high school.

26. The vast majority of Respondent's statements to M.S. were outrageous lies. Respondent did not enlist in the army as a result of a poor grade from M.S.; he was never in Viet Nam and was not a prisoner of war. Instead, Respondent had been voted "Most Likely to Succeed" by his high school peers, had been accepted into college at the University of Minnesota where he attended college for two years before dropping out and at the time of the abduction was a successful businessman. Respondent apparently lied to M.S. in an attempt to make her feel bad for him and to believe that the B she had given him in math had had a devastating effect on his life.

27. Respondent repeatedly raped M.S. during the time he held her and Elizabeth captive. Respondent videotaped the rapes, which in some cases lasted hours. Approximately ten hours of videotapes were found following Respondent's arrest, which were transcribed. The transcripts were used during Respondent's criminal trials and were provided to the pre-petition screener and the first and second examiner to consider in reaching an opinion whether Respondent meets the criteria for SDP/SPP.

28. Respondent kept M.S. blindfolded with her hands tied above her head to a chair the majority of the times he raped her. Respondent became angry and rough with M.S. when she was uncooperative or refused to respond in the manner demanded by Respondent. On one occasion, Respondent tied a rope tightly around one of M.S.'s ankle, wrapped the rope around her neck and then bound her other ankle in order to force M.S. into the position Respondent wanted her in when he raped her. Respondent kept M.S. bound in this position for over an hour despite the fact that she was in significant pain. Respondent claims he gained no pleasure from

causing M.S. pain but rather threatened M.S. and inflicted pain on her so that he could rape her. Respondent's claims conflict with his fantasy writing, wherein Respondent indicated that he felt pleasure as a result of causing pain during sexual intercourse. Additionally, the transcripts of Respondent's actual rapes of M.S. show that he enjoyed inflicting physical and emotional pain upon M.S., and humiliating M.S., while he raped her.

29. Respondent also used Elizabeth to gain M.S.'s compliance during their captivity and while raping M.S. On one occasion, while raping M.S., Respondent became angry because M.S. was not behaving affectionately or cooperating with him but was, according to Respondent, "like a dead fish." Respondent asked M.S. if she had ever seen someone die by suffocation and asked if she wanted to see Elizabeth die that way. Respondent then insisted that M.S. kiss him and be physically affectionate. When M.S. refused, Respondent removed Elizabeth from the closet and put a large plastic bag over her head and tucked it under her feet. Respondent kept the bag over Elizabeth's head for four to five minutes and only removed it after M.S. kissed him.

On at least two occasions, Respondent separated Elizabeth from M.S. by taking her out of the closet they were locked in and placing her in a box. Elizabeth was kept inside the box, which was locked inside Respondent's van, for nearly eight hours while Respondent worked. It was summer and very hot inside Respondent's van. Elizabeth was so traumatized that she ripped hair out of her scalp and urinated on herself. These incidents understandably caused a great deal of anxiety for Elizabeth and M.S. because neither knew what was happening to the other, if Respondent was going to kill one of them or if they would ever see each other again.

30. Respondent told M.S. and Elizabeth that he would kill M.S.'s husband and her son if either of them attempted to escape.

31. After approximately one month of holding M.S. and Elizabeth captive, and keeping them bound and locked in a closet, Respondent began allowing M.S. and Elizabeth out of the closet in the evening when Respondent got home from work. M.S. and Elizabeth were allowed to eat dinner in the kitchen and Respondent played games with Elizabeth.

32. During M.S. and Elizabeth's captivity, Respondent chained them up in a motor home and drove them with him to Illinois to attend a work-related conference.

33. Eventually, Respondent stopped binding and gagging M.S. and Elizabeth and keeping them locked in a closet. Instead, Respondent shackled M.S. and Elizabeth to opposite ends of a chain which was secured near the closet so they would have access to a bedroom while Respondent was at work. When Respondent learned that Elizabeth was able to get into the hallway outside of the bedroom, he modified the shackle system, which included securing M.S. and Elizabeth's chain through a hinge pin on the closet door.

34. On July 7, 1980, after Respondent left for work, M.S. determined that she could remove the hinge pin from the closet door. Although M.S. and Elizabeth remained chained together, they were able to get out of the bedroom and use the telephone in the kitchen to call police. M.S. then took Elizabeth outside and hid behind a car until police arrived. Respondent was arrested at his place of business.

35. Respondent was taken to the Ramsey County Adult Detention Center where he met another inmate named Richard Green. Respondent offered Mr. Green \$50,000 to kill M.S. and Elizabeth to prevent them from testifying against him. After Mr. Green was released from jail, Respondent mailed him a check in the amount of \$1,000 as a down payment and provided Mr. Green with information to assist him in locating the Stauffer's address. Alternatively, Respondent requested Mr. Green's help in escaping from jail. Respondent suggested that Mr.

Green could help him escape when Respondent was being transferred from the jail to the federal courthouse or while he was at St. Paul-Ramsey hospital for medical testing. Mr. Green reported this information to the FBI.

36. Respondent was also held at the Anoka County Jail where he told other inmates he was going to escape and made some rudimentary escape attempts. Respondent also made a weapon in jail by breaking a light-bulb and tying the shards of glass to a toilet plunger. Respondent was investigated for planning an escape from Leavenworth in 1982.

37. Respondent was tried in federal court for the interstate transportation of a kidnapping victim and tried in state court for the kidnapping and murder of Jason Wilkman.

38. Respondent was examined by a number of psychiatrists and psychologists in the federal and state court proceedings.

39. Charles McCafferty, M.D., conducted a psychiatric examination of Respondent in September of 1980. Dr. McCafferty opined "my diagnostic impression is that (Respondent's) aberrant behavior is the product of a personality disorder which has many features of the antisocial or psychopathic category." Dr. McCafferty concluded that Respondent "is obviously an unhappy individual with serious sexual difficulties including severe inadequacy and sexual immaturity combined with limited development of his impulse controls. He shows many of the characteristics of an antisocial personality disorder but further psychological assessment . . . is needed before reaching a more definitive diagnosis." Dr. McCafferty requested that Dr. James Gilbertson, Ph.D. conduct a psychological assessment of Respondent due to the "nature and complexity of the case."

40. Dr. James Gilbertson, Ph.D. conducted a psychological evaluation of Respondent and issued a report dated November 3, 1980. Dr. Gilbertson concluded:

“As I survey the entire data in this matter, I conclude that we are dealing with an individual who does show strong elements of schizoidism in the context of poor controls, capabilities for aggression and a psychosexual disorder. Historically, these appear to have been identified as early as age 14 when he was a patient at the University Hospitals. At that time, peeping Tomism, heightened sexual interest in mother and fire setting were all present and admitted to by (Respondent), as an adolescent, as a result of uncontrollable pressure. I detect that little has changed with regard to (Respondent) in terms of the walled-off lifestyle and for the tendencies for powerful thoughts and sexual urges to break into behavior once again. I cannot detect any indications of psychotically crystallized delusional system nor mental illness that would present a McNaughten question. I sense that he is a deeply troubled individual whose life has been primarily one of fantasy who has over time showed periods of lesser and greater control over aggressive-sexual impulses. Diagnostically, I would see him as showing a combination of schizoid and characterological defects with additional paranoid trends and a psychosexual disorder.”

41. Dr. Terry Zuehlke, Ph.D. conducted a psychological assessment of Respondent in September of 1980. Dr. Zuehlke opined that Respondent:

“(m)ay be diagnosed as a mixed personality disorder. The results of the evaluation suggest personality characteristics of a narcissistic, anti-social and compulsive personality disorder. With respect to the narcissistic features, (Respondent) gives evidence of over-valuing his sense of personal worth, an exaggerated sense of his own importance seen in his tendencies to be very be self-centered Antisocial personality characteristics are also noted. That is, (Respondent) has a history of fire-setting, violating the rights of others, including breaking into Ms. Stauffer’s in-laws in Duluth, and a distinct antiauthoritarian quality to his manuscripts. Observation of the videotapes suggested he was enjoying the verbal debate between himself and Ms. Stauffer, and seemed to be deliberately taunting her by stating, for example, ‘I want to have my little fun here, okay?’ Again, on the videotapes, there is a very strong revenge motif, with (Respondent) indicating he was very upset with Ms. Stauffer for having ‘ignored me.’ Furthermore, (Respondent) threatened Ms. Stauffer with harm as well as her daughter and said, for example, he would ‘take you and your husband and your kid with me,’ if she reported him to the police. . . . The *compulsive personality disorder* characteristics include a limited ability on his part to express nuturant emotions to others. . . . Secondary diagnostic characteristics traits include an *obsessive compulsive neurosis* component to his personality, as well as a *psychosexual disorder*.”

42. Dr. Jonas Rappeport, M.D., conducted a psychiatric evaluation of Respondent in October of 1980. Dr. Rappeport concluded that Respondent suffered from compulsive personality disorder with features of atypical paranoid disorder and sexual sadism.

43. Respondent did not deny kidnapping the Stauffers and Jason Wilkman, or raping M.S, at his trials in federal and state court. Rather, Respondent claimed that he was incapable of understanding that what he was doing was wrong at the time the offenses were committed. Respondent claimed that he had no memory of killing Jason Wilkman. Respondent claimed he had visual and audio hallucinations during interviews with the numerous psychiatrists and psychologists that evaluated him before the trials. Based on Respondent's reporting of hallucinations, some expert witnesses concluded that Respondent suffered from paranoid schizophrenia. The experts who opined that Respondent had schizophrenia had differing opinions regarding whether Respondent understood that what he was doing was wrong; one opining that Respondent did not understand that what he was doing was wrong and the other opining that Respondent did understand the nature of the act but that he was powerless to control himself.

44. Respondent now admits that he was not having audio or visual hallucinations at any time prior to the kidnappings and murder and that he lied in order to further his insanity defense.

45. During Respondent's trial in federal court on the charge of kidnapping, he lunged at M.S. as she approached the witness stand. Respondent was restrained by federal marshals who prevented him from reaching M.S.

46. During Respondent's trial in Anoka County he secreted a knife into the courtroom and brutally attacked M.S. while she was testifying. The trial judge described the attack on the record as follows:

" ... (Defendant) jumped out of his chair and raced hollering toward Mrs. Stauffer on the witness stand. He jumped on her, tipped over the witness chair, came down on top of the witness. He attempted to circle his arm around her neck and threatened to take her hostage under a threat of death. He had a knife in his hand. He slashed at her and several Deputy Sheriffs came to her assistance. It took five men to subdue the Defendant. Before they were able to subdue him he slashed Mary Stauffer with a knife across her

face inflicting a deep wound requiring 62 stitches to close. The Court was immediately recessed and Mary Stauffer was treated at Mercy Hospital as an emergency patient.”

47. Respondent was convicted in federal court on the kidnapping charge and given a life sentence. Respondent is eligible for parole but has not, at present, been granted parole by the U.S. Parole Commission.

Respondent was convicted of kidnapping and second degree murder in Anoka County District Court in the death of Jason Wilkman and sentenced to thirty years in prison. The sentencing judge in Anoka County ordered that Respondent’s state sentence would run concurrent with his federal sentence.

48. Respondent is serving his concurrent state and federal sentences within the Federal Bureau of Prisons. Upon commitment, Respondent was initially sent to the United States Medical Facility at Springfield, Missouri for a mental health evaluation where he was examined by Dr. Walter Cassidy, who concluded that Respondent was not psychotic but that there were “indications of psychosexual emotional problems and a considerable amount of hostility.” Dr. Cassidy noted that Respondent responded in a defensive manner and appeared annoyed when questioned about his criminal history. Dr. Cassidy diagnosed Respondent with Adult Antisocial Behavior. Dr. Cassidy determined that Respondent was not sufficiently pathological to be placed in a psychological treatment facility but concluded that Respondent would benefit from psychiatric/psychological services.

49. Since 1980, when Respondent was incarcerated, he has been involved in two behavioral incidents of note: a) in 1982, it was reported that Respondent was going to “shank” another inmate; and b) in 2000, Respondent assaulted an inmate after the two were involved in an altercation and was found to have acted aggressively towards the correctional officer who intervened.

50. Since Respondent's incarceration he has never sought psychological or psychiatric services despite the fact that he knew such services were available. Respondent's testimony that he believed psychological services were only available if he was suicidal was not credible. This Court finds that Respondent chose not seek out psychological treatment despite the fact that it was recommended. Based on the records, Respondent's statements to Dr. Paul Reitman and Dr. Powers-Sawyer and his testimony at trial, it does not appear that Respondent felt that he had any psychological problems which required treatment. While Respondent indicated at trial that his thinking was wrong at the time he kidnapped M.S., Elizabeth and Jason Wilkman, murdered Jason Wilkman and repeatedly raped M.S., he appears to believe that he no longer suffers from any mental illness.

51. Respondent has not been offered sex offender treatment while in federal custody and he has not requested sex offender treatment despite the fact that in 1999 he was notified of his sex offender classification. Respondent claims he did not request sex offender treatment because he did not want other inmates to know that he had kidnapped and raped M.S. and murdered a little boy in the process of the kidnapping because it would place him in danger. While the Court believes a clear stigma attaches to a person incarcerated for sex crimes and crimes against children, the Court does not accept this excuse. Based on prison records it is clear that inmates at the prisons where Respondent was incarcerated were aware of Respondent's crimes. Respondent was attacked by other inmates at various prisons because they were aware of Respondent's crimes. For example, in 2004, Respondent was taken out of the general prison population to protect his safety after he was assaulted by another inmate.

52. Anoka County retained Dr. Paul Reitman, Ph.D, L.P., to conduct a pre-petition screening of Respondent in July of 2008 to determine if Respondent met the criteria for commitment as

SDP/SPP. Dr. Reitman interviewed Respondent, conducted psychological testing and reviewed psychological assessments completed before Respondent's trial and reviewed reports and records related to Respondent's offenses and incarceration. Dr. Reitman issued his report, dated July 10, 2008, in which he opined that Respondent met the statutory definition for commitment as SDP and SPP.

53. Based on Dr. Reitman's opinion, Anoka County filed a petition for civil commitment on October 16, 2009, alleging that Respondent meets the criteria for civil commitment as a SDP and SPP.

54. On November 3, 2009, Dr. Amanda Powers-Sawyer was appointed by this Court as the first examiner to provide an opinion as to whether or not Respondent meets the criteria to be committed as SDP and SPP.

55. Dr. Powers-Sawyer interviewed Respondent for approximately four hours on December 9, 2009 and performed psychological testing of Respondent on December 17, 2009. In addition to the interview and testing, Dr. Powers-Sawyer also reviewed Volumes A through T¹, which were provided to this Court as exhibits at trial. Based on the interview, and record review, Dr. Powers-Sawyer scored a number of actuarial tools.

56. Based on the evaluation, Dr. Powers-Sawyer issued a written report, dated January 15, 2010, opining that Respondent did meet the criteria for commitment as SDP and SPP.

57. After receiving a copy of Dr. Powers-Sawyer's evaluation, Respondent requested the appointment of a second examiner. Minn. Stat. § 253B.08, Subd. 1 requires a hearing on the petition for civil commitment within 90 days from the date the petition is filed, or within 120 days of the date the petition is filed on a showing of good cause. Respondent waived the

¹ Volumes A through T included many exhibits that were relevant and important. However, many of the documents in Volumes A through T were duplicates, illegible or simply irrelevant.

statutory time requirements of Minn. Stat. § 253B.08, Subd. 1, in order to allow sufficient time for the second examiner to conduct an evaluation.

58. At Respondent's request, this Court appointed Dr. Peter Marston as the second examiner on January 11, 2010. Dr. Marston interviewed Respondent for approximately seven hours on January 25, 2010. Dr. Marston also reviewed Volumes A through T and scored a number of actuarial tools. Dr. Marston opined that Respondent does not meet the criteria for commitment as SDP because: 1) it is not clear that he suffers from any sexual, personality or other mental disorder at present; and 2) he is not "highly likely" to engage in acts of harmful sexual conduct because of his "age and '*apparently*' diminished and possibly remitted disorders and other risk factors absent and constructively adaptive factors present support this." (emphasis added). Despite Dr. Marston's conclusion that Respondent does not meet the criteria for SDP/SPP, he testified that Respondent does need secure in-patient treatment because it is the only type of treatment that will effectively address his issues and that will allow professionals to observe Respondent twenty-four hours a day, seven days a week.

Respondent meets the criteria to be civilly committed as a sexually dangerous person pursuant to Minn. Stat. § 253.02, Subd. 18c.

59. A Sexually Dangerous Person is defined by Minn. Stat. § 253B.02, Subd. 18c as a person who,

- (1) has engaged in a course of harmful sexual conduct,
- (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
- (3) as a result, is likely to engage in acts of harmful sexual conduct.

Respondent has engaged in a course of harmful sexual conduct

60. There is no dispute that Respondent has engaged in a course of harmful sexual conduct. Respondent's obsession with M.S began while he was in high school. Respondent wrote over

700 pages of violent, sadistic fantasies involving the rape of M.S. The fantasy writing, and Respondent's admitted desire to carry out his fantasies with M.S., eventually led him to kidnap M.S. The "course of harmful sexual conduct" as required to be committed as SDP is clearly present in the repeated rapes of M.S. over the course of the seven weeks Respondent held M.S. captive. In addition to the criminal sexual conduct, this Court finds that the following conduct is "harmful sexual conduct" as defined by Minn. Stat. § 253B.02, Subd. 7a(b) because said conduct was motivated by Respondent's sexual impulses and was part of a pattern of behavior that Respondent engaged in with the ultimate goal being to kidnap and rape M.S.: 1) breaking into M.S.'s in-laws home; 2) stalking M.S.; 3) the kidnapping and murder of Jason Wilkman; 4) the kidnapping of M.S. and Elizabeth; 5) threatening to kill Elizabeth to gain M.S.'s compliance; 6) repeated threats over the course of M.S.'s and Elizabeth's captivity that Respondent would kill M.S. and/or her husband and son; and 7) the brutal assault of M.S. while she testified against Respondent in state court during his trial and before the very jury asked to deliberate his fate.

Respondent suffers from a sexual, personality, or other mental disorder or dysfunction.

61. Dr. Powers-Sawyer and Dr. Marston both offered opinions as to Respondent's mental health diagnosis.

62. Dr. Powers-Sawyer opined that Respondent has an AXIS I diagnosis of Sexual Sadism and an AXIS II diagnosis of Antisocial Personality Disorder. Dr. Powers-Sawyer's opinion as to Respondent's mental health diagnosis is similar to that of Dr. Reitman, who opined that Respondent had an AXIS I diagnosis of Paraphilia NOS and Delusional Disorder, Erotomanic Type and an AXIS II diagnosis of Personality Disorder NOS (with Antisocial and Narcissistic Features). At trial, Dr. Reitman testified that he agreed with Dr. Powers-Sawyer that Respondent

exhibits criteria associated with sexual sadism and that his diagnosis of Paraphilia NOS encapsulates sexual sadism.

63. Dr. Powers Sawyer explained in her written report that,

“Sexual Sadism, is a Paraphilia. The essential features of a Paraphilia are recurrent and intense sexually arousing fantasies, sexual urges or behaviors generally involving 1) nonhuman objects; 2) the suffering or humiliation of oneself or one’s partner, or 3) children or other non-consenting persons that occur over a period of 6 months. For Sexual Sadism, the diagnosis involves real acts in which the individual derives sexual excitement from the psychological or physical suffering (including humiliation) of the victim. In (Respondent’s) case this condition exists evidenced by the offense characteristics from the official record, his written rape fantasies, and the transcript of the rapes. Considering the offense characteristics first, the literature considers the following factors for the presence of sexual sadism: torture, use of a weapon, humiliation, victim confinement, bondage, post-death mutilation and object insertion. Sexual sadists also tend to display more offense planning and dramatic expressions of violence. In (Respondent’s) case, many of these characteristics are present. He artfully planned the kidnapping of the Stauffer’s and was prepared the day of the kidnapping. He used a weapon to abduct them, and shortly thereafter placed them in the trunk of the car. He kept them bound and confined to the closet during most of their captivity allowing them use of bucket as a toilet. In the interview, he admitted to carrying a gun with him when transporting them to Chicago. The murder of child victim Jason Wilkman occurred, as (Respondent) maintained, because he was ‘in the way.’ (Respondent) murdered Jason because Jason’s presence impeded his plan to carry through with his sadistic sexual fantasies. This act of violence was a component of (Respondent’s) psychosexual disorder in the sense that his sexual urges and obsessions were unalterable. Prolonged confinement of Mary Stauffer involving repeated sexual assaults of prolonged length (3-4 hours) was exceedingly cruel. At times, she was bound to furniture and blindfolded. On another occasion, she was psychologically forced to comply (sexually) as instructed in order to prevent her daughter from death at the hands of (Respondent). The transcript of one of the sexual assaults includes evidence of (Respondent’s) enjoying his efforts to punish and control her. The following statements made by (Respondent) to Mrs. Stauffer while she was bound and raped characterize sexual sadism: ‘...unburdened my hatred. . . I’ve evened the score. . . this has been planned. . . you’ll probably have emotional scars... that’s the beauty of it . . . do you wanna fight, fine, nothing gets me more excited. . . haven’t even started. . .you haven’t begun to suffer. . .it’s an evil thing isn’t it. . .have this anger and want to release it. . . I’m not going to give it to you all at once [explaining why he’s doing what he’s doing], I want to have my little fun here, okay?. . . that’s the anger and hatred I have for you right now.’”

With respect to her opinion that Respondent is a sexual sadist, Dr. Powers Sawyer concluded that,

“Given that individuals with sexual sadism show a tendency toward sexually assaulting non-consenting persons, this examiner concluded that as a result, this disorder predisposes (Respondent) to engage in acts of harmful sexual conduct as defined in Minnesota Statute 253B.02, subs. 18c and 7a, and causes him to have a lack of adequate control over his sexually harmful behavior.”

With respect to her opinion that Respondent suffers from an antisocial personality disorder, Dr. Powers-Sawyer indicated that,

“antisocial personality disorder, is a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood or early adolescence and continues into current adulthood. (Respondent) has periodically exhibited lack of remorse or rationalized having mistreated and hurt others, repeated lying, irresponsibility and failure to conform to social norms. This pattern of behavior is seen evidenced by his juvenile misconduct and convictions or self-reported incidents of sexual assault, kidnapping, murder, burglary, serious assault, use of weapons, threats to harm others, and elopement (escape) attempts. Thus, this pattern of behavior is seen as ongoing.”

With respect to her opinion that Respondent suffers from an anti-social personality disorder, Dr. Powers-Sawyer concluded that Respondent is predisposed,

“to engage in acts of harmful sexual conduct as defined in Minnesota Statute 253B.02, subs. 18c and 7a, and causes him to have a lack of adequate control over his sexually harmful behaviors.”

Dr. Powers-Sawyer’s opinion is buttressed by Dr. Reitman’s report, in which he indicated,

“these (sic) diagnoses, singularly or in combination, contribute to (Respondent’s) inability to control himself in sexual matters.”

64. With respect to Respondent’s mental health, Dr. Marston offered the following,

“(Respondent) presented significant dysfunctions at the time of his offense 30 years ago. He presented a Paraphilia-NOS, Nonconsent, and a Personality Disorder, - NOS with narcissistic, antisocial and obsessive-compulsive traits. He has not completed any treatment to address these problems, though reports he has made progress on the paraphilia symptoms and character disorder problems.

(Respondent) claims that he has not experienced any of the symptoms of his Paraphilia since the initial period of his confinement. He explained that sexual urges and impulses at this point are and for many years have been aversive to him because they remind him of his offense which makes him sick to his stomach.

With respect to the personality disorder he said he has worked toward his self-improvement for many years and has achieved significant progress in eliminating angry, violent, grandiose, entitled thinking and behaviors. He said that his track record of good behavior while in prison should serve, in part, to demonstrate his improvement. He said that his good long term relationships with some Federal employees including female employees and other good long term relationships with other inmates also should help to demonstrate this. Last, he said that his work to improve his relationship with his mother and brothers, over time, also should serve as a partial demonstration of this. He has not been carefully observed during the course of a treatment program to verify this. The extent to which (Respondent) suffers from a disorder or a dysfunction at this point is not clear. He does not admit to the paraphilic symptoms at this point. He claims to have substantially resolved the personality disorder problems he presented at the time of the offense.”

Later in Dr. Marston’s report, he indicates his AXIS I diagnoses is Paraphilia NOS-Nonconsent in partial or full sustained remission while in confinement and his AXIS II diagnosis is Personality Disorder NOS with antisocial, narcissistic and obsessive-compulsive traits in partial or full sustained remission while in confinement.

At trial, Dr. Marston testified that he diagnosed Respondent with paraphilia NOS, nonconsent. Dr. Martson also testified that he had initially concluded that Respondent’s diagnosis should be sexual sadism because of the “sadistic qualities of his behavior” and “humiliation” but ultimately did not diagnose Respondent as a sexual sadist because Respondent claimed he was not aroused by causing pain or humiliation. Dr Martson’s decision to base his diagnosis solely on Respondent’s self-reporting, without considering: 1) Respondent’s fantasy writings, which included scenarios that were carried out by Respondent when he raped M.S.; or 2) what Respondent did to M.S during the rapes, leads this Court to conclude that little weight can be placed on Dr. Marston’s diagnostic impressions. Relying solely on Respondent’s self-serving self-reporting is also of little value because Respondent made conflicting statements, and his claims changed, with each examiner’s interview. While the interview with the Respondent is important, Respondent’s statements cannot be given weight unless the statements comport with

the evidence and record. In this case, Respondent's statements to Dr. Marston stand in stark contrast to Respondent's fantasy writing and his conduct over the course of seven weeks while he held M.S.

65. Dr. Marston's opinion regarding Respondent's current mental health diagnosis is not supported by the record and was not convincingly set forth in Dr. Marston's written report or through his testimony.

First, Dr. Marston acknowledged in his testimony, and in his written report, that the sole basis for his opinion as to Respondent's current mental health functioning was based on Respondent's self-reporting. This Court does not believe, as Dr. Marston testified, that the examiner "has to use (Respondent's) subjective report." This Court is extremely uncomfortable with the fact that Dr. Marston relied solely on Respondent's self-reporting regarding his mental health without any thoughtful challenge thereto and without considering the plausibility of Respondent's statements taking into account the record. For instance, Respondent indicated that he had made significant achievements with respect to his personality disorder based on the fact that he has eliminated grandiose thinking, has a track record of good behavior and establishing long term relationships in prison including with female employees and has worked to improve his relationship with his mother and brothers.

Dr. Marston did not carefully consider Respondent's statement in light of the record. This Court notes that at the time Respondent became obsessed with M.S. in high school he claimed to be working on solving a mathematical theorem and was angry at M.S. for not being supportive of this endeavor. Respondent continues to this day to claim that he can solve the

mathematical theorem, which indicates to this Court² that Respondent continues to suffer from grandiose thinking. Additionally, Respondent's statements regarding relationships with female employees are troubling in light of his testimony at trial that female employees in the prison, "sought him out." Again, this seems to be indicative of his grandiose thinking and is all too reminiscent of Respondent's belief that M.S. was in love with him. Additionally, this Court notes that Respondent has a strong motivation to lie regarding his current condition and his sexual functioning, or lack thereof, to avoid civil commitment. Respondent has a history of lying to mental health professionals to avoid confinement, such as claiming to have audio and visual hallucinations as part of his insanity defense, and admitted in these proceedings that he lied to mental health professional in an attempt to avoid prison thirty years ago.

Second, Dr. Marston was careful to qualify his opinion regarding Respondent's current mental health diagnosis with the acknowledgement that: 1) Respondent has not had ANY type of treatment to address the mental health problems he obviously had when he entered the federal prison system 30 years ago; and 2) Respondent has not been observed by professionals in a treatment program to verify Respondent's self report that his personality disorder is improved. While Dr. Marston accepts Respondent's self-reporting regarding his mental health he distances himself from his own opinion with these qualifiers.

Finally, Petitioner retained Dr. James Gilbertson to review the pre-petition screener's and first and second examiner's scoring of the Hare Psychopathy Checklist (PCLR). While testifying, Dr. Gilbertson indicated that a person diagnosed with an anti-social personality disorder or paraphilia does not mature out of either mental health condition. With respect to personality disorders, Dr. Gilbertson indicated that the manner in which the personality order

² Dr. Powers-Sawyer testified that Respondent's claims regarding solving this theorem are indicative of grandiose thinking.

manifests itself may change but the disorder is still present and not easily changed. With respect to paraphilia, specifically sexual sadism, Dr. Gilbertson indicated that an individual does not grow out of this paraphilia, that sexual arousal patterns are intractable, there is no cure and that an individual must learn to manage the paraphilia through treatment. Dr. Gilbertson testified that in the case of either diagnosis, the individual must go through treatment because a “self-deception” occurs when people “treat” themselves, which leads to cognitive distortion. Dr. Gilbertson also indicated that there is a correlation between an individual’s belief that they have treated themselves and grandiosity. Dr. Gilbertson’s testimony was persuasive.

66. This Court finds, based on Dr. Powers-Sawyer’s and Dr. Reitman’s evaluations and testimony, that Respondent’s suffers from significant mental health problems, including the paraphilia sexual sadism and a personality disorder. This Court notes that the first examiner’s opinion, and this Court’s finding that Respondent suffers from a paraphilia, is consistent with the conclusions of the majority of the psychologists who evaluated Respondent in 1980 who opined that Respondent has a psychosexual disorder.

Respondent is likely to engage in acts of harmful sexual conduct.

67. Both examiners scored Respondent using the Hare Psychopathy Checklist- Revised (PCL-R), which is used to measure the degree to which an individual is psychopathic. Dr. Powers-Sawyer indicated in her report, “(w)hile PCL-R scores are continuous, prediction studies for criminal and violent recidivism often use a cutoff score of 25 for defining the ‘prototypical psychopath.’”

Dr. Powers-Sawyer gave Respondent a score of 25 on the PCL-R. In Dr. Marston’s written report he gave Respondent two scores on the PCL-R; one score based on 1980 and one score based on the present. Dr. Marston scored Respondent as an 18 or 19 as of 1980 and gave

Respondent a present score of 5. During trial, and after Dr. Gilbertson testified, Dr. Marston came up with a third PCLR score of 14.

Dr. Marston's approach to scoring the PCL-R for the purpose of rendering his written opinion is not accepted by psychological professionals nor is it endorsed by the doctor who developed the PCL-R. Additionally, Dr. Marston's score on the PCL-R is so drastically different from Dr. Powers-Sawyer's and Dr. Reitman's scores that this Court can only conclude that one of the examiner's PCL-R scoring of is incorrect.

In order to determine which examiner's scoring of the PCL-R is accurate, this Court relied heavily on the testimony of Dr. James Gilbertson. Dr. Gilbertson testified that: 1) the median score of an offender in a correctional institution or psychiatric hospital is 23; 2) that the bifurcation of scores by Dr. Martson does not comport with the recommendations of Dr. Hare, who developed the PCL-R; 3) that research indicates that the factors being rated in the PCL-R are fairly pervasive, tend to persist and stand the test of time; and 4) that the scores assigned are based on the total information available about the individual during their life span not a specific segment or snapshot in time during the life span. Dr. Gilbertson also testified that the difference in scores between Dr. Reitman (who gave Respondent a PCL-R score of 25 – 28) and Dr. Powers-Sawyer's score of 25, is not statistically significant, due to the standard error of measurement while Dr. Marston's scores are beyond the statistically accepted limits of error.

Additionally, a significant amount of testimony was taken from Dr. Reitman, Dr. Powers-Sawyer and Dr. Martson regarding how they reached their individual PCL-R scores.³ Based on their explanations of how each factor was scored and how the score related to Respondent's

³ The PCL-R score is reached by assigning a score of 0, 1, or 2 to twenty different factors.

conduct, this Court finds that Dr. Powers-Sawyer's PCL-R score of 25 is the most reliable score and that none of Dr. Marston's scores on the PCL-R are credible.

68. Both examiners scored Respondent using actuarial assessments that help predict Respondent's future risk for sexual re-offending.

The Static-99R, which is a 10 item actuarial risk assessment scale designed to predict sexual recidivism among sexual offenders, was scored by both examiners. The Static-99R assigns four risk categories based on the score assigned; these risk categories are low, low-moderate, moderate-high and high. Both examiners gave Respondent a score of 4 on the Static-99R, which places him in the re-offense category of moderate-high. Dr. Powers-Sawyer also scored Respondent using the Static-2002R, which consists of 14 risk factor groups and places offenders in one of five risk categories based on their score; low, low-moderate, moderate, moderate-high and high. Dr. Powers-Sawyer scored Respondent as a five, which places him in the moderate risk category. Dr. Marston did not use the Static-2002R in his assessment of Respondent.

The Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) was also scored by both examiners. Dr. Powers-Sawyer gave Respondent a score of + 3 and Dr. Marston gave Respondent a score of 0. Both scores place Respondent in the low risk range, which is statistically associated with a likelihood of Respondent being rearrested for a new physical contact sexual offense within six years post-incarceration of 12%.

The Rapid Risk Assessment for Sex Offender Recidivism (RRASOR) was also scored by the examiners. Both examiners assigned a score of 1 to Respondent, which is associated with a 7.6% likelihood of being reconvicted for a new sexual offense within five years and an 11.2% likelihood of being reconvicted for a new sexual offense within ten years.