NO. _____

In the

Supreme Court of the United States

DARRIN ALONZO MILLER,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

APPENDIX A

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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61 F.4th 426
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff – Appellant,
v.
Darrin Alonzo MILLER, Defendant – Appellee.

No. 22-4397
|
Argued: January 27, 2023
|
Decided: March 6, 2023

Synopsis
Background: Defendant who was charged with transferring obscene material to a minor filed a pre-trial motion in limine to exclude evidence that the recipient of the allegedly obscene material was defendant's 14-year-old sister. The United States District Court for the Southern District of West Virginia, Joseph R. Goodwin, J., granted the motion. Government appealed.

Holdings: The Court of Appeals, Agee, Circuit Judge, held that:

[1] evidence that victim was defendant's 14-year-old sister was highly probative;

[2] probative value of the evidence was not substantially outweighed by risk of unfair prejudice; and

[3] district court's error in excluding the evidence was a plain abuse of discretion that warranted reversal.

Reversed and remanded.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

West Headnotes (10)

[1] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice is rule of inclusion, generally favoring admissibility. Fed. R. Evid. 403.

4 Cases that cite this headnote

[2] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Where evidence is probative, the balance under rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice should be struck in favor of admissibility, and evidence should be excluded only sparingly. Fed. R. Evid. 403.

7 Cases that cite this headnote

[3] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Under rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice, "unfair prejudice" speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged. Fed. R. Evid. 403.

3 Cases that cite this headnote

[4] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Criminal Law Necessity and scope of proof

When performing the evaluation required by rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice, the court must keep in mind the offering party's need for evidentiary richness and narrative integrity in presenting a case; a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the government chooses to present it. Fed. R. Evid. 403.

2 Cases that cite this headnote

[5] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Criminal Law Necessity and scope of proof

Defendant's objection, under rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice, offering to concede a point generally cannot prevail over government's choice to offer evidence showing guilt and all circumstances surrounding offense. Fed. R. Evid. 403.

[6] **Criminal Law** Relevance

Court of Appeals reviews evidentiary rulings, under rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice, for plain abuse of discretion, and typically gives wide discretion to the district court to determine admissibility under the rule. Fed. R. Evid. 403.

4 Cases that cite this headnote

[7] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Criminal Law Necessity and scope of proof

Evidence that victim was defendant's 14-year-old sister was highly probative in prosecution for transferring obscene material to a minor, for purposes of determining whether the evidence was inadmissible under rule providing that court could exclude relevant evidence if its probative value was substantially outweighed by danger of unfair prejudice, although defendant was willing to stipulate to his knowledge that victim was under the age of 16 years; defendant's stipulation was no match for the robust evidence the government sought to admit about how defendant knew the victim's age, the evidence could assist jury in determining whether the material was obscene, and the evidence was significant part of narrative integrity of government's case. 18 U.S.C.A. § 1470; Fed. R. Evid. 403.

3 Cases that cite this headnote
More cases on this issue

[8] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Probative value of evidence that victim was defendant's 14-year-old sister was not substantially outweighed by risk of unfair prejudice, and thus the evidence was admissible in prosecution for transferring obscene material to a minor; the evidence clearly related to the obscenity and knowledge elements of the offense and to immediate circumstances of the charged crime, and possibility that jury could find details of the offense egregious did not make admission of those details unfair. 18 U.S.C.A. § 1470; Fed. R. Evid. 403.

More cases on this issue

[9] **Criminal Law** Evidence calculated to create prejudice against or sympathy for accused

Damage to a defendant's case is not a basis for excluding probative evidence, under rule providing that court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice, because all evidence that is highly probative invariably will be prejudicial to the defense; instead, the prejudice must be unfair. Fed. R. Evid. 403.

8 Cases that cite this headnote

[10] **Criminal Law** Exclusion of Evidence

District court's error in excluding evidence that victim was defendant's 14-year-old sister, on ground that probative value of evidence was substantially outweighed by danger of unfair prejudice, was a plain abuse of discretion that warranted reversal, in prosecution for transferring obscene material to a minor; case presented extraordinary circumstances in light of significance of the evidence to the charged crime, the minimal risk of unfair prejudice, and the need to prevent government from being forced to stipulate to defendant's proffer of evidence regarding knowledge of victim's age. 18 U.S.C.A. § 1470; Fed. R. Evid. 403.

1 Case that cites this headnote
More cases on this issue

***428** Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Joseph R. Goodwin, District Judge. (2:21-cr-00261-1)

Attorneys and Law Firms

ARGUED: Jennifer Rada Herrald, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellant. Wesley P. Page, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellee. ON BRIEF: William S. Thompson, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellant. Jonathan D. Byrne, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellee.

Before AGEE, QUATTLEBAUM, and RUSHING, Circuit Judges.

Opinion

Reversed and remanded by published opinion. Judge Agee wrote the opinion in which Judge Quattlebaum and Judge Rushing joined.

AGEE, Circuit Judge:

Prior to Darrin Miller's criminal trial for transferring obscene material to a minor, the district court relied on Federal Rule of Evidence 403 to exclude evidence that the recipient of the allegedly obscene material was Miller's fourteen-year-old sister. The Government appeals, asserting that the court abused its discretion in excluding the ***429** evidence because it relates to elements of the offense and is necessary for the Government to tell the complete story of how the crime occurred. Considering the evidence's high probative value and minimal risk of unfair prejudice, we find that the district court plainly abused its discretion in excluding the evidence. We therefore reverse and remand.

I.

[1] **[2]** The district court granted Miller's motion in limine to exclude the evidence of Miller's relationship with his victim under Rule 403,[1] which provides that a court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice."[2] Fed. R. Evid. 403. This Rule "is a rule of inclusion, generally favoring admissibility." *United States v. Udeozor*, 515 F.3d 260, 264–65 (4th Cir. 2008) (cleaned up). In other words, "[w]here evidence is probative, 'the balance under Rule 403 should be struck in favor of admissibility, and evidence should be excluded only sparingly.' " *United States v. Lentz*, 524 F.3d 501, 525 (4th Cir. 2008) (quoting *United States v. Aramony*, 88 F.3d 1369, 1378 (4th Cir. 1996)).

1 The district court also excluded the evidence on relevance grounds, which Miller concedes was an error. We agree and therefore do not consider that ground further.

2 We do not address the other grounds for exclusion under Rule 403 because Miller concedes he relies solely on the risk of unfair prejudice on appeal.

[3] In order to exclude evidence under Rule 403's high bar, it must be unfairly prejudicial. " '[U]nfair prejudice' ... speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground *different from proof specific to the offense charged*." *Old Chief v. United States*, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997) (emphasis added). In contrast to such unfairly prejudicial evidence, we have found prejudicial evidence admissible when it "directly establishe[s] an element of the offense." *United States v. Grimmond*, 137 F.3d 823, 833 (4th Cir. 1998) (recognizing that "[e]vidence that is highly probative [to establishing an element of the offense] invariably will be prejudicial to the defense," but that "damage to a defendant's case is not a basis for excluding probative evidence"); *see United States v. Dunford*, 148 F.3d 385, 394–96 (4th Cir. 1998) (concluding that the district court did not abuse its discretion in admitting evidence related to an element of the offense over defendant's Rule 403 challenge that its admission would unfairly prejudice the jury against him and that he had already stipulated to certain related facts).

[4] **[5]** When performing the evaluation required by Rule 403, the court must keep in mind "the offering party's need for evidentiary richness and narrative integrity in presenting a case." *Old Chief*, 519 U.S. at 183, 117 S.Ct. 644. In light of this standard, "a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it." *Id.* at 186–87, 117 S.Ct. 644. In other words, "a defendant's Rule 403 objection offering to concede a point generally cannot prevail over the Government's choice to offer evidence showing guilt and all the circumstances surrounding the offense." *Id.* at 183, 117 S.Ct. 644.

For instance, in *Dunford*, following these rules, we upheld the admission of prejudicial evidence going to an element to which the defendant was willing to stipulate when the challenged evidence "related not to facts far removed in time from the [charged crime]" but rather was part of an ***430** " 'eventful narrative,'—a relevant part of the very transactions leading to [the defendant's] arrest and indictment in *this case*." 148 F.3d at 396 (internal citation omitted). We reasoned that allowing "contemporaneous evidence relevant both to the context and to the crime is not the type of prejudice that Federal Rule of Evidence 403 addresses" and "the general rule that the defendant cannot stipulate away the government's case applies." *Id.*; *see also United States v. Bajoghli*, 785 F.3d 957, 963–64 (4th Cir. 2015) (explaining that while a district court "retains broad-ranging discretion to manage trials and limit proof[,] ... its discretion must be balanced by the need to give the government adequate latitude to prove its case").

II.

With this baseline for understanding the relevant law, we turn to the undisputed facts in the case before us. While Miller was imprisoned for an unrelated conviction, he sent a predatory, sexually explicit letter to his fourteen-year-old sister describing his fantasy of sexual activity with her. He was then indicted for violating 18 U.S.C. § 1470, which prohibits "using the mail or any facility or means of interstate or foreign commerce" to "knowingly transfer[ ] obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempt[ing] to do so."

Before trial, Miller sought to stipulate that he knew he was transferring the letter to an individual under the age of sixteen. However, the Government refused to accept the stipulation and indicated that it intended to call a police officer to testify as to *how* Miller knew the victim was fourteen years old (namely, because they were siblings). The Government asserted that the testimony was relevant to prove that Miller knew the victim was under the age of sixteen and that the letter was obscene because it was "written to and graphically describe[d] sexual activity between defendant, a then 38-year-old man, and his 14-year-old *sister*." J.A. 49.

[6] Miller filed a motion in limine seeking to preclude the admission of the Government's proposed evidence. The district court granted the motion, reasoning that evidence beyond the letter—including evidence of Miller's relationship with the victim—was inadmissible under Rule 403. The Government appealed,[3] arguing that the evidence (1) is probative because it relates to elements of the offense and the narrative of the crime, and (2) is not unfairly prejudicial because direct evidence of the elements of the crime and the context in which the crime occurred cannot unfairly prejudice a defendant. We address each argument in turn, bearing in mind that we review evidentiary rulings under Rule 403 for plain abuse of discretion, and typically give "wide discretion" to the district court to determine admissibility under Rule 403. *Udeozor*, 515 F.3d at 265 (explaining that this Court may overturn a district court's Rule 403 decision only "under the most extraordinary circumstances" (quoting *United States v. Williams*, 445 F.3d 724, 732 (4th Cir. 2006))).

[3] We have jurisdiction under 18 U.S.C. § 3731, which authorizes the Government to appeal a district court's decision to exclude evidence under certain circumstances, upon certification by the U.S. Attorney that the appeal is not taken for an improper purpose. *See* J.A. 45 (certification).

III.

A.

[7] The Government contends that the evidence is highly probative because it establishes ***431** two elements of the offense—that Miller knew the victim's age and that the letter is obscene—and is contemporaneous evidence of what law enforcement discovered in connection with the crime. We agree.

First, under the Rule 403 balancing test, the evidence is highly probative because it goes directly to elements of the offense. *See* *Grimmond*, 137 F.3d at 833 (finding no abuse of discretion in the admission of evidence under Rule 403 where it "directly established an element of the offense"); *Bajoghli*, 785 F.3d at 966 (explaining that once it is shown that "evidence is probative of an element of the crime charged, 'the balance under Rule 403 should be struck in favor of admissibility' " (quoting *Aramony*, 88 F.3d at 1378)). The Government's proffered evidence would strongly suggest that Miller knew the victim was under the age of sixteen because they were siblings.

Miller's willingness to stipulate to his knowledge of the victim's age does not reduce the probative value of the evidence. The Supreme Court has said that alternative evidence only "discount[s] the value of the item first offered" if the alternative has "substantially the same or greater probative value." *Old Chief*, 519 U.S. at 182–83, 117 S.Ct. 644. That is not the case here, where the stipulation that Miller knew the victim was fourteen years old would "be no match for the robust evidence" the Government seeks to admit about *how* he knew that fact. *Id.* at 189, 117 S.Ct. 644. For that reason, in *Dunford*, this Court held that the district court did not abuse its discretion in admitting evidence of drug use where the evidence was "contemporaneous evidence relevant both to the context and to the crime" such that "the general rule that the defendant cannot stipulate away the government's case applie[d]." 148 F.3d at 396. [4]

[4] Further, Miller agrees that the Government cannot be forced into a stipulation, yet that is the precise result if the district court's ruling is upheld. The Government will be required to enter the stipulation or else it will not be able to introduce evidence on a necessary element of the crime charged: that Miller knew the victim was under the age of sixteen. *See* *Old Chief*, 519 U.S. at 189, 117 S.Ct. 644 (describing "the accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away").

In addition, the evidence could assist the jury in determining whether the material is obscene. As Miller acknowledges, there is a "taboo against incest" in society, Resp. Br. 6 (citation omitted), such that evidence that Miller sent a sexually explicit letter *to his sister* may inform the jury as to whether the letter is obscene, *i.e.*, whether it appeals to a shameful and prurient interest in sex. *See* *Miller v. California*, 413 U.S. 15, 24, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973) (defining obscenity as "works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual

conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value"); *United States v. Guglielmi*, 819 F.2d 451, 455 (4th Cir. 1987) (indicating that "appeals to or provokes a prurient interest" refers to material that appeals to a " 'shameful or morbid interest in nudity, sex or excretion' " (quoting *Roth v. United States*, 354 U.S. 476, 487 n.20, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957))).

Although it is true, as Miller indicates, that whether a work is obscene requires consideration of the work itself, that does not discount the significance of Miller's relationship to the victim because the Supreme Court has instructed that, for purposes of the prurient interest prong of obscenity, the work must be examined "as a whole." *Miller*, 413 U.S. at 24, 93 S.Ct. 2607. In the specific circumstances of this case—a sexually explicit letter directed to ***432** a minor victim to whom the sender was related that describes sexually explicit acts between the sender and victim—the "whole" necessarily includes Miller's relationship to the recipient. *See United States v. Deason*, 965 F.3d 1252, 1262 (11th Cir. 2020) (explaining that the "taken as a whole" requirement "ensures ... that the matter is placed in context so that the jury can properly determine whether the work as a whole appeals to the prurient interest").

Second, aside from the evidence's relevance to the elements of the offense, the evidence is a significant part of the "narrative integrity" of the Government's case. *Old Chief*, 519 U.S. at 183, 117 S.Ct. 644. If that narrative flow is interrupted by, *e.g.*, a stipulation, "the effect may be like saying, 'never mind what's behind the door,' and jurors may well wonder what they are being kept from knowing." *Id.* at 189, 117 S.Ct. 644. Stated differently, "[p]eople who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story's truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard." *Id.* Therefore, for the Government to tell a complete story of Miller's crime that "satisf[ies] the jurors' expectations," *id.* at 188, 117 S.Ct. 644, the Government must tell the jury how he knew the victim before presenting the allegedly obscene letter that resulted from his contact with her. We thus find the evidence that Miller's victim was his sister to be highly probative.

B.

[8] **[9]** Turning to the unfair-prejudice prong of Rule 403, evidence that Miller sent sexually charged and predatory correspondence to his minor sister is clearly damaging to his defense. However, "damage to a defendant's case is not a basis for excluding probative evidence" because *all* "[e]vidence that is highly probative invariably will be prejudicial to the defense." *Grimmond*, 137 F.3d at 833. Instead, the prejudice must be "unfair." Fed. R. Evid. 403. And prejudice is unfair where it could convince the jury "into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief*, 519 U.S. at 180, 117 S.Ct. 644. But here, rather than the evidence

suggesting that Miller is guilty because, *e.g.*, he did a bad act in the past, the Government's proof relates directly to the offense charged, as explained above. That a jury may find the details of the offense egregious does not make the admission of those details unfair.

In support of his argument that the evidence would be unfairly prejudicial, Miller relies on *United States v. Ham*, 998 F.2d 1247 (4th Cir. 1993), where members of a Hare Krishna religious community were charged with RICO and mail fraud violations. *Id.* at 1249. At trial, the district court admitted evidence "of homosexuality, child molestation and abuse, and subordination of women within the community." *Id.* On appeal, this Court found that the evidence was unfairly prejudicial because the jurors could "convict a defendant based on the jurors' disdain or their belief that the defendant's prior bad acts make guilt more likely." *Id.* at 1252. Moreover, the contested evidence was minimally relevant. Although some of it related to motive, it was not essential proof, and was used for impeachment as opposed to proving a required element of the crime. *Id.* at 1253. *Ham* is thus not analogous to this case, where the Government's evidence clearly relates to the obscenity and knowledge elements and to the immediate circumstances of the crime with which Miller is charged.

***433** **[10]** We therefore conclude that the probative value of the Government's evidence is not substantially outweighed by risk of unfair prejudice. Moreover, in view of the foregoing, we hold that the district court's error in excluding the evidence warrants reversal as a plain abuse of discretion. *See United States v. Delfino*, 510 F.3d 468, 470 (4th Cir. 2007) (explaining that "[a] district court abuses its discretion when it ... commits an error of law").

Miller correctly asserts that the standard for reversing the district court's decision is a high one. *See Udeozor*, 515 F.3d at 265 (indicating that we may overturn a district court's Rule 403 determination only "under the most extraordinary circumstances, where [its] discretion has been plainly abused" (quoting *Williams*, 445 F.3d at 732)). However, this case presents those extraordinary circumstances based on the significance of the Government's evidence to the crime with which Miller is charged, the minimal risk of unfair prejudice, and the need to prevent the Government from being forced to stipulate to Miller's proffer of evidence. *See Bajoghli*, 785 F.3d at 964 (finding an abuse of discretion where the district court limited the Government's evidence such that Government could not offer sufficient proof of certain elements of the crime).

IV.

For the foregoing reasons, we conclude that the district court plainly abused its discretion in granting Miller's motion in limine to exclude evidence that the victim was Miller's fourteen-year-old sister.

REVERSED AND REMANDED

All Citations

61 F.4th 426, 120 Fed. R. Evid. Serv. 2238

NO. _____

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Supreme Court of the United States

DARRIN ALONZO MILLER,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

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APPENDIX B

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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2025 WL 80295
Only the Westlaw citation is currently available.
UNPUBLISHED
United States Court of Appeals, Fourth Circuit.

UNITED STATES OF AMERICA, Plaintiff – Appellee,
v.
DARRIN ALONZO MILLER, Defendant – Appellant.

No. 23-4590
|
Submitted: November 12, 2024
|
Decided: January 13, 2025

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Joseph R. Goodwin, District Judge. (2:21-cr-00261-1)

Attorneys and Law Firms

ON BRIEF: Wesley P. Page, Federal Public Defender, Jonathan D. Byrne, Appellate Counsel, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. William S. Thompson, United States Attorney, Jennifer Rada Herrald, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before AGEE, QUATTLEBAUM, and RUSHING, Circuit Judges.

Opinion

PER CURIAM:

***1** Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

A jury convicted Darrin Alonzo Miller of one count of transferring obscene material to a minor under the age of 16, in violation of 18 U.S.C. § 1470. Miller appeals, arguing that the evidence does not support the jury's finding that the letter in question met the definition of "obscenity." We previously considered—and rejected—the bulk of Miller's argument in our decision issued after the Government noted an interlocutory appeal in this case. *United States v. Miller*, 61 F.4th 426

(4th Cir. 2023). As for the rest, we readily conclude that the jury's verdict did not run afoul of the First Amendment because Miller's letter meets the Supreme Court's definition of "obscenity." Accordingly, we affirm his conviction.

I.

The record shows that while Miller was imprisoned in a state facility, he sent a sexually explicit letter to his adopted sister in which he described, in graphic detail, sexual acts he envisioned occurring between himself and his sister. At the time, Miller was thirty-eight years old and she was fourteen years old.

After she received the letter, state law enforcement officers were notified and they investigated. Corporal Jennifer DeMeyer of the West Virginia State Police interviewed Miller, who acknowledged that he sent the letter. Throughout the interview, Miller referred to the recipient as "his sister," J.A. 32, though he also indicated that she was adopted and acknowledged that she was under the age of sixteen.

Based on his sending the letter to the minor, Miller was indicted for violating 18 U.S.C. § 1470, which prohibits "using the mail or any facility or means of interstate or foreign commerce" to "knowingly transfer[ ] obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempt[ing] to do so." To convict, the Government had to prove that Miller (1) used the mail or other means of interstate commerce to (2) knowingly transfer or attempt to transfer (3) obscene matter (4) to an individual under the age of 16 years (5) while knowing that the recipient was under the age of 16. Miller stipulated to every element of the offense except that the letter constituted "obscene matter."

Before trial, Miller moved in limine to exclude evidence about *how* he knew the recipient was underage, specifically, any evidence that she was his adopted sister. The district court granted that motion, and the Government noted an interlocutory appeal of that decision. We reversed, reasoning that this evidence was admissible in part because it "could assist the jury in determining whether the material is obscene." *Miller*, 61 F.4th at 431. After so holding, we remanded the case for further proceedings.

Miller exercised his right to a jury trial, and in light of his stipulation to all but the obscenity element, the trial was short and focused exclusively on whether the letter met that definition. To prove this element, the Government introduced the letter. It also called Corporal DeMeyer to testify about her meetings with Miller and with his sister and her mother.

***2** The jury convicted Miller, and the district court denied his motion for judgment of acquittal. The court then sentenced him to thirty-seven months' imprisonment, to run concurrently with the remainder of his state sentence, and to three years' supervised release.

Miller noted a timely appeal, and the Court has jurisdiction under 28 U.S.C. § 1291.

II.

Most speech is protected by the First Amendment and therefore cannot be the basis for criminal charges. But obscenity falls outside the Constitution's protection, and thus can be subject to criminal prohibitions. One offense that qualifies is § 1470, which targets "obscene matter," as defined in accordance with Supreme Court First Amendment caselaw.

In what may well be one of the most recognizable quotes from a Supreme Court Justice to non-lawyers, Justice Potter Stewart once remarked, "I know it when I see it" to define obscenity. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Though this was not the definition of obscenity adopted by the full Court, it is nonetheless an apt reflection on a somewhat intuitive sensibility underlying the Court's attempt to describe the line between the merely sexually explicit—which is protected—and the obscene—which is not.

To that end, the Court has recognized that printed words alone can be "obscene" and thus fall outside the First Amendment's protection. *Kaplan v. California*, 413 U.S. 115, 118–20 (1973). The Supreme Court requires balancing three prongs when determining whether something is obscene: First, we consider "whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest in sex." *Marvin* *Miller v. California*, 413 U.S. 15, 24 (1973) (quoting *Kois v. Wisconsin*, 408 U.S. 229, 230 (1972)). Appealing to prurient interest means that the material appeals to a "shameful or morbid interest in nudity, sex or excretion" or being "substantially beyond customary limits of candor in description or representation of such matters." *Roth v. United States*, 354 U.S. 476, 487 n.20 (1957); *cf.* *United States v. Guglielmi*, 819 F.2d 451, 455 (4th Cir. 1987) (defining prurient interest as appealing to those "individuals eager for a forbidden look"). Second, we look to "whether the work depicts or describes, in a patently offensive way, sexual conduct." *Marvin* *Miller*, 413 U.S. at 24. And although "contemporary community standards" originally appeared only in the first prong's description, the Supreme Court later clarified that the second prong "is also a question of fact to be decided by a jury applying contemporary community standards." *Ashcroft v. ACLU*, 535 U.S. 564, 576 n.7 (2002). Third, we analyze "whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." *Marvin* *Miller*, 413 U.S. at 24.

On appeal, Miller asserts that the letter does not constitute obscenity and, therefore, his conviction cannot stand.[1] Acknowledging the letter's frank and explicit sexual language, Miller nonetheless asserts that the letter's text does not "appeal[ ] to the prurient interest" or "portray sexual acts in a patently offensive way" under contemporary community standards.[2] Opening Br. 5. Miller contends that these two prongs of obscenity were not met because the words used in the letter are no more explicit than lyrics found in certain modern well-known songs. Because the text itself does not satisfy the definition of obscenity, Miller asserts that the jury necessarily, but improperly, relied on evidence from outside the four corners of the letter to convict him. And, in his view, because neither the age disparity nor the familial relationship between sender and recipient are expressly set out in the letter, neither fact was an appropriate ground for deeming the letter "obscene." He also contends that a contrary view dilutes the meaning of obscenity and conflates elements of § 1470 given that the recipient's age is a separate element of the offense.

1 While the Court ordinarily reviews the denial of a motion for judgment of acquittal based on sufficiency of the evidence grounds under a "substantial evidence" standard favorable to the Government prevailing at trial, the constitutional overlay to an obscenity challenge shifts the Court's review to something more akin to a *de novo* standard of review. *See Marvin Miller*, 413 U.S. at 25 (acknowledging that because obscenity-based convictions implicate the First Amendment, appellate courts must "conduct an independent review of constitutional claims" as appropriate); *see United States v. Salcedo*, 924 F.3d 172, 176–77 (5th Cir. 2019) (discussing the unsettled nature of what *Marvin Miller*'s "independent review" looks like).

2 Miller's brief takes a passing shot at the third prong of obscenity, cautioning the Court against the conclusion that private letters inherently lack literary, artistic, political, or scientific value. But he acknowledges that this prong is likely satisfied here and does not seriously challenge it. If not quite a concession that the third prong is met, Miller has not sufficiently developed this argument to warrant our further discussion. *Accord Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by ... failing to develop its argument—even if its brief takes a passing shot at the issue." (cleaned up)). And, regardless, we fail to see any basis for concluding that *this* letter would raise constitutional concerns under the third prong of obscenity.

***3** None of Miller's arguments hold water. Our prior decision in the Government's interlocutory appeal of Miller's case dispenses with the notion that we must consider the four corners of the letter apart from evidence of the recipient's age or familial relationship when considering whether the letter is obscene. As we recognized there, because incest is taboo, evidence that the letter describes a sexually explicit fantasy involving Miller and his minor sister "may inform the jury as to whether the letter is obscene, *i.e.*, whether it appeals to a shameful and prurient interest in sex." 61 F.4th at 431 (citations omitted). In so holding, we expressly rejected Miller's argument

that the jury's consideration of obscenity was limited to the letter's text. Noting that the Supreme Court's definition of obscenity takes into account the work "as a whole," we observed that "[i]n the specific circumstances of this case—a sexually explicit letter directed to a minor victim to whom the sender was related that describes sexually explicit acts between the sender and victim—the 'whole' necessarily includes Miller's relationship to the recipient." *Id.* at 431–32 (citation omitted). Miller has not provided any reason to revisit our prior decision, which remains binding authority in this Circuit.

In truth, we remain convinced by that decision's reasoning. Whether material is obscene is based on its totality, looking at the three prongs the Supreme Court has identified. Although Miller's letter does not use the word "sister" or "brother" when talking about the individuals it discusses engaging in an explicit sexual encounter, it does use the words "you," "your," "I," "me," and "my." J.A. 87–88. And it envisions the recipient saying "my name 'Darrin' " during the encounter. J.A. 87. Because this is a private letter between the sender and recipient, the identity of those two individuals—which necessarily encompasses their familial relationship and their age—provides salient context to who the words reference and precisely what sexual acts are being described. Therefore, the words within the four corners of the letter *do* in fact recount what would be incest involving an adult male and his fourteen-year-old sister. That reality is something the jury was free to consider in assessing whether, under contemporary community standards, the letter "appeal[s] to the prurient interest" or "portray[s] sexual conduct in a patently offensive way." *Marvin Miller*, 413 U.S. at 24.

Given this conclusion, the flaws inherent in the rest of Miller's argument come into sharp relief. The letter may reasonably (and consistent with the First Amendment) be deemed obscene not just because it uses vulgar terms, but because it uses such language to describe—graphically—specific sexual acts.[3] Furthermore, whatever the state of contemporary music, using sexually explicit lyrics to describe conduct between two unrelated, consenting adults stands on different legal footing than using identical words to describe conduct between an adult brother and minor sister. Contrary to Miller's contention, there's simply no comparison between them in ways that are directly relevant to whether the material in question meets the first two prongs of obscenity.

[3] We take no position on whether or when the use of vulgarities alone could be deemed obscene because this case does not involve that scenario. The whole at issue here involves such language being used to describe specific acts which take on additional meaning when understanding the relationship of the described individuals. All three layers are present here and, taken together, they are the basis for today's holding.

The Supreme Court requires more than Justice Stewart's "know it when [we] see it" understanding of obscenity, but those words still ring true when applying the Court's requisite three-pronged assessment. *Jacobellis*, 378 U.S. at 197. Miller's choice of words combined with the specific

conduct depicted between the sender and the receiver create the strong impression on the reader as to the letter's obscene nature. And the totality of the circumstances fully supports the conclusion that the letter both falls outside "customary limits of candor in description or representation of such matters," *Roth*, 354 U.S. at 487 n.20, and "depicts or describes, in a patently offensive way, sexual conduct," *Miller*, 413 U.S. at 24.

***4** We thus readily conclude that Miller's conviction does not run afoul of the First Amendment. The record supports the jury's finding that the letter Miller sent to his fourteen-year-old sister was "obscene matter" for purposes of § 1470, as Supreme Court caselaw defines that term.

III.

For the reasons provided, we affirm Miller's conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

All Citations

Not Reported in Fed. Rptr., 2025 WL 80295

End of Document

NO. _____

In the

Supreme Court of the United States

DARRIN ALONZO MILLER,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

APPENDIX C

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
Appellate Counsel
Counsel of Record

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Counsel for Petitioner

FILED: February 10, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4590
(2:21-cr-00261-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DARRIN ALONZO MILLER

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

NO. _____

In the

Supreme Court of the United States

DARRIN ALONZO MILLER,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

APPENDIX D

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
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Counsel of Record

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jonathan_byrne@fd.org

Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

v. CRIMINAL ACTION NO. 2:21-cr-00261

DARRIN ALONZO MILLER

ORDER

In the defendant's response to my previous Order [ECF No. 62], he requested that the I enter an order in limine precluding the Government from introducing evidence of his relationship with M.M. on the ground that such evidence is inadmissible under Rule 403 of the Federal Rules of Evidence, and that no other evidence or testimony is relevant or should be permitted. [ECF No. 68, at 4].

Having considered the parties' submissions and the defendant's admissions and stipulations [ECF Nos. 67, 68], the only question to be resolved at trial is whether the June 22, 2020, letter at issue is obscene. Accordingly, it is **ORDERED** that the Government is precluded from introducing evidence of the defendant's relationship with M.M. or any testimony or other evidence beyond the June 22, 2020, letter at issue. Such additional testimony or evidence is irrelevant and otherwise inadmissible under Rule 403 of the Federal Rules of Evidence, as its probative value would be far outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury,

and needlessly presenting cumulative evidence.

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: July 12, 2022

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

NO. _____

In the

Supreme Court of the United States

DARRIN ALONZO MILLER,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

APPENDIX E

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Wesley P. Page
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Counsel for Petitioner

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA
v.
Darrin Alonzo Miller

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:21-cr-00261

USM Number: 85200-509

Wesley Page
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) one after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1470	Transfer of Obscene Matter to a Minor	6/22/2020	One

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/7/2023
Date of Imposition of Judgment

Joseph R. Goodwin
JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

9/7/2023
Date

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
37 months to run concurrently with the remainder of the state court sentence.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

STANDARD CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.

2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.

3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.

4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.

5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

6) The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall have no direct or indirect contact, at any time, for any reason, with the victim(s) identified in the presentence report.

2) The defendant shall submit to an evaluation by a qualified mental health professional, approved by the probation officer, who is experienced in treatment of sexual offenders. The defendant shall take all medications reasonably related to treatment of his or her condition, complete all treatment recommendations and abide by all rules, requirements and conditions imposed by the professional. The defendant must do so until discharged from treatment by the professional. Prior to being required to submit any proposed course of treatment, the defendant or the United States may seek review by the presiding district judge of any facet of the prescribed course of treatment. The United States and the defendant shall also have the right to seek review by the presiding district judge of any continuation or discontinuation of such treatment.

3) The defendant shall submit to risk assessments, psychological and physiological testing, which may include, but is not limited to, a polygraph examination or other specific tests to monitor the defendant's compliance with probation or supervised release treatment conditions, at the direction of the probation officer.

4) The defendant's residence and employment shall be approved by the probation officer. Any proposed change in residence or employment must be provided to the probation officer at least 10 days prior to the change and pre-approved before the change may take place. If such notification is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of the change or expected change.

5) The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) and/or register as directed by the probation officer. The defendant shall register with any local and/or State Sex Offender Registration agency in any state or federal territory where the defendant resides, is employed, carries on a vocation, or is a student, or was convicted of a qualifying offense, pursuant to state law.

Optional Conditions
The defendant shall not associate or have verbal, written, telephonic or electronic communications with any minor except: 1) in the presence of the parent or legal guardian of said minor; 2) on the condition that the defendant notifies the parent or legal guardian of the defendant's sex offender conviction(s); and 3) with written approval from the probation officer, which shall not be unreasonably withheld. This provision does not encompass associating or communicating with minors working as waiters, cashiers, ticket vendors, and similar service personnel with whom the defendant must associate or communicate in order to obtain ordinary and usual commercial services, so long as such associations or communications are limited exclusively to those which are necessary and proper for obtaining the aforementioned services.

The defendant shall not engage in any forms of exhibitionism, voyeurism, obscene phone calls or other lewd or lascivious behavior toward a minor, nor engage in "grooming" behavior that is apt to attract, seduce reduce sexual resistance or inhibitions of a minor.

The defendant shall not own, use or have access to the services of any commercial mail receiving agency or storage unit nor shall the defendant open or maintain a post office box or storage unit without the prior approval of the probation officer, which shall not be unreasonably withheld. The defendant shall provide the probation officer with a list of all P.O. boxes and/or storage units the defendant can access.

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall submit his or her person, property, house, residence, vehicle, papers, or office to a search conducted by a United States probation officer when there is reasonable suspicion that the defendant has violated a condition of supervision. Prior to the search, the Probation Officer must obtain approval for the search from the Court. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release. The defendant shall inform other occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Darrin Alonzo Miller
CASE NUMBER: 2:21-cr-00261

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The $100 special assessment will be paid through participation in the Inmate Financial Responsibility Program. The defendant shall pay the fine in payments of not less than $25 per quarter through participation in the Bureau of Prisons' Inmate Financial Responsibility Program in quarterly installments of $25. Any remaining balance shall be paid during the term of supervised release in minimum installments of no less than $25 per month, with the first installment to be paid within 30 days of release from incarceration, until the full amount has been paid. Payments shall be paid to the Clerk of the Court at the following address: United States District Clerk's Office, Robert C. Byrd Federal Building, United States Courthouse, 300 Virginia Street East, Charleston, West Virginia, 25301