

June 15, 2005

05CR1683

Page 1

DISTRICT COURT
CITY & COUNTY OF DENVER
COLORADO
1437 Bannock Street
Denver, Colorado 80202

PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

vs.

ARTURO MARQUEZ,

Defendant.

! *FOR COURT USE ONLY*

For the Plaintiff:

! Case No. 04-CR-1683
! Courtroom 10

G. AARON SUAZO, #31017
Deputy District Attorney

For the Defendant:

TONE T. SCHAUER, #8461
Attorney at Law

The matter came on for trial on Monday, June 13, 2005, before the HONORABLE SHEILA A. RAPPAPORT, Judge of the District Court, and a jury of 12 with one alternate.

The following transcript contains the testimony of Suvi H. Miller, given on Wednesday, June 15, 2005.

Jerome R. Malecka, RPR

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June 15, 2005

05CR1683

Page 2

P R O C E E D I N G S

(The following transcript contains the
testimony of Suvi H. Miller.)

* * * * *

THE COURT: Next witness for the
prosecution.

MR. SUAZO: Yes, Your Honor. The People
call Suvi Miller.

SUVI H. MILLER,
was called as a witness on behalf of the People and,
having been first duly sworn, was examined and testified
as follows:

THE COURT: Thank you. Please be seated.
Once you are seated, feel free to adjust the
mike so it's comfortable for you.

Please state your full name and spell your
first and last name for us.

THE WITNESS: Suvi, S-u-v-i, the last name
is M-i-l-l-e-r.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. SUAZO:

Q Good afternoon.

A Good afternoon.

Q Ms. Miller, what do you do for a living?

Jerome R. Malecka, RPR

1 A I'm a clinical social worker and I work for
2 the Denver Children's Advocacy Center.

3 Q What is that?

4 A It's a center that provides forensic
5 interviewing and treatment services to children who have
6 been victims of trauma, mostly sexual abuse and domestic
7 violence.

8 Q In addition -- well, in addition to your
9 work at the Denver Children's Advocacy Center, do you
10 have any other professional experience in this type of
11 crime?

12 A Yes. I have been a licensed clinical social
13 worker since 1992. I've worked in a number of different
14 settings, including residential treatment, as well as
15 another treatment facility where I worked with children
16 who were victims of sexual abuse.

17 Q Ms. Miller, explain to the jury your
18 education and your training that qualifies you for your
19 position.

20 A I graduated from New York University with a
21 master's of social work in '92. And I was a licensed
22 clinical social worker in New York State and moved here
23 in 1995. And I have been licensed here since then,
24 also, as a clinical social worker.

25 Q In addition to your formal education, do you

1 also have any other type of training, professional
2 training, to qualify for your position?

3 A I've done a number of trainings over the
4 course of my career, mostly related to children and
5 adolescents. A great deal of those related to working
6 with children who were victims of trauma, specifically
7 around domestic violence and sexual abuse.

8 Q Do you teach?

9 A Yes. I'm also on the adjunct faculty at
10 Denver University.

11 Q How long have you been at the University of
12 Denver?

13 A I have held different positions for last two
14 years and teaching for the last year.

15 Q What do you teach?

16 A A foundational seminar course for graduate
17 social work.

18 Q Ms. Miller, do you have any other teaching
19 experience related more directly to sexual assault in
20 children and things of that nature?

21 A I have done some trainings, also, at the
22 Colorado Organization of Victim's Assistance Conference.
23 I've presented twice. I've presented to the Denver
24 Public Schools, also to the Denver Police Academy, among
25 other things, and some smaller presentations as well.

1 Q Now I'd like you to tell the jury about your
2 specific hands-on dealings in this field actually
3 treating. Do you treat victims of sexual assault?

4 A Yes. At the facility where I've been
5 working since 1996, I work with children ages 2 all the
6 way down -- age 2 up to 17. I do individual and group
7 work, and also family work with children who are
8 referred to us because they have been victims of trauma.
9 So I am specifically the therapist to those children and
10 families. I'm also a supervisor to staff members over
11 there, as well as supervisor to graduate interns who do
12 work with families.

13 Q This isn't going to be a fair question,
14 Ms. Miller, can you estimate for us how many victims of
15 sexual assault on a child, sexual child assault victims
16 you have had interactions with?

17 A The best number I can give you is over 100,
18 because I'm not specifically sure how many children I've
19 worked with. But it's definitely probably closer to
20 150.

21 MR. SUAZO: Your Honor, I move to qualify
22 Ms. Miller as an expert in the field of sexual assault
23 on a child pursuant to Rule 702.

24 MS. SCHAUER: No objection.

25 THE COURT: Thank you. Ms. Miller will be

1 accepted in that area and allowed to render opinions.

2 Q (By Mr. Suazo) Ms. Miller, I want to make
3 some things clear to the jury before we start talking
4 about the topics you are going to address.

5 Have you ever met an individual named
6 Miranda Abeyta?

7 A I have not.

8 Q Do you know who Miranda Abeyta is?

9 A I do not.

10 Q Have you ever met an individual named Paul
11 Morales?

12 A I have not.

13 Q If I told you that Miranda Abeyta was the
14 victim in this crime, does that ring any bells for you?

15 A No.

16 Q Why haven't you met Miranda Abeyta?

17 A Because I was called to work on this case as
18 an expert. In doing so, having any contact with the
19 client previously would create some bias or some earlier
20 knowledge that might influence my testimony. I've had
21 no contact with her that I have knowledge of.

22 Q Is it accurate you are not going to talk
23 about the credibility of anybody in this case?

24 A I do not plan to do so, no.

25 Q So you are not going to tell us whether or

1 not Miranda Abeyta told the jury the truth?

2 A No, I will not.

3 Q All right. Let's get into it. I'm going to
4 ask you talk about three specific topics. One is
5 delayed outcry, why children delay in outcry, why
6 children make gradual disclosures in outcries and to
7 whom that disclosure is made. Let's break that down,
8 that is an overview.

9 What does outcry mean?

10 A Outcry would mean when a children would
11 actually disclose or talk about something that happened
12 to them, in this case specifically sexual abuse,
13 something happened to them sexually. That's the
14 definition of outcry in this case.

15 Q Is it common or uncommon for a child to not
16 immediately report something that happened to them?

17 A It's actually more common than not for
18 children to wait before they tell someone. We don't
19 very often see children who go tell right away when
20 something like this happened to them. They usually wait
21 for a period of time depending on the kid and depending
22 upon a lot of other factors as to how long, but we
23 rarely see a child go immediately about something like
24 this.

25 Q Ms. Miller, explain to the jury why a child

1 would delay in making an outcry.

2 A There are a number of reasons why a child
3 might delay. And a lot of it also relates to the child,
4 their age, how long the abuse has been going on and
5 their relationship to the perpetrator. Those are the
6 things that influence that delay quite a bit.

7 Overall, though, children would delay in
8 this outcry for reasons of fear. And fear being fear
9 of, say, harm coming to them or to the perpetrator.
10 They are afraid something bad is going to happen either
11 because they told that or worried that if they share the
12 secret or talk about this thing that something bad is
13 going to happen to someone.

14 Sometimes children will not share right away
15 because they are afraid of losing affection of the
16 perpetrator. This may be somebody they care very deeply
17 for. And this is an aspect of the relationship that is
18 confusing or they don't understand or upsets them, but
19 they don't want this person to stop liking them or to
20 stop loving them or to not want to spend time with them
21 anymore.

22 There also may be fear of consequences that
23 something is going to happen to someone, someone is
24 going to go to jail, someone is getting in very bad
25 trouble and they don't want to cause that. And

1 additionally, they could be fearful that there would be
2 some kind of negative reactions from their family, that
3 people are going to be upset with them, people upset
4 with the perpetrator, and again, they don't want to
5 create that kind of thing for people around them.

6 They also have a huge fear of not being
7 believed. We see so many children who will not tell
8 because they think nobody is going to believe that this
9 really happened because everybody really likes this
10 person. He's my uncle, he's very close to the family.
11 They talk a lot about how what a great man he is. So if
12 I tell, they probably won't believe me.

13 In general, the children that we see who are
14 victims of sexual abuse have a lot of shame and a lot of
15 guilt about what has happened to them. They feel
16 embarrassed, guilty, like they played a part and
17 therefore they shouldn't be telling on this person
18 because maybe, in fact, they did something to bring this
19 on themselves. So we see that quite a bit with
20 children.

21 So those are a number of reasons why a child
22 might delay in outcry.

23 Q I want to ask you specifically about a
24 couple issues that you just talked about, a couple
25 portions of your answer.

1 You talked about age having an effect on a
2 delayed outcry, and you talked about relationship. I
3 assume you were talking about the relationship between
4 the victim and the suspect?

5 A Yes.

6 Q Let's talk about age first. We are talking
7 about sex assault on a child. What do you mean when
8 you're telling this jury you're talking about a child,
9 what age group?

10 A I think in general we are talking about a
11 child -- I guess I would be referencing maybe somebody
12 down to 1 1/2 to 2 years old up to approximately 10, 11.
13 I would start to qualify a 12- or 13-year-old as an
14 adolescent. But we use that term generally. If we are
15 talking about it here, I would say somewhere from the
16 age of 2 and 11.

17 Q Let's break it down a little further. I
18 want to talk specifically in the age range of 7 to 10
19 years old.

20 A Okay.

21 Q What effect -- would you change your answer
22 or be more specific in your answer on delayed outcry for
23 a victim in the age range of 7 to 9, 7 to 10 years old?

24 A I wouldn't change my answer. I would say
25 that children of that age, they're school-aged children

1 but they are very dependent upon their families. They
2 are not, as an example, an adolescent who might be old
3 enough to know they can make some decisions on their
4 own, that there are things that they have some control
5 of outside their household, outside of the school.

6 So a child that is 7 to 10 has some
7 resources outside of their family but, in general, look
8 to their family to be their primary resource. So when
9 bad things happen, they may tell a teacher, they may
10 tell someone in school, but oftentimes they hold that
11 information to be shared within their family.

12 If a child who is in that age group has had
13 some sort of abuse happen to them within their family,
14 they often feel that they don't have any resource
15 outside of their family to talk to about it.

16 So I think in that age range, they haven't
17 quite gotten a sense that there are that many resources
18 outside that could be of help to them or that they
19 really primarily rely upon these people around them who
20 shelter them, feed them, clothe them, care for them.

21 Q Ms. Miller, the other portion I wanted to
22 follow up on was the relationship between the victim and
23 the suspect. Have you found, based on your experience
24 and your trainings, everything in your background, is it
25 more common for a child who makes disclosure of a

1 stranger that assaulted them, or a family member,
2 someone they know, having assaulted them?

3 A It would be much more common to disclose
4 about a stranger.

5 Q I will just ask you specifically, let's say,
6 hypothetically speaking, the victim is a stepdaughter of
7 a suspect. What can you tell us about delayed outcry in
8 that type of relationship?

9 A Well, that would depend on a great deal the
10 possible relationship of the suspect and the family of
11 the perpetrator and the family. Clearly this is a
12 person who is in a role of trust. If they are a step
13 parent or a person who has been brought into the family
14 as a family member, clearly the partner of mom. So
15 depending upon mom's relationship to this person and
16 mom's relationship to the children, the child may or may
17 not feel that they can talk about things that they
18 object to about this person, even with a small thing.

19 If the step parent, a person that has a lot
20 of control in the family, is the financial support of
21 the family, people talk a lot about how important he is
22 to this family and to their well-being, then a child is
23 going to be much less likely saying things to get this
24 person in trouble.

25 If mom is very protective of her partner and

1 sometimes has maybe even displayed this in some previous
2 incidents over the children, the child goes and says,
3 well, John did -- John took my toy, and he won't give it
4 back to me. And he said -- mom would say, you need to
5 understand he's under a lot of stress or something like
6 that, mom is not really hearing what the issue might be,
7 in which the child might see something more severe, mom
8 is also going to take his side over mine.

9 A person brought into the family, a step
10 parent, has a very important role to play and the child
11 understands he is sort of here to stay. And people have
12 accepted him and trusted him and he's been brought into
13 that role. I think a child is much less likely to an
14 extended family member the once or twice a year they
15 see, who is not the person on whom one relies for
16 financial support or for emotional support, or the
17 person who has the car or does the fun things for the
18 family.

19 Q Ms. Miller, does the child aged 7, 8, 9, 10
20 really understand all these dynamics?

21 A It depends often on the child. But I think
22 children understand a lot more than we give them credit
23 for. And they hear just about everything that goes on
24 in your household. If you have children, you know you
25 are on the phone, you think you are away from your kids,

1 you are sharing a story, the child comes in and says,
2 What do you mean we are not going, you said we are going
3 to go. You think they are at the other end of the
4 house. They pick up on people's stress. They pick up
5 on what is acceptable and not acceptable to do, say, how
6 to behave, sometimes without even anybody overly telling
7 them.

8 So if a child has a parent who has overtly
9 or not so plainly said to them, This is my boyfriend,
10 this is my husband and he's a wonderful man and sort of
11 he can do no wrong or he can do wrong but we are going
12 to keep him as part of this family, the child can
13 definitely understand that there is less of a role for
14 them to play as far as critique or complaint or
15 something like sex abuse, which would really turn the
16 family on its ear, so to speak.

17 Q That takes us to the next topic. When a
18 child finally discloses, makes an outcry, who do
19 children outcry to?

20 A Again that would depend upon age, and also
21 very much upon the relationship to the perpetrator. The
22 reason I mention age is when you're talking about little
23 children, sometimes little children will tell just about
24 anybody things that happen to them. What I'm talking
25 about, two- or three-year-olds, they might come and talk

1 about that they -- that something happened to them that
2 day, they may tell a stranger on the bus as well as
3 their mom.

4 When you can talk -- a child starts to
5 develop a little more, develop social skills, getting
6 older, they will share more private information or more
7 personal information with people that are closer to
8 them. So if we are talking about a child who is -- when
9 you were talking about 7 to 10, they have already
10 developed knowledge and social skills, certain things
11 you don't share outside the family, for example.

12 Relationship to the perpetrator is very
13 critical here. Again, when we're talking about if the
14 perpetrator is somebody who is close to mom and talks
15 about mom a lot, because most often children will talk
16 to that parent first about certain things they have
17 concerns or fears about. But if that person is seen
18 unavailable for any number of reasons, mom works
19 full-time, not home very much, and my baby-sitter takes
20 care of me a lot of the time, or an aunt takes care of
21 me a lot of the time, then perhaps mom is not available
22 as much as this other person who is the primary care
23 giver.

24 If mom has already demonstrated that she
25 might be less available to hear bad things about

1 situations, then maybe this child might go to somebody
2 that has been, in the past, sort of a better listener or
3 somebody who seems more available. Sometimes we have
4 kids that age tell peers. They tell a friend because
5 they are confused about what happened and they want some
6 sort of sense of is this something that happens to other
7 people. So they might tell somebody they know within
8 their own age group.

9 But generally, if the perpetrator is
10 somebody within the household who has been considered
11 sort of a trusted member of the family and is somebody
12 that everybody recognizes as a family member, then they
13 are going to be less likely to go maybe to the other
14 parent or somebody within that household immediately
15 because of the role that the perpetrator is playing for
16 them, the family and the child.

17 Q All right. Ms. Miller, once a child does
18 discloses, does make outcry to whomever, does the child
19 normally completely disclose everything or is it a
20 gradual disclosure? Can you talk about that.

21 A That, again, would depend on the child. And
22 also the duration of the abuse, as well as a number of
23 factors, depending upon how disclosure happens
24 initially. Some children come with a spontaneous
25 disclosure, I need to tell you this thing that happened

1 to me because it's starting to bother me, starting to
2 get worried or crying all the time, you are asking me
3 why, what's wrong with you, can I help you.

4 So the child might give some information.
5 But almost always initially it's a very little bit of
6 information. And depending upon the reaction of the
7 person to whom they disclose, as an example, I tell mom
8 that Uncle Johnny has been touching me and mom starts to
9 get very upset, asks me a lot of questions or starts to
10 cry or get very distraught, I might not want to get mom
11 any more upset, which is what else happened, that's all
12 that happened. But later I might start to think about
13 other things that happened, I feel like maybe mom has
14 calmed down, I can tell her.

15 I see very frequently in our practice at the
16 agency children who a parent will come in and the child
17 may even be interviewed by an investigator, and given a
18 disclosure about what happened to them in terms of
19 sexual abuse, but after working with this child, we have
20 developed some trust in our relationship, they might
21 tell me things they haven't told anybody else just
22 because they developed a comfort level.

23 I don't get upset when they start to reveal
24 information about things that have happened, they think
25 they can keep talking because this person isn't going to

1 get mad or upset. So the response of the person to whom
2 they initially disclose to makes a big difference as far
3 as how much information.

4 Q It sounds like, correct me if I'm wrong, if
5 the child makes disclosure, starts to tell what happened
6 to him or her, the child may tell it one way or one
7 person one thing, tell another person maybe more, maybe
8 less, and a third person maybe more or maybe less. Am I
9 accurate?

10 A That can be the case, yes. If a child has
11 shared this initial disclosure with a friend or an older
12 sister, and then mom comes into the picture and says,
13 tell me what you told your sister. And then they have
14 conversation and maybe that night they are talking and
15 they say, well, and this was another time it happened or
16 another time it happened.

17 Generally, if there is an investigation
18 pursued either with Social Services or criminally with
19 the police, the child will be interviewed and children
20 will sometimes give more information to an investigator
21 and more often will give less to the stranger when they
22 are not sure what this person is going to do with the
23 information and they know on some level this is
24 important, just because of the circumstances around
25 which they might be asked a lot of questions. But they

1 may give a little bit of information to one person and
2 then a little more to another, as you have said. As I
3 said, it also may be in a therapy setting where they may
4 give more that people are more unaware of even before
5 they came in.

6 Q You said sometimes with the interviews with
7 Social Services or police department the child may not
8 give as much information as they did to, say, a mother
9 or brother or cousin; is that accurate?

10 A That's accurate.

11 Q Could that role be reversed to where more
12 information is given to the police officer or Social
13 Services worker than they have given to mother, father,
14 aunt, uncle?

15 A That can also happen as well. The child may
16 be at that point more comfortable sharing initial
17 investigation and the investigator may be able to phrase
18 things in a particular way that eases the child in terms
19 of giving more details or more information.

20 Q All right. Now, Ms. Miller, are you being
21 paid to be here today?

22 A I am.

23 Q How much are you getting paid?

24 A \$80 an hour.

25 Q Are you getting rich off of this?

1 A I am not.

2 Q How many hours do you get paid for today?

3 A Probably about three.

4 MR. SUAZO: I have nothing further. Thank
5 you.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. SCHAUER:

9 Q Ms. Miller, so you never interviewed, heard
10 of or ever talked to her?

11 A No, I did not.

12 Q So you never read her file either?

13 A No, I did not.

14 Q And the children that you have been working
15 with have all been sexually abused. I mean, they don't
16 come to you unless they really have been sexually
17 abused, right?

18 A At the agency we also see children who are
19 victims of domestic violence. Also we see siblings of
20 children who were sexually abused, they may or may not
21 have been, correct.

22 Q Okay. And you testified that children who
23 have been victims of sexual abuse feel a lot of shame, a
24 lot of guilt?

25 A Correct.

1 Q And that they exhibit certain behaviors.
2 Could you explain to us what kind of behaviors you see
3 in children who really have been sexually abused.

4 A It's a vast number of behaviors. I think
5 what we do know is we sort of look at it in the overall
6 picture. Some specific things, some children may
7 demonstrate no trauma symptoms at all after being
8 sexually abused. Mom may come to you, say, I know this
9 thing happened but she seems to be fine, she's sleeping,
10 she's eating, she's playing, we don't seem to see lot of
11 trauma symptoms.

12 So we can go from that end of the continuum
13 all the way to children who could have severe trauma,
14 like post-traumatic stress disorder symptoms, they can't
15 sleep, hyper-vigilant, every little noise makes them
16 startled, clingy, cry easily, things like that. Those
17 things depend upon a lot on the child. Some children
18 are more resilient than other children.

19 It also depends upon the relationship to the
20 perpetrator. If this was a stranger, this was an
21 exposure on the street and the child has a lot of
22 support at home and people are taking good care, give
23 them everything they need, they may really show very
24 little symptoms at all.

25 But depending upon the relationship to the

1 perpetrator, such as what is happening within their
2 home, sometimes some of these symptoms may seem not very
3 often as obvious, the child might be more easily
4 agitated, but nothing very big or to the extremes of
5 fighting all the time, seeming to be in a bad mood all
6 the time. But those things really depend upon the
7 child's relationship to the perpetrator and how long
8 this has gone on.

9 Q So it's really hard to generalize?

10 A I think with -- you have to talk about each
11 case specifically in the context, correct.

12 Q So what you have done here, in general, is
13 you have presented to the jury what is out there in the
14 sexual abuse arena about children and behaviors, right?

15 A Uh-huh, yes.

16 Q And nothing specific about this case?

17 A No.

18 Q And the only thing you can use are may or
19 might or it maybe, because you can't say anything else,
20 words you can use?

21 A No. And I think when you're talking about
22 children in this kind of context, you do look at all of
23 the overall pieces of it. And that's why generally it
24 is to explain some of the things that we might see, but
25 that each child's case may be different or taken as a

1 whole.

2 MS. SCHAUER: Thank you very much.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. SUAZO:

6 Q Rather than saying may, might or maybe, I
7 want talk about it in terms of is it likely, unlikely or
8 it just never happened.

9 Ms. Schauer just asked you questions about
10 symptoms that a victim may show, a child victim may show
11 having been sexually assaulted. What symptoms may a
12 victim -- a child victim in the range of, say, 7 to 10
13 demonstrate that they are being sexually abused?

14 MS. SCHAUER: Asked and answered, Your
15 Honor.

16 MR. SUAZO: It was not asked and answered
17 during my direct. I'm following up.

18 THE COURT: Overruled.

19 A When you're talking about a child between 7
20 and 10, again we get back to that continuum of what
21 types of things we might see with a child. And because
22 I don't know the specifics of this case, what we see
23 often are children who may seem -- who may cry more
24 easily than they used to, more clingy to an adult that
25 they trust than they used to, who may seem a little more

1 agitated than they might have been before. All the way
2 up to what I was talking about which would be some of
3 those severe symptoms, flashbacks and nightmares and
4 some of the much more hyper-vigilant behavior. Some
5 children do not show very many symptoms at all or not
6 very noticeable to most people.

7 Q I want to talk about that, that last
8 portion. You said that victims might show these
9 symptoms. That means, I would assume, that it's not
10 unusual or not unheard of that a victim, a child victim,
11 is being victimized sexually, may not show any of those
12 symptoms at all?

13 A Children -- like I was saying, children that
14 actually do not show any symptoms apparently to anybody,
15 and this can be specifically if there is not -- if the
16 duration of this has not necessarily been over a very
17 long period of time or if it hasn't been very severe, we
18 generally see with -- generally children with forced
19 use, never not seen symptoms. If there is fondling and
20 some of those other kinds of things, sometimes we see
21 kids who seem to present normally as they did before.
22 It is a surprise when families find out, I didn't notice
23 anything different. And sometimes they don't see
24 anything at all until the child has disclosed. Once the
25 child has disclosed, then the symptoms become more

1 apparent to them. It's hard to know sometimes if the
2 children really aren't presenting any symptoms mild
3 enough that people aren't noticing them.

4 THE COURT: Recross.

5 MS. SCHAUER: Nothing.

6 * * * * *

7 (End of requested portion.)

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REPORTER'S CERTIFICATE

STATE OF COLORADO)
) SS.
CITY & COUNTY OF DENVER)

I, JEROME R. MALECKA, do hereby certify that I am a Registered Professional Reporter within and for the State of Colorado, an Official Reporter for the Second Judicial District of the District Court at Denver, Colorado; that as such reporter, I was present upon the occasion of the proceedings that were conducted in the above-entitled matter, which were held on Wednesday, June 15, 2005; that I stenographically reported all proceedings had; and that the above and foregoing constitutes a true and complete transcription of my stenographic notes, so taken as aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of April, 2006.

JEROME R. MALECKA
Registered Professional Reporter

Jerome R. Malecka, RPR