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2011 IL App (3d) 100746-U

Order filed September 8, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Whiteside County, Illinois,
	)	
v.	)	Appeal Nos. 3-10-0746 and 3-10-0747
	)	Circuit Nos. 07-CF-64 and 07-CF-87
	)	
SHANE A. TYNE,	)	Honorable
	)	John L. Hauptman,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion by admitting into evidence the recordings of the respondent describing his sexual encounters with two minors. A reasonable jury could have found that the respondent remained a sexually dangerous person.

¶ 2 The respondent, Shane A. Tyne, was adjudicated a sexually dangerous person in March 2007. He filed an application for recovery, requesting release upon a finding he was no longer sexually dangerous. Following a jury trial, the respondent was found to still be sexually dangerous. The respondent appeals, arguing: (1) the trial court committed reversible error in admitting recorded

police interviews into evidence that contained the respondent detailing his sexual acts with minors, because the probative value was outweighed by the prejudicial effects of the recordings; and (2) the State's evidence was insufficient to prove that he remained a sexually dangerous person.

¶ 3

### FACTS

¶ 4 On February 8, 2007, in an audiotaped police interview, the respondent confessed to sexually assaulting a five-year-old female minor in 2006, two times per week for at least six months, which included acts of digital penetration, cunnilingus, fellatio, and ejaculation. He stated that he knew his behavior was not right but he felt that he could not control himself. On February 9, 2007, in a videotaped police interview, the respondent described an incident that occurred in July 2004, in which he showed a nine-year-old female minor a masturbation technique by simultaneously rubbing her clitoris and anus. The respondent indicated that he was not aroused but admitted that he would have masturbated if the minor's aunt had not arrived.

¶ 5 The respondent was charged by information with three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)) for committing acts of sexual penetration with the five-year-old minor, and one count of predatory criminal sexual assault for committing an act of sexual penetration with the nine-year-old minor. On March 22, 2007, while the criminal charges were pending, the State filed a petition for the respondent to be civilly committed as a sexually dangerous person as defined by the Sexually Dangerous Persons Act (SDPA) (725 ILCS 205/0.01 *et seq.* (West 2006)).

¶ 6 On April 18, 2007, the respondent underwent two court-ordered psychiatric evaluations. The psychiatrists concluded that he was a sexually dangerous person in that he had a mental disorder, pedophilia, coupled with a criminal propensity to commit sex offenses. On May 30, 2007, the

respondent admitted that the facts in the State's petition were true and could be proven beyond a reasonable doubt. He also specifically stipulated that had the matter gone to trial, the State would have produced the testimony of the two court-appointed psychiatrists, indicating that he was a sexually dangerous person in that he: (1) suffered from a mental disorder that had existed for more than one year prior to the filing of the petition; (2) had a criminal propensity toward the commission of sexual offenses; and (3) demonstrated propensities toward acts of sexual assault or sexual molestation of children. On May 31, 2007, the trial court declared the respondent to be a sexually dangerous person.

¶ 7 On July 17, 2008, the respondent filed an application for recovery pursuant to section 9 of the SDPA (725 ILCS 205/9 (West 2008)), requesting that the trial court find that he was no longer a sexually dangerous person. On September 23, 2010, a two-day jury trial took place on the respondent's application. During the trial, over the respondent's objection, the trial court admitted into evidence the recordings of the respondent's confessions to police.

¶ 8 At trial, the State's witnesses consisted of Detective Alex Chavira, Dr. Mark Carich, and Dr. Angeline Stanislaus. Chavira testified that he was the youth officer for the Sterling police department and the lead detective regarding the respondent's case. Chavira testified that he conducted the taped interviews on February 8 and 9, 2007.

¶ 9 Carich testified that he was employed with the Illinois Department of Corrections as the coordinator of the sexually dangerous person program at the correctional facility where the respondent was civilly committed. Carich testified that the respondent had not progressed past the initial orientation phase of the program due to his denial of the offenses. Carich stated that the respondent had originally admitted to committing the underlying offenses and having deviant

fantasies but had since categorically denied those events. Carich testified that the respondent showed a lack in progress in that he held a belief system in which children were sexual objects. In Carich's view, it would be difficult for the respondent to have victim empathy because he was in denial. Additionally, the respondent could not work on relapse intervention skills or begin to analyze the reasons for his offending when he was in denial of the offenses. Carich indicated that a search of the respondent's cell revealed numerous pornographic magazines and a store toy catalog comprised of child models. Carich opined that the respondent's possession of the magazines, in violation of the program's rules, indicated that he was sexually preoccupied and had not recovered from being a sexually dangerous person.

¶ 10 In assessing the respondent's risk of reoffending, Carich used various actuarial assessments. On one assessment, the respondent scored in the low to moderate range for recidivism, and on another assessment he scored in the high-risk category for recidivism. Dr. Carich opined that the respondent remained a sexually dangerous person and that he would commit sex offenses in the future if not confined.

¶ 11 Stanislaus testified that she was a psychiatrist for the sexually dangerous persons program at the correctional facility where the respondent was civilly committed. Stanislaus was familiar with the respondent in that she had interviewed him for a recovery evaluation and reviewed his offenses. She also reviewed the respondent's psychiatric evaluation and the investigation reports. Stanislaus opined that the respondent suffered from a mental disorder of "pedophilia." She described pedophilia as a person, who is at least 16 years of age, having recurrent intense sexual fantasies or urges or behaviors toward prepubescent children for at least six months. She also diagnosed the respondent as being capable of having sexual encounters with both female children and female

adults.

¶ 12 Stanislaus believed that the respondent's sexual propensity toward female children still continued at the time of the trial. Stanislaus explained that at the beginning of treatment, the respondent submitted his autobiography indicating that he had sexual interests in children but "then somewhere along the line he denied it" and no longer believed that he was a sex offender. She testified that, "even though [the respondent] ha[d] been in the Sex Offender Treatment Program since 2007, he ha[d] not really made any substantial changes that would have decreased his propensity to sexually offend." She was also concerned with the respondent's possession of pornography in violation of the program's rules as an indication of sexual preoccupation and a lack of impulse control regardless of the rules. Stanislaus opined that the respondent continued to be a sexually dangerous person with a propensity to commit sex offenses and that he was "much more likely to commit a sex offense if not confined[.]"

¶ 13 Psychologist Dr. Kirk Witherspoon testified for the respondent. Witherspoon testified that in assessing the respondent he: (1) reviewed documents such as police investigative reports, the charges against the respondent, and transcripts of the respondent's various interviews; (2) conducted a detailed history and mental status assessment of the respondent; and (3) administered a number of tests to the respondent. Witherspoon noted that, at the age of 12, the respondent was struck by a car. The respondent incurred brain swelling and bruising, was unconscious for a few weeks, had a slow physical recovery, and incurred long-term effects of retrograde amnesia, difficulty in school, and a reduction in social and verbal skills. In high school the respondent had an intimate relationship with his first girlfriend that lasted for two years. Thereafter, the respondent had a five-year relationship with his second girlfriend, which resulted in the couple having a daughter together. Witherspoon

opined that the respondent did not suffer from pedophilia and did not possess criminal propensities to engage in sexual offenses.

¶ 14 After jury deliberations, the jury returned a verdict indicating that the respondent was still a sexually dangerous person. The respondent appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, the respondent first argues that the trial court committed reversible error in admitting the recorded police interviews due to the prejudicial effect of the recordings on the jury. We disagree.

¶ 17 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused its discretion. *People v. Caffey*, 205 Ill. 2d 52 (2001). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Caffey*, 205 Ill. 2d 52.

¶ 18 Relevant evidence should be excluded only if its probative value is substantially outweighed by the danger of unfair prejudice. *People v. Lewis*, 165 Ill. 2d 305 (1995). Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Lewis*, 165 Ill. 2d 305. Prejudice means an undue tendency to suggest a decision on an improper basis, commonly an emotional one, such as sympathy, hatred, contempt, or horror. *Lewis*, 165 Ill. 2d 305. "Since all effective evidence is prejudicial in the sense of damaging the party against whom offered, only unfairly prejudicial evidence calls for exclusion[.]" M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 403.1 at 204 (10th ed. 2010).

¶ 19 In this case, there is no question that the police interviews of the respondent's confessions

were relevant, especially in light of the respondent's subsequent denial of the offenses. The interviews directly related to the State proving an element of sexual dangerousness, *i.e.*, that the respondent actually had demonstrated criminal propensities toward sexual offenses. 725 ILCS 205/1.01 West 2006). The recorded interviews were also relevant in that they showed, among other things, the respondent's demeanor while describing the acts and his attitude toward the victims. They also showed the manner in which he had the opportunity to commit the acts, which was relevant in determining whether he would commit sexual offenses in the future if not confined. In the interviews, the respondent described his sexual acts with children that were undoubtedly prejudicial. Nonetheless, the interviews cannot be said to be *unfairly* prejudicial because the evidence was directly relevant to the issue of whether the respondent remained a sexually dangerous person and the probative value of the interviews cannot be said to be substantially outweighed by *unfair* prejudice. Thus, the trial court did not abuse its discretion in admitting the evidence.

¶ 20 Additionally, the respondent claims on appeal that the State failed to prove by clear and convincing evidence that he remained a sexually violent person. In a hearing on an application for recovery, the State has the burden of proving by clear and convincing evidence that the applicant is still a sexually dangerous person. 725 ILCS 205/9(b) (West 2010). On appeal, the reviewing court must consider all the evidence introduced at trial in the light most favorable to the State and then determine whether any rational trier of fact could have found that the respondent was still a sexually dangerous person. *People v. Trainor*, 337 Ill. App. 3d 788 (West 2003).

¶ 21 A person is sexually dangerous if: (1) the person suffered from a mental disorder for at least one year prior to the filing the petition; (2) the mental disorder is associated with criminal propensities to the commission of sexual offenses; (3) the person has actually demonstrated that

propensity towards acts of sexual assaults or acts of sexual molestation of children; and (4) there is an explicit finding that it is "substantially probable" that the person would engage in the commission of sex offenses in the future if not confined. 725 ILCS 205/1.01 (West 2010); *Masterson*, 207 Ill. 2d at 330. A "mental disorder" under the SDPA means "congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." 725 ILCS 205/4.03 (West 2010).

¶ 22 In this case, the evidence viewed in the light most favorable to the State showed: (1) the respondent committed the alleged sexual offenses against the five-year-old and nine-year-old victims over the course of two years; (2) the respondent was diagnosed with the mental disorder pedophilia, and was previously found to be a sexually dangerous person; (3) the respondent denied any responsibility for the offenses; (4) as a result of his denial, the respondent had not progressed beyond the initial phase of the sex offender treatment program; and (5) the facts on which the defendant was originally found to be a sexually dangerous person had not changed, other than the fact that he was now denying the commission of the offense and there had been a passage of time. The State presented expert testimony that the respondent was preoccupied with sex and continued to be a sexually dangerous person, and it was substantially probable that he would reoffend in the future if not confined. Additionally, the respondent scored in the high-risk to offend category on one of the actuarial tests. Therefore, in considering the evidence in the light most favorable to the State, we hold that a rational jury could have found that the State had proven that the respondent was still a sexually dangerous person by clear and convincing evidence.

¶ 23

#### CONCLUSION

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Whiteside County.

¶ 25 Affirmed.