

2014 IL App (2d) 130655-U  
No. 2-13-0655  
Order filed February 20, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> COMMITMENT OF JOSHUA JOHNSON	)	Appeal from the Circuit Court of Lake County.
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	)	No. 11-MR-1269
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Joshua Johnson, Respondent-Appellant).	)	Honorable John T. Phillips, Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) The State proved beyond a reasonable doubt that respondent is a sexually violent person: the State submitted uncontroverted expert testimony to that effect, which was not undermined by respondent's purportedly low intelligence or the self-reported nature of some incidents of sexual conduct; (2) the trial court did not abuse its discretion in committing respondent to a secure facility instead of placing him on conditional release: respondent's criminal history and poor treatment record suggested that conditional release would endanger the public, and an expert testified that a secure facility offered the most appropriate treatment options for respondent's various disorders.
- ¶ 2 Following a bench trial, respondent, Joshua Johnson, was found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.*

(West 2010)), and he was committed to the custody of the Department of Human Services (DHS). Respondent appeals, arguing that (1) the State failed to prove beyond a reasonable doubt that he is a sexually violent person; and (2) the court erred when it did not place respondent on conditional release. For the reasons that follow, we affirm.

¶ 3 The following facts are relevant to resolving the issues raised. In 2010, when respondent was on probation, an officer conducting a home visit discovered that respondent was in possession of child pornography. Based on that discovery, respondent was charged with 15 counts of possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2010)). He pleaded guilty to one count and was sentenced to 2½ years in prison. A few months later, the State filed a petition to have respondent declared a sexually violent person.

¶ 4 At a bench trial on the State’s petition, two psychologists, who were experts in evaluating and treating sex offenders, testified. The first psychologist, Dr. Allison Schechter, stated that she attempted to interview respondent after reading to him the “Notice of S[exually] V[iolent] P[erson] Commitment Act Evaluation, Interview, Limits of Confidentiality and Privileges Form.” After indicating that he understood the process, by paraphrasing nearly every sentence in the form, defendant refused to participate in an interview.

¶ 5 Because respondent refused to participate in an interview, Dr. Schechter evaluated him based on more than 34 files she reviewed. These materials included respondent’s Illinois Department of Corrections medical and criminal records, various police reports, mental health evaluations, and psychological and psychiatric assessments.

¶ 6 Dr. Schechter learned from these documents that the child pornography with which respondent was found consisted of “quite graphic and explicit” DVDs depicting “adults having intercourse with children and young girls being bound and raped.” When arrested for this

offense, respondent admitted that, in addition to watching these videos, he had gone to various websites to view images of rape. In 2008, respondent, who was then 23, was charged with public indecency and lewd exposure after he exposed his erect penis to a 10-year-old girl in a video store and followed her around the store as she attempted to get away from him. Also in 2008, when respondent was out on bond for that incident, he touched the stomach and breast of a 15-year-old girl who was a friend of respondent's sister and was sleeping over at respondent's home. When arrested for this offense, respondent told police that, in addition to touching the victim that night, he had also touched the victim with his penis on another occasion.<sup>1</sup> In 1999, when respondent was 14, he exposed his genitals to his eight-year-old cousin and enticed his cousin to touch them. Respondent was charged with various offenses related to that incident and spent several months in a detention center, where he received treatment. While in treatment, respondent admitted having fondled and engaged in oral sex with his cousin on a number of occasions.

¶ 7 In addition to these incidents, Dr. Schechter learned that, after respondent was arrested for possessing child pornography, he told police officers that he committed several offenses with which he was never charged. For example, respondent indicated that, in 2009, he met a six- or seven-year-old girl in the woods near his home. Respondent described that finding this girl was “like a predator look[ing] for its prey.” Respondent forced the girl to touch his penis, tried to put his penis in the girl's mouth, touched the girl on the stomach in an area near her vagina, and wanted to take the girl's clothing off. Respondent let the girl go, and, when he saw her approaching her father, respondent fled the area. In 2008 and 2009, respondent, on several

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<sup>1</sup> Respondent was on probation for the reported battery when he was found in possession of child pornography.

occasions, exposed his penis to girls who were between 6 and 10 years old, and he rubbed his penis against girls of this age in such a way that the girls did not know what was happening. For instance, these types of encounters would happen on beaches while respondent was in the water or in dark mazes that churches would have around Halloween. Respondent described how he “would plan these offenses” and how he had a plan to “tak[e] a young girl off to a secluded area and then kill[] her so she would be silenced.” Additionally, while defendant was in treatment at the Elgin Mental Health Center, he exposed his genitals to female staff members. Dr. Schechter determined that these self-reported incidents were relevant in assessing whether respondent was a sexually violent person, because, among other things, they spoke “to an ongoing pattern of fantasies, urges, and behaviors toward nonconsenting prepubescent and adolescent children.” In finding them relevant, Dr. Schechter noted that, although respondent never recanted these self-reported incidents, the details of some of these offenses would vary in the reports that various evaluators prepared.

¶ 8 Further, for purposes of determining whether respondent has a mental disorder, Dr. Schechter considered how respondent adjusted to being in custody. Dr. Schechter learned that, in 2010, when respondent was in jail for possession of child pornography, he attempted to rally other inmates to bring a female officer to respondent’s cell so that respondent could expose his genitals to her. Respondent was placed in segregation for 60 days because of that incident. While respondent was at the DHS facility, he received several nondisciplinary reports for trading and trafficking, violation of the rules, and possession of pornographic material. As recently as two months before trial, respondent received disciplinary reports for those types of incidents.

¶ 9 In assessing the likelihood that respondent will reoffend, in addition to considering whether respondent has a mental disorder, Dr. Schechter looked at respondent’s participation in

sex offender treatment programs. When respondent was a juvenile and receiving treatment after he was charged with abusing his cousin, he sought treatment for one year and then left the program prior to completion. The records Dr. Schechter reviewed revealed that respondent made little progress in the program, often made sexually provocative comments to his peers and the staff, masturbated excessively, and was extremely focused on sexually aggressive fantasies. During this treatment, respondent admitted to being attracted to much younger male and female children, plotting to sexually offend a peer, and being unable to control his impulses. In 2010, after respondent was arrested for possessing child pornography, he participated in another sex offender treatment program. Again, respondent made little progress in the program, had difficulty applying what he had learned, and left the program prior to completing it. Staff running the program indicated that respondent was at high risk for reoffending. At other times, respondent would participate in early stage treatment groups, which he left prior to completion, only because he thought this would make him “look good to the judge.” The records revealed that respondent wished to rejoin these groups, but, as of the date of trial, he had not participated in any type of treatment. Moreover, these records indicated that, as recently as two months before trial, respondent made threats to female staff members, threatening to rape them, and he told these women that he had buried bodies in the woods. Further, these records revealed that respondent was remorseful only because he had gotten caught.

¶ 10 In addition to reviewing records, Dr. Schechter used various diagnostic tools and actuarial instruments to determine whether respondent had a mental disorder and was likely to reoffend. Using these instruments, Dr. Schechter diagnosed respondent with, among other things, paraphilia not otherwise specified and exhibitionism, and she indicated that respondent’s mental disorders “affect [his] emotional and volitional capacity,” meaning that these disorders

“affect the way [respondent] thinks, feels, behaves, or makes choices to behave.” In diagnosing respondent, Dr. Schechter took into account the fact that respondent has a “long-standing and well-documented history of \*\*\* cognitive and learning deficits.”<sup>2</sup> Dr. Schechter found that respondent was at high risk for reoffending given his scores on various actuarial tools, and, with regard to at least two of these tools, respondent’s risk to reoffend was even higher given that the self-reported offenses with which he was never charged were not used in obtaining his scores.<sup>3</sup>

¶ 11 Given all of the evidence, Dr. Schechter concluded that respondent suffers from a mental disorder that makes it substantially probable that he will engage in future acts of sexual violence. Thus, she believed, within a reasonable degree of psychological certainty, that respondent met the criteria to be found a sexually violent person.

¶ 12 Dr. David Suire, who interviewed respondent and reviewed various documents, testified consistently with Dr. Schechter. Like Dr. Schechter, Dr. Suire indicated that, before he interviewed respondent, he presented respondent with a written description of the process, had respondent read that form, reviewed the main points of the process with respondent, and then asked respondent questions to make sure that he understood. Respondent asked relevant questions about the process, which questions Dr. Suire could not remember, and Dr. Suire answered them. From this exchange, Dr. Suire concluded that respondent “appeared to have a

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<sup>2</sup> This included IQ tests, many of which placed respondent at extremely low levels of functioning and some of which indicated that respondent tested in the average range.

<sup>3</sup> Specifically, Dr. Schechter stated that, “[a]lthough [respondent] scored in the high risk category, this score is actually an underestimation of his true risk due to the fact that he has reported numerous additional sex offending behaviors for which he was never caught, charged, or convicted.”

general understanding of the process, the purpose of the evaluation, and his general situation,” and, thus, Dr. Suire continued with his interview of respondent.

¶ 13 During that interview, respondent told the doctor that, even though he understands that it is illegal, “he doesn’t believe that it’s wrong for an adult to have sex with a child.” Because respondent believed that it was not wrong, Dr. Suire theorized that respondent was more likely to engage in that type of activity. Respondent also told the doctor during the interview that the 10-year-old girl he exposed himself to in the video store was “ ‘one of those naughty girls’ ” who was “ ‘looking for trouble.’ ” Dr. Suire found it “pretty remarkable to refer to a ten-year-old girl” that way. Further, respondent told the doctor during the interview that “children will frame adults to get them in trouble for sexual behavior.”

¶ 14 Based on the interview and all of the materials that Dr. Suire reviewed, including the actuarial tools and over 33 files on, among other things, respondent’s criminal and mental history, Dr. Suire, like Dr. Schechter, concluded that respondent has a mental disorder, namely, among others, paraphilia not otherwise specified and exhibitionism, that these and his other mental disorders affect respondent’s emotional and volitional capacity, and that respondent’s mental disorders make it substantially probable that he will engage in future acts of sexual violence. Thus, like Dr. Schechter, Dr. Suire concluded that respondent met the criteria to be found a sexually violent person under the Act.

¶ 15 On cross-examination, Dr. Suire was asked whether respondent ever denied having committed any of the self-reported offenses. In reply, the doctor indicated that he learned about all of the incidents from the files and that the only offense respondent admitted committing was possession of child pornography. Elaborating on this point, with regard to the incident with his cousin, respondent first told Dr. Suire that “ ‘not everything happened,’ ” and then he said that

“ [he did not] think any of it happened.’ ” Respondent further explained that, when he touched his sister’s 15-year-old friend, he was trying to retrieve his cell phone that was underneath the sleeping girl.

¶ 16 Dr. Suire was also asked on cross-examination about respondent’s cognitive abilities. Dr. Suire testified that, although respondent’s IQ has tested within the low range, “evaluators have generally had questions about [respondent’s] effort, so they wondered how valid [the test results are].” Dr. Suire opined that respondent was “probably below average functioning but probably not mentally retarded or anything” and that that is “not actually that atypical for this population,” meaning “[s]exually violent persons.”<sup>4</sup>

¶ 17 Based on all the evidence presented and considering the demeanor of the two witnesses who testified, the court found that respondent is a sexually violent person as defined in the Act. In so finding, the court observed that respondent has been convicted of a sexually violent offense, he is a dangerous person because he suffers from mental disorders, and respondent’s mental disorders make it substantially probable that he will engage in future acts of sexual violence.

¶ 18 At the dispositional hearing, the court admitted an affidavit that Dr. Suire prepared and took judicial notice of the evidence presented at the bench trial. In his affidavit, Dr. Suire indicated that, being “familiar with available outpatient treatment services and residential

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<sup>4</sup> In his written report, which, like Dr. Schechter’s report, was admitted at trial, Dr. Suire indicated that, although respondent’s prior test results placed him within the “Mild Mental Retardation range,” it appeared to the doctor, based on his interview with respondent, that “at least [respondent’s] verbal and reasoning abilities were likely better than would be indicated based on these testing results.”

treatment services for sex offenders,” “outpatient treatment services are not capable of meeting the Respondent’s treatment needs at this time.” Dr. Suire opined that “the residential treatment program at the [DHS]-Treatment and Detention Facility is capable of meeting the Respondent’s treatment needs and is currently the most appropriate setting for the Respondent.” In argument, respondent’s counsel urged the court to put respondent on conditional release, because, due to the many cognitive and social problems that respondent has, counsel believed that treatment at an inpatient facility could not meet all of respondent’s needs. The court ordered that respondent be placed in inpatient treatment with DHS, noting that there was no evidence presented indicating that outpatient treatment was a better option, and, in fact, the court found that “all the evidence [was] to the contrary.” This timely appeal followed.

¶ 19 Respondent raises two issues on appeal. He argues that (1) the State failed to prove beyond a reasonable doubt that he is a sexually violent person; and (2) the court should have placed him on conditional release. We consider each issue in turn.

¶ 20 The first issue we address is whether the State proved beyond a reasonable doubt that respondent is a sexually violent person. To establish that respondent is a sexually violent person, the State was required to prove beyond a reasonable doubt that respondent: (1) has been convicted of a sexually violent offense; (2) has a “mental disorder” as defined by the Act; and (3) “is a danger to others because the mental disorder causes a substantial probability that the [respondent] will commit acts of sexual violence.” *In re Detention of Hardin*, 238 Ill. 2d 33, 43 (2010) (citing 725 ILCS 207/5(f), 15(b) (West 2006)). When a respondent is found to be sexually violent and appeals that finding, we consider “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find the elements proved beyond a reasonable doubt.” *In re Detention of Sveda*, 354 Ill. App. 3d 373, 380 (2004). In determining

whether the State has proved its case beyond a reasonable doubt, we must defer to the fact finder's assessment of the witnesses' credibility, resolution of conflicts in the evidence, and reasonable inferences from the evidence. *In re Detention of Welsh*, 393 Ill. App. 3d 431, 455 (2009).

¶ 21 Here, Drs. Schechter and Suire provided the only evidence considered at respondent's trial. In addition to reviewing their reports, the court heard the doctors testify. The court considered the demeanor of these witnesses and then concluded that the State had proven that respondent is a sexually violent person. We cannot conclude that this finding is erroneous.

¶ 22 First, the evidence indicated that respondent was convicted of possessing child pornography. The Act lists child pornography as a sexually violent offense for purposes of these proceedings. See 725 ILCS 207/5(e)(1) (West 2010) (a "Sexually Violent Offense" includes "[s]ection \*\*\* 11-20.1 \*\*\* of the Criminal Code of 1961 [(720 ILCS 5/11-20.1 (West 2010))]," which is the child pornography statute). Second, respondent has a mental disorder. Under the Act, a "mental disorder" is a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." 725 ILCS 207/5(b) (West 2010). Both of the psychologists testified at length about the mental disorders from which respondent suffers and how these mental disorders "affect the way [respondent] thinks, feels, behaves, or makes choices to behave" and predispose him to engage in sexually violent acts. Last, the evidence established that respondent is a danger to others because there is a substantial probability that, given his mental disorders, he will engage in future acts of sexual violence. In this context, "substantial probability" means "'much more likely than not.'" *In re Detention of Hayes*, 321 Ill. App. 3d 178, 189 (2001) (quoting *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1085 (2000)). Both psychologists found that respondent's mental disorders make

him a danger to others, because they make it much more likely that he would engage in other sexually violent acts. Given that no evidence contradicted the evidence the State presented, which the court found credible, we cannot conclude that the State failed to prove beyond a reasonable doubt that respondent is a sexually violent person.

¶ 23 In contesting the sufficiency of the evidence, respondent argues that any statements he made during his interview with Dr. Suire should be considered with caution, because, given respondent's low IQ and the fact that Dr. Suire did not remember how long it took respondent to read the waiver or what questions respondent asked in response to it, it is conceivable that respondent did not understand the nature of the interview or the questions posed to him. Respondent then claims that all of the self-reported incidents presented in the files the doctors reviewed should not have been considered, because the details of those incidents varied or respondent denied having committed them. Thus, respondent argues that these "uncorroborated and speculative" incidents have little value in determining whether he is a sexually violent person. We find neither of respondent's arguments availing.

¶ 24 First, although it is true that some of the IQ tests respondent completed indicated that he was within the low range of cognitive ability, others did not. Moreover, the evidence indicated that respondent's actual IQ may have been low on some tests because respondent was malingering. Dr. Suire determined after interviewing respondent that respondent's verbal and reasoning abilities were likely better than would be indicated in the test results, and, in any event, his IQ did not appear to be any lower than those of other violent sex offenders. Additionally, even though Dr. Suire could not remember what questions respondent asked after reading through the waiver form or how long it took respondent to read it, that alone does not mean that respondent did not comprehend what was happening. Rather, according to both Dr. Schechter

and Dr. Suire, respondent was well aware of the process, the purpose of the evaluation, and the situation in which respondent found himself.

¶ 25 Second, even if the self-reported incidents should not have been considered, any reliance placed on such incidents was harmless given all of the other evidence establishing that respondent is a sexually violent person.<sup>5</sup> For instance, during the interview, respondent told Dr. Suire that, even though it was illegal, respondent did not believe that it was improper to have sex with children. Because of this, Dr. Suire opined that respondent was likely to have sex with children in the future. Respondent also believed that, when he had engaged in inappropriate contact with children in the past, they were asking for it. Dr. Suire found this particularly troubling. Moreover, the self-reported incidents were not always considered in assessing whether respondent is a sexually violent person. In fact, in evaluating respondent using at least two actuarial tools, Dr. Schechter concluded that respondent was at a high risk to reoffend even when the self-reported acts were not considered.

¶ 26 The next issue we address is whether the court erred when it did not place respondent on conditional release. Section 40(a) of the Act (725 ILCS 207/40(a) (West 2010)) provides that, when a respondent is found to be sexually violent, the court “shall order the person to be committed to the custody of [DHS] for control, care and treatment.” Section 40(b)(2) of the Act (725 ILCS 207/40(b)(2) (West 2010)) dictates that the commitment order shall specify either institutional care in a secure facility or conditional release. In determining whether to place a respondent in treatment in a secure facility or on conditional release, the court shall consider

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<sup>5</sup> We observe that Dr. Schechter found that these self-reported incidents were of value in assessing whether respondent is a sexually violent person, and respondent has pointed to no authority that suggests that considering such incidents was improper.

various factors, including the nature and circumstances of the respondent's behavior, the respondent's mental history and present mental condition, and what arrangements are available to ensure that the respondent has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2010). The decision whether to place a respondent in a secure facility or on conditional release is within the trial court's discretion (see *In re Commitment of Brown*, 2012 IL App (2d) 110116, ¶ 19), and the court's decision will not be disturbed absent an abuse of that discretion (*In re Detention of Erbe*, 344 Ill. App. 3d 350, 374 (2003)). A trial court abuses its discretion when its decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view the trial court did. *Id.*

¶ 27 Here, we cannot conclude that the trial court abused its discretion when it ordered respondent placed in a secure facility and not on conditional release. The evidence presented at trial established that respondent is predisposed to engage in inappropriate sexual contact with children. He is drawn to not only engaging in this type of contact, but also watching pornographic videos of children being bound and raped. He believes that having sex with children is not inappropriate and that, at a minimum, exposing his genitals to children is proper when, in his mind, they are “ ‘naughty’ ” and act like they are looking for “ ‘trouble.’ ” Moreover, respondent has engaged in disturbing and inappropriate sexual contact with children for well over 10 years. When put in treatment, he failed to learn what was taught, opting instead to plan sexual assaults on his peers. Given that respondent failed to complete inpatient treatment in the past, committed sex offenses while on probation or out on bond for other sex-related crimes, violated DHS rules within two months before trial, and recently threatened to rape female DHS staff members, the evidence suggests that conditional release would endanger the public. Further supporting the court's decision to place respondent in a secure facility for

treatment is the fact that respondent does not accept responsibility for his actions, indicating that he is remorseful for having sexually violated children only because he has gotten caught, and he has endured treatment in the past only because he thought that the court would look favorably upon him. Finally, and perhaps most pertinent, is the fact that Dr. Suire indicated in his affidavit that he is familiar with the treatment options available and that the best treatment for respondent is that found in a secure facility.

¶ 28 Respondent claims that conditional release is more appropriate given the many other problems he has, like a low IQ, social disorders, and various mental conditions. Putting aside the fact that Dr. Suire was well aware of these facts when he nevertheless found that placement in a secure facility was the best alternative for respondent, nothing in the record other than respondent's hypothesizing on appeal indicates that the facility in which respondent was placed is unable to address the many other problems from which respondent suffers. Without any authority to the contrary, we simply cannot conclude that the trial court abused its discretion when it ordered respondent committed to a secure facility.

¶ 29 For these reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 30 Affirmed.