

NOTICE

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2014 IL App (4th) 130848-U

NO. 4-13-0848

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 4, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
JOHNATHAN D. CLAYTON,)	No. 12CF202
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Even though defendant had lived in the community for five years without a report of sexual misconduct before the current allegation, the evidence was sufficient for the trial court to find beyond a reasonable doubt defendant was a sexually dangerous person.

¶ 2 In February 2012, the State charged defendant, Johnathan D. Clayton, by information with two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60 (West Supp. 2011)). Then, in May 2012, the State filed a petition to have defendant declared a sexually dangerous person under the Sexually Dangerous Persons Act (Act) (725 ILCS 205/0.01 *et seq.* (West 2012)), which is the subject of this appeal. After a September 2013 trial, the Macon County circuit court found defendant was a sexually dangerous person and appointed the Director of Corrections as defendant's guardian.

¶ 3 Defendant appeals, arguing the State failed to prove beyond a reasonable doubt he

was a sexually dangerous person. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The State's February 2012 aggravated-criminal-sexual-abuse charges asserted that, on January 27, 2012, defendant knowingly committed an act of sexual conduct with A.B., who was between 13 and 16 years of age, in that he knowingly fondled A.B.'s breasts and sex organ for the purpose of his sexual arousal and defendant was at least five years older than A.B. While the aforementioned charges were pending, the State filed the May 2012 sexually-dangerous-person petition at issue in this appeal. Pursuant to section 4 of the Act (725 ILCS 205/4 (West 2012)), the trial court appointed Dr. Lawrence Jeckel and Dr. Terry Killian to each conduct a sexually-dangerous-person evaluation of defendant.

¶ 6

On September 19, 2013, the trial court held a bench trial on the sexually-dangerous-person petition. The State presented the testimony of (1) Dr. Killian; (2) Dr. Jeckel; (3) Terry Campbell, a licensed clinical professional counselor; (4) Travis Welch, a Moultrie County probation officer; (5) A.B.; (6) H.M., A.B.'s friend; (7) Decatur police officer Kenneth Duffy, who investigated A.B.'s report against defendant; and (8) Decatur police sergeant Brad Allen, who also investigated A.B.'s report against defendant. The State also presented the following: (1) Dr. Killian's October 2012 evaluation of defendant; (2) Dr. Jeckel's August 2012 evaluation report of defendant; (3) Campbell's February 2005 sex-offender assessment of defendant; (4) defendant's presentence investigation report in case No. 04-CF-113 (People v. Clayton, No. 04-CF-113 (Cir. Ct. Moultrie Co.)); (5) certified copies of documents from defendant's delinquency adjudication in case No. 02-JD-38 (In re J.C., No. 02-JD-38 (Cir. Ct. Moultrie Co.)); (6) certified copies of documents from defendant's delinquency adjudication in case No. 03-JD-22 (In re J.C., No. 03-JD-22 (Cir. Ct. Moultrie Co.)); and (7) certified copies of documents from

defendant's aggravated-criminal-sexual-abuse conviction in case No. 04-CF-113. Additionally, at the State's request, the trial court took judicial notice of the pending criminal charges in this case. Defendant presented the testimony of T.R., A.B.'s stepmother; and Shawna Clayton, defendant's wife and A.B.'s cousin. He also presented Campbell's January 2012 sex-offender assessment of defendant with its February 2012 addendum. A summary of the trial testimony follows.

¶ 7 Dr. Killian testified he interviewed defendant on October 4, 2012, for a little more than two hours and reviewed around 400 pages of documents from defendant's current and prior cases. During Dr. Killian's interview of defendant, defendant stated that, as a child, he had been sexually abused by both of his parents and a cousin. Defendant admitted he sexually abused six or seven victims but was unsure "because he could not remember that far back." Defendant denied fondling A.B. At first, defendant said he needed sex-offender treatment but then later said he was unsure of needing that type of counseling. Defendant's documents indicated defendant had around six months or less of treatment related to his sex offenses.

¶ 8 Dr. Killian diagnosed defendant with pedophilia, nonexclusive, both male and female victims; attention deficit/hyperactivity disorder; and possible borderline intellectual functioning. In his opinion, all three mental disorders had existed for well over a year before the filing of the State's petition. However, Dr. Killian noted the latter two diagnoses were not specifically related to sex offenses. Further, Dr. Killian opined defendant had exhibited criminal propensities toward the commission of sexual offenses. Dr. Killian noted defendant had an extensive history of offenses and estimated defendant had 10 to 15 victims. Dr. Killian also opined defendant had certainly demonstrated propensities toward acts of sexual assault or molestation of children. Last, Dr. Killian opined defendant was substantially likely to reoffend. Dr. Killian had

administered three screening tools to defendant. On the Minnesota Sex Offender Screening Tool, defendant scored 14, and the tool provided those who score 13 and higher should be referred for treatment in a restricted setting as they have a high risk to reoffend. Dr. Killian noted he did a lot of evaluations, and he rarely saw anyone score higher than 13. Dr. Killian also administered the Rapid Risk Assessment for Sex Offender Recidivism, which has a high score of 6. Defendant scored a 5, which put him in the high-risk category. Last, Dr. Killian did the Static 99 test, which has a high score of 12. Defendant scored a 5, which was considered moderate to high risk.

¶ 9 On cross-examination, Dr. Killian testified defendant was almost 25 years old when he evaluated defendant. Defendant was younger than 10 when he committed his first sex offense, and most of his offenses occurred in his early to mid-teens. Dr. Killian defined a pedophile as a person who has a strong desire for sexual contact with prepubescent children. Since A.B. was 15 at the time of the alleged incident, the alleged offense against her would not be considered a pedophilic offense. However, that incident did show defendant's propensity to commit sexual offenses or the molestation of children. Dr. Killian acknowledged no reports of a pedophilic offense had been made against defendant in nine years. Despite that history, Dr. Killian still opined defendant suffered from pedophilia. He explained it would not be unusual for someone to go awhile without having an offense because offending does not take place in a regular pattern. Offending generally depends on what is going on in the offender's life and what opportunities arise. If a person is doing well in life, it is less likely the person would commit an offense. Dr. Killian also explained it is not a matter of outgrowing pedophilia, but rather learning things in treatment to overcome it, like alcoholism. Additionally, Dr. Killian noted that violent sex offenders usually get less violent as they age. However, pedophiles do not change all that

much over time.

¶ 10 Dr. Jeckel testified he met with defendant on June 26, 2012, for 90 minutes and reviewed materials related to defendant's juvenile and criminal cases. Defendant denied touching A.B. Dr. Jeckel diagnosed defendant with pedophilia, sexually attracted to both sexes, non-exclusive type, and a personality disorder, not otherwise specified. Dr. Jeckel opined defendant had suffered from the mental disorder of pedophilia for more than one year prior to the filing of the sexually-dangerous-person petition. He also opined defendant had exhibited criminal propensities to the commission of sexual offenses based on defendant's prior juvenile and criminal cases, as well as the pending charges in this case. Next, Dr. Jeckel opined defendant had demonstrated propensities toward acts of sexual assault or the molestation of children based on the facts defendant had been highly sexualized by his parents, had a chaotic and nomadic life, and acted out sexually throughout his life, including in 2012. Last, Dr. Jeckel opined it was substantially probable defendant would engage in sexual offenses in the future if not confined and receiving treatment. Like Dr. Killian, Dr. Jeckel did consider the fact a long period of time had passed between allegations in diagnosing him with pedophilia. Dr. Jeckel noted that, if he has shown impulsive behavior now with A.B., the likelihood of it happening again is "very, very high."

¶ 11 Campbell testified about his 2005 sex-offender evaluation of defendant, in which he concluded defendant presented a high risk to the community to commit another sexual offense. He also said defendant would benefit from community-based therapy or education, but due to his high risk, he might not be appropriate for treatment in the community. On cross-examination, Campbell discussed his 2012 sex-offender evaluation of defendant. Originally, Campbell found defendant's risk to defendant's own child was low. However, after the State filed the charges in this case, Campbell found defendant presented a moderate to high risk to his

child and recommended defendant not have unsupervised contact with his child.

¶ 12 Welch testified about the presentence report for defendant's case No. 04-CF-113, which he prepared when defendant was 17 years old. The report listed the names of individuals, their ages, and the sexual activity that occurred with defendant as reported by defendant.

¶ 13 A.B. testified that, in January 2012, she lived with her mother and spent every other weekend with her father. On Thursday, January 26, 2012, she had gone to her father's home for the weekend a day early because she had strep throat and would not be going to school on Friday. She went to sleep around 4 a.m. on Friday, January 27, 2012, on a couch in the living room because her bedroom was too warm. Defendant and Shawna were sleeping on an air mattress that was pushed up against the couch. While she was sleeping, she awoke to defendant touching her breasts under her pajamas. A.B. was able to get defendant's hand to move by turning to face the couch. A.B. went back to sleep and did not get up off the couch or tell anyone about defendant's actions. A.B. testified defendant was awake during the incident and kept looking at the door to her father's room. A.B. later woke up again when defendant put his hand down her pajama pants and touched her vagina. A.B. again went back to sleep without moving or saying anything. When she woke up the next time, her stepmother, defendant, and Shawna were awake and talking. A.B. got up and went to her bedroom without talking to anyone. After sleeping some more, she went back to the living room, where only her stepmother and sister were present. A.B. again did not mention the incident to them. Around 3 p.m., when A.B.'s friends got out of school, A.B. telephoned her friend H.M. and told her about defendant's actions. H.M. eventually convinced A.B. to tell her stepmother about the incident. However, A.B. was too upset and crying and had H.M. tell T.R. over the telephone. A.B. testified she knew defendant was a sex offender and did not tell anyone right away because she was scared.

¶ 14 H.M. testified A.B. called her after school was out that day and told her what happened. A.B. was upset and crying during the call. H.M. told A.B. to tell her mother, father, and stepmother about the incident.

¶ 15 Officer Duffy testified he investigated A.B.'s allegations and spoke to defendant at the residence of A.B.'s father. According to Officer Duffy, defendant seemed nervous as he was rocking, sweating, and speaking about how warm it seemed in the trailer. Defendant stated he was sleeping on an air mattress next to the couch but denied touching A.B. However, defendant noted that sometimes people do things in their sleep like sleepwalking. Defendant denied having a history of sleepwalking.

¶ 16 Sergeant Allen spoke with defendant at the Decatur police department. Defendant again denied touching A.B. and again mentioned possibly doing things in his sleep. Defendant also noted he loved the victim and considered her a sibling.

¶ 17 T.R., A.B.'s stepmother, testified that, when she went to bed around 4:30 a.m. on January 27, 2012, defendant and Shawna were sitting on the air mattress and A.B. was sleeping on the couch. T.R. got up at 6 a.m. and talked to defendant. A.B. was still sleeping on the couch. At 9:30 a.m., A.B. came out of her bedroom to talk to T.R. A.B. did not mention the incident and did not seem to have a problem. Around 3 p.m., A.B. went outside to talk to H.M. T.R. noticed A.B. was upset and had tears in her eyes. It was H.M. who told T.R. on the telephone about the incident. After talking to H.M., T.R. tried to talk to A.B. about the incident, but A.B. was not talking. T.R. then got A.B.'s father, who talked with A.B. After talking to A.B., A.B.'s father confronted defendant in T.R.'s presence, and defendant denied doing it. A.B.'s father then took A.B. to her mother's home.

¶ 18 Shawna testified defendant went to sleep first at 3 a.m. and was the closest to the

couch at that time. A.B. went to sleep around 4:30 a.m. Before Shawna went to sleep at 5:25 a.m., she and defendant switched positions so she was closer to the couch. While she was sleeping, Shawna did not notice defendant wake up or move around. She saw and spoke to A.B. around 9 a.m., and A.B. did not say anything and seemed groggy. Shawna denied telling Officer Duffy defendant was sleeping closest to the couch.

¶ 19 After hearing all of the evidence, the trial court found the State had proved beyond a reasonable doubt all three elements of a sexually dangerous person under the Act and that it was substantially probable defendant would engage in the commission of a sex offense in the future if not confined. In its ruling, the court noted it found A.B.'s testimony was credible and believed it beyond a reasonable doubt. The court noted a written order would follow.

¶ 20 According to the docket sheets, the trial court filed the written order on September 23, 2013. A December 2, 2013, docket entry notes the original September 23, 2013, order could not be located. That same day, the court filed a replacement order dated September 23, 2013.

¶ 21 On October 1, 2013, defendant filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See 725 ILCS 205/3.01 (West 2012) (except where otherwise provided, the civil supreme court rules apply to proceedings under the Act).

¶ 22 II. ANALYSIS

¶ 23 Here, defendant asserts the State failed to prove beyond a reasonable doubt he was a sexually dangerous person. Specifically, defendant argues the State failed to prove all of the necessary elements for finding him a sexually dangerous person. The State asserts its evidence was sufficient for the trial court to find beyond a reasonable doubt defendant was a sexual-

ly dangerous person.

¶ 24 Under section 1.01 of the Act (725 ILCS 205/1.01 (West 2012)), the State had to prove defendant (1) had a mental disorder that existed for more than one year prior to the filing of the sexually-dangerous-person petition, (2) exhibited criminal propensities to the commission of sex offenses, and (3) demonstrated propensities toward acts of sexual assault or the molestation of children. Additionally, our supreme court has held the elements of section 1.01 of the Act must "be accompanied by an explicit finding that it is 'substantially probable' the person subject to the commitment proceeding will engage in the commission of sex offenses in the future if not confined." *People v. Masterson*, 207 Ill. 2d 305, 330, 798 N.E.2d 735, 749 (2003). While proceedings under the Act are civil in nature, the State's burden of proof is beyond a reasonable doubt. 725 ILCS 205/3.01 (West 2012).

¶ 25 On appeal from a trial court's finding the defendant was a sexually dangerous person, "the reviewing court will affirm the judgment, after considering all of the evidence introduced at trial in the light most favorable to the State, if it determines that any rational trier of fact could have found the essential elements to be proved beyond a reasonable doubt." *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 44, 982 N.E.2d 953. Moreover, "[t]he reviewing court will not substitute its judgment for that of the trial court or jury on the factual issues that have been raised in the petition, unless the evidence is so improbable as to raise a reasonable doubt that the defendant is a sexually dangerous person." *Hunter*, 2013 IL App (4th) 120299, ¶ 44, 982 N.E.2d 953 (quoting *People v. Bailey*, 405 Ill. App. 3d 154, 171, 937 N.E.2d 731, 745 (2010)).

¶ 26 A. Mental Disorder

¶ 27 Section 1.01 of the Act requires the State to prove defendant had a mental disorder.

der that existed for more than one year prior to the filing of the State's sexually-dangerous-person petition. The Act defines "mental disorder" as "a 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 2012). Our supreme court has further held the State must also show the defendant's condition "results in serious difficulty controlling sexual behavior." *Masterson*, 207 Ill. 2d at 329, 798 N.E.2d at 749.

¶ 28 Here, defendant asserts the State failed to prove he had a mental disorder for more than one year prior to the State's May 18, 2012, petition. While defendant recognizes Dr. Killian and Dr. Jeckel diagnosed him with pedophilia, he asserts the evidence showed he had overcome that diagnosis because he had no allegations of sex offenses from his 2007 prison release to the February 2012 charges. Defendant also notes the current allegations were disputed by his wife's testimony and do not meet the definition of pedophilia because A.B. was past puberty.

¶ 29 Defendant correctly states the evidence at trial showed no reported allegations of sex abuse against defendant for the five years after his prison release and that his alleged molestation of A.B. did not meet the definition of pedophilia. However, the testimony of both Dr. Killian and Dr. Jeckel showed they were aware of the lack of any reported sex offenses between defendant's prison release and the current allegations and still diagnosed defendant with pedophilia. Specifically, Dr. Killian noted defendant had not committed an offense that would meet the definition of pedophilia in nine years. However, he explained it is not unusual for a person with pedophilia to go awhile without having an offense. According to Dr. Killian, offending does not take place in a regular pattern but, rather, depends on what is going on in the offender's life and what opportunities are presented. He also noted that, unlike violent offenders who become less violent with age, pedophiles do not change all that much over time. Moreover, while

Dr. Killian testified a person with pedophilia could learn to control urges and overcome the condition, neither expert opined defendant had done so. Accordingly, we find the evidence was sufficient for the trial court to find beyond a reasonable doubt defendant was suffering from a mental disorder for more than one year before the filing of the sexually-dangerous-person petition.

¶ 30 B. Propensities to the Commission of Sex Offenses

¶ 31 To establish the second element, the State must show defendant's mental disorder is "coupled with criminal propensities to the commission of sex offenses." 725 ILCS 205/1.01 (West 2012). In analyzing the second element, this court has defined "propensity" as " 'an often intense natural inclination or preference.' " *People v. Bingham*, 2013 IL App (4th) 120414, ¶ 46, 987 N.E.2d 1023 (quoting Merriam-Webster's Collegiate Dictionary 932 (10th ed. 2000)). We have also found "the State may admit evidence of a defendant's prior criminal acts to prove a propensity to commit acts in pursuit of a defendant's sexual urges." *Bingham*, 2013 IL App (4th) 120414, ¶ 46, 987 N.E.2d 1023.

¶ 32 Defendant again notes no allegations had been made against him from 2007 to the present case. He also points out the facts surrounding the current charges are in dispute. As to the latter argument, we note the trial court found A.B.'s testimony credible. Regardless, defendant already had one aggravated-criminal-sexual-abuse conviction and two juvenile delinquency adjudications based on sexual abuse. Moreover, Dr. Killian, Dr. Jeckel, and Campbell all testified about defendant admitting to engaging in sexual conduct with younger children during his early and mid-teens. Dr. Killian estimated defendant had 10 to 15 victims. In addition to his prior acts, both Dr. Killian and Dr. Jeckel opined, to a reasonable degree of medical and psychiatry certainty, defendant had exhibited criminal propensities to the commission of sex offenses. We find the aforementioned evidence was sufficient for the trial court to find beyond a reasona-

ble doubt defendant exhibited criminal propensities to commit sex offenses.

¶ 33 C. Propensities Toward Acts of Sexual Assault or the Molestation of Children

¶ 34 To satisfy the third element, that defendant has demonstrated propensities toward acts of sexual assault or molestation of children, our supreme court has held the State must prove defendant had committed or attempted to commit at least one act of sexual assault or molestation. *People v. Allen*, 107 Ill. 2d 91, 105, 481 N.E.2d 690, 697 (1985). Our supreme court has held the State may prove this element by introducing a record of a prior conviction. *People v. Lawton*, 212 Ill. 2d 285, 303, 818 N.E.2d 326, 337 (2004). Defendant again notes no allegations of a sex offense had been made against him from 2007 until the present charge. He also notes he was younger and closer to the victim's age in his prior offenses.

¶ 35 In *Lawton*, 212 Ill. 2d at 288, 818 N.E.2d at 328, the events that gave rise to the defendant's appeal began in February 1998, when the State brought charges of predatory criminal sexual assault of a child against him. At the hearing on the sexually-dangerous-person petition, the defendant presented the testimony of his own psychiatrist, who noted the defendant had (1) no sex-offense convictions in the years following his abuse of his stepdaughter, (2) a stable marriage, and (3) lived in a house with several female minors without incident. *Lawton*, 212 Ill. 2d at 291, 818 N.E.2d at 330. In an appeal from a collateral motion, our supreme court held the trial court correctly took judicial notice of the defendant's 1987 conviction for sexual abuse of his stepdaughter, and that conviction was sufficient to meet the State's burden of proving the demonstrated-propensities element. *Lawton*, 212 Ill. 2d at 304, 818 N.E.2d at 337.

¶ 36 Additionally, in *Hunter*, 2013 IL App (4th) 120299, ¶ 4, 982 N.E.2d 953, the State filed its sexually-dangerous-person petition against the respondent in May 2010. On appeal, this court found the State's introduction of certified copies of the respondent's 1987 conviction

tion for criminal sexual abuse and 2002 conviction for criminal sexual abuse were sufficient to prove the element that the defendant had demonstrated propensities toward acts of sexual assault or molestation of children. *Hunter*, 2013 IL App (4th) 120299, ¶ 46, 982 N.E.2d 953.

¶ 37 At defendant's September 2013 trial, the State presented certified copies showing the following: (1) defendant's 2002 delinquent-minor adjudication for the offense of criminal sexual abuse; (2) defendant's 2003 delinquent-minor adjudication for the offense of criminal sexual abuse, and (3) defendant's 2005 aggravated-criminal-sexual-abuse conviction. These offenses are the same or closer in time to defendant's sexually-dangerous-person proceedings than those found sufficient to prove the third element in the aforementioned cases. Additionally, we note the language in both *Lawton* and *Hunter* does not indicate a conviction can be too old to satisfy the third element. Moreover, both experts again opined, to a reasonable degree of medical and psychiatric certainty, defendant had demonstrated propensities toward acts of sexual assault or molestation of children. Accordingly, we again find the evidence was sufficient for the trial court to find beyond a reasonable doubt defendant demonstrated propensities toward acts of sexual assault or molestation of children.

¶ 38 D. Substantial Probability of Reoffending

¶ 39 Last, the State must show "it is 'substantially probable' the person subject to the commitment proceeding will engage in the commission of sex offenses in the future if not confined." *Masterson*, 207 Ill. 2d at 330, 798 N.E.2d at 749. That showing " 'does not require proof that anything "will" happen in the future.' " *Hunter*, 2013 IL App (4th) 120299, ¶ 48, 982 N.E.2d 953 (quoting *People v. Hancock*, 329 Ill. App. 3d 367, 377, 771 N.E.2d 459, 466 (2002)).

¶ 40 Defendant again argues he was in the community for five years with no reports of sexual misconduct, except for A.B.'s. He claims that, if it was substantially probable he would

offend again, then allegations certainly would have arisen during that five-year period. Thus, a reasonable doubt exists he would offend again unless confined. We disagree.

¶ 41 Dr. Killian and Dr. Jeckel both opined, to a reasonable degree of medical and psychiatric certainty, it was substantially probable defendant would engage in sex offenses in the future if not confined and treated. Dr. Killian testified he administered three different screening tools on reoffending to defendant, and defendant fell in the high category of risk to reoffend on two of them and the moderate to high category of risk on the third test. Dr. Jeckel opined defendant's history of impulsive behavior makes the likelihood of him engaging in another incident of sexual conduct "very, very high." Thus, ample evidence existed from which the trial court could find beyond a reasonable doubt it was substantially probable defendant would offend again if not confined.

¶ 42

III. CONCLUSION

¶ 43 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 44 Affirmed.