

No. 1-11-0017

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> THE COMMITMENT OF EMMANUEL CARTER,)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 01 CR 80013
)	
Emmanuel Carter,)	Honorable
)	Mary C. Roberts,
Respondent-Appellant).)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirmed the jury's finding that respondent is a sexually violent person and the trial court's order of commitment over respondent's claim that the State failed to prove beyond a reasonable doubt that he was a sexually violent person.

¶ 2 Following a jury trial, respondent, Emmanuel Carter, was found to be a sexually violent person (SVP) under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2012)), and was committed to the custody of the Illinois Department of Human Services (the IDHS). On appeal, respondent argues that the evidence was insufficient to prove him to be a SVP beyond a reasonable doubt. We affirm.

¶ 3 On November 14, 2011, the State filed a petition seeking respondent's commitment to the

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IDHS as a SVP. The petition alleged that on April 5, 1999, respondent was convicted of aggravated criminal sexual assault, sentenced to 10 years' in the Illinois Department of Corrections (the IDOC), and was scheduled for mandatory supervised release on November 15, 2001. In its petition, the State included a report from Dr. Anthony Schaab, who diagnosed respondent with: paraphilia; not otherwise specified (NOS); sexually attracted to prepubescent and underage females; and personality disorder NOS with antisocial features. Additionally, Dr. Schaab opined that respondent was substantially at risk to committing future acts of sexual violence.

¶ 4 The circuit court, on November 14, 2001, ordered respondent be detained by the IDHS. On December 7, 2001, the trial court found probable cause to believe respondent was a SVP and ordered that he be evaluated.

¶ 5 At trial, psychologist, Dr. Jacqueline Buck, and clinical psychologist, Dr. Paul Heaton, testified for the State.

¶ 6 Dr. Buck has a private practice and a contract with the IDOC to provide SVP evaluations and assessments. Dr. Buck presented her background and expertise in this area to the jury. Dr. Buck testified that pursuant to a court order, she was to evaluate respondent. Because respondent refused to consent to an interview, Dr. Buck, instead, reviewed his various records; including criminal, IDOC and IDHS records.

¶ 7 Dr. Buck testified as to respondent's relevant criminal history. In 1979, when respondent was 15-years old, he was convicted of a sexual offense where the victim was an 11- or 12-year-old girl. Respondent was released from juvenile custody at the age of 18 and was placed on probation.

¶ 8 In 1983, at the age of 20, respondent pleaded guilty to a total of 58 counts, including:

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rape; deviant sexual assault; indecent liberties with a child; and robbery and kidnapping involving eight female victims aged 9- to 14-years-old, and was sentenced to 25 years' imprisonment. The factual basis for those charges showed that respondent, over a period of a few months on separate occasions, approached his victims, forced them into empty buildings, and sexually assaulted or robbed them. During certain of the incidents, respondent had been armed with a handgun.

¶ 9 In 1996, while on parole from that sentence, respondent, at the age of 33, forced a 14-year-old girl at gunpoint into a church basement and raped her. Respondent was charged with 19 counts, subsequently pled guilty to aggravated criminal sexual assault, and was sentenced to 10 years' imprisonment.

¶ 10 While at the IDOC, between 1983 and 1995, respondent was a member of the Black Gangster Disciples gang, identified as a leader of the gang, and accrued 125 disciplinary reports, including violations for possessing homemade knives in his cell and for fighting. After being placed in the custody of the IDHS, respondent had difficulty managing his emotions and his "aggressive behavior." Additionally, he stopped taking his medication, swore at staff members, and threatened to burn his mattress. Respondent, while in custody or detention, refused sex offender treatment.

¶ 11 Dr. Buck diagnosed respondent with paraphilia NOS, sexually attracted to nonconsenting adolescents and children, and personality disorder with antisocial traits, and found that those diagnoses are congenital or acquired conditions which affect respondent's ability to make appropriate choices.

¶ 12 Dr. Buck used certain actuarial tools or instruments to assess respondent's risk of reoffending. Respondent scored in the high-risk category in the Static 99, the Minnesota Sex

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Offender Screening Tool Revised (MnSOST-R), and the Sex Offender Risk Appraisal Guide (SORAG) instruments. He also scored 31 on the Hare Psychopathy Checklist, which indicates that his risk for recidivism was two to four times higher than persons with lower scores. In addition, respondent presented aggravating factors, such as: his commission of sexual offenses against children under the age of 10; against unrelated children; or while on parole for another sexual offense. In addition, respondent had a sexually violent history as a juvenile; intimacy problems; lack of remorse; failed to participate in or complete sex offender treatment; and an inability to control or manage himself, even with medications. Also, no protective factor existed which would decrease his likelihood to reoffend. Dr. Buck expressed an opinion that it was "substantially probable" or "much more likely than not" that respondent would reoffend.

¶ 13 On cross-examination, Dr. Buck testified that, while he was at the IDOC, respondent did not use weapons in fights and that, while he was in the custody of the IDHS, respondent was not violent, and that there had been no reports of sexual misconduct during his time spent in either place. Additionally, Dr. Buck testified that there was no documentation that respondent had not received treatment for his disorders while in custody, and that she had not spoken to the victims or police officers who had been involved in respondent's crimes.

¶ 14 Dr. Heaton testified to his background and expertise and, in particular, his experience in the evaluation of whether a person was a SVP. Dr. Heaton reviewed respondent's records, conducted a three-hour clinical interview and tested respondent, and evaluated him using various assessment tools and criteria. In the interview, respondent denied committing the 1983 sexual offenses and stated that he pled guilty to the 1996 offense because he had been beaten and coerced into doing so.

¶ 15 Dr. Heaton testified that respondent had never participated in treatment for his disorder

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during his time in prison or in the custody of the IDHS, although such treatment was available to him. In fact, respondent had regularly and repeatedly declined treatment for his disorder.

¶ 16 Dr. Heaton diagnosed respondent with paraphilia NOS, sexually attracted to nonconsenting prepubescent or underage females, and personality disorder NOS with antisocial features. Dr. Heaton testified that these congenital conditions affected defendant's ability to make appropriate decisions. Defendant scored in the "high risk" category on the Static-99 and the MnSOST-R, which are actuarial instruments. Defendant also displayed additional dynamic risk factors, including: lack of remorse; low motivation for treatment; anger problems; antisocial traits; and failure to attend sex offender treatment. Respondent's static risk factors included: a criminal history, being unmarried; deviant sexual interest in children; and the victimization of a stranger or person outside the family. Dr. Heaton opined that respondent had no protective factors and met the criteria to be adjudicated a SVP.

¶ 17 On cross-examination, Dr. Heaton testified that there was no documentation respondent had refused treatment while in custody, nor that he had been told such treatment was available to him. Dr. Heaton did not speak to the victims of respondent's prior crimes, nor to anyone involved in the prosecution of those prior crimes. Dr. Heaton acknowledged that respondent had not used weapons during his time in the IDOC, nor did he commit sexual misconduct while in custody at the IDOC or the IDHS.

¶ 18 On November 16, 2010, the jury found respondent to be a SVP and the trial court committed him to the custody of the IDHS for secure care and treatment. The trial court denied respondent's motion for a new trial. Respondent timely filed a notice of appeal.

¶ 19 On appeal, respondent argues that the State failed to prove, beyond a reasonable doubt, that he is a SVP.

¶ 20 Under section 205/5(f) of the Sexually Violent Persons Commitment Act (725 ILCS 207/5(f) (West 2010)), to prove respondent is a SVP, the State was required to show he is "a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, *** and who is dangerous because he *** suffers from a mental disorder that makes it substantially probable that [he] will engage in acts of sexual violence."

¶ 21 In considering whether the evidence is sufficient to support the jury's determination, we view the evidence in the light most favorable to the State, to determine whether any rational trier of fact could find that these elements were proved beyond a reasonable doubt. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 598 (2007). We also recognize that it is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 22 The evidence showed that respondent had a history of convictions for sexually violent crimes against young female victims which began when he was a juvenile and that the 1996 offense occurred while he was on parole from sentences on prior convictions.

¶ 23 The expert medical testimony demonstrated respondent was diagnosed with paraphilia NOS, sexually attracted to nonconsenting prepubescent or underage females, and personality disorder NOS with antisocial features; these acquired or congenital conditions affected respondent's capacity for making appropriate decisions and placed respondent in the "high risk" category for recidivism based on the results of the Static 99, the MnSOST-R, and the SORAG actuarial instruments and other risk factors, such as respondent's lack of remorse, his offenses against children, and his failure to participate in sex offender treatment. The medical testimony also revealed that respondent had no protective factors which would decrease his chances of

reoffending. Both Drs. Buck and Heaton expressed the opinion that it was substantially probable that respondent would engage in acts of sexual violence if released and that he met all the criteria of a SVP.

¶ 24 In sum, the evidence shows that respondent has been convicted of multiple sexually violent offenses, and that he is dangerous because he suffers from a mental disorder making it substantially probable that he will continue to engage in further acts of sexual violence. Under these circumstances, a rational trier of fact could have found, beyond a reasonable doubt, that respondent is a SVP. See *In re Detention of Erbe*, 344 Ill. App. 3d 350, 373 (2003).

¶ 25 Nevertheless, respondent argues that the evidence was insufficient because Drs. Buck and Heaton did not speak to any of his victims, nor anyone involved in the prosecution of his prior crimes, and that there was no evidence that he rejected sex offender treatment while in custody. Respondent does not cite to any authority in support of his claim that Drs. Buck and Heaton were required to consult with respondent's victims or the prosecution prior to diagnosing him as a SVP, and does not state the significance that these steps would have had to his diagnosis. Additionally, the record included the testimony of Drs. Buck and Heaton that respondent had not obtained sex offender treatment, while in custody, and had rejected such treatment. Moreover, these alleged infirmities in the medical evidence were explored at trial during the cross-examination of both experts. The jury had an opportunity to consider all the evidence presented to it, and the verdict demonstrates that the jurors found the expert testimony to be credible and compelling. In reviewing a challenge to the sufficiency of the evidence, it is not the function of this court to reweigh the evidence. *Sutherland*, 223 Ill. 2d at 242.

¶ 26 Accordingly, we conclude that the evidence presented here was sufficient to sustain the jury's verdict that respondent was a sexually violent person (*In re Detention of Erbe*, 344 Ill.

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App. 3d at 373), and affirm the judgment of the circuit court.

¶ 27 Affirmed.