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2015 IL App (3d) 130313-U

Order filed January 14, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

IN RE COMMITMENT OF ALTON M. WILLIAMS)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal No. 3-13-0313
Petitioner-Appellee,)	Circuit No. 11-MR-219
)	
v.)	
)	
ALTON WILLIAMS,)	Honorable
)	Ronald J. Gerts,
Respondent-Appellant).)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* A respondent detained under the Sexually Violent Persons Commitment Act was not entitled to the dismissal of the petition upon the conclusion of one evaluator that there was not a substantial probability that he would engage in future acts of sexual violence. Probable cause had already been found under the Act, and the evaluation was merely evidence to be considered by the jury at trial. Also, the trial court did not abuse its discretion in allowing the admission of the details of the respondent's prior sexual offenses; the details were highly probative of

whether the respondent had a mental disorder and whether it was substantially probable that the respondent would commit future acts of sexual violence.

¶ 2 Following a jury trial, the respondent, Alton Williams, was found to be a sexually violent person (SVP) subject to commitment under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2010)). The respondent appealed.

¶ 3 FACTS

¶ 4 On May 20, 2011, the State filed a petition seeking the respondent's commitment pursuant to the Act. The petition alleged that the respondent had been convicted of predatory criminal sexual assault of a child in Kankakee County case No. 03 CF 272, as well as eight counts of aggravated criminal sexual abuse in Kankakee County case No. 02 CF 707. The petition further alleged that Dr. Allison Schechter, a clinical psychologist, had diagnosed the respondent with two mental disorders and had found that the respondent was dangerous because his mental disorder made it substantially probable that he would engage in future acts of sexual violence. Dr. Schechter testified at a probable cause hearing, and the circuit court found probable cause to believe that the respondent was an SVP. The circuit court ordered that the respondent be evaluated by the Department of Human Services (DHS).

¶ 5 The evaluator for DHS, Dr. Steven Gaskell, a clinical psychologist, found that the respondent had a mental disorder, pedophilia, sexually attracted to females, nonexclusive type. However, he opined that the respondent did not meet one of the statutory requirements to be committed as an SVP, in that he found that the respondent was not substantially probable to engage in future acts of sexual violence. The State, pursuant to section 25(e) of the Act (725 ILCS 207/25(e) (West 2010)), filed a motion to allow its retained expert access to the respondent for evaluation. The circuit court granted the motion, and denied the respondent's motion to dismiss.

¶ 6 A jury trial commenced on September 26, 2011, to determine if the respondent was an SVP. Dr. Schechter testified that, in evaluating the respondent, she reviewed his master file and interviewed the respondent. After completing actuarials, and considering dynamic risk factors and protective factors, she concluded that the respondent met the statutory criteria for civil commitment under the Act. In reaching that conclusion, Dr. Schechter testified that she considered the respondent's sexually violent criminal past and his convictions for sexually violent offenses. Those convictions involved females as young as 11 years old. The State elicited the factual details of the convictions and behaviors that she considered. Dr. Schechter also testified that she considered the respondent's convictions for personation of a police officer and conspiracy to commit burglary, on the basis that they spoke to the respondent's history of criminal and antisocial behavior. Dr. Schechter diagnosed the respondent with: (1) paraphilia not otherwise specified, nonconsenting persons, and (2) personality disorder not otherwise specified with antisocial and narcissistic features.

¶ 7 In determining the respondent's risk of reoffending, Dr. Schechter utilized actuarial instruments in addition to considering dynamic risk factors and protective factors. She used the Static-99R and the Minnesota Sex Offender Screening Tool, Revised (MnSOST-R). On the Static-99R, the respondent received a score of 3, which placed him in the low-moderate risk category. However, in Dr. Schechter's opinion, it was an underestimation of his true risk for two reasons: (1) the respondent had not participated in sex offender treatment; and (2) the respondent had additional offenses that did not result in formal charges or convictions, so they were not taken into account by the Static-99R. As for the MnSOST-R, the respondent originally received a score of 7, which placed him at the high end of the moderate risk category. However, Dr. Schechter testified that, after receiving further information, she re-scored the respondent as a 10, which placed him in the high risk category. Dr. Schechter opined, to a reasonable degree of

psychological certainty, that the respondent met the criteria needed in order to be found an SVP under the Act: the respondent had been convicted of a sexually violent offense, he suffered from mental disorders that affected his emotional or volitional control, and it was substantially probable that he would engage in future acts of sexual violence.

¶ 8 Dr. Paul Heaton, the State's retained expert, testified that he also evaluated the respondent. He began with a comprehensive review of the available written material concerning the respondent, including his Department of Corrections master file. The respondent declined to participate in a clinical interview or psychological testing, but Dr. Heaton reviewed the clinical notes of Dr. Gaskell and Dr. Schechter. He also looked at the results of the Multiphasic Sex Inventory psychological test conducted by Dr. Gaskell. Dr. Heaton diagnosed the respondent with two mental disorders: (1) pedophilia, sexually attracted to females, nonexclusive type, and (2) personality disorder not otherwise specified, with antisocial and narcissistic features. Dr. Heaton scored the respondent as a 4 on the Static-99, which put him in the moderate-high risk category. He scored the respondent as a 3 on the Static-99R, which put him in the moderate-low range. He also scored in the moderate-low range on the Static-2002. However, Dr. Heaton scored the respondent as an 8, or possibly a 10, on the MnSOST-R, which put the respondent in the high risk for reoffending category. According to Dr. Heaton, considering the test scores and other protective risk factors, it was substantially probable that the respondent would reoffend, so the respondent met the statutory requirements of an SVP. At the close of the State's evidence, the respondent made a motion for a directed verdict, which the circuit court denied.

¶ 9 Dr. Gaskell testified for the defense. Dr. Gaskell testified that he conducted personal interviews with the respondent, reviewed all the available documentation, and evaluated the respondent. Dr. Gaskell diagnosed the respondent with pedophilia, sexually attracted to females, nonexclusive type. Dr. Gaskell used two actuarial tests to determine the respondent's risk of

reoffending, the Static-99R and the MnSOST-R. He scored the respondent with a 3 on the Static-99R, moderate-low risk, and a 7 on the MnSOST-R, the moderate risk category. Dr. Gaskell considered the actuarial results, additional risk factors, and protective factors, and opined that the respondent did not meet the criteria to be an SVP. Dr. Gaskell noted that the respondent did have a qualifying offense, and a qualifying mental disorder that would predispose him to commit future acts of sexual violence, but found that he was below the threshold of a substantial probability of committing such future acts. The jury returned a verdict finding that the respondent was an SVP, and the respondent appealed.

¶ 10

ANALYSIS

¶ 11

The respondent argues that the denial of his motion to dismiss was in error. He also argues that the circuit court erred in denying his motion for a directed verdict. The respondent argues that the circuit court erred by allowing in-depth details of his sexually violent criminal history, and by allowing non-sexual convictions. Finally, the respondent argues that the State was “psychologist shopping,” which resulted in unfair prejudice to the respondent.

¶ 12

The Act allows the State to petition the court for the civil detention of sex offenders beyond a period of imprisonment if the State can show the offender is a "sexually violent person." 725 ILCS 207/15 (West 2010); *In re Donald A.G.*, 221 Ill. 2d 234 (2006). To establish that a person is an SVP, the State must prove the following three elements: (1) that the person has been convicted of a sexually violent offense; (2) that the person has a requisite mental disorder; and (3) that the person is dangerous to others because the mental disorder creates a substantial probability that the person will engage in future acts of sexual violence. *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 49; 725 ILCS 207/5(f) (West 2010). The State must prove that a person is an SVP beyond a reasonable doubt, and on review, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact

could find the elements proved beyond a reasonable doubt. 725 ILCS 207/35 (West 2010); *In re Detention of Lieberman*, 379 Ill. App. 3d 585 (2007).

¶ 13 The respondent argues that the petition should have been dismissed and he should have been released from custody upon Dr. Gaskell's evaluation finding that he did not meet the statutory requirements of an SVP. The State argues that the statute did not authorize such a dismissal after the finding of probable cause.

¶ 14 Section 30 of the Act provides that, after the filing of a petition under the Act, the court should determine whether there is cause to detain the person under the Act. 725 ICLS 207/30(a) (West 2010). If the court makes such a determination, the detention order remains in effect until the person is discharged after a trial under section 35 of the Act, or until the effective date of a commitment order under section 40 of the Act. *Id.* Thus, Dr. Gaskell's evaluation, made after the circuit court found that there was probable cause to believe that the respondent was an SVP, was relevant for purposes of a trial under the Act, but did not invalidate the probable cause finding. Therefore, there was no error in the denial of the respondent's motion to dismiss.

¶ 15 The respondent argues that that the circuit court erred in denying his motion for a directed verdict at the close of the State's case. The respondent argues that Dr. Schechter had only been licensed in the State of Illinois for a few months before she evaluated the respondent, and her testimony regarding her risk assessment of the respondent was inconsistent. As for Dr. Heaton, the respondent argues that his opinion was called into question because he never met with the respondent, but merely reviewed the documentation and reports of Drs. Schechter and Gaskell. Since a motion for a directed verdict presents a question of law, we review *de novo* the denial of the motion. *People v. Withers*, 87 Ill. 2d 224, 230 (1981). The respondent's arguments only go to the weight to be given to the experts' opinions. A review of the evidence, in the light most favorable to the State, shows that a reasonable mind could fairly conclude beyond a

reasonable doubt that the State demonstrated each element required to find that the respondent was an SVP. Thus, the respondent was not entitled to a directed verdict.

¶ 16 The respondent argues that the admission of the details of his prior sexual offenses was in error, because the probative value was outweighed by the prejudicial effect. The respondent argues that the details of each offense, particularly the counts that were *nolle prossed*, were inappropriate. The State counters that the details regarding the respondent's crimes, including the charges that were dismissed, were properly admitted as the material reasonably relied on by the expert witnesses, not as substantive evidence. In addition, the details were relevant to prove the second two elements under the Act.

¶ 17 Relevant evidence is any evidence that has a tendency to fairly make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. *In re Detention of Allen*, 331 Ill. App. 3d 996, 1004 (2002). While copies of the respondent's convictions were sufficient to prove the first element under the Act, the details of the prior crimes were relevant to prove the latter two elements. See *People v. Winterhalter*, 313 Ill. App. 3d 972 (2000) (when conviction of sexually violent crime is proven by a certified copy of conviction, the testimony of a victim, describing details of the crime, would only be admissible if relevant to the remaining issues of mental disorder and the probability of future acts of sexual violence). Thus, while the evidence might have been prejudicial, it was clearly relevant to proving the latter two elements under the Act. See *Allen*, 331 Ill. App. 3d at 1005 (detailed accounts of the respondent's past sexual offenses were prejudicial, but the probative value of the evidence in proceedings under the Act outweighed the prejudicial effect). It was within the trial court's discretion to determine whether the probative value outweighed the prejudicial effect. *Winterhalter*, 313 Ill. App. 3d at 978 (2000). We find no abuse of that discretion. The details of the respondent's prior sexual offenses were highly

probative as to whether the respondent had a mental disorder and whether it was substantially probable that the respondent would commit future acts of sexual violence.

¶ 18 The respondent argues that the circuit court erred in allowing the State to introduce evidence of non-sex crimes committed by the respondent because they were not relevant to the sexually violent crimes. However, the respondent's convictions for burglary and false personation of a police officer were not admitted for their truth, but admitted for the limited purpose of explaining the experts' opinions. See *In re Commitment of Butler*, 2013 IL App (1st) 113606, ¶ 31, *reh'g denied* (Oct. 23, 2013), *appeal denied*, No. 116966 (Jan. 29, 2014) (Facts or data underlying an expert's opinion are admissible for the limited purpose of explaining the basis for the expert witness's opinion). The respondent does not argue that the prior convictions were admitted as substantive evidence, and the record does not support such a finding. There was no error.

¶ 19 Lastly, the respondent argues that the State's motion to have the respondent examined by another psychologist was an act of "psychologist shopping" and resulted in unfair prejudice to the respondent. The respondent argues that this violated his due process rights. However, section 25 of the Act provides that the State has the right to have the person evaluated by an expert chosen by the State. 725 ILCS 207/25 (West 2010). Since the Act plainly provides the State the right to such an evaluation, the circuit court did not err in permitting Dr. Heaton to evaluate the respondent.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Kankakee County is affirmed.

¶ 22 Affirmed.