2017 IL App (4th) 170219-U

NO. 4-17-0219

FILED
November 1, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re COMMITMENT OF ANTHONY SULLIVAN,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 13MR220
v.	)	
Anthony Sullivan,	)	Honorable
Respondent-Appellant).	)	Paul G. Lawrence,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence was sufficient to support the circuit court's finding respondent was a sexually violent person.

¶ 2 In April 2013, the State filed a petition seeking to commit respondent, Anthony Sullivan, pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2012)). After a January 2017 bench trial, the McLean County circuit court found respondent was a sexually violent person. At the March 2017 dispositional hearing, the court committed respondent to the custody of the Department of Human Services (Department) for institutional care in a secure facility. Respondent appeals, asserting the State's evidence was insufficient to prove beyond a reasonable doubt he was a sexually violent person within the meaning of the Act because the State's experts' opinions and testimony were (1) based on questionable information from a prior examination and (2) predicated on evaluations that were

ethically challenged. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State's April 2013 petition alleged respondent (1) had been convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(ii) (West 2010)) (People v. Sullivan, No. 11-CF-89 (Cir. Ct. McLean Co.)); (2) had been diagnosed by Dr. Deborah Nicolai with having antisocial personality disorder, sexual sadism, and paraphilia, not otherwise specified, nonconsenting persons; (3) was dangerous because his mental disorders make it substantially probable that he will engage in acts of sexual violence. Attached to the petition were several documents from respondent's criminal case, which indicated he committed the offense on January 6, 2011, and Dr. Nicolai's report. Due to an updated version of the Diagnostic and Statistical Manual (DSM-5), the State filed an amended petition in May 2014. The amended petition asserted Dr. Nicolai diagnosed respondent as having (1) antisocial personality disorder; (2) sexual sadism disorder; and (3) other specified paraphiliac disorder, sexually attracted to nonconsenting persons, in a controlled environment.

¶ 5 In January 2017, the circuit court held a bench trial on the State's amended petition. The State presented the testimony of Dr. Nicolai and Dr. Edward Smith. It also presented (1) Dr. Nicolai's curriculum vitae; (2) Dr. Nicolai's March 11, 2013, evaluation; (3) Dr. Nicolai's April 10, 2014, addendum; (4) Dr. Nicolai's October 17, 2016, supplement; (5) Dr. Smith's curriculum vitae; (6) Dr. Smith's June 3, 2013, report; (7) Dr. Smith's May 12, 2014, addendum; and (8) Dr. Smith's October 19, 2016, addendum. Respondent presented the testimony of Dr. William Hillman, as well as his curriculum vitae and August 22, 2016, report.

¶ 6 Dr. Nicolai testified she was a licensed clinical psychologist, had sex offender specific licenses, and had a contract with the Department to provide mandatory sex offender

evaluations. Without objection, the circuit court accepted Dr. Nicolai as an expert in the area of clinical psychology, specifically in the evaluation and risk assessments of sex offenders. Dr. Nicolai was assigned to evaluate respondent. In performing a sex offender evaluation, she generally reviews the records, meets with the respondent, performs a risk assessment, formulates an opinion, and writes a report. Usually, she does not contact family members as part of the evaluation because she had never encountered a situation where family members could provide useful information for this type of an evaluation. Dr. Nicolai further explained diagnostic conclusions are based on an individual's inner experiences, and thus other people's perceptions and interpretations are not generally useful.

¶ 7 In this case, she met with respondent on March 8, 2013. Her interview of respondent lasted approximately 80 minutes. During the interview, respondent was guarded in his responses and terminated the interview when she brought up substance abuse.

¶ 8 Also as part of the evaluation, she reviewed respondent's criminal history. The McLean County incident reports indicated a 13-year-old girl was at a residence with respondent and some friends when she ended up alone on a couch with respondent. Respondent tried to lay on top of her and she told him she did not want anything to do with him. As he removed her pants, she continued to kick and hit him and told him to stop. Respondent placed his mouth on her vagina and inserted his fingers into her vagina. The victim was able to free herself and ran for the bathroom. Respondent followed her into the bathroom and tried to force her to perform oral sex on him by putting his penis in her face. He then had her head by her hair and was repeatedly banging it on the bathroom floor while at the same time pounding and kicking her privates. She repeatedly told him to stop. Respondent then forced his finger into her anus, and she screamed as loud as she could. The friends opened the bathroom door, and she was able to

run out. The victim's hospital records showed she had extensive bruising on both sides of her neck and back as well as her right ear lobe, which were consistent with being choked. She also had extensive bruising on her left arm, both breasts, left thigh, and left buttock. Additionally, the victim suffered multiple bite marks on her torso, an abrasion on her right shoulder, and four abrasions to her rectum.

¶ 9 Dr. Nicolai also read and considered an evaluation completed by Bryan Denure. Denure interviewed respondent about his version of the incident with the 13-year-old girl. Respondent told Denure he was really horny at the time and took it too far like he always did. His adrenaline was pumping, and he was biting her everywhere. Respondent reported that was not the first time something like that had happened. He had engaged in nonconsensual sex with a number of females and had anally raped a male juvenile. Dr. Nicolai testified it was common for psychologists to rely on statements a respondent made regarding past crimes. Dr. Nicolai also noted respondent was arrested for possession of a controlled substance in May 2009. He intended to sell crack cocaine. Past crimes can be relevant to the presence of an antisocial personality disorder or provide information about a person's level of functioning. Dr. Nicolai also reviewed respondent's disciplinary history. During his time in the McLean County adult facility, respondent had 106 incident reports, 33 of which required physical restraint, and 7 required the use of a restraint chair.

¶ 10 Dr. Nicolai opined, to a reasonable degree of psychological certainty, respondent had the following diagnoses under the DSM-5: (1) other specified paraphiliac disorder, sexually attracted to nonconsenting persons; (2) sexual sadism; and (3) antisocial personality disorder. Dr. Nicolai explained paraphilia is any intense, persistent sexual interest other than a sexual interest in a phenotypically normal, physically mature, consenting human partner. It becomes a

paraphiliac disorder when it causes distress or impairment to the individual or when it is a paraphilia whose expression entails personal harm or risk of personal harm to others. "Other specified" refers to the fact the paraphilia is not one of the eight types of paraphilia specifically listed. Respondent meets the definition because he reported "foreseeing" sexual intercourse on nonconsenting persons with no gender preference and having fantasies involving rape and other sexually aggressive acts against nonconsenting persons.

¶ 11 Regarding sexual sadism, Dr. Nicolai explained it was a recurrent intense sexual arousal to physical pain or the physical or psychological suffering of another person as manifested by fantasies, urges, or behaviors over a period of at least six months. Additionally, the person must have acted on the sexual urges or fantasies or the urges cause the individual distress or impairment in social, occupational, or other important areas of functioning. Respondent met that definition because he reported a heightened sense of arousal with rough sex, specifically choking and biting nonconsenting persons. His conviction involved those behaviors. Respondent also noted he had fantasies about hurting someone during sex.

¶ 12 Dr. Nicolai explained antisocial personality disorder as a pervasive pattern of disregard for and the violation of the rights of others occurring since age 15 and manifested by three of seven factors. Respondent met all seven factors. His antisocial personality disorder exacerbated the paraphiliac disorder and increases the risk of offending. Both the paraphiliac disorder and the sexual sadism are chronic conditions.

¶ 13 Additionally, Dr. Nicolai used several actuarial instruments to conduct a risk assessment. Respondent scored a five on the Static-99R, which is moderate to high risk. Only 7.4% of people score higher than a five. He scored a six on the Static-2002R, which placed him in the moderate risk category. On the Psychopathy Checklist Revised, respondent scored a 28,

which meant he had a high degree of psychopathic traits relative to other incarcerated males. Additionally, several dynamic factors not captured by the actuarial instruments increased respondent's risk of reoffense, and no factors decreased his risk. In her opinion to a reasonable degree of psychological certainty, a substantial probability existed respondent would engage in future acts of violence.

¶ 14 Dr. Nicolai amended the report in April 2014 due to the publishing of the DSM-5. She also filed a supplement to her report in October 2016 to ensure no significant changes had taken place. Her opinion of respondent did not change. The information she based her assessments on came in part from Denure's report. She did get information directly from respondent. While respondent told her he exaggerated when talking with Denure, he endorsed many of the things he said he had previously exaggerated. Dr. Nicolai also testified respondent had a job while in the Department. However, he lost the job because he was impulsive, aggressive, and disrespectful; could not self-regulate; and refused to take responsibility for his actions.

¶ 15 Dr. Smith testified he was a licensed clinical psychologist and a licensed sex offender evaluator in Illinois. He currently worked for the Department conducting sexually violent person examinations. Without objection, the circuit court accepted Dr. Smith as an expert in the area of clinical psychology and the evaluation and risk analysis of sex offenders.

¶ 16 Dr. Smith received respondent's case in 2013. He did conduct a clinical interview of respondent, but respondent was very vague and nondescript in his answers. Respondent did not tell Dr. Smith he had engaged in other sexual offenses for which he was not charged. Dr. Smith reviewed much of the same materials as Dr. Nicolai, including Denure's report. Dr. Smith explained previous evaluations were reasonably relied upon to conduct evaluations such as this.

Respondent did tell him that what he told Denure was not true. Under the DSM-5, Dr. Smith diagnosed respondent as having the following: (1) other specified paraphiliac disorders, such as attracted to nonconsenting females with sadistic features; (2) alcohol, cannabis, ecstasy, and cocaine use disorder; and (3) antisocial personality disorder. As to the paraphiliac disorder, Dr. Smith explained respondent had an ongoing sexual preoccupation and issues with sexual deviancy that included sexual fantasies and behaviors involving aggressive behavior toward others. He had a pattern of strong sexual deviant arousal and difficulty with controlling sexual arousal. Dr. Smith also explained a paraphiliac disorder is a chronic condition. In Dr. Smith's opinion, respondent still suffered from it. In his diagnosis, Dr. Smith also included "rule out" sexual sadism disorder. He did not feel he had enough information to make that specific diagnosis.

¶ 17 Dr. Smith also performed risk assessments. Using the Static-99R, respondent scored in the moderate high risk category for sexual reoffense. On the Static-2002, respondent scored in the moderate risk category. Dr. Smith also found a total of eight dynamic risk factors applied to respondent. In his opinion to a reasonable degree of psychological certainty, respondent was substantially probable to engage in future acts of sexual violence.

¶ 18 Dr. Hillman testified he was a psychologist in private practice, having last worked for the State in 2004. Since he left State employment, he had done seven or eight sex offender evaluations for respondents. He reviewed as much of respondent's background information as possible and interviewed respondent three times. Dr. Hillman also gave respondent a personality test and spoke with as many collateral contacts as possible. According to Dr. Hillman, it is part of the ethical guidelines of the Association for the Treatment of Sexual Abusers and the American Board of Forensic Psychology to contact outside parties that know information that

would be useful for a diagnosis and an estimation of risk. He only did not do it when a person had been in prison so long he or she had lost contact with family members. Dr. Hillman stated it was standard practice to contact the people who know the individual being evaluated. For respondent, he spoke with four family members. They reported respondent was hardworking, bighearted, and helped out around the house. His family was interested in providing as much support as possible. In his opinion to a reasonable degree of psychological certainty, respondent did not have a mental disorder and was not at risk for reoffense. Dr. Hillman stated a pattern of conduct was needed to establish a mental disorder, and respondent had only committed one offense. He also viewed respondent's disciplinary history as evidence of an anger control issue and not an antisocial personality disorder.

¶ 19 In Dr. Hillman's opinion, Dr. Nicolai did not spend enough time with respondent. He also described Denure's report as "goofy" and "off the charts," and criticized Dr. Nicolai's and Dr. Smith's reports for quoting extensively from Denure's report. Dr. Hillman reviewed Denure's report with respondent and determined most of it was inaccurate. Respondent admitted he got overly aggressive during the offense. He explained he was having trouble getting an erection and thought rough sex play would arouse him. Dr. Hillman noted he had done therapy for rapists and sadists and they do not brag about their conduct but, instead, minimize it. Dr. Hillman also pointed out respondent's youth. Respondent was 17 years and 9 months old when he committed the crime. He was now 23 years old. According to Dr. Hillmann, the eight factors discussed by Dr. Nicolai and Dr. Smith applied to adults and not teenagers. According to Dr. Hillman, recidivism for teenagers is half of what it is for adults. Moreover, respondent told Dr. Hillman he lied to Denure about other uncharged offenses to get into treatment and out of jail earlier. With Dr. Hillman, respondent denied being aggressive with females.

¶ 20 Dr. Hillman did not conduct the risk assessments on respondent and did not dispute Dr. Nicolai's and Dr. Smith's results. However, he noted some recent research had indicated the assessments they used overestimate the rate of reoffense as much as 30 to 50%. Additionally, Dr. Hillman testified the DSM-5 does not contain a diagnosis for other specified paraphiliac disorder, sexually attracted to nonconsenting person in a controlled environment. The DSM-5 listed eight or nine otherwise specified paraphiliac disorders, but none of them are nonconsent coercive. According to Dr. Hillman, it is not listed because it is a crime and not a mental disorder.

¶ 21 After hearing the parties' arguments, the circuit court found the State had proved beyond a reasonable doubt respondent was a sexually violent person. The court noted it found Dr. Nikolai's and Dr. Smith's opinions more credible in this case because they considered all of the information that was available to them. On January 20, 2017, the court entered a written order finding respondent was a sexually dangerous person.

¶ 22 On March 10, 2017, the circuit court held the dispositional hearing. The State presented Dr. Smith's February 2017 predisposition investigation report. At the conclusion of the hearing, the court found respondent needed treatment in a secure facility. That same day, the court entered a written order, committing respondent to institutional care in a secure facility.

¶ 23 On March 16, 2017, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See *In re Detention of Samuelson*, 189 Ill. 2d 548, 559, 727 N.E.2d 228, 235 (2000) (providing cases under the Act are civil in nature). Thus, this court has jurisdiction of respondent's appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 24 II. ANALYSIS

¶ 25 Respondent challenges the sufficiency of the evidence by attacking the basis for the State's experts' opinions. The State contends its evidence was sufficient. In reviewing a sufficiency of the evidence claim, we view the evidence in a light most favorable to the State and determine whether any rational trier of fact could have found the required elements proved beyond a reasonable doubt. *In re Detention of Welsh*, 393 Ill. App. 3d 431, 454, 913 N.E.2d 1109, 1129 (2009).

¶ 26 To establish a person is a sexually violent person under the Act, the State must prove the following three elements beyond a reasonable doubt: (1) the respondent has been convicted of a sexually violent offense; (2) the respondent has a requisite mental disorder; and (3) the respondent is dangerous to others because the mental disorder creates a substantial probability the person will engage in future acts of sexual violence. 725 ILCS 207/5(f), 15(b), 35(d)(1) (West 2012); *Welsh*, 393 Ill. App. 3d at 454, 913 N.E.2d at 1129. In this case, respondent generally disputes the second and third elements by asserting the State's experts' opinions were insufficient to prove those elements because their evaluations were (1) based on questionable information from a prior evaluation by Denure and (2) ethically challenged.

¶ 27 As the State notes, respondent's arguments attack the witnesses' credibility and the weight to be given to their testimony. "It is not our function, in reviewing a challenge to the sufficiency of the evidence, to retry the defendant. [Citations.] Instead, it is the province of the trier of fact to evaluate witness credibility, resolve conflicts in the evidence, and draw reasonable inferences therefrom." *Welsh*, 393 Ill. App. 3d at 455, 913 N.E.2d at 1129; see also *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 602, 884 N.E.2d 160, 177 (2007); *In re Tittlebach*, 324 Ill. App. 3d 6, 11, 754 N.E.2d 484, 488 (2001). Respondent thoroughly raised his appellate contentions at trial through cross-examination of both of the State's expert witnesses and the

testimony of his own expert witnesses. The circuit court expressly stated it found the State's experts more credible. The court's determination finds support in the record.

¶ 28 Dr. Nicolai testified she only relied "in part" on Denure's evaluation of respondent. She interviewed respondent for 80 minutes and gathered information directly from him. She testified respondent also told her about past unreported victims. Respondent did not give her a specific number or a specific instance. Dr. Nicolai further testified respondent did tell her he exaggerated to Denure but then went on to endorse many of the things he said he had exaggerated. Respondent also recanted his statements to Denure in his interview with Dr. Smith. Thus, Dr. Smith considered both respondent's recantation and his statements to Denure in evaluating respondent. Both experts clearly considered respondent's claim of recantation of his statements to Denure in their evaluations.

¶ 29 Respondent's ethical challenge was based on his expert's testimony that contacting family members as part of the evaluation process was part of the ethical guidelines of two professional groups. Dr. Hillman asserted it was standard practice. However, he did not provide any evidence to support that assertion and both of the State's experts indicated they did not consider it standard practice. Dr. Nicolai testified she had never encountered a situation where relatives could provide useful information for this type of evaluation because the diagnostic conclusions were based on an individual's inner experiences. Dr. Smith testified he usually did not contact family members because the information he could obtain would not determine the general opinions or outcomes.

¶ 30 Accordingly, we find the State's evidence was sufficient to support the circuit court's finding respondent was a sexually violent person.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the McLean County circuit court's judgment.

¶ 33 Affirmed.