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2018 IL App (3d) 170199-U

Order filed July 16, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-17-0199
v.)	Circuit No. 12-MR-2482
)	
KENDON CURRY,)	Honorable
)	Sarah-Marie Francis-Jones,
Respondent-Appellant)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State presented sufficient evidence at respondent's bench trial to warrant a finding that respondent was a sexually dangerous person under the Sexually Violent Persons Commitment Act.
- ¶ 2 Following a bench trial, the trial court found Kendon Curry (respondent) to be a sexually violent person (SVP) pursuant to the Sexually Violent Persons Commitment Act (the Act). 725 ILCS 207/1 *et seq.* (West 2012). Respondent appeals the trial court's ruling and contests the trial court's finding with regard to respondent's requisite mental disorder.

FACTS

¶ 3

¶ 4 On November 26, 2012, the State filed a petition requesting that respondent be committed as an SVP pursuant to the Act. 725 ILCS 207/1 *et seq.* (West 2012). The petition alleged that: (1) respondent was convicted of aggravated criminal sexual abuse in Will County case No. 10-CF-1879; (2) respondent has been diagnosed by Dr. Allison Schechter with paraphilia, not otherwise specified; and (3) “[r]espondent is dangerous to others because his mental disorders create a substantial probability that he will engage in acts of sexual violence.” In further accordance with the Act, the trial court found probable cause to believe that respondent was an SVP on January 3, 2013.

¶ 5 On March 21, 2014, respondent filed a motion for a *Frye* hearing requesting that the trial court review whether the diagnosis of paraphilia, not otherwise specified, is generally accepted by the scientific community. On May 7, 2014, the trial court denied respondent’s motion for a *Frye* hearing. On September 19, 2014, the State filed a motion for leave to amend the petition wherein the State proposed to change respondent’s alleged mental disorder to other specified paraphilic disorder (OSPD), nonconsenting persons. Respondent objected to the State’s motion for leave to amend, however, the trial court granted the motion on May 15, 2015.

¶ 6 On December 11, 2015, the trial court began a bench trial on the State’s petition. The State called their first expert, Dr. Allison Schechter, a clinical and forensic psychologist employed at Wexford Health Sources, to testify. Dr. Schechter had previously been qualified as an expert in the field of clinical and forensic psychology, specifically in the area of sex offender evaluations, including diagnosis and risk assessment, 34 times in 14 counties throughout Illinois. In her capacity as a clinical and forensic psychologist, Dr. Schechter completes comprehensive evaluations to determine whether individuals meet the statutory criteria for civil commitment as

SVPs under the Act. Dr. Schechter testified that she was an approved evaluator and treatment provider for the Illinois Sex Offender Management Board, and that she had completed a total of 55 sex offender evaluations, 32 of which Dr. Schechter referred for commitment under the Act.

¶ 7 At the time of trial, respondent was 30 years of age. Dr. Schechter explained that she was assigned to respondent's case because respondent was convicted of a sex offense that required respondent to be screened prior to respondent's release on parole. Dr. Schechter conducted a clinical evaluation of respondent to determine whether he was a candidate for commitment under the Act. As part of her evaluation, Dr. Schechter reviewed respondent's master file, which included relevant court documents, police reports, disciplinary records, medical records, previous evaluations, and other relevant documentation. On September 18, 2012, Dr. Schechter interviewed respondent for approximately 3 hours and 15 minutes.

¶ 8 Based on her review of respondent's case, Dr. Schechter prepared a report dated September 24, 2012. On December 6, 2013, Dr. Schechter submitted an addendum to her September 24, 2012, report wherein Dr. Schechter updated respondent's diagnosis "to reflect the most current, updated Diagnostic Manual." Dr. Schechter's report indicated that respondent had been convicted or adjudicated delinquent for a sexually violent offense on three occasions. When respondent was 14 years-of-age, he was charged with two counts of aggravated criminal sexual assault in Will County case No. 99-JD-155, wherein the victims were five and six-year-old females. Respondent was adjudicated delinquent for this offense. When defendant was 15 years of age, he was charged with two counts of aggravated criminal sexual assault in Kane County case No. 01-JD-1077, wherein the victim was respondent's 14-year-old male roommate. Respondent was again adjudicated delinquent for those offenses. When respondent was 24 years of age, he pleaded guilty to the aggravated criminal sexual abuse of a 14-year-old female, a

sexually violent offense as defined by the Act, in Will County case No. 10-CF-1879. Respondent was convicted of failure to register as a sex offender and resisting a police officer in Will County case Nos. 06-CF-2543, 09-CF-1057, and 09-CF-672. Respondent was involved in a Will County investigation for allegedly sexually assaulting another 14-year-old female, however, the investigation did not continue because the victim refused a medical examination. Dr. Schechter relayed that respondent admitted to assaulting this 14-year-old female in a prior evaluation. In 2000, respondent was transferred to an alternative school for making a sexual gesture to a female and threatening to rape a school member. Dr. Schechter also referred to records from IYC Kewanee where staff described respondent as being sexually preoccupied, sexually objectifying others, and repeatedly making sexualized gestures and comments. Respondent's disciplinary reports from IDOC and IYC indicated that respondent had behavioral difficulties, fought with peers, made threats to staff members, engaged in gang activity, and sexually assaulted his roommate. Dr. Schechter also considered respondent's other nonviolent offenses of criminal damage to property and theft in developing her opinion about respondent's status as an SVP. Dr. Schechter considered these nonviolent offenses because these offenses showed a pattern of criminal activity which began in respondent's adolescence and continued through his adulthood.

¶ 9 With regard to diagnosing a mental disorder, Dr. Schechter utilized the DSM-IV-TR when she completed her initial report, and then utilized the Diagnostic and Statistical Manual of Mental Health Disorders Fifth Edition, which is also referred to as the DSM-5, to diagnose respondent's mental disorder in the December 2013, addendum to her report. Under the DSM-5, Dr. Schechter diagnosed defendant with OSPD, and a history of conduct disorder with an unspecified onset. The name of this diagnosis differed from Dr. Schechter's original diagnosis due to the update in the DSM, but according to Dr. Schechter, the basic structure of the majority

of the disorders remained the same. Dr. Schechter explained that the diagnosis of OSPD indicates:

“any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature consenting human partners.

A paraphilic disorder is a paraphilia that is causing distress or impairment to the individual or whose satisfaction entails personal harm or risk of harm to others.

The category other specified paraphilic disorder applies to presentations that are characteristic of paraphilic disorder that caused clinically significant distress or impairment in social, occupational, or other important areas of functioning that predominate but do not meet specific criteria for any of the eight disorders that are specifically listed in the paraphilic disorders diagnostic class.”

Dr. Schechter further explained that:

“Evidence suggests [respondent] has demonstrated a repeated pattern that is indicative of a sexual interest in sexual activity with individuals who are unwilling or unable to provide consent to engage in sexual activity with him.

He seeks satisfaction of his paraphilic interest in a manner that entails personal harm or risk of harm to others. He has demonstrated recurrent and intense sexual interest in sexual activity with non-consenting persons that has been present for at least six months, and he has been repeatedly charged, convicted, or incarcerated for engaging in these behaviors.

[Respondent] has been demonstrating a pattern of this type of behavior since his early adolescence and the behaviors continued into his adulthood.

He consistently chooses younger and more vulnerable victims regardless of age or gender. He has offended while free in the community, while within a controlled environment, and after releasing back into the community as an adult after participating in sex offender treatment.

[Respondent] also demonstrated with his most recent offense that even when he has consensual sexual activity available to him, he continues to seek out situations of engaging in sexual activity with non-consenting people.”

Dr. Schechter also opined that respondent showed some symptoms of antisocial personality disorder. Ultimately, Dr. Schechter concluded that respondent’s mental disorders predisposed him to commit acts of sexual violence.

¶ 10 Dr. Schechter also testified that she conducted a risk assessment, utilizing an actuarial instrument known as the Static-99R, to determine the likelihood that respondent would reoffend in the future. Respondent received a score of eight on the Static-99R, which placed him into the high-risk category. Respondent also exhibited what Dr. Schechter referred to as “dynamic factors” that increased respondent’s risk of reoffending and no “protective factors” to minimize such a risk. Dr. Schechter opined that respondent “is substantially probable to commit future acts of sexual violence,” and that respondent met all the criteria for commitment as an SVP under the Act.

¶ 11 Next, the State called their second expert, Dr. Diana Dobier, a licensed clinical psychologist employed as an evaluator for the SVP program for the Illinois Department of Human Services, to testify. Dr. Dobier had completed 185 SVP evaluations and was an approved evaluator through the Sex Offender Management Board. Dr. Dobier had been qualified as an

expert in Illinois courts in the evaluation of risk analysis for sex offenders approximately five times.

¶ 12 Dr. Dobier testified that she received respondent's master file, and interviewed respondent on February 11, 2013. Dr. Dobier's February 13, 2013, report opined that respondent should be found to be an SVP. Much like Dr. Schechter, Dr. Dobier updated her report in December 2013, to reflect the new diagnosis offered in the DSM-5. Dr. Dobier also updated her report periodically with updated information. Dr. Dobier testified that respondent was convicted of a sexually violent offense pursuant to the Act, and proceeded to recount respondent's criminal history, disciplinary records, and other documents used to diagnose respondent. Overall, Dr. Dobier diagnosed respondent with alcohol use disorder, cannabis use disorder, antisocial personality disorder, and OSPD.

¶ 13 Dr. Dobier utilized the Static-99R and the Static-2002R instruments to evaluate respondent's risk of reoffending. Respondent scored an eight on the Static-99R and a ten on the Static-2002R, which both placed him in the highest risk category. Dr. Dobier then applied similar criteria to those utilized by Dr. Schechter, and concluded that it was substantially probable that respondent would reoffend in the future. Dr. Dobier opined that respondent fit the criteria for commitment under the Act.

¶ 14 On March 23, 2016, the bench trial resumed. Respondent called Dr. Craig Rypma as his first witness. Dr. Rypma testified as a clinical and forensic psychologist who had completed around one thousand sex offender evaluations wherein he found a mental abnormality existed approximately 43 percent of the time. Dr. Rypma was not a licensed psychologist in Illinois, but had testified as an expert in various states. The court found Dr. Rypma qualified as an expert in clinical and forensic psychology who specialized in sex offender evaluation.

¶ 15 Dr. Rypma testified that he reviewed respondent's records and interviewed respondent for approximately two-and-a-half hours as part of an evaluation. Unlike Drs. Schechter and Dobier, Dr. Rypma did not diagnose respondent with OSPD. Following his evaluation, Dr. Rypma diagnosed respondent with alcohol and cannabis abuse. Dr. Rypma stated:

“While certainly the offenses were terrible, poor choices, the majority of his offending, in fact, research would even suggest that all of his offenses occurred during his adolescence assuming that what we now know to be adolescence extends up to about age 25. As I read the police reports, and as I talked to Mr. Curry, and as I looked at data that I had available to me, it didn't look to me as if he had a disorder of sexual arousal. I believe that he was engaged in criminal activity. I believe that he certainly broke the law and was found by a court of law to have done so but from a psychological stand point, I don't believe that he qualifies with a diagnosis of paraphilia.”

Dr. Rypma testified that paraphilia, not otherwise specified, a diagnosis set forth in the DSM-IV-TR was a controversial diagnosis due to the absence of specific criteria for the diagnosis. Dr. Rypma explained that many in the field thought that paraphilia, not otherwise specified was an overused diagnosis, and was not reliable over a person's lifetime. Dr. Rypma further explained that OSPD was developed as a diagnosis in the DSM-5 as an alternative to paraphilia, not otherwise specified. Dr. Rypma believed many in the field improperly used OSPD to diagnose an individual who was committing crimes out of a power and control dynamic, but did not necessarily exhibit a paraphilic drive. Dr. Rypma opined that respondent did not exhibit a “pervasive intense need” to engage in paraphilic behavior. Instead, Dr. Rypma opined that respondent “was just a young, unsocialized individual” who did not exhibit a fixed pattern of behavior because his life was moving in a positive direction.

¶ 16 Ultimately, Dr. Rypma concluded that respondent's criminal behavior occurred during his adolescence. Dr. Rypma opined that respondent's adolescence continued until the age of 25 and concluded the diagnosis of OSPD was incorrect. Dr. Rypma concluded that respondent did not meet the criteria for commitment under the Act.

¶ 17 On cross-examination, Dr. Rypma testified that respondent had a high risk of reoffending based on his history, and that respondent had been convicted of a sexually violent offense pursuant to the Act. After a review of two criteria for a paraphilic disorder, (1) the presence of a paraphilia, and (2) distress, harm, or impairment caused to others as a result of the paraphilia, Dr. Rypma agreed that the second criteria applied to respondent. Dr. Rypma testified respondent exhibited part of the first criterion for paraphilic disorder, a six-month period that there exists sexual arousal manifested by fantasies, urges, or behaviors, but that this did not necessarily indicate a paraphilic disorder. Dr. Rypma reiterated that he believed there was a difference between paraphilic behavior and a paraphilic disorder, and that this concept was contained in the DSM-5. Dr. Rypma believed respondent's crimes were "more reflective of sociological factors in his life than any on-going disorder."

¶ 18 At the conclusion of the testimony, the court found respondent to be an SVP under the Act. Following a dispositional hearing on February 17, 2017, respondent was committed to the care of the Illinois Department of Human Services. On March 17, 2017, respondent filed a timely notice of appeal.

¶ 19 ANALYSIS

¶ 20 On appeal, respondent contends that no reasonable trier of fact could find that the State proved respondent suffers from a requisite mental disorder under the Act beyond a reasonable

doubt. In opposition, the State argues that the State presented sufficient evidence to support the trial court's finding that respondent is an SVP.

¶ 21 At trial, the State bears the burden of proving the allegations contained within the petition beyond a reasonable doubt. 725 ILCS 207/35(d)(1) (West 2012). Under the Act, an individual may be declared an SVP if he or she: (1) has been convicted of a sexually violent offense; (2) is dangerous because he or she suffers from a mental disorder; and (3) it is substantially probable that the person will engage in acts of sexual violence. 725 ILCS 207/5(f) (West 2012).

¶ 22 Respondent's argument on appeal asks this court to accept Dr. Rypma's diagnosis, or lack thereof, and to reject Drs. Shechter and Dobier's diagnosis of OSPD. When reviewing a challenge to the sufficiency of the evidence, a court of review must ask "whether, 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 Commitment of Fields*, 2014 IL 115542, ¶ 20. Reviewing courts do not retry SVP cases on appeal, rather, "it is the responsibility of the trier of fact to evaluate the credibility of the witnesses, to weigh and resolve conflicts in the evidence, and to determine the reasonable inferences to be drawn from the evidence." *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 48. A reviewing court must reverse the trial court's SVP determination if the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt as to the matter. *Id.*

¶ 23 To begin, both parties agree that respondent's aggravated criminal sexual abuse conviction in Will County case No. 10-CF-1879 is a sexually violent offense which satisfies the first prong of the Act. Both parties also agree that the State proved beyond a reasonable doubt that it is substantially probable that respondent will engage in acts of sexual violence. Thus, the sole issue subject to review by this court is whether any reasonable trier of fact, based on the

evidence presented during the bench trial, could have found that respondent suffered from a requisite mental disorder under the Act. The Act defines a 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 207/5(b) (West 2012).

¶ 24 In this case, Dr. Rypma testified extensively about the controversy in his field regarding the application and diagnosis of OSPD. However, Dr. Rypma’s testimony establishes that many experts in the field consider the application and diagnosis of OSPD proper. We recognize that Dr. Rypma does not share this point of view and disagrees with the State’s experts. In Dr. Rypma’s opinion, there is a difference between paraphilic behavior and a paraphilic disorder, and that this concept was contained in the DSM-5. Dr. Rypma believed respondent’s crimes resulted from behaviors “more reflective of sociological factors in his life than any on-going [mental] disorder.”

¶ 25 In contrast, both Drs. Schechter and Dobier diagnosed respondent with OSPD based on the DSM-5, an actuarial tool, and recommended that respondent be found an SVP under the Act. Drs. Schechter and Dobier both testified that their diagnosis was based on a review of the contents of respondent’s “master file,” which included: police reports, disciplinary records, medical records, prior evaluations, criminal history, uncharged and nonsexual offenses, and their recent interviews with respondent. Both Drs. Schechter and Dobier formed their respective diagnosis after reviewing the documented behaviors exhibited by respondent that were contained in respondent’s file and after considering respondent’s interview. We note that both doctors’ reports and testimony were well-articulated and extremely thorough.

¶ 26 It is the responsibility of the trier of fact to evaluate the credibility of the witnesses, to weigh and resolve conflicts in the evidence, and to determine the reasonable inferences to be

drawn from the evidence. As stated above, reviewing courts do not retry SVP cases on appeal. Instead, the sufficiency of the evidence in this case must be determined by viewing the evidence in the light most favorable to the State and asking if any rational trier of fact could find the elements proved beyond a reasonable doubt.

¶ 27 In this case, each side presented conflicting expert testimony for the court’s consideration on the issue of whether respondent has a mental disorder. Here, the trial court relied on the testimony of Drs. Schechter and Dobier and rejected the opinion expressed by Dr. Rypma. Nothing in this record serves to undermine the expert opinions of Drs. Schechter and Dobier. Therefore, viewing the evidence in the light most favorable to the State, we conclude the State proved respondent suffers from a requisite mental disorder under the Act beyond a reasonable doubt.

¶ 28 For the above stated reasons, we affirm the trial court’s ruling granting the State’s petition.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Will County is affirmed.

¶ 31 Affirmed.