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2012 IL App (4th) 111037-U

Filed 9/19/12

NO. 4-11-1037

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JOSEPH D. LEADY,	)	No. 11CF275
Defendant-Appellant.	)	
	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justices Steigmann and Cook concurred in the judgment.

### ORDER

¶ 1 *Held:* The State sufficiently proved defendant was a sexually dangerous person by presenting the testimony of two experts, who testified defendant had demonstrated propensities toward acts of sexual assault or sexual molestation of children, and that it was substantially probable he would engage in the commission of sex offenses in the future if not confined.

¶ 2 After a jury trial, defendant, Joseph D. Leady, was found to be a sexually dangerous person and was committed to the Illinois Department of Corrections for an indefinite period for treatment. Defendant appeals from the jury's verdict, arguing the State failed to prove beyond a reasonable doubt he was a sexually dangerous person. We affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 On April 7, 2011, the State charged defendant with one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)) for knowingly touching R.H., a person under

the age of 13 years, for the purpose of sexual arousal. On April 21, 2011, the State filed a superseding indictment.

¶ 5 On September 21, 2011, the State filed a civil commitment proceeding, seeking to have defendant declared a sexually dangerous person as that term is defined in section 1.01 of the Sexually Dangerous Persons Act (Act) (725 ILCS 205/1.01 (West 2010)). In support of its petition, the State alleged psychiatrists Lawrence L. Jeckel and Terry M. Killian had concluded, after their respective examinations of defendant, to a reasonable degree of medical and psychiatric certainty that defendant was a sexually dangerous person.

¶ 6 At trial, the State presented each psychiatrist's testimony as an expert in the field of conducting such evaluations. First, Dr. Killian testified regarding his process in conducting an examination. Initially, he gathers and reviews as much documentary information as possible. He subsequently conducts a personal interview of the defendant. In this case, a social worker reviewed approximately 250 pages of documents relating to defendant for him. She then prepared a summary for Dr. Killian's use.

¶ 7 According to Dr. Killian, defendant's first involvement in a sex crime occurred in June 1995, when he was approximately 13 years old. The female victim in that case was 9 or 10 years old and a friend of defendant's 3 stepsisters. The victim reported that defendant had grabbed her, threw her to the floor, kissed her, touched her breasts, tried to pull her pants down, and tried to put his hand in her pants. Defendant's parents arrived and pulled him off the girl. They sent him for treatment.

¶ 8 In January 1996, defendant was babysitting a three-year old girl. He placed his finger in her vagina and attempted to place his penis in her vagina. This incident was discovered after the

victim's physician noted an injury to her vagina. Defendant admitted his actions to the police.

¶ 9 Defendant's three younger stepsisters, aged 9, 11, and 13, were interviewed and revealed to the police defendant had done similar things to them. He admitted to these acts as well and was criminally charged. He pleaded guilty to the charge involving the three-year-old, and as a result, the charges relating to his stepsisters were dismissed. He was sentenced to the Department of Corrections, Juvenile Division. While detained, he engaged in sexual activity and fights with other teenaged boys in the facility. He was released at the age of 19 years.

¶ 10 In 2005, defendant, who was then approximately 23 years old, abused a 9-year-old girl—a daughter of a woman he lived with at the time. He was charged, pleaded guilty in 2006, and sentenced to prison. After his release, he was returned to prison on a parole violation for failing to report his whereabouts.

¶ 11 In April 2010, defendant was released from prison and became involved with a woman named, Tera, who had a 9- or 10-year-old daughter, R.H., the victim in the underlying criminal case. Defendant moved in with the pair and abused the young girl. In January 2011, R.H. reported at school that defendant had molested her, though she recanted because she feared her mother would be angry. According to R.H., defendant was the first man who had not hit her mother. For this reason, she was afraid to accuse him, knowing he would have to leave the home, upsetting her mother. However, she renewed her allegations, and defendant was removed from the home.

¶ 12 Defendant had planned to move into a home with a family who had a 10-year-old daughter. When Tera discovered this fact, she notified the police. The police stopped him while he was in the process of moving his belongings. Dr. Killian found this incident significant because it demonstrated defendant's pattern of placing himself in situations where he would be around young

girls even though he had been repeatedly accused, charged, and convicted of molesting them.

¶ 13 Defendant had a significant criminal history without the numerous sexual offenses. He had been arrested five times for domestic battery, a weapons charge, theft, damage to property, and battery. According to Dr. Killian, defendant's nonsexual criminal history was significant in determining whether he was a sexually dangerous person because this history demonstrated an "antisocial orientation," meaning it showed defendant violated other people's rights without remorse—a trait which tended to increase the risk of reoffending.

¶ 14 Dr. Killian reported that defendant only admitted to the charge relating to the three-year-old child. He denied all other allegations, including those to which he had previously pleaded guilty which, according to Dr. Killian, was not unusual.

¶ 15 In conducting his evaluation, Dr. Killian used three actuarial scales to predict defendant's risk of recidivism: (1) Static-99, (2) Minnesota Sex Offender Screening Tool (MnSOST), and (3) Rapid Risk Assessment for Sex Offender Recidivism (RRASOR). Defendant scored 4 on the Static-99, placing him in the "moderate to high risk" category; 11 on the MnSOST, placing him in the "high risk" category; and 3 on the RRASOR, placing him in the "moderate risk" category. In addition to these actuarial tools, Dr. Killian relied on five "dynamic factors" to help predict defendant's recidivism: (1) antisocial orientation, (2) deviant sexual interest, (3) resistance to supervision, (4) lack of emotionally, healthy, stable, and intimate relationships, and (5) high-frequency sexual behavior. He took the "actuarial scales or the actuarial instruments, these dynamic factors, and then factor[ed] in any other impressions that [he] might have about the person. So, all of that [was] put together to draw the conclusion."

¶ 16 For that "conclusion," Dr. Killian testified he diagnosed defendant with "several"

disorders, namely, (1) pedophilia, (2) antisocial personality disorder, (3) drug and alcohol abuse, and (4) attention deficit disorder, with the first two being the "most important." Pedophilia is defined as a mental disorder with a strong sexual interest or repeated sexual behaviors with prepubescent persons. Defendant's repeated incidents with girls aged 3 to 11 years old led to this diagnosis. Also significant to Dr. Killian, was the fact defendant had reported to the police during an interview that he intentionally avoided situations where young girls were present, so he would not be accused, yet his behavior demonstrated the opposite. He put himself in situations around young girls. It was likely that defendant had had this disorder since he was 16 years old (the earliest age for such diagnosis). To a reasonable degree of medical certainty, Dr. Killian believed this disorder, coupled with defendant's history and repeated sexual offenses, supported defendant's propensity to commit sex offenses.

¶ 17 Antisocial personality disorder is defined as a mental disorder exhibiting a pattern of behavior that violates the rights of others, typically without remorse or guilt. Defendant possessed five of seven categories of behavior that supported this diagnosis. Those are: (1) repeated criminal activity, (2) deceitfulness, (3) impulsivity, (4) history of aggression, and (5) lack of remorse. According to Dr. Killian, this diagnosis (1) affected defendant's volitional capacity or emotional control, and (2) coupled with pedophilia, predisposed him to engage in the commission of sex offenses. It was likely defendant has had this disorder since he was 18 years old (the earliest age for such diagnosis).

¶ 18 In Dr. Killian's opinion, to a reasonable degree of medical or psychiatric certainty, based on his evaluation of defendant, his review of the documentary evidence, and the completion of the actuarial tools, defendant was (1) a sexually dangerous person, and (2) substantially likely to

engage in future sex offenses if he was not confined.

¶ 19 On cross-examination, and upon questioning regarding the veracity of the allegations of R.H., Dr. Killian reiterated that his opinion was not based solely on the police reports or police interviews, but upon the entire "picture" of defendant, including the doctor's interview. He stated:

"The assessment is not based just on police reports. My assessment was not based just on police reports, but on everything, including a lengthy interview with [defendant], but I will certainly acknowledge that, if all of the allegations made against him over the years were all false, that would be—that would certainly alter my report."

¶ 20 Second, the State called Dr. Jeckel as another expert in the field of conducting evaluations. Like Dr. Killian, Dr. Jeckel typically reviews the documentary evidence prior to conducting a personal interview with the defendant. However, unlike Dr. Killian, Dr. Jeckel does not utilize actuarial tools in conducting his evaluations. Rather, he relies only on his clinical impression of the documentary evidence and personal interview. Of particular significance to Dr. Jeckel in the documentary reports was defendant's apparent inability to control his impulses, both sexual and aggressive non-sexual impulses, and his many reported inconsistencies or untruths. These characteristics suggested defendant was "an impulse-ridden fellow."

¶ 21 Dr. Jeckel diagnosed defendant with (1) pedophilia (sexually attracted to female, nonexclusive type), (2) attention deficit hyperactivity disorder, (3) substance abuse, including alcohol, cocaine, and marijuana, and (4) personality disorder not otherwise specified. Dr. Jeckel explained the pedophilia, nonexclusive diagnosis as one where defendant had sexual relations with

adult females, as well as prepubescent females. He explained that pedophilia (1) is a mental disorder that affects the person's emotional and volitional capacity, (2) predisposes a person to engage in the commission of sex offenses, and (3) results in the person having serious difficulty controlling sexual behavior.

¶ 22 Dr. Jeckel explained that defendant's personality disorder has obviously caused problems for him in society by resulting in poor impulse control, aggressiveness, corruption, and dishonesty. Dr. Jeckel explained he did not make a diagnosis of antisocial personality disorder. He said he reserves such diagnosis for "those people who fulfill all of the DSM criteria." (He did not explain which criteria defendant had not met.) Defendant's diagnoses were based on defendant's "extensive history" and personal interview with the doctor. In Dr. Jeckel's opinion, defendant's mental disorder has existed for more than one year prior to filing the petition.

¶ 23 According to Dr. Jeckel, based on a reasonable degree of medical and psychiatric certainty, it is substantially probable that defendant will engage in the commission of sex offenses in the future if not confined. Further, in the doctor's opinion, defendant is a sexually dangerous person.

¶ 24 At the conclusion of the doctors' testimony, the State tendered for admission certified copies of defendant's criminal convictions from 1996 and 2006. The trial court admitted the copies without objection. Defendant presented no evidence. After considering the evidence, closing arguments, and jury instructions, the jury returned a verdict, finding defendant to be a sexually dangerous person.

¶ 25 Defendant filed a posttrial motion, claiming the evidence was insufficient to prove he was a sexually dangerous person beyond a reasonable doubt. The trial court denied defendant's

motion and entered an order of commitment. This appeal followed.

¶ 26

## II. ANALYSIS

¶ 27

In this appeal, defendant challenges the sufficiency of the evidence. In particular, he contends the State failed to present sufficient evidence to prove the fourth and fifth propositions set forth in the jury instruction defining a sexually dangerous person. He claims the experts' testimony on these matters was "unsatisfactory."

¶ 28

We begin with the language of the Act, which defines the term "sexually dangerous persons" as follows:

"All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children." 725 ILCS 205/1.01 (West 2010).

¶ 29

Given this definition, commitment under the Act requires the State to convince the trier of fact beyond a reasonable doubt (725 ILCS 205/3.01 (West 2010)) that (1) the person has a "mental disorder" of the prescribed duration, (2) the mental disorder is associated with criminal propensities to the commission of sex offenses, and (3) the person has actually demonstrated that propensity. This statutory definition and the supreme court's decision in *People v. Masterson*, 207 Ill. 2d 305, 330 (2003), were used to fashion the jury instruction, which set forth five propositions the State needed to prove for the jury to find defendant to be a sexually dangerous person. In this



appeal, defendant challenges the sufficiency of the evidence related only to the final two propositions, namely that (1) defendant had "demonstrated propensities toward acts of sexual assault or sexual molestation of children," and (2) it was "substantially probable the [defendant] will engage in the commission of sex offenses in the future if not confined."

¶ 30 On appeal from a jury's ruling on a sexually-dangerous-person petition, 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 proven beyond a reasonable doubt. *People v. Bailey*, 405 Ill. App. 3d 154, 171 (2010). "The 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." *Bailey*, 405 Ill. App. 3d at 171.

¶ 31 To prove the fourth proposition that defendant has demonstrated propensities toward acts of sexual assault or sexual molestation of children, the State was required to 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 (1985). The State was not required to prove multiple sex crimes. *Allen*, 107 Ill. 2d at 105. The primary purpose of the definition in the statute (and the corresponding propositions set forth in the jury instructions) is for the trier of fact to predict a defendant's future conduct. Thus, there exists the requirement that a defendant must have demonstrated the propensity by the commission of at least one act. This way, the determination of whether the defendant is a sexually dangerous person will be based on something more than "psychological speculation." *Allen*, 107 Ill. 2d at 105.

¶ 32 In this case, the State introduced a certified copy of defendant's (1) 1996 juvenile delinquency adjudication for aggravated criminal sexual assault of the three-year old female, and (2) 2007 conviction for aggravated criminal sexual abuse of a nine-year old female. Pursuant to *Allen*, this evidence was sufficient to prove defendant had demonstrated propensities toward acts of sexual assault. Contrary to defendant's claim, the State did not rely on Dr. Killian's and Dr. Jeckel's testimony to prove this fourth proposition. Instead, it introduced proof, by way of certified copies of convictions, that defendant had committed acts of sexual molestation in the past. These certified copies satisfied the State's obligation.

¶ 33 Defendant also claims the State failed to put forth sufficient evidence to prove the fifth proposition that it was substantially probable defendant will engage in the commission of sex offenses in the future if not confined. He contends the experts' testimony was "unsatisfactory" given their different and uncertain methodologies. Dr. Jeckel testified he did not utilize actuarial scales to predict defendant's behavior, believing they often confuse things. He therefore relied only upon his professional judgment upon a review of the facts before him. Dr. Killian relied upon three separate actuarial tools to predict defendant's behavior. Defendant claims this conflicting testimony about the various methods of predicting future behavior is at best, confusing, and at most, is "unsatisfactory and unreasonable." We disagree.

¶ 34 The testimony of both well-qualified experts supported the State's claim that it was substantially probable that defendant would reoffend if he was not confined. Each expert stated his opinion to this effect based on his respective review of the documentary evidence and his personal interview with defendant. Both doctors diagnosed defendant with pedophilia, which affected his impulse control and which predisposed him to commit sex offenses. Given defendant's history of

(1) repeatedly placing himself in volatile situations, (2) having been involved in seven reported incidents of sexual abuse of young girls, and (3) possessing certain characteristics indicative of offending, both experts opined conclusively, to a reasonable degree of psychiatric certainty, that it was substantially probable that defendant would commit sex offenses in the future if not confined.

¶ 36 III. CONCLUSION

¶ 38 Affirmed.