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2013 IL App (4th) 120638-U

NO. 4-12-0638

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 2, 2013

Carla Bender

4th District Appellate
Court, IL

In re: the Commitment of GREG KIGER, a)	Appeal from
Sexually Violent Person,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Vermilion County
Petitioner-Appellee,)	No. 08MR182
v.)	
GREG KIGER,)	Honorable
Respondent-Appellant.)	Karen E. Wall,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.

Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in finding respondent to be a sexually violent person because the evidence was sufficient to prove him to be a sexually violent person beyond a reasonable doubt.

The trial court did not abuse its discretion in finding respondent to be subject to intensive institutional treatment rather than outpatient treatment.

¶ 2 The State of Illinois brought a petition to commit to the custody of the Illinois Department of Human Services respondent, Greg Kiger, under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2008)). In August 2011, after a jury trial, respondent was found to be a sexually violent person and subject to commitment. In June 2012, the trial court ordered respondent detained by the Department of Human Services for intensive institutional treatment. Respondent appeals, contending the State failed to prove he was a sexually violent person beyond a reasonable doubt and the trial court abused its discretion in

finding him subject to intensive institutional treatment rather than outpatient treatment. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On September 5, 2008, the State of Illinois filed a petition in the Vermilion County circuit court alleging respondent had been convicted of two sexually violent offenses, aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2000)) in Vermilion County and attempt (aggravated criminal sexual abuse) (720 ILCS 5/8-4(a), 12-16(d) (West 2008)) in Perry County. The petition further alleged respondent was within 90 days of discharge from prison and had been diagnosed with a mental disorder. The State alleged respondent suffered from four mental disorders affecting his emotional or volitional capacity and predisposing him to commit acts of sexual violence: paraphilia not otherwise specified, exhibitionism, bipolar disorder, and personality disorder. The State contended these disorders made it substantially probable respondent would engage in future acts of sexual violence without treatment.

¶ 5

On September 8, 2008, the trial court found probable cause to believe respondent was sexually violent and ordered him detained by the Illinois Department of Human Services at its Rushville detention facility pending further court order. For a year and a half the case was transferred back and forth between Vermilion and Perry Counties on motions contesting proper venue. The trial court in Vermilion County finally accepted venue.

¶ 6

A jury trial was held on August 10 through August 12, 2011. The State produced evidence and testimony from its expert witnesses, psychologists Martha Bellew-Smith and Raymond Wood. Bellew-Smith, an expert in evaluating sex offenders, testified she screens convicted sex offenders to determine whether they should be committed under the Sexually

Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2008)). She evaluated respondent in 2008 by conducting a 3 1/2-hour interview with him and reviewing his Illinois Department of Corrections master file, court records, police reports, and medical records. Prior to testifying, Bellew-Smith also reviewed records from respondent's stay at the Department of Human Services facility since the filing of this petition.

¶ 7 Dr. Wood testified as an expert in the field of evaluating and treating sex offenders. Wood is a licensed clinical psychologist and evaluator for the Illinois Department of Human Services. He first evaluated respondent in 2008 and conducted a status examination in 2011. Respondent refused to meet with Wood, but Wood prepared a report based on his review of respondent's master file, police and court records, and the Department of Human Services records.

¶ 8 Respondent was born in 1980 in Danville and moved to Benton at age 13. Prior to age 13, respondent lived in a group home in Wisconsin for approximately two years. Respondent's parents divorced when he was six and he has one older brother. Respondent's mother remarried and the family expanded to include two older stepbrothers and one younger half-brother. Respondent experienced social and academic problems in school. Respondent has held a variety of labor type jobs but never lasted long in any of them. He is currently married with a six-year-old daughter.

¶ 9 In January 2001, respondent was convicted in Vermilion County circuit court of aggravated criminal sexual abuse when he was 21 years old and the victim was 13. The victim became pregnant but the pregnancy was terminated. Respondent received a sentence of 59 months in prison.

¶ 10 The victim is described in the police reports as defendant's half-sister. However, throughout the testimony of the various examining doctors and defendant himself, the victim is described as "the half-sister of a stepbrother," as "a half-brother's stepsister", and as "[m]y half-sister's half-sister." The exact relationship between defendant and his victim is not of any consequence, however, as the distinction drawn by the doctors is whether the victim is a stranger to defendant or known to him.

¶ 11 As for his second sexually-violent-crime conviction, while working at a carnival in September 2007, respondent made solicitous sexual statements to a 15-year-old girl. Specifically, he invited her to a motel for sex. He was convicted in Perry County circuit court of attempt (aggravated criminal sexual abuse) and unlawful communication with a child. He was given a sentence of three years in prison to be served concurrently with a prior sentence on revocation of his parole.

¶ 12 Respondent's criminal history began at age 11 by breaking out streetlights. Later he was alleged to have stolen bicycles but was not charged. At age 17, he received a misdemeanor conviction for theft of Nintendo games. While still 17, in 1998, he received another misdemeanor-theft conviction for stealing stereo equipment. At age 18, respondent received a misdemeanor conviction for stealing fishing gear from Wal-Mart. For each of these convictions, the trial court sentenced him and fined him. After the Wal-Mart conviction, the court also ordered him to undergo mental health counseling.

¶ 13 In February 1999, respondent was convicted of criminal trespass to property, fined, and sentenced to two years of probation after breaking a beer sign in the basement of a friend. Four months later he was convicted of misdemeanor public indecency for masturbating in

the window of a building where he was employed. He was sentenced to 20 months' probation, 4 months in jail, and a fine. In 2000, at age 20, respondent was charged with aggravated criminal sexual abuse and home invasion. Those charges were dropped. A woman accused respondent of breaking into her home but respondent had a witness who said the woman invited him to her home, drove to pick him up, and took him to her residence. Four months later, in October 2000, respondent was accused of forgery and deceptive practices but no charges were filed. In November 2000, respondent was convicted of felony stalking. He was sentenced to 90 days in jail, 30 months' probation, and a fine. Respondent eventually admitted sexually harassing a woman in her forties by making lewd and suggestive statements to her and not leaving her alone.

¶ 14 In June 2004, respondent was sentenced to two years in prison and a fine for felony theft after stealing a wallet. In 2005, respondent was charged with misdemeanor battery for unsolicited sexual touching after patting a woman on the buttocks and inviting himself into her home. In November 2005, when respondent was 25 years old, he was charged with unlawfully communicating with a child in a public park after he asked two girls, ages 10 and 13, to go to a mall. He was sentenced to 39 months' imprisonment and 1 year of mandatory supervised release.

¶ 15 Respondent's mental health history indicated he received counseling on and off from age 10 to adulthood. He has suffered from depression and attention deficit/hyperactivity disorder. During his stay at the Wisconsin facility, respondent was accused of sexual inappropriateness and removed from the facility. Respondent experiences social anxiety or fear of rejection. His defenses to those unpleasant feelings are withdrawal, blaming, denial, pleasure-seeking, and provocative negative-attention-seeking. Although these concerns do not appear to

compromise respondent's day-to-day activities, he makes poor social decisions. Prior to his most recent incarceration, respondent participated in sex-offender treatment but was accused of not taking the treatment seriously and was described as at a very high risk to reoffend. He was deemed not to be amenable to treatment at that time.

¶ 16 Bellew-Smith testified when she interviewed respondent in 2008, he had had many disciplinary problems in the Department of Corrections. During his interview, he claimed his convictions stemmed from misunderstandings. Bellew-Smith stated respondent minimized and distorted his own behavior. She diagnosed respondent as suffering from paraphilia (not otherwise specified) with a focus on nonconsenting individuals, exhibitionism, and personality disorder not otherwise specified with antisocial features. Bellew-Smith explained paraphilia is a congenital or acquired condition characterized by intense, sexually arousing thoughts or fantasies occurring over at least a six-month period and interfering with one's ability to function in society. She testified these mental disorders affected respondent's emotional and volitional capacity, predisposing him to engage in acts of sexual violence. Bellew-Smith based her diagnosis on respondent's admissions he fantasized about having sex with his stepsister from the time she was 9 until he had sex with her when she was 13. She also noted respondent's past convictions for having sex with a minor and grabbing another minor while soliciting her for sex showed he acted on his deviant urges.

¶ 17 Bellew-Smith admitted some psychologists believe a paraphilia diagnosis should not be used in a legal setting such as a sexually-violent-person trial. Bellew-Smith stated other psychologists hold different opinions.

¶ 18 Bellew-Smith testified respondent's parole violations, while not related to sexual

urges, demonstrated his inability to cooperate with supervision. She performed a risk assessment using actuarial tools and found respondent to be at high risk for reoffending. She concluded it was substantially probable respondent would commit future acts of sexual violence.

¶ 19 Wood diagnosed respondent as suffering from paraphilia (not otherwise specified) and antisocial personality disorder. He based his diagnosis on the urges leading respondent to commit his two sexually violent offenses. He also relied on respondent's admission to the police officers who arrested him for public indecency "he has trouble playing with himself and he needs help so he can stop playing with himself." Wood discerned a pattern of behavior—inappropriate sexual statements to girls and women, obscene telephone calls, public indecency and stalking—organized around sexual contact. Using actuarial instruments, Wood found respondent to be in a high-risk category to reoffend. His opinion was it was substantially probable respondent would engage in future acts of sexual violence as a result of his mental disorder.

¶ 20 Respondent presented the testimony of Louis Rosell, M.D., a licensed psychologist who does evaluations for sexually-violent-persons cases. Rosell had performed approximately 200 evaluations and had consulted on between 280 and 290 cases. Rosell testified in 35 to 40% of the cases he worked on, he found the person met the criteria to reoffend. Rosell reviewed the reports of Bellew-Smith and Wood as well as police reports and interviewed respondent. Rosell agreed two convictions qualified respondent for commitment under the Act but did not agree he suffered from paraphilia (not otherwise specified). He also did not see nonconsent issues in respondent's convictions. Rosell stated what happened in respondent's case, from a clinical rather than a legal standpoint, did not involve nonconsent. Rosell diagnosed respondent with antisocial personality disorder given respondent's aggressiveness, irritability, and

impulsiveness. He acknowledged antisocial personality disorder can be to the degree individuals have been found to be sexually violent persons but he did not think respondent's personality disorder was sexually related and, thus, it was insufficient to qualify him as a sexually violent person. He did not believe it was substantially probable respondent would engage in future acts of sexual violence.

¶ 21 Rosell stated a paraphilia diagnosis is "a fairly controversial issue related to the field of [sexually violent persons]," noting one of the doctors who drafted the section on paraphilia in the Diagnostic and Statistical Manual of Mental Disorders is concerned paraphilia is being misused in sexually-violent-person proceedings.

¶ 22 Rosell admitted in his mind "sexual violence" meant "violent behavior" involving use of force that is sexual and is against another individual's will. He did not think respondent's behavior fit that description although he acknowledged respondent's behavior did fit the description of "sexually violent" found in the Act.

¶ 23 Respondent testified on his own behalf. He stated he was 31 years old, married, and the father of a young daughter. At the Department of Humans Services facility he had completed courses in anger management, celebrating recovery, and instruction to thinking errors, act mindfulness, and tactics. These courses helped him identify his "triggers" for offending such as teenage girls and avoiding situations where a trigger may cause him to reoffend. He agreed he had not completed any part of the core sex-offender treatment yet but attributed this to a long waiting list.

¶ 24 When asked about his battery conviction, respondent said he had "an instinct" which made him pat the woman's buttocks. Asked why he had had sex with his underage half-

sister, respondent clarified the victim was his "half-sister's half-sister." He then stated, having been sexually abused as a child himself, he thought he would feel better if "someone else felt the hurt that I felt."

¶ 25 Respondent further stated he was not honest with Bellew-Smith when she interviewed him. He lied to her because he thought he would get released after the evaluation. He did not take full responsibility for his actions. He believed he had made substantial progress in therapy between his release from the Department of Corrections in 2008 and the time of his testimony.

¶ 26 The jury found respondent was a sexually violent person who qualified for commitment under the Act.

¶ 27 II. ANALYSIS

¶ 28 A. Sufficiency of the Evidence To Determine Respondent was
a Sexually Violent Person

¶ 29 To prevail in a sexually-violent-person case, the State must prove beyond a reasonable doubt a respondent was convicted of a sexually violent offense, has a mental disorder and, because of that disorder, is substantially likely to engage in acts of sexual violence. 725 ILCS 207/5(f) (West 2010). Respondent argues the evidence in this case was insufficient to prove he is a sexually violent person. He cites the testimony of Rosell as providing doubt as to whether he has a mental disorder and whether he is substantially likely to reoffend. It is a jury's responsibility to evaluate the credibility of witnesses and weigh and resolve conflicts in the evidence. *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶48, 970 N.E.2d 560. On appeal, this court asks whether, after viewing all of the evidence in the light most favorable to the

State, any rational trier of fact could find the required elements have been proved beyond a reasonable doubt. *In re Commitment of Brown*, 2012 IL App (2d) 110116, ¶18, 971 N.E.2d 612.

¶ 30 The evidence in this case, viewed in the light most favorable to the State, allowed a rational jury to find respondent is a sexually violent person. Respondent has twice been convicted of sexually violent offenses as defined by the Act. Two experts, testifying for the State, diagnosed respondent with paraphilia, a mental disorder predisposing respondent to engage in future acts of sexual violence. Both of these experts agreed respondent was in the "high risk" category for sexually reoffending.

¶ 31 This evidence permitted a rational jury to find respondent was a sexually violent person. *In re Commitment of Stevens*, 345 Ill. App. 3d 1050, 1063, 803 N.E.2d 1036, 1046-47 (2004) (testimony from two experts respondent suffered from paraphilia sufficient to prove respondent had mental disorder). Rosell's conflicting testimony raises a question of fact to be determined by the jury. See *Dienstag v. Margolies*, 396 Ill. App. 3d 25, 36, 919 N.E.2d 17, 28 (2009). When the trier of fact hears conflicting expert opinions, it is free to accept the opinion of one expert over another. *People v. McDonald*, 329 Ill. App. 3d 938, 946-47, 769 N.E.2d 1008, 1016 (2002). Rosell's testimony does not create a reasonable doubt as to the finding respondent is a sexually violent person.

¶ 32 B. Committing Respondent to Secure Facility for Treatment

¶ 33 Respondent argues the trial court erred in committing him to a secure facility for treatment. He contends he presented sufficient evidence to cast a shadow of doubt on the opinions of the State's expert witnesses he required treatment in a secure facility.

¶ 34 After a respondent is adjudicated to be a sexually violent person, the Act provides

"an order of commitment shall be entered ordering the person to be committed in either institutional care in a secure facility or be placed on conditional release." *In re Detention of Ehrlich*, 2012 IL App (1st) 102300, ¶75, 980 N.E.2d 111; 725 ILCS 207/40(a) (West 2012). In deciding whether to order institutional care or conditional release, the trial court must consider (1) the nature and circumstances of the behavior that was the basis of the allegation in the petition; (2) the person's mental history and present mental condition; and (3) what arrangements are available to ensure the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2012). A trial court's commitment order is reviewed for an abuse of discretion. *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374, 800 N.E.2d 137, 157 (2003).

¶ 35 A predisposition report, authored by Dr. Wood, was filed with the trial court on September 27, 2011. Wood stated respondent would receive only low-intensity treatment if allowed a conditional release whereas he required intense treatment offered only by an institutional setting. There were five stages in the sex-offender-treatment program and respondent had completed only stage one and was currently in stage two. Wood stated he had no reason to believe respondent would progress more effectively in outpatient treatment when he was only in stage two while institutionalized.

¶ 36 Respondent filed a psychological evaluation authored by Dr. Kirk Witherspoon. Witherspoon started by criticizing the diagnosis of respondent as suffering from paraphilia because "said diagnosis does not actually exist in this application." He argues it was created artificially by evaluators hired by the State in sexually-violent-person cases with reference to the issue of rape and has been excluded from the Diagnostic and Statistical Manual of Mental Disorders. He did acknowledge respondent fell within an estimated high-reoffense category

compared to other convicted sex offenders. Witherspoon concluded, however, "the best substitute for misconduct is good behavior," which would be facilitated most directly if respondent were permitted to reunite with his family and resume meaningful function in the community, *i.e.*, employment.

¶ 37 On May 8, 2012, respondent testified at the dispositional hearing. He stated he successfully completed numerous courses and participated in several activities while at the Rushville treatment facility. Respondent testified he learned his triggers and how to avoid them, how to ward off anger issues, how to deal positively with situations, and how to accept responsibility for his actions. He stated he has been consistently involved with treatment except while delayed by waiting lists for classes. Respondent also held a job at the detention facility. His wife can only visit him once a month due to a 6 1/2-hour round-trip drive to the facility from her home. He cannot see his six-year-old daughter but he can talk to her on the telephone and write letters to her. Respondent believes from the treatment he has received and the tools he has gained he would be able to comply with outpatient treatment if he received conditional release.

¶ 38 The trial court, after reviewing the experts' reports, found respondent still suffers from a mental disorder and is still at high risk to reoffend. The court noted even Witherspoon agreed with a finding of high risk. The court also noted although respondent professed to have a positive attitude toward sex-offender treatment, he spent his first two years in confinement at Rushville not cooperating with treatment. Although his change in attitude was to be commended, the court concluded respondent would benefit from further intensive institutional treatment.

¶ 39 We find no abuse of discretion here. The experts were in agreement respondent

was at a high risk to reoffend. As for the need for inpatient treatment, while Witherspoon disagreed inpatient treatment was the best option, he spent a great deal of his report discussing the topic of paraphilia as the wrong diagnosis for respondent under these circumstances. His opinion on the diagnosis was irrelevant at this stage of the proceeding as to whether respondent would benefit most from inpatient or outpatient treatment. See *In re Detention of Stanbridge*, 2012 IL 112337, ¶79, 980 N.E.2d 598 (respondent's expert's opinion paraphilia is not a valid diagnosis was irrelevant to whether, at a hearing on petition for discharge, respondent was still a sexually violent person).

¶ 40 The trial court ultimately found Wood's opinion on treatment more credible than that of Witherspoon. The evidence showed respondent had not meaningfully participated in sex offender treatment while in Department of Corrections custody, while on parole, or initially while in Department of Human Services custody. To the extent he had participated, the treatment had been ineffective as he had reoffended. "Although respondent points to evidence that he claims warrants his conditional release, the record shows that the trial court was presented with and considered all of this evidence, *** we will not reweigh the relevant factors or substitute our judgment for that of the trial court." *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 609, 884 N.E.2d 160, 182 (2007). We find the court did not abuse its discretion in committing respondent for institutional care and treatment.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we affirm the trial court's judgment.

¶ 43 Affirmed.