

No. 1-15-2844

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE DETENTION OF MARK LINDSEY:)	Appeal from the
)	Circuit Court of
(People of the State of Illinois,)	Cook County.
)	
Petitioner-Appellee,)	
)	No. 13 CR 80007
v.)	
)	
Mark Lindsey,)	Honorable
)	Alfredo Maldonado,
Respondent-Appellant).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

Held: The trial court did not err in rejecting respondent's special interrogatory because the interrogatory was incomplete and confusing. Respondent's second issue has been forfeited because he failed to raise it below.

¶ 1 Respondent-appellant, Mark Lindsey (hereinafter "respondent"), who had previously been convicted of sexually violent offenses, was found to be a sexually violent person (SVP) and

committed to the control and custody of the Illinois Department of Human Services. On appeal from his designation as a SVP, respondent argues (1) the trial court erred in refusing to tender his special interrogatory thereby depriving him of an opportunity to test the jury's general verdict, and (2) the trial court improperly allowed the jury to consider his stimulant use disorder and alcohol use disorder in adjudicating him a sexually violent person.

¶ 2 For the following reasons, we find no errors with the trial below and affirm respondent's adjudication as a sexually violent person.

¶ 3 **JURISDICTION**

¶ 4 On June 4, 2015, a jury found respondent to be a sexually violent person. On October 2, 2015, the trial court denied respondent's motion for a new trial and ordered respondent committed to the custody and control of the Illinois Department of Human Services. Respondent filed his notice of appeal on the same day. Accordingly, this court has jurisdiction over this appeal pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 5 **BACKGROUND**

¶ 6 Respondent has been convicted of sexually violent offenses involving four young children, and has acknowledged sexually assaulting eight others. He was first prosecuted in 1989 after he raped his cousin's seven-year old daughter, while the girl was sleeping. The victim awoke to find respondent, who was twenty-five years old at the time, rubbing his penis on her vagina. She pretended to be asleep until respondent finished and then reported the assault to her mother. The State charged respondent in the case and he pled guilty to aggravated criminal sexual assault. A trial judge sentenced him to eight years in prison. (Case No. 89 CR 6500).

¶ 7 After being released, and while serving on parole, respondent assaulted at least three more children. In October 1993, respondent sexually assaulted the ten-year old son of a friend. The next year, in separate incidents, respondent assaulted two brothers, ages five and eight, the children of another friend. Respondent earned the children's trust by taking advantage of his relationship with their parents, spending alone time with them, and buying them gifts. Respondent avoided prosecution on these offenses for a time by convincing the victims that, if they reported the sexual assaults, the boys would be in trouble and would be responsible for sending respondent back to prison. Each boy eventually broke their silence, and respondent was charged in three separate cases. (Case Nos. 94 CR 22842, 97 CR 19422, and 97 CR 19423). In each case, respondent pled guilty to aggravated criminal sexual assault and received a total sentence of thirty-eight years in prison.

¶ 8 In addition to the above crimes, respondent has acknowledged committing additional sexual offenses against young children for which he has not faced criminal prosecution. In all, respondent has admitted sexually abusing ten boys and two girls all under the age of thirteen.

¶ 9 In August 2013, the State of Illinois filed a petition seeking respondent's commitment under the Sexually Violent Persons Commitment Act (the Act). The State presented the testimony of two experts at respondent's June 2015 jury trial: Dr. John Arroyo and Dr. Edward Smith. Both witnesses reviewed respondent's criminal history, disciplinary records, previous evaluations, treatment history, medical records, and other information in order to evaluate respondent. Dr. Arroyo interviewed respondent at the Graham Correctional Center in 2013, while respondent refused to meet with Dr. Smith.

¶ 10 Both experts testified that respondent meets the criteria for commitment under the Act because he: (1) has been convicted of sexually violent offenses, (2) suffers from mental disorders

that affect his emotional and volitional capacity and predispose him to commit acts of sexual violence, and (3) is much more likely than not to commit future acts of sexual violence. At the onset, both experts agreed respondent had been convicted of sexually violent offenses in Cook County cases 89 CR 6500, 94 CR 22842, 97 CR 19422, and 97 CR 19423.

¶ 11 Both experts also diagnosed respondent with multiple mental disorders. The experts agreed that respondent met the criteria under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) for pedophilic disorder, nonexclusive type, sexually attracted to both. This diagnosis meant that respondent was attracted to prepubescent children, boys and girls. In addition to this diagnosis, respondent also met the DSM-5 criteria for alcohol use disorder and stimulant use disorder. The experts opined that all of these disorders are congenital or acquired conditions that affect respondent's emotional and volitional capacity. The experts further testified that, although the substance use disorders alone would not ordinarily predispose a person to commit acts of sexual violence, respondent's substance use has impaired his judgment and decreased his inhibitions, leading to his assaults on children. The experts concluded both the substance use disorders and the pedophilic disorder together predispose respondent to sexual violence.

¶ 12 Both experts also conducted a risk assessment of respondent by considering actuarial tools, dynamic risk factors, case-specific risk factors, and protective factors. Both experts concluded that, if respondent is released into the community, it is substantially probable that he will commit future acts of sexual violence. In particular, the experts relied on the facts that respondent demonstrated a continued sexual interest in children, sexually assaulted children while intoxicated on alcohol and cocaine, failed to comply with supervision requirements by

committing offenses while on parole and violating rules in prison, consistently acted impulsively, had difficulty coping with problems, and failed to complete sex offender treatment.

¶ 13 Although he did not present any expert testimony, respondent testified in his own defense. Respondent asserted that he felt regret for his actions and that he believed he could avoid offending in the future. On cross-examination, respondent conceded, although he felt regret at the time he assaulted each of his victims, he went on to abuse other children.

¶ 14 At the jury instruction conference, respondent asked to tender a special interrogatory to the jury. The interrogatory asked the jury to answer the following question: "We the jury find that Respondent, Mark Lindsey, suffers from the mental disorder Pedophilic Disorder, Nonexclusive type, Sexually Attracted to Both." The State objected and following argument, the trial court sustained the objection. After deliberating for thirty minutes, the jury returned a verdict finding respondent to be a sexually violent person. Following a dispositional hearing, the trial court ordered respondent be committed to the custody of the Illinois Department of Human Services for control, care, and treatment.

¶ 15 Respondent timely filed his notice of appeal.

¶ 16 ANALYSIS

¶ 17 Respondent raises two issues on appeal: (1) that the trial court erred in refusing to tender his special interrogatory, and (2) the trial court improperly allowed the jury to consider his stimulant use disorder and alcohol use disorder in adjudicating him a sexually violent person.

¶ 18 In his first issue, respondent claims the trial court erred in denying the use of his special interrogatory. Proceedings involving the adjudication of a sexually violent person are civil in nature and are therefore governed by the Illinois rules of civil procedure. 725 ILCS 207/20 (West 2014). The Code of Civil Procedure (Code) provides that juries render general verdicts unless the

nature of the case requires otherwise. 735 ILCS 5/2-1108 (West 2014). The Code provides that any party may request a jury to make special findings upon any material question or questions of fact. *Id.*

¶ 19 The purpose of the special interrogatory is to test the jury's general verdict by submitting a question that relates to an ultimate issue of fact upon which the rights of the parties depend, and that has an answer potentially irreconcilable with the general verdict. *Simmons v. Garces*, 198 Ill. 2d 541, 555 (2002). "[A]n inconsistent special finding controls a general verdict as a matter of common law." *Zois v. Piniarski*, 107 Ill. App. 3d 651, 652 (1982). A response to a special interrogatory is inconsistent with a general verdict only where it is "clearly and absolutely irreconcilable with the general verdict." *Simmons*, 198 Ill. 2d at 555-56. Any interrogatory should ask a single question and not be misleading, confusing, or ambiguous. *Zois*, 107 Ill. App. 3d at 652. The trial court must submit the proposed special interrogatory to the jury, provided the proposing party submits a question in the proper form. *In re Detention of Hayes*, 2014 IL App (1st) 120364, ¶ 40. A trial court's decision on whether to give a special interrogatory is a question of law we review *de novo*. 735 ILCS 5/2-1108 (West 2014).

¶ 20 Respondent's special interrogatory stated, "We the jury find that Respondent, Mark Lindsey, suffers from the mental disorder Pedophilic Disorder, Nonexclusive type, Sexually Attracted to Both." He argues that if the jury had answered this in the negative he could not have been committed because no other condition aside from pedophilic disorder, nonexclusive type, sexually attracted to both constituted the necessary element of a mental disorder. However, the two testifying experts opined that respondent had three diagnoses – (1) pedophilic disorder, nonexclusive type, sexually attracted to both; (2) alcohol use disorder; and (3) stimulant use disorder. Both experts testified that the three disorders worked in conjunction with each other to

constitute a condition meeting the definition of a mental disorder under the Act. See 725 ILCS 207/5(b) (stating that "'mental disorder' means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence"). The experts explained that although the alcohol use and stimulant use disorders alone would not predispose a person to commit acts of sexual violence, respondent's substance use has impaired his judgment and decreased his inhibitions, leading to his assaults on children.

¶ 21 Respondent's proposed special interrogatory listed only a single diagnosis - pedophilic disorder, nonexclusive type, sexually attracted to both, and was therefore incomplete and confusing. By listing only the one disorder, and not all three, the interrogatory could have given the jury the impression they could only consider this one condition as a basis for commitment under the Act. Furthermore, a negative answer to respondent's interrogatory would not have been completely irreconcilable with a general verdict because the State's experts testified respondent's three disorders combine to satisfy the requirements of the Act. See *In re Detention of White*, 2016 IL App (1st) 151187, ¶ 53 (rejecting a proposed special interrogatory listing only one disorder where the State's experts testified that the two disorders working in unison met the definition of mental disorder under the Act); see also *In re Detention of Hayes*, 2014 IL App (1st) 120364, ¶ 42 (rejecting an as incomplete an interrogatory that listed only a single mental disorder when experts testified respondent had two disorders, which alone or together, were sufficient to qualify him as a SVP).

¶ 22 Based on the testimony presented, the trial court properly rejected the proposed special interrogatory because it was confusing, misleading and would not have been absolutely irreconcilable with the general verdict.

¶ 23 In his second issue, respondent argues that the "State should not have been allowed to seek commitment for any alleged psychological diagnosis other than pedophilic disorder when no other psychological conditions were testified to by the state psychologists as mental disorders as defined by the Act." While not entirely clear from his brief, respondent appears to argue that the two substance abuse disorders are not "mental disorders" as defined by the Act, and therefore cannot represent a basis for commitment as a SVP.

¶ 24 Respondent raises this issue for the first time on appeal. Respondent claims he repeatedly raised objections on this point, but fails to provide any citation to the record and our own examination of the record does reveal any objection before the trial court on this issue. Respondent also did not raise this issue in his posttrial motion for a new trial. To preserve a claim for appeal, a litigant must raise it both in a timely objection and in a written posttrial motion. *People v. Kitch*, 239 Ill. 2d 452, 460-61 (2011). Otherwise, the litigant forfeits the claim. *Id.* Respondent failed to object during trial and failed to raise the issue in his posttrial motion, accordingly, respondent has forfeited review of the issue on appeal.

¶ 25 Even if respondent had not forfeited review of the issue, respondent's issue raises only a hypothetical question. While not clear from his brief, respondent appears to be arguing that the stimulant use disorder and alcohol use disorder cannot represent the *sole* basis for committing him under the Act. However, as discussed, both experts testified that it was respondent's three disorders working as one, which qualified him as a SVP. Respondent does not dispute that pedophilic disorder, nonexclusive type, sexually attracted to both is a mental disorder under the Act. The State was not trying to commit respondent on the basis of only the two substance abuse disorders. Therefore, any opinion we may issue as to whether an individual could be committed on the sole basis of a substance abuse disorder would be purely advisory. We do not issue

advisory opinions. *People ex rel. Partee v. Murphy*, 133 Ill. 2d 402, 410 (1990)(prohibiting a court from answering a question that cannot affect the result as to the parties or controversy before it).

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, we find no error with the proceedings below and affirm the jury's determination that respondent is a sexually violent person under the Act.

¶ 28 Affirmed.