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2017 IL App (3d) 160400-U

Order filed April 19, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Petitioner-Appellee,)	
v.)	Appeal No. 3-16-0400
)	Circuit No. 00-CF-1844
ROBERT LAMBERT,)	Honorable
Respondent-Appellant.)	Carmen Goodman, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's findings that respondent suffered from a mental disorder and was substantially likely to reoffend if released were not contrary to the manifest weight of the evidence.

¶ 2 Respondent, Robert Lambert, appeals from the circuit court's order denying his application for recovery under the Sexually Dangerous Persons (SDP) Act (725 ILCS 205/9 (West 2014)). He argues that the court's ruling was contrary to the manifest weight of the evidence. We affirm.

FACTS

¶ 3

¶ 4 Respondent was originally found to be an SDP and committed to the custody of the Department of Corrections in October 2003. On September 3, 2014, respondent filed an application for recovery. The matter proceeded to a hearing on June 13, 2016.

¶ 5 At the hearing, Dr. Melissa Weldon-Padera testified that she was a doctor of psychology and forensic psychology. As an employee of Wexford Health Sources, her job was to perform comprehensive SDP evaluations for both commitment and recovery proceedings. Weldon-Padera testified that she had conducted 31 previous SDP evaluations, and 14 sexually violent person evaluations. The court found Weldon-Padera qualified as an expert in the evaluation and risk analysis of sex offenders.

¶ 6 Weldon-Padera testified that she interviewed respondent on June 23, 2015, in relation to his application for recovery. Prior to this meeting, Weldon-Padera reviewed respondent's records and spoke with his therapist. Her review of respondent's records included "rap sheets, police reports, court records, previous evaluations, treatment notes, and *** medical and treatment files." Based on these records, her discussion with respondent's therapist, and her interview with respondent, Weldon-Padera compiled a report dated July 23, 2015. Nothing Weldon-Padera learned in the intervening time period impacted the conclusions she reached in her report. Further, the report showed that respondent was born in 1948; he was 67 years old at the time of the hearing.

¶ 7 Weldon-Padera testified extensively regarding respondent's prior offenses, explaining that her risk assessment focuses on patterns of behavior. She testified that respondent was charged with contributing to the sexual delinquency of a minor in 1982, when he was 34 years old. The charge was ultimately dismissed because the alleged victim was unable to testify.

Weldon-Padera recounted the factual basis of the charge: An 11-year-old boy reported that respondent had wrestled with him, and had shaken him upside down until the boy's pants came loose. Respondent then instructed the boy to remove his pants to his knees and lay on the floor. Respondent stuck a pin or needle of some type into the boy's buttocks, then rubbed an alcohol or some other liquid on the buttocks. Respondent took photographs while the boy was on the floor and instructed him not to tell anyone. Weldon-Padera asked respondent about this charge in their interview, but respondent was nonresponsive.

¶ 8 Weldon-Padera also considered a 1986 case in which respondent was charged with and convicted of three counts of aggravated criminal sexual assault. The victims in that case were a seven-year-old boy and an eight-year-old boy, each of whom was a music student of respondent. The younger victim reported that on two nights while he was at a cabin with respondent, respondent had given him enemas and taken photographs while doing so. Respondent had also handcuffed the younger victim to a lawn chair, then later showed him a book containing photographs of partially nude men. Respondent also forced the younger victim to play a game in which the victim took off an article of clothing every time he used the phrase "I can't." The older victim reported that respondent struck and kissed him the first time they were at the cabin together. On a separate occasion, respondent spanked the older victim on the bare buttocks, administered an enema on him, and took photographs while doing so. When Weldon-Padera inquired about these events in the interview, respondent stated that he had merely "tapped" on the boys to teach them a rhythm. He did not recall performing any enemas.

¶ 9 Weldon-Padera also discussed allegations made against respondent found in a 1986 report from the Ottawa police department. According to that report, respondent's foster son had accused respondent of striking him on the bare buttocks, then sticking pins and needles in the

resulting blood blisters. The boy also reported that respondent performed repeated enemas on him and that respondent told him afterward: “now he knows how girls feel when they get screwed.” In the same report, another boy alleged that respondent forced him to sit on a hot pan. The boy told investigators: “[He] asked me if I wanted off and I said ‘yeah’ and he said what ‘would I do to get off’ and I told him ‘I don’t know’ and just jumped down and ran.”

¶ 10 In April 2000, when respondent was 51 years old, he was charged with battery. That charge was eventually dropped. The police reports from the case indicate that a 15-year-old boy reported that he had been in a motel with respondent for an out-of-town band concert. The alleged victim reported that respondent had pulled down the boy’s pants, exposing his bare buttocks, then struck his buttocks with a metal comb or brush approximately 30 times. The spanking created a blood blister on the alleged victim’s buttocks. Respondent then allegedly stuck a needle or pin into the boy’s buttocks to pop the blister and later rubbed an ointment on it. Respondent did not comment on this charge in his interview with Weldon-Padera.

¶ 11 Also in 2000, respondent was accused of repeatedly beating and spanking the bare buttocks of two boys, ages 13 and 15. One victim reported that respondent later rubbed aloe on the boy’s buttocks. Both victims reported that respondent instructed them not to tell anyone about what had happened. The charges were dismissed in 2012, as respondent, at that point, had been civilly committed as an SDP for nine years. Respondent admitted only that he had “whacked [the boys] because of their bad grades.”

¶ 12 Respondent was also charged with six child pornography counts in 2000. Those charges were also dropped in 2012 because of respondent’s civil commitment. The charges stemmed from a police search which uncovered a number of items in respondent’s possession, including a VHS tape labeled “discipline and child pornography,” books relating to child abuse or the torture

and discipline of children, and numerous computer files containing child pornography.

Respondent told Weldon-Padera that he had purchased the computer second-hand, and that he had never seen the pornography in question.

¶ 13 Finally, in 2000, respondent was charged with two counts of aggravated criminal sexual abuse. It was these charges that gave rise to respondent's commitment as an SDP. The victims in that case were two 11-year-old male music students. Each boy reported that respondent struck them during music lessons, either on the buttocks or on the "top part of the back of his legs." In speaking with Weldon-Padera, respondent reacted with shock and surprise that he had been charged with any crimes relating to these two victims. He admitted only that he had tapped the boys to teach them a rhythm, as he had done in the past with others.

¶ 14 Weldon-Padera also referenced incidents occurring in either 1973 or 1974. Though respondent was never charged, Weldon-Padera surmised the events from 1986 court records, as well as respondent's reference to the incidents in previous evaluations. She testified that respondent had victimized three music students, poking each of their buttocks with a pin or needle. Weldon-Padera also recounted four other victims, each of whom had variously reported respondent spanking them, poking them with pins or needles in their buttocks, performing enemas, or some combination of those acts.

¶ 15 Weldon-Padera next testified regarding respondent's participation and progress in sex offender treatment. She described the treatment program as consisting of four distinct phases. Respondent remained in the first phase. Weldon-Padera testified that respondent attends group therapy sessions, but rarely participates. She characterized respondent's progress in treatment as "stagnant and minimal." This was reflected in the fact that he remained in phase one despite

being committed for approximately 12 years. Weldon-Padera testified that accepting responsibility was the primary area in which respondent needed to improve.

¶ 16 In the treatment program, respondent was evaluated on a semi-annual basis. Weldon-Padera reviewed the most recent of these evaluations in compiling her report. She conveyed that respondent rated as “meets expectations” in only one area, attendance. On nine other metrics, respondent was rated from “minimal need for improvement” to “considerable needs for improvement.” However, respondent was rated as unsatisfactory on 18 metrics. Weldon-Padera testified:

“[W]hen you review those 18 items, they were all related to sex offender treatment targets such as disclose your offense, accepting responsibility, cycles, core issues, victim empathy, deviant arousal, relapse prevention, things that were obviously very important for him to address, and he was rated as one or unsatisfactory on all of those.”

¶ 17 Weldon-Padera related that respondent frequently denied responsibility for his offenses in group sessions. He maintained his innocence, asserting that he had been “pressured to testify” or that he had been the victim of people seeking revenge. He reiterated that he had only struck the children in an encouraging, coach-like manner. Respondent had made comments that he was only participating in treatment because of a court order. Weldon-Padera testified that these comments evinced an external motivation for treatment, rather than an internal motivation to recover.

¶ 18 In the interview with Weldon-Padera, respondent denied that there was any sexual intent behind his actions. He was unable to describe his assault cycle or high-risk situations. Respondent had a limited understanding of victim empathy, openly wondering who had actually

suffered more harm, himself or the victims. He denied any sort of deviant arousal, in the past or present.

¶ 19 Based on her examination, Weldon-Padera diagnosed respondent with three mental disorders. She explained: “One is pedophilic disorder exclusive type sexually attracted to males. The second was sexual sadism disorder [provisionally], and the third was other specified [paraphilic] disorder partialism in a controlled environment.” She diagnosed respondent with pedophilic disorder based on his 27-year history of sexually abusing prepubescent boys. She testified that respondent was still suffering from that disorder as of the day of the hearing, explaining that “it’s a chronic and life long condition that doesn’t just go away on its own spontaneously without treatment, sort of like diabetes.” Through treatment, one can manage the disorder or bring it down to a manageable level.

¶ 20 Weldon-Padera testified that the sexual sadism diagnosis was based on respondent’s history of spankings boys’ buttocks, striking boys’ buttocks with objects, sticking pins or needles into boys’ buttocks, and performing enemas on boys. She testified: “[W]e can infer that these behaviors were sexually motivated.” Weldon-Padera described the sexual sadism diagnosis as provisional because “there’s a strong presumption that the full criteria for the disorder will be met but *** there wasn’t enough information to make a firm diagnosis.” The paraphilic disorder partialism diagnosis was based upon respondent’s preoccupation with the buttocks.

¶ 21 Weldon-Padera next addressed respondent’s risk to reoffend. She testified that she employed an adjusted actuarial approach in reaching her conclusion on that issue. In doing so, Weldon-Padera used an actuarial tool—in this case the Static-99R—then considered other clinically significant factors before forming her ultimate opinion.

¶ 22 Weldon-Padera explained that the Static-99R incorporates 10 historical and unchangeable factors in assessing sex offender risk. These items include demographic information, criminal history, and victim information. She described it as “the most common actuarial tool that’s used to predict sexual recidivism among adult male sex offenders.” Respondent received a score of two on the instrument, corresponding to a low-moderate risk for recidivism.

¶ 23 Weldon-Padera testified that she also considered dynamic risk factors in forming an opinion regarding respondent’s risk of reoffense. According to Weldon-Padera, research has shown that the presence of these factors tends to increase the likelihood that one will reoffend. Specifically, a meta-analysis of over 30,000 sex offenders was used to determine which factors are most associated with recidivism. They are considered dynamic factors because they can change with intervention. Weldon-Padera described respondent’s dynamic factors as follows: “There was sexual preference for children in sexualized violence from multiple [paraphilias] and lack of emotionally intimate relationship with adults.”

¶ 24 Weldon-Padera also considered respondent’s protective factors, dynamic factors that tend to statistically decrease one’s likelihood to reoffend. She testified that one potential protective factor is the age of the offender, specifically, if the offender has less than 15 years to live. She agreed that this factor applied to respondent. However, she gave the factor less weight in respondent’s case, because the Static-99R already took his age into account, resulting in a three-point reduction in that score. Moreover, respondent, while old, did not have any specific conditions that would physically prevent him from reoffending. Weldon-Padera also noted that respondent’s offenses had continued into his fifties, an age where statistics would have predicted his risk would be decreasing.

¶ 25 Based on the Static-99R, the dynamic risk and protective factors, her interview with respondent, her review of respondent's files, and her education and training, Weldon-Padera opined that respondent was substantially probable to commit future sex offenses unless confined. She opined that respondent continued to meet the criteria necessary to be considered an SDP, specifically: a mental disorder lasting for more than one year and a criminal propensity to the commission of sex offenses. She testified that respondent should remain confined.

¶ 26 On cross-examination, Weldon-Padera conceded that there was no direct evidence that respondent was ever sexually aroused by any of the behaviors he engaged in. Respondent never admitted or acknowledged that he was aroused by prepubescent children. He never discussed fantasies relating to prepubescent children. While incarcerated, respondent has never been found in possession of materials that would demonstrate an interest in prepubescent children.

¶ 27 Weldon-Padera's report indicated that respondent was married in July 1976, but divorced in January 1979. Though respondent described the marriage as healthy, his former wife commented that respondent " 'never consummated the marriage' and 'treated her as a live-in maid and nothing more.' "

¶ 28 Counsel for respondent brought up the topic of respondent's marriage as it related to the Static-99R instrument. Specifically, counsel asked: "[T]he second [question] is ever live with and that would be lived with a wife for at least two years'; is that correct?" Weldon-Padera responded affirmatively, and testified that she had marked "no" in that category for respondent's assessment. Counsel then asked: "But he actually did live with his wife for three years?" Weldon-Padera responded that she marked "no" in the category because respondent and his wife were not lovers and were not involved in an intimate relationship. Weldon-Padera had sought

guidance on that specific item from Dr. Yolanda Fernandez, the master trainer for the Static-99R instrument.

¶ 29 After the State rested, respondent made an oral motion for a directed finding. When that motion was denied, respondent called Dr. Kirk Witherspoon in his case-in-chief. The State stipulated that Witherspoon was an expert in the evaluation and treatment of sex offenders.

¶ 30 Witherspoon relied on the same information as had Weldon-Padera, namely, police reports, court records, and treatment records and evaluations. He had also conducted a clinical interview of respondent. Witherspoon also conducted psychological testing on respondent, including a problems checklist, a standardized personality measure, and a standardized psychosexual test. Witherspoon prepared a report dated July 5, 2015.

¶ 31 Witherspoon testified that respondent told him he was only attracted to middle-aged and older adult women. He was not attracted to any other groups. Respondent never admitted that his criminal offenses were sexual in nature. Nothing in respondent's history indicated to Witherspoon that those offenses were motivated by paraphilic sexual desire.

¶ 32 Witherspoon concluded that respondent suffers mainly from anxiety. Witherspoon testified: "He did not have sexual psychopathology, in my estimation." He testified that respondent did not suffer from pedophilic disorder, opining that there was no

"evidence that [respondent] acted in a way that was clearly sexual. He partook in spanking and sometimes painful spanking. He administered enemas. There is no indication that he was ever sexually aroused by having done that. He made no innuendoes or solicitations at any point. ***

He partook in behavior which seemed to me to parallel what occurred to him by his mother and likely reflected his unconsciously acting out the

dissatisfaction that she showed with him by punishing him physically and treating his charges that way when he was teaching music.”

Witherspoon conceded that an inference of pedophilic interest based on respondent’s behaviors was plausible. However, Witherspoon rejected such an inference, explaining that “nearly always you would find attendant additional indications of sexual interest” such as erections, masturbating afterwards, or an attempt at intercourse. Similarly, the lack of evidence of sexual arousal allowed Witherspoon to rule out diagnoses for sexual sadism and paraphilia.

¶ 33 Witherspoon noted that respondent denied ever viewing the images of child pornography found on his computer. He pointed out that the computer suffered from a “chain of evidence problem,” in that respondent had purchased it from another person. Witherspoon testified that he believed respondent when respondent denied ever viewing the images. That denial was consistent with respondent’s previous statements that he was not sexually interested in males or children.

¶ 34 Witherspoon also conducted a risk assessment on respondent. Specifically, he performed the Static-2002R and the MATS-1 instruments. Witherspoon testified that those two instruments “have the best track record *** for predictive reliability.” He did not consider any dynamic factors in forming his opinion regarding respondent’s risk for reoffense. He opined that such factors had not been researched or developed enough for application in the field.

¶ 35 Respondent scored a four on the Static-2002R, indicating a low-moderate risk of reoffense. Witherspoon testified that sexual offenders with that score have a statistical 3.5% chance of reoffending over a five-year period. The MATS-1 test indicated respondent was a medium risk, though that correlated to, in Witherspoon’s words, a reoffense risk of “one-third of a percent per year over an 8-year time span.” Witherspoon testified that respondent’s relatively

old age at the time of his latest offenses did not impact his present likelihood of reoffending.

Witherspoon testified: “[A]dvancing age overrides everything.” He concluded that respondent was not substantially likely to reoffend if released.

¶ 36 On cross-examination, Witherspoon testified that he was aware of a study that found the MATS-1 to be an unreliable instrument. Specifically, the study concluded that the MATS-1 tends to significantly underestimate recidivism chances and that the Static-99R was a more reliable instrument in that regard. Witherspoon did not agree with the conclusions published in that study. Witherspoon did not review respondent’s current treatment records, because he did not find them to be relevant, due to respondent’s age and “extremely limited risk.”

¶ 37 Witherspoon also reiterated on cross-examination his opinion that respondent’s behaviors were not sexually motivated. Witherspoon did not recall any incidents where respondent played games in which he instructed young boys to remove their clothes. With regard to allegations that respondent took photographs of young boys, Witherspoon testified: “I didn’t see there was any evidence of that beyond their testifying to that.” With regard to the charge that respondent took photographs while administering an enema to a boy, Witherspoon testified that respondent had denied doing so, and that there was no other evidence “that was solidly confirmed that that had happened.” He testified that if respondent had, in fact, taken those photographs, there was no indication that he was sexually gratified by it. With regard to the incident in which respondent performed an enema on a boy, then told him he then knew “how girls feel when they get screwed,” Witherspoon testified that respondent did not acknowledge anything sexual about that incident.

¶ 38 Following closing arguments, the court addressed the parties in issuing its ruling. On the question of whether respondent’s behaviors had been sexually motivated, the court reasoned: “If

it wasn't, what was it? Because common sense at a certain period of time must kick in." The court found that respondent remains an SDP and that a substantial probability existed that respondent would reoffend if released.

¶ 39

ANALYSIS

¶ 40

On appeal, respondent argues that the State failed to prove by clear and convincing evidence that he remained an SDP. Specifically, respondent asserts that the State failed to prove that: (1) it is substantially probable that he will reoffend if released, and (2) he suffered from a mental disorder. Upon review, we find that the circuit court's conclusions on these elements were not contrary to the manifest weight of the evidence.

¶ 41

Under section 9(a) of the SDP Act, a person who has been adjudicated an SDP may submit an application to the circuit court setting forth facts showing that he has recovered. 725 ILCS 205/9(a) (West 2014). At the ensuing hearing, the State has the burden of proving by clear and convincing evidence that respondent remains an SDP. 725 ILCS 205/9(b) (West 2014). A person is sexually dangerous if: (1) the person suffered from a mental disorder for at least one year prior to filing the petition; (2) the mental disorder is associated with criminal propensities to the commission of sexual offenses; (3) the person demonstrated that propensity toward acts of sexual assault or acts of sexual molestation of children; and (4) there is an explicit finding that it is substantially probable that the person would engage in the commission of sex offenses in the future if not confined. 725 ILCS 205/1.01 (West 2014); *People v. Masterson*, 207 Ill. 2d 305 (2003). "Substantially probable" means "much more likely than not." *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001).

¶ 42

The decision of the circuit court pursuant to an SDP recovery proceeding is reviewed under the manifest weight of the evidence standard. *People v. Donath*, 2013 IL App (3d) 120251,

¶ 38. Accordingly, a court’s finding that a respondent remains an SDP will be only be disturbed upon review where the opposite conclusion is clearly apparent. *Id.*

¶ 43 I. Probability of Reoffending

¶ 44 Respondent’s primary argument is that the State failed to properly prove a substantial probability that respondent will reoffend if not confined. Respondent asserts that Weldon-Padera’s conclusion on that point was not supported by “solid factual testimony” and was, in fact, undermined by her actuarial testing. Respondent further maintains that Weldon-Padera failed to appropriately account for his advanced age. In contrast, respondent argues that Witherspoon’s conclusion was consistent with his actuarial testing.

¶ 45 Weldon-Padera testified that her approach to determining respondent’s risk of reoffense incorporated both static and dynamic factors. That is, the Static-99R tool, which assesses the risk of reoffense through actuarial accounting of static factors, was only one part of her analysis. She testified that the presence of certain dynamic factors tends to correlate with an increased likelihood of reoffense. She described respondent’s dynamic factors as “sexual preference for children in sexualized violence from multiple [paraphilias] and lack of emotionally intimate relationship with adults.”

¶ 46 Weldon-Padera further testified that respondent’s only protective factor—a dynamic trait indicating a lower risk of reoffense—was his advanced age. She explained that she gave this protective factor less weight for two reasons. First, she pointed out that the age factor had already played a significant role in her analysis of static factors, resulting in a three-point deduction on the Static-99R. Second, she noted that respondent was a statistical anomaly, in that he continued offending well past a point where models would have predicted a decrease in offending. After synthesizing all of this data, including respondent’s refusal to admit his offenses or progress in

treatment, Weldon-Padera concluded that respondent was substantially likely to reoffend if released.

¶ 47 The circuit court found Weldon-Padera’s testimony to be credible. It is, of course, “the reviewing court’s prerogative to disbelieve a witness where his [or her] testimony in the record is inherently incredible.” *People v. Bailey*, 265 Ill. App. 3d 262, 271 (1994). However, the record before this court contains no indication that Weldon-Padera was inherently or otherwise incredible. Her testimony was logical and internally consistent. Contrary to respondent’s assertion on appeal, Weldon-Padera’s conclusions were supported by factual testimony. She accounted for respondent’s age in both the static and dynamic testing, and cogently explained why the presence of dynamic factors—and a relative dearth of protective factors—led her to reach a conclusion that differed from the result of the Static-99R alone. Based on this testimony, the circuit court found the State had proven by clear and convincing evidence that respondent was much more likely than not to reoffend if released. The opposite conclusion is not clearly apparent; accordingly, the circuit court’s ruling was not contrary to the manifest weight of the evidence.

¶ 48 II. Mental Disorder

¶ 49 Though not presented as a separate argument, respondent also takes issue with Weldon-Padera’s testimony regarding the presence of a mental disorder, one of the necessary elements of the State’s case. Though respondent argues generally that Weldon-Padera’s diagnoses were insufficiently supported and thus “undermine[] her credibility,” we construe this as an argument that the State failed to prove the mental disorder elements by clear and convincing evidence. With regard to the diagnosis of pedophilic disorder, respondent contends that Weldon-Padera

“could not testify, other than her hunch, that [respondent] was even sexually aroused by any of the behavior which she alleged supported her conclusion that he suffers from Pedophilia.”

¶ 50 At the outset, we note that while Weldon-Padera diagnosed respondent with three distinct disorders—pedophilic disorder, sadism disorder (provisionally), and specified paraphilic disorder partialism—the State needed only to prove the presence of one such disorder. In ruling that respondent remained an SDP, the circuit court did not specify which mental disorder it found respondent to be suffering from. However, because we find a conclusion that respondent suffered from pedophilic disorder to not be contrary to the manifest weight of the evidence, we need not consider Weldon-Padera’s remaining diagnoses.

¶ 51 In her testimony, Weldon-Padera recounted extensive examples of respondent’s deviant conduct over a 27-year period. In each example, the victim was a young boy. Each example involved some combination of spanking or striking the bare buttocks, sticking pins or needles into the buttocks, performing enemas, taking photographs, and telling the boys to not tell anyone what had happened. Respondent was found in possession of a computer that contained images of child pornography, as well as books relating to child abuse or the torture and discipline of children. In one case, respondent showed a young boy photographs of partially nude men. In another case, after performing an enema, respondent told the victim that he now knew “how girls feel when they get screwed.” In yet another case, respondent asked a boy what he would be willing to do in order to get off of a hot pan.

¶ 52 Despite this voluminous list of offenses—some leading to convictions, others merely alleged—respondent maintains that Weldon-Padera had nothing more than a “hunch” that respondent derived sexual gratification from his behaviors. We reject this argument. While there was no *direct* evidence that respondent was ever sexually aroused by any of the behaviors he

