2019 IL App (2d) 171032-U
No. 2-17-1032
Order filed June 4, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CF-520
	)	
MIGUEL GONZALEZ-MORENO,	)	Honorable
	)	T. Clint Hull,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's involuntary commitment of defendant was not against the manifest weight of the evidence, as the evidence supported the court's conclusions that defendant was unfit and posed a serious threat to public safety.

¶ 2 Defendant, Miguel Gonzalez-Moreno, sexually assaulted J.L. on the Fox River Trail in Elgin. He was charged with two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)) and one count of criminal sexual abuse (*id.* § 11-1.50(a)(1)). Defendant was found unfit to stand trial, and following a discharge hearing, he was found not not guilty of all three offenses. Defendant appealed, and we affirmed. *People v. Gonzalez-Moreno*, No. 2-15-1124

(2018) (unpublished order under Illinois Supreme Court Rule 23) (*Gonzalez-Moreno I*). Thereafter, because defendant never attained fitness, the court held a hearing to determine whether defendant should be involuntarily committed. See 725 ILCS 5/104-25(g)(2) (West 2012). The court found that he should. Defendant timely appeals that order. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Discharge Hearing[1]

¶ 5 J.L. testified that she was walking on the bike path near her home during the late afternoon of March 11, 2012. Defendant, who was on his bike, approached her, said something she did not understand, and then rode away. As J.L. continued to walk, she saw defendant staring at her. J.L. started to run. Defendant chased her on his bike. When defendant caught up to J.L., he grabbed her. J.L. told defendant that she could give him money, motioning that she lived right next to the bike path. Defendant pushed J.L. against a fence gate, and J.L. fell to the ground. When J.L. tried to get up, defendant pushed her back down. Defendant put his hands around J.L.'s neck and tried to choke her. J.L. screamed for help as she continued to struggle with defendant. Defendant put his finger to his lips, gesturing that J.L. should be quiet. After struggling with J.L., defendant pulled J.L.'s pants down and assaulted her.

¶ 6 Although J.L. testified on cross-examination that she did not recall defendant "jingling" his pocket as if indicating that he had money, she admitted that she might have said that to the police or the nurse who examined her.

[1] Our knowledge of what transpired at the discharge hearing is based on our review of the record in *Gonzalez-Moreno I*.

¶ 7 Officer John Pellegrino was patrolling the trail on his bike when he heard J.L. screaming and saw her legs flailing. He approached the scene and confronted defendant. J.L. got up, pulled her pants on, and ran home.

¶ 8 B. Involuntary Commitment Hearing

¶ 9 The State petitioned to involuntarily commit defendant based on the fact that he was unfit and posed a serious threat to the public's safety. See *id.* At a hearing on that petition, Dr. Martha Welch, an expert in forensic psychology, testified. She stated that she was a clinical psychologist at the Elgin Mental Health Center (EMHC). Welch had treated defendant for over three years. She concluded that defendant was still unfit to stand trial.

¶ 10 Welch indicated that defendant was deaf and had never formally learned sign language or another recognized form of communication. Although defendant had learned some communication skills while at the EMHC and desired to learn more, he still required the help of several interpreters. For example, at the involuntary commitment proceedings, six interpreters were there to help defendant. Because of his communication shortcomings, defendant had difficulty with empathy, interacting with other patients, and understanding abstract issues. For example, while defendant might be able to identify basic facial expressions like anger, happiness, or sadness, he cannot identify more complex expressions.

¶ 11 Welch testified that defendant attended many treatment programs, including some programs that were offered offsite for compliant patients who exhibited appropriate behavior. Anger management is one treatment program defendant was encouraged to attend. Defendant was encouraged to attend this program because he was involved in five physical altercations after he was admitted. Although defendant was not the initial aggressor in all of these altercations, he sometimes minimized what he had done or overreacted. For example, in February 2015, a fellow

patient allegedly bumped into defendant, and defendant retaliated by repeatedly hitting that patient even after the patient was on the ground. Defendant lost his privilege to go offsite when these altercations occurred, but he had since regained that privilege.

¶ 12 As part of defendant's treatment, Welch administered a sex offender evaluation. This evaluation assessed defendant's knowledge of and attitudes toward sex in addition to sexual health and boundaries. Of concern for Welch was the fact that defendant "demonstrated a relative weakness in the area of socio-sexual boundaries." For example, although defendant recognized that sexual relationships between adults and children are unacceptable and that sexual relationships between adults require consent, "what [defendant] considers consent seems to be off or could be off." Specifically, defendant "thinks that if [adults] shake hands, they agree" or "if they exchange money, that constitutes consent, and that's okay." Defendant, who had had sex with prostitutes, identified women as prostitutes based on what they would wear, how they would walk, and where they would congregate. However, Welch did not think "that [defendant] definitively can decipher between someone who is a prostitute and someone who is not."

¶ 13 Despite these concerns, treatment for sexual issues was not part of defendant's formal treatment. Welch explained that the primary focus of treating defendant was "just for fitness restoration." However, when sex-related issues came up, defendant's treatment team would address them. One such issue came about when defendant touched his genitalia in front of a female interpreter in February 2015. After defendant was told that this type of behavior was unacceptable, no further reports that defendant touched himself inappropriately were made.

¶ 14 Welch and defendant also discussed the crimes with which he was charged. At first, defendant did not understand why he was charged with three offenses, telling Welch that "it was just one time, it was just one little thing." Defendant's attitude toward his charges had since

changed "somewhat at least," as he now understood why there were three charges and had "more of an appreciation that the charges are serious." However, while defendant better understood that what he did was wrong, and expressed that belief in his most recent treatment session, that understanding was new. As recently as six months ago, defendant told Welch that J.L. was the one who did something wrong. Defendant believed that he was going to give J.L. money or food for sex. Because of that, defendant thought that everything was okay.

¶ 15 The last time defendant's treatment team met, the team concluded that defendant was not violent in a predatory-type way. However, Welch concluded that defendant would benefit from more education on healthy sexual boundaries and social skills. Welch also concluded that, even though she believed that defendant would never be fluent in sign language, he would benefit from further basic sign-language instruction. To this end, defendant's treatment team concluded that defendant should be placed in a facility that treats hearing-impaired patients. Although defendant told Welch that he would participate in whatever treatment the court ordered and defendant was compliant and willing to learn, defendant wanted the court to release him so that he could work.

¶ 16 The trial court found that the State had proved by clear and convincing evidence that defendant should be involuntarily committed. The court determined that defendant had not been restored to fitness and that he could not be without special provisions or assistance. The court then determined that defendant posed a serious threat to the public's safety. While the court gave little weight to the fights defendant engaged in at the EMHC, the court observed that the evidence against defendant indicated that he had committed a violent offense against J.L in a public place during daylight hours. Moreover, although defendant recently said that he was wrong for attacking J.L., at all other times he saw nothing wrong with what he did. The court

observed that defendant had a difficult time understanding what constitutes consent and that defendant would benefit from treatment on healthy social and sexual boundaries.

¶ 17 II. ANALYSIS

¶ 18 At issue in this appeal is whether defendant should be involuntarily committed. Defendant was involuntarily committed pursuant to section 104-25(g)(2) of the Code of Criminal Procedure of 1963 (Code) (*id.*). That section provides:

> "If the defendant continues to be unfit to stand trial, the court shall determine whether he *** is subject to involuntary admission under the Mental Health and Development Disabilities Code or constitutes a serious threat to the public safety." *Id.*

"A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." *Id.* § 104-10.

¶ 19 "The standard of review for an involuntary-commitment proceeding is whether the judgment is against the manifest weight of the evidence." *In re Shirley M.*, 368 Ill. App. 3d 1187, 1194 (2006). Great deference is given to the trial court's judgment, and absent a showing that it is against the manifest weight of the evidence, it " 'will not be set aside at the appellate level, even if the reviewing court, after applying the clear[-]and[-]convincing standard, would have ruled differently.' " *In re Bennett*, 251 Ill. App. 3d 887, 888 (1993) (quoting *In re Orr*, 176 Ill. App. 3d 498, 505 (1988)). The trial court's judgment is against the manifest weight of the evidence "only if 'the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *People v. Relwani*, 2019 IL 123385, ¶ 18 (quoting *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)).

¶ 20 Here, defendant was unfit to stand trial because of a physical condition. 725 ILCS 5/104-10 (West 2012). That is, his inability to effectively communicate rendered him "unable to

understand the nature and purpose of the proceedings against him or to assist in his defense." *Id.* The evidence supports that conclusion. Welch testified that she had treated defendant since his admission and that he remains unfit. Defendant has great difficulty communicating with others and only recently understood "somewhat" that what he allegedly did was wrong.

¶ 21 Because he was unfit, the court next considered whether defendant should be involuntarily committed because (1) of a mental illness or (2) he posed a serious threat to the public's safety. *Id.* § 104-25(g)(2). The parties and the court agreed that defendant did not suffer from a mental illness that would warrant committing him involuntarily. Rather, at issue was whether defendant posed a serious threat to the public's safety. The court found that defendant did, citing the evidence presented at the discharge hearing in addition to defendant's inability to properly gauge consent and assess social and sexual boundaries. The evidence supports this conclusion too. Although there certainly was evidence presented that defendant exhibited good behavior while undergoing treatment, complied with treatment, and corrected bad behavior, there was also evidence presented that defendant posed a serious threat to the public's safety. For example, defendant suggested that he believed that J.L was a prostitute and that he was going to give J.L. money or food in exchange for consensual sex. The evidence presented at the discharge hearing suggested otherwise. Specifically, after J.L. ran away from defendant, defendant chased her; grabbed her; pushed her; choked her; attempted to quiet her when she screamed for help; and struggled with her while removing her pants. Pellegrino, the officer who arrived at the scene, confirmed some of this. From that evidence, it is clear that defendant either misrepresented the nature of his encounter with J.L. or, as indicated at the involuntary commitment hearing, has difficulty understanding what constitutes consent and proper social and sexual boundaries. Either way, defendant poses a serious threat to the public's safety.

¶ 22 Instructive on this point is *People v. Young*, 287 Ill. App. 3d 394 (1997). There, the defendant was a deaf mute who did not know sign language. *Id.* at 395. Although he had no mental disability, he was physically unable to communicate. *Id.* Thus, he was found unfit to stand trial. *Id.* Because the defendant never attained fitness, a discharge hearing was held. *Id.* Evidence presented at that hearing revealed that the defendant pulled his girlfriend's five-year-old niece into his bedroom and pushed her onto his bed. *Id.* at 396. While threatening the child with a knife, he tied the child's arms and legs to the bed, ripped off her shirt, started a pornographic film on the television, and penetrated the child with his hand and penis for one hour. *Id.* At a discharge hearing, he was found not not guilty of aggravated criminal sexual assault. *Id.* Thereafter, the defendant "had still not learned sign language sufficiently to enable him to communicate with counsel and understand the proceedings against him." *Id.* Accordingly, an involuntary commitment hearing was held pursuant to section 104-25(g)(2) of the Code. *Id.* The court found that, although the defendant could eventually learn sign language, he "was physically, but not mentally, unfit to stand trial." *Id.* Given that and the fact that the circumstances of the sexual assault made the defendant a serious threat to the public's safety, the court involuntarily committed the defendant. *Id.*

¶ 23 On appeal, the defendant argued that he should not have been involuntarily committed. *Id.* at 397. He claimed that defendants like him may be involuntarily committed only if the condition that renders them unfit poses a serious threat to the public's safety. *Id.* The court disagreed. *Id.* at 398. The court determined that, if a defendant is unfit for a physical reason, he may be involuntarily committed if the circumstances surrounding his crime indicate that he poses a serious threat to the public's safety. *Id.*

¶ 24 Here, as in *Young*, the circumstances surrounding defendant's offenses were abhorrent. Additionally, defendant's trouble with understanding consent and respecting social and sexual boundaries makes him even more of a serious threat to the public's safety.

¶ 25 Defendant claims that *Young* is not persuasive, because the facts there were worse than the facts here. Although that might be true, *Young* certainly did not set the standard by which all future serious-threat-to-public-safety cases must be judged.

¶ 26 Defendant also puts great reliance on the fact that his treatment team concluded that he was not violent in a predatory way. Putting aside the fact that "violent in a predatory way" is not the standard for involuntary commitment, nothing indicated that defendant was not violent at all. Indeed, the circumstances of defendant's alleged attack of J.L. suggest the exact opposite. Moreover, although the court gave it little weight, the evidence also indicated that defendant was involved in five altercations at the EMHC. In one of those altercations, defendant retaliated in a manner that far exceeded what prompted the fight. In light of all the evidence, we simply cannot conclude that the court's decision to involuntarily commit defendant is against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Kane County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 29 Affirmed.