2020 IL App (4th) 190806-U

NO. 4-19-0806

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 25, 2020
Carla Bender
4th District Appellate
Court, IL

In re the DETENTION OF ROBERT REYNOLDS,	)	Appeal from the
a Sexually Violent Person	)	Circuit Court of
	)	Sangamon County
(The People of the State of Illinois,	)	No. 12MR721
Petitioner-Appellee,	)	
v.	)	Honorable
ROBERT REYNOLDS,	)	Leslie J. Graves,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Steigmann and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to establish respondent suffered from a mental disorder, as defined under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2010)).

¶ 2 In 2005, respondent, Robert Reynolds, entered a plea of guilty but mentally ill to the charge of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2000)). The State subsequently petitioned to have respondent adjudicated a sexually violent person under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2010)). After a bench trial, the trial court found respondent met the criteria to be considered a sexually violent person and committed him to a secure treatment and detention facility in the custody of the Department of Human Services (DHS). On appeal, respondent argues the State failed to establish beyond a reasonable doubt that he suffers from a mental disorder as defined by the Act. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2005, respondent was convicted of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2000)) for conduct that occurred in 2002. In 2012, the State petitioned to have respondent adjudicated a sexually violent person under the Act (725 ILCS 207/1 *et seq.* (West 2010)).

¶ 5 In October 2018, the trial court held a bench trial on the State's petition. Three witnesses testified as experts in the field of sex offender diagnosis, treatment, and risk assessment. Two of these witnesses testified on behalf of the State, and one witness testified on behalf of respondent. Both parties entered into evidence the written evaluations prepared by their respective expert witnesses and their witnesses' *curricula vitae*. Additionally, at the State's request, the court took judicial notice of a certified copy of respondent's 2005 plea of guilty but mentally ill to the charge of aggravated criminal sexual assault.

¶ 6 The first expert witness who testified on behalf of the State was Dr. Tetyana Kostyshyna. According to Dr. Kostyshyna, she conducted a sexually violent person evaluation of respondent to determine if he "ha[d] a mental disorder leading to sexual re-offending, and *** what *** his risk level [was]." During Dr. Kostyshyna's evaluation, she interviewed respondent and reviewed his "criminal history, police records, court records, [ ] victim statements, and previous psychosexual reports[,]" all of which were "commonly relied upon in [her] field" for purposes of conducting a sexually violent person evaluation.

¶ 7 Dr. Kostyshyna testified regarding respondent's criminal history. She characterized his criminal activity as "chronic," noting respondent committed his first offense when he was 17 years old and had been arrested 57 times. Dr. Kostyshyna testified seven of respondent's prior arrests had been for sexual misconduct. According to Dr. Kostyshyna, respondent's first instance

of reported sexual misconduct occurred in 1990 when he offered a woman he met on the street a ride in his car and, instead of taking the woman to her destination, took her to his house where, for the next several hours, he and another male "[took] turns having penis-to-vaginal sexual intercourse with her[ ]" even while the victim "resist[ed]" and "scream[ed]." Respondent's second "cycle of sexual offending" occurred in 1992 when, at a female acquaintance's apartment, respondent suddenly "grab[bed] the victim[,]" "bit[ ] her shoulders[,]" "threw her on the bed and started to touch her private areas and trying to undress her." Respondent only stopped when he noticed the victim's young daughter was watching the assault. Respondent's third arrest for sexual misconduct occurred in 1993 when respondent drove a female to a park and "forced penis-to-vagina sexual intercourse" with her even while she "resist[ed] and kick[ed] and scream[ed][.]" Respondent's fourth and fifth arrests for sexual misconduct involved minor children, three of whom were the children of respondent's girlfriend. According to Dr. Kostyshyna, over the course of seven months, respondent digitally penetrated the vagina and anus of a six-year-old girl, performed oral sex on her, and sexually touched her. Respondent also digitally penetrated the vagina of a seven-year-old girl, attempted to have vaginal intercourse with her, sexually touched her, and performed oral sex on her. Additionally, respondent forced the girls' 11-year-old brother to perform oral sex on him. In a separate incident, respondent digitally penetrated a 13-year-old girl, threatened her with a knife, and then touched the genitalia of another 13-year-old girl. In 1994, respondent broke into a woman's home, "[held] her down down and force[d] penis-to-vagina sexual intercourse on her." Finally, Dr. Kostyshyna recounted the facts leading up to his 2005 conviction for aggravated criminal sexual assault. According to Dr. Kostyshyna, in 2002, respondent attempted to force a woman to have sex with him by threatening to stab her with a pair of scissors. Although respondent's conduct resulted in only two sex offense convictions, Dr.

Kostyshyna considered all of the described instances relevant as evidence of a "pattern[ ] of how [respondent] interacts with [a] victim[.]"

¶ 8 Dr. Kostyshyna also testified regarding respondent's history of consensual sexual activity. Respondent had been in a relationship with a woman for 10 years and, during at least part of that time, was married to the woman. However, respondent's relationship and marriage were "marked with a lot of conflict, a lot of domestic violence, and there was a lot of illegal activity going on in this relationship[,]" including prostitution and drug use. According to Dr. Kostyshyna, respondent was "responsible for the money earned through *** prostitution" and had told Dr. Kostyshyna he "wanted to keep the [prostitutes] *** happy[,] *** mak[e] sure that they [were] safe[,] [and] *** [had] sex with them to make them emotionally content so they d[id]n't compete with each other for his attention."

¶ 9 After interviewing respondent and reviewing his history, Dr. Kostyshyna consulted the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), the "most current diagnostic manual" in her field. She diagnosed respondent with "otherwise specified paraphilic disorder nonconsent [(OSPD)][,]" "pedophilic disorder nonexclusive attracted to both [(pedophilic disorder)][,]" "antisocial personality disorder[,]" and "stimulant use disorder *** for cocaine [in a controlled environment.]" Dr. Kostyshyna classified OSPD and pedophilic disorder as mental disorders leading to sexual re-offending. She also testified that, while antisocial personality disorder and stimulant use disorder alone did not constitute mental disorders leading to sexual re-offending, when combined with OSPD and pedophilic disorder, they "increase the risk."

¶ 10 According to Dr. Kostyshyna, paraphilia is "an intense sexual preoccupation with some sort of outside-the-norm sexual idea or object" and, "when there is a distress to the person

who's engaging in it or some kind of impairment from that *** sexual interest, it becomes paraphilic disorder." Dr. Kostyshyna classified respondent's paraphilic disorder as "nonconsent" because respondent "engaged in multiple incidents of forcing intercourse, causing injuries, and still being able to remain erect and ejaculate during some of the acts" and because two of the incidents "involved weapons." This demonstrated to Dr. Kostyshyna that respondent's "arousal is maintained when the victim is in distress, is screaming, is asking for help and to stop" and that respondent was "completely aware that the victim [was] not enjoying the act[.]" Dr. Kostyshyna further explained pedophilic disorder involves "sexual urges, sexual fantasies or behaviors in relation to having sexual activities with children" that begins when the person is 16 years old and more than 5 years older than the child. The "nonexclusive" classification indicated that respondent was "capable of developing a relationship with an adult." Dr. Kostyshyna based her diagnosis on respondent's sexual conduct involving children.

¶ 11 Dr. Kostyshyna testified the four disorders which she diagnosed respondent as suffering were the same ones identified in a 2012 evaluation performed by the State's second expert witness, Dr. Kimberly Weitl. Dr. Kostyshyna also testified that in Dr. Weitl's revised evaluation, performed in 2017, Dr. Weitl diagnosed respondent with sexual sadism instead of OSPD and pedophilic disorder. Dr. Kostyshyna did not consider her diagnosis of OSPD and Dr. Weitl's diagnosis of sexual sadism incompatible. Rather, Dr. Kostyshyna classified sexual sadism as a "higher standard of nonconsent[,]" explaining OSPD and sexual sadism are "on a spectrum[,]" with sexual sadism being "the most extreme part of the same continuum." Dr. Kostyshyna explained the distinction between the two disorders depended on the "brutality, injury, and humiliation" involved in a person's offenses, although "[s]adism is not too far from nonconsent." Dr. Kostyshyna did not consider respondent's criminal acts sufficient to support a diagnosis of

sexual sadism; rather, she believed his conduct evinced the "lower degree" of the "continuum from nonconsent to sexual sadism."

¶ 12 Dr. Kostyshyna also testified regarding a "[penile] plethysmograph" (PPG) examination that had been administered to respondent. Dr. Kostyshyna explained a PPG exam assesses a person's sexual arousal by measuring the person's physical response to images and sounds of sexually-suggestive material. According to Dr. Kostyshyna, in the PPG given to respondent, he was presented with images and sounds of "muted sadism[,]" "sadistic overt[,]" "consenting female initiated[,]" and other sexually-suggestive profiles. The PPG indicated respondent demonstrated the highest level of sexual arousal to images and sounds of consensual sexual intercourse. Although the results of respondent's PPG indicated the examination had been "valid[,]" Dr. Kostyshyna testified the entire test was "invalid" because respondent did not reach a "significant level" of arousal to any of the images he was shown.

¶ 13 Dr. Kostyshyna also assessed the likelihood that respondent would commit a future sex-based offense by reviewing his "adjusted actuarial." Dr. Kostyshyna assessed respondent's likelihood to reoffend first by utilizing two "actuarial measures," the STATIC-99R and the STATIC-2002R, both of which were "commonly used in [her] field[.]" She explained the STATIC-99R assesses an offender's likelihood to reoffend based on 10 factors, such as "how many previous sex offenses the person has[,]" and the STATIC-2002R assesses an offender's likelihood to reoffend based on other factors. On both measures, respondent scored "in the highest range." In assessing respondent's likelihood to reoffend, Dr. Kostyshyna also considered several "dynamic risk factors" such as his "sexual preoccupation," as evidenced by his claim to have had "700 sex partners" and to have had "daily sex with his wife" while also "engag[ing] in sex with his sex workers" and "commit[ing] sexual offenses against adults and children[.]" Based on all of this

information, Dr. Kostyshyna opined it was "substantially probable that [respondent] [would] commit sexual acts of violence in the future[.]"

¶ 14 The State next called Dr. Weitl. Dr. Weitl testified that, based on the interview she conducted with respondent, as well as her review of records related to his case, respondent suffered from two mental disorders, as defined by the Act: "sexual sadism [disorder] in a controlled environment" and "antisocial personality disorder."

¶ 15 According to Dr. Weitl, "[s]exual sadism is when an individual is sexually aroused when their sexual partner suffers from physical or psychological pain." Dr. Weitl determined respondent suffered from sexual sadism disorder because "[h]is criminal history demonstrates over and over him using excessive force beyond what's necessary to gain compliance" and "he maintained arousal while causing this kind of suffering."

¶ 16 Dr. Weitl explained the difference between OSPD and sexual sadism. According to Dr. Weitl, "[OSPD] is a more general type of disorder that just requires that this person is *** aroused to sex with a nonconsenting person, where sexual sadism is more specific in that it's not just a nonconsenting partner, it's the physical and psychological suffering of the nonconsenting partner." Dr. Weitl continued, "both *** disorders describe [respondent's] behavior. Sexual sadism just describes it more specifically. [OSPD] would still be accurate. He still is aroused by nonconsenting partners, but sexual sadism is a better way to describe his specific behavior." Similarly, Dr. Weitl testified "pedophilic disorder could be used; there's sufficient evidence of that disorder" but "sexual sadism better *** describes his behavior." Dr. Weitl testified, although she had diagnosed respondent with OSPD and pedophilic disorder in her 2012 evaluation, there had been a change in the diagnostic manual since that date and, under the DSM-V, she now considered her diagnosis of sexual sadism disorder appropriate.

¶ 17 Dr. Weitl acknowledged respondent had been given a PPG test and, on that evaluation, respondent scored highest in the "consenting female initiated" category. However, Dr. Weitl testified that "none of the responses on the PPG *** reached a significant level[.]"

¶ 18 Dr. Weitl also utilized the STATIC-99R measure to assess the likelihood that respondent would commit an additional sex-based offense. Respondent scored "in the highest risk category" on that assessment. Based on the results of the STATIC-99R, as well as additional risk factors, Dr. Weitl determined it was "substantially probable [respondent would] commit further acts of sexual violence."

¶ 19 Respondent called Dr. Lesley Kane to testify. Like the State's witnesses, Dr. Kane conducted an interview with respondent, reviewed his sexual history, and prepared an evaluation containing her findings. Based on her assessment, Dr. Kane opined that respondent suffered from "alcohol use disorder[,]" "cannabis use disorder[,]" "stimulant use disorder, specifically cocaine[,]" "antisocial personality disorder[,]" and "bipolar disorder[,]" none of which, in her opinion, qualified as a "a mental disorder pursuant to the Act[.]"

¶ 20 Dr. Kane did not believe respondent suffered from OSPD, pedophilic disorder, or sexual sadism disorder. Regarding OSPD, Dr. Kane noted, "[w]ith [respondent], when there is some resistance, a lot of times he has walked away or given up." Based on her review of respondent's criminal history, Dr. Kane opined respondent's "initial instinct is to try and persuade [the victim] and get them to consent [to sex] and when they don't [he] either walks away, or in [the 2002 case], he acted." Dr. Kane did not believe respondent suffered from sexual sadism disorder because "there [was no] strong evidence of [respondent] becoming aroused off the humiliation or suffering, pain and suffering of another individual." Similarly, she did not believe there was enough evidence of pedophilia, noting "the majority of [respondent's] sex partners were

females his age" and the offense involving the six and seven-year-old girls was "opportunistic" rather than demonstrative of "a pattern of *** attraction to prepubescent children."

¶ 21 After the presentation of evidence, the trial court found respondent "m[et] the statutory criteria for civil commitment of a sexually violent person." The court first found respondent had been convicted of a sexually violent offense. It next found the testimony of Dr. Kostyshyna was "the most compelling" and accepted her "diagnostic conclusions *** that [respondent] [was] at risk to commit further acts of violent sexual acts because of the OSPD, the pedophilic disorder nonexclusive attracted to both, [and the] antisocial personality disorder[.]"

¶ 22 The trial court subsequently committed respondent to a secure treatment and detention facility in the custody of DHS.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, respondent argues the State failed to establish beyond a reasonable doubt that he suffers from a mental disorder as defined by the Act. "When a respondent appeals a finding that he is a sexually violent person, a reviewing court considers whether any rational trier of fact, when viewing the evidence in the light most favorable to the State, could find the elements of the Act beyond a reasonable doubt." *In re Commitment of Lingle*, 2018 IL App (4th) 170404, ¶ 62, 103 N.E.3d 564.

¶ 26 To establish an individual is a sexually violent person under the Act, the State is required to prove, beyond a reasonable doubt: (1) the respondent "ha[d] been convicted of a sexually violent offense"; (2) the respondent "suffer[ed] from a mental disorder"; and (3) the respondent's mental disorder "ma[de] it substantially probable that [he] will engage in acts of sexual violence." 725 ILCS 207/5(f), 35(d) (West 2010). Under the Act, a mental disorder is "a

congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." *Id.* § 5(b)

¶ 27 In this case, respondent only challenges the sufficiency of the evidence that he suffers from a mental disorder under the Act. Respondent argues the expert testimony presented by the State was "largely in conflict regarding the diagnosis of a mental disorder[.]" He asserts because Dr. Kostyshyna "disagreed" with Dr. Weitl's diagnosis of sexual sadism and because Dr. Weitl did not diagnose respondent with OSPD or pedophilic disorder, the State's evidence was "unsatisfactory" and "[left] reasonable doubt" that respondent suffered from a mental disorder under the Act.

¶ 28 Contrary to respondent's assertion, Dr. Kostyshyna's diagnosis of OSPD and pedophilic disorder was not "in conflict" with Dr. Weitl's diagnosis of sexual sadism. The State presented evidence that a person who suffers from OSPD is aroused by sex with a person who does not consent to the act while a person who suffers from sexual sadism disorder is aroused by the "physical and psychological suffering" of that nonconsenting person. Dr. Kostyshyna classified sexual sadism disorder as a "higher standard of nonconsent" compared to OSPD, which is on the "lower degree" of the "continuum." She further testified "[t]he two disorders are not far away from each other." Dr. Weitl testified diagnosing respondent with OSPD "would still be accurate" and pedophilic disorder "could [have been] used[,]" but she believed a diagnosis of sexual sadism described respondent's conduct "more specifically." Examining the experts' testimony, it is apparent that their diagnoses are only dissimilar insofar as Dr. Weitl believed that respondent's conduct supported a diagnosis of sexual sadism disorder in addition to a diagnosis of OSPD and pedophilic disorder. Accordingly, Dr. Weitl's diagnosis does not "put[ ] Dr. Kostyshyna's diagnosis in question" but tends to support it.

¶ 29 Even assuming, *arguendo*, that Dr. Kostyshyna's diagnosis and Dr. Weitl's diagnosis were incompatible, respondent's claim would still fail. On review, "[w]e defer to the fact finder's assessment of the credibility of the witnesses, resolution of conflicts in the evidence, and reasonable inferences from the evidence." *Lingle*, 2018 IL App (4th) 170404, ¶ 62. Here, the trial court specifically found Dr. Kostyshyna's testimony to be "the most compelling" and accepted her "diagnostic conclusions[.]" We cannot say the trial court erred in doing so. Dr. Kostyshyna testified she diagnosed respondent with OSPD and pedophilic disorder after reviewing evidence "commonly relied upon in [her] field" and using the "most current diagnostic manual." According to Dr. Kostyshyna, both OSPD and pedophilic disorder qualify as mental disorders under the Act. On appeal, respondent does not assert Dr. Kostyshyna's opinion is incorrect except in that it was not supported by the results of the PPG, which, contrary to Dr. Kostyshyna's testimony, respondent insists was valid. The trial court discounted this argument, and we cannot say it was error to do so.

¶ 30 Accordingly, we find, viewing the evidence in the light most favorable to the State, a rational trier of fact could have concluded beyond a reasonable doubt that respondent suffers from a mental disorder.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.