THIRD DIVISION
August 10, 2011

2011 IL App (1st)1102103-U
No. 1-10-2103

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re DETENTION OF CHARLES TIGNER,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
Petitioner-Appellee,	)	
	)	08 CR 80001
	)	
	)	
Charles Tigner,	)	Honorable Timothy Joseph Joyce,
Respondent-Appellant).	)	Judge Presiding.
	)	

PRESIDING JUSTICE QUINN delivered the opinion of the court.

Justices Murphy and Neville concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court did not err in excluding evidence that was not relevant to determination of whether respondent was a sexually violent person or in finding that respondent should be confined in a secure institution.

¶ 2 On February 25, 2010, respondent, Charles Tigner, who had been convicted twice for aggravated criminal sexual assault and once for indecent liberties with a child and had served

a term of incarceration for those convictions, was adjudicated by a jury to be a sexually violent person under the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 et seq. (West 2008)). Thereafter, the trial court held a dispositional hearing to determine whether the respondent should be confined in a secure institution or could be conditionally released, and it ruled that the former placement alternative was appropriate. Respondent appeals the judgment and the order of commitment, arguing that the trial court erred in excluding relevant evidence that he wanted to introduce at trial and by ordering him to be placed in institutional care. We affirm.

¶ 3 Between 1983 and 1989, respondent was convicted of three sexually violent offenses. First, in August 1983, he was charged with indecent liberties with a child for touching the vagina of his girlfriend's ten-year old daughter. According to respondent, he was worried that the girl had engaged in sexual activity with an older boy so he checked her underwear for fluids. Respondent was convicted and sentenced to two years of felony probation with four months in jail. In December 1987, respondent was charged with aggravated criminal sexual assault and robbery. In that case, he approached a woman at a bus stop, asked her if she wanted to get high and when she declined, walked her at gunpoint approximately two miles to a vacant building. There they engaged in nonconsensual sex, after which respondent stole money from the victim and fled. Respondent claimed that he and the victim had consensual sex but that he had robbed her prompting her to falsely accuse him of rape. Respondent was sentenced to 15 years in prison for the assault and four years for the robbery. In May 1989, respondent was again charged with aggravated criminal sexual assault. In that case, respondent helped a woman find her car outside a Chicago nightclub and then asked her for a ride home. When they arrived at his home, he grabbed the victim's car keys and ran into the house, then he returned to the car and

directed the victim to drive to a vacant area near some train tracks, where he sexually assaulted her at knife point. Respondent was convicted and sentenced to 20 years' imprisonment.

¶ 4 On January 17, 2008, shortly before the respondent was to be released from prison and begin serving his term of mandatory supervised release, the State petitioned to have him adjudicated a sexually violent person pursuant to the SVP Act. The petition alleged that respondent suffered from two mental disorders: paraphilia, not otherwise specified, sexually attracted to non-consenting persons and personality disorder, not otherwise specified, with antisocial features. **On that same day, the trial court entered an order of detention, set a date for a probable-cause hearing, and appointed attorney Stephen Potts to represent defendant. At the January 26, 2009 probable-cause hearing, the trial court found probable cause existed and ordered defendant transferred to DHS for an evaluation, pursuant to section 30(c) of the Act.** 725 ILCS 207/30(c) (West 2008).

¶ 5 The SVP adjudication was tried before a jury in February 2010. Prior to trial, the State filed a motion in limine, seeking to bar admission of two videotapes created by respondent's previous counsel for use in a post-conviction proceeding challenging his 1987 aggravated criminal sexual assault conviction. The videotapes depict a re-enactment of the victim's testimony regarding events that occurred immediately prior to the sexual assault as the respondent was leading the victim from a bus stop to a vacant building, but not what occurred in that building. The videos were created by respondent's postconviction counsel to support respondent's assertion that the crime was not committed in the way that the victim described it in court. The State argued that the videotapes should be excluded because respondent had an opportunity to argue his innocence on direct appeal and during postconviction proceedings, and that any challenge to his guilt was barred by collateral estoppel.

Respondent asserted he wanted to use the videotapes to refute the expected testimony of the State's expert witnesses that respondent was lying about what occurred during the incident that resulted in his 1987 conviction. The trial court granted the State's motion to bar the videotapes, finding that because they depict events that occurred prior to the sexual assault, they were collateral to respondent's guilt.

¶ 6 During the trial, the State called two expert witnesses, Dr. Ray Quackenbush and Dr. David Suire. Dr. Quackenbush testified that he performed a psychological evaluation of respondent but that because respondent refused his request for an interview, he evaluated him solely based on available records, which included police reports, court documents, witness statements, medical records, and disciplinary history. He stated that in performing his evaluation he considered the facts and circumstances surrounding respondent's criminal convictions, his behavior in prison, which included 200 disciplinary actions, one for sexual misconduct toward a female prison guard, and his behavior while in the secure setting of the DHS.

¶ 7 Based on his evaluation and using the Diagnostic and Statistical Manual (4th ed., Text Rev. 2000) (DSM-IV-TR), Dr. Quackenbush diagnosed respondent as suffering from paraphilia not otherwise specified, sexually attracted to nonconsenting persons and personality disorder not otherwise specified with antisocial features. Dr. Quackenbush testified that he subsequently conducted two actuarial tests designed to predict the likelihood that respondent would commit an act of sexual violence in the future, the Static-99 and Minnesota Sex Offender Screening Tool-Revised (MnSOST-R). Dr. Quackenbush stated that respondent's scores on each of those tests indicated that respondent posed a high risk of re-offending in the future. Based on all of the factors he considered in his evaluation, Dr. Quackenbush opined that respondent met the criteria of a sexually violent person under Illinois law and was

substantially likely to engage in future acts of sexual violence.

¶ 8 Dr. Suire, a clinical psychologist employed by the Illinois DHS, testified that in March 2009, he conducted an evaluation of respondent to determine if he was a candidate for commitment under the SVP Act. Dr. Suire said that his evaluation included an interview with respondent and a review of all relevant records, the facts and circumstances surrounding respondent's convictions, and his disciplinary violations while in prison. Dr. Suire testified that he diagnosed respondent with three mental disorders based on the DSM-IV: paraphilia not otherwise specified, sexually attracted to nonconsenting females; polysubstance dependence; and antisocial personality disorder. After making these diagnoses, Dr. Suire, using the Static 99 and the MnSOST-R, assessed respondent's risk of reoffending and determined that he was in the moderate to high risk range on the Static 99 and in the high risk range on the MnSOST-R.

¶ 9 Three witnesses testified for respondent. First, respondent's older sister, Norma Tigner, testified that she and her seven siblings lived with their parents in a home on the near north side of Chicago, that both parents worked, and that they had a "normal childhood." She stated that when respondent was in high school, he was pressured to join a gang but instead joined Job Corps to learn a trade. She testified that respondent eventually got a job as a welder and moved out of his parent's home. She stated that she talked to respondent about staying at her home in Chicago temporarily after he is released from prison.

¶ 10 The respondent's next witness, Dr. Kirk Witherspoon, was accepted as an expert in clinical psychology and testified that he evaluated respondent by reviewing police reports, records of

misconduct, IDOC records, affidavits in support of respondent's character, and DHS records. Dr. Witherspoon also interviewed respondent and performed psychological tests on him. Dr. Witherspoon opined that respondent was not currently suffering from any mental disorder. He stated that respondent might have a very moderated case of antisocial personality disorder because antisocial tendencies moderate with age. He also gave respondent a rule out diagnosis of anxiety. "Rule out" means that there is some, but insufficient, evidence of a diagnosis so that it should be monitored in the future. Dr. Witherspoon testified that he reviewed the reports of Dr. Quackenbush and Dr. Tigner and was aware that they diagnosed respondent with paraphilia not otherwise specified non-consent but that he did not make that diagnosis because it did not fit respondent's current functioning.

¶ 11 Dr. Witherspoon also administered several actuarial assessment tools to determine respondent's likelihood of reoffending. Dr. Witherspoon testified that he revised his report twice, once to incorporate the Static 2002, because the Static 99 was obsolete and a second time to incorporate the Static 2002-R, in order to account for revisions to the test. Dr. Witherspoon determined that respondent fell into a moderate risk category on the Static 2002-R and the Sexual Violence Risk-20 test. Dr. Witherspoon also preformed a Structured Risk Assessment Test , which indicated that respondent's risk of reoffending was "extremely low." Dr. Witherspoon testified that he did not use the MnSOST-R, because it was developed over 15 years ago and its normative sample is not similar to what exists in the country today. Dr. Witherspoon stated that respondent posed a moderate risk of reofffending compared to other people his age with roughly an 8% chance of reoffending in 5 years, and that in his opinion, it was not substantially probable that respondent would commit a sexually violent offense if released.

¶ 12 Respondent testified on his own behalf. He discussed his childhood, his use of alcohol and drugs beginning as a teenager, his creation of a zip gun at age 15, and his decision to drop out of high school and enter the Job Corps to learn to be a welder. Respondent testified that in the late 1970's he developed a serious drug problem and was dealing drugs on the near north side of Chicago. He stated that around that time, he was arrested and convicted for solicitation of undercover police officers, but that his intent was to rob the officers Regarding his conviction for indecent liberties with a child, respondent asserted that he only looked in the girl's underwear for blood, did not feel with his fingers, and lacked sexual intent. He testified that he pled guilty to spare the child the embarrassment of testifying in court. Respondent also discussed his resisting arrest conviction and his disciplinary problems in jail. With regard to his convictions for aggravated criminal sexual assault, respondent asserted that his encounter with the woman at the bus stop was consensual, that he had offered her money in exchange for sex but robbed her instead. Respondent admitted that he raped and robbed the woman he met outside a nightclub in October 1986. Respondent stated, however, that he did not prefer to have sex with nonconsenting people, that he would not reoffend, and that he wanted to have sex only with a girlfriend or a wife.

¶ 13 After deliberating, the jury returned a verdict finding respondent to be a sexually violent person. The trial court subsequently held a disposition hearing on May 3, 2010, to determine if respondent should be conditionally released or confined in a secure institution. The State called Dr. Suire as a witness, who testified that after the jury's verdict he conducted a predispositional investigation of respondent by looking at materials that were covered at trial as well as any progress or change that occurred afterwards in terms of treatment process or medical condition. Dr. Suire also

interviewed respondent on March 3, 2010 and reviewed respondent's master treatment plan from DHS.

¶ 14 Dr. Suire testified that while he was in the DHS treatment and detention facility, respondent participated in sex offender treatment from March 2009 through November 2009, at which time he gave his therapist a note stating that he wanted to withdraw from treatment. Dr. Suire stated that prior to withdrawing, respondent had several difficulties in treatment, including displays of verbal aggression and disrespect toward therapists and other group members and was suspended from treatment for one-week for threatening and intimidating behavior toward others. Dr. Suire also testified that during group therapy respondent stated that he did not want to make any personal changes and was only there to look good for the court. Dr. Suire stated that the only progress respondent made during eight months of sex offender treatment was his acknowledgment, during the interview, that he had used coercion when he sexually assaulted the woman outside of the night club, which he had denied in his previous interview. Dr. Suire testified that although respondent told him there was no risk that he would reoffend if released into the community, this was not consistent with the evidence available because respondent still suffered from paraphilia, not otherwise specified, sexually attracted to nonconsenting persons.

¶ 15 Dr. Suire testified that he investigated possible community treatment options for respondent in the event he was granted conditional release by contacting three treatment providers in Cook County, but determined that none were able to meet respondent's needs. He stated that only one treatment provider actually responded but that based on his experience in SVP cases, he was aware that most community treatment programs offer only 1 hours of group therapy and one hour of individual therapy per week while a treatment detention facility could provide 15 hours of group therapy a week.

Dr. Suire opined that given respondent's failure to address the underlying urges that led to his previous sexually violent offenses and his lack of understanding of how to prevent such conduct in the future, he could not be treated safely or effectively in a community-based treatment program but instead, needed a secure facility that provides in-depth extensive treatment services. Dr. Suire stated that although respondent might attend a community-based treatment program, based on his treatment history he could not be expected to participate in a meaningful, honest, and open way.

¶ 16 On cross-examination, Dr. Suire stated that he was not aware that respondent had applied to re-enter the treatment program and was not allowed to participate because of his prior withdrawal. He acknowledged that if respondent were conditionally released, Liberty Healthcare would supervise his treatment by transporting respondent to treatment, reporting to the court if he failed to participate, monitoring his living circumstances, and helping him look for a job. Dr. Suire stated that he did not contact Liberty Healthcare to discuss what treatment options would be available to respondent if he were conditionally released.

¶ 17 Dr. Witherspoon testified on respondent's behalf. Dr. Witherspoon stated that he did not reinterview respondent after trial but had looked at some documents prior to testifying at the dispositional hearing. Dr. Witherspoon opined that based on respondent's level of risk, his improved functioning, his degree of pathology and his present mental condition, conditional release would be the least restrictive environment in which respondent's treatment needs could be met while still protecting the public. He stated that in his opinion, respondent would participate in a conditional release treatment program if ordered to do so.

¶ 18 On cross-examination, Dr. Witherspoon stated that in his opinion respondent did not need any sex offender treatment. He acknowledged that he was not aware that respondent had been in treatment while in the DHS treatment and detention facility and stated that the fact that respondent withdrew from that treatment would not affect his opinion as to whether or not respondent would comply with an outpatient therapy program. He also stated that he had not contacted any community treatment providers in connection with the case and asserted that respondent is not a candidate for very intensive treatment.

¶ 19 Respondent testified that he withdrew from the treatment program at the treatment and detention facility because he noticed that statements he had made to other patients were being reported to the therapists and included in his treatment notes. Respondent stated that he had applied to reenter treatment but was on a waiting list for ancillary programs. He stated that if released, he would probably live with a sibling and seek employment as a welder. He also stated that if the court ordered him to participate in treatment he would comply.

¶ 20 At the conclusion of the dispositional hearing, the trial court ordered respondent committed to the DHS for institutional care in a secure facility until further order of the court. Respondent filed a posttrial motion for a new trial, which the trial court denied. Respondent then filed a timely notice of appeal.

¶ 21 Respondent first argues that the trial court erred in granting the State's motion in limine, excluding videotape evidence depicting a re-enactment of the testimony of the victim who was sexually assaulted by respondent in 1986. The trial court found that because the tapes only depicted events that

led up to the sexual assault and not the offense itself, they were collateral to whether or not he was guilty of the offense. Respondent asserts, however, that he sought to introduce the videotapes in order to challenge the weight of the testimony of the State's expert witnesses, Dr. Suire and Dr. Quackenbush, by showing that the version of the offense they relied on to form their opinions that respondent was a sexually violent person was not credible. Respondent contends that by excluding the videotapes, the trial court denied him the right to present a defense and further, that the evidence would have had a significant impact on the jury's perception of the strength of the State's case and likely would have changed the outcome of the proceeding. Therefore, respondent contends, this court should reverse the judgment of the trial court and remand for a new trial.

¶ 22 Generally, evidentiary motions, such as motions *in limine,* are directed to the trial court's discretion, and reviewing courts will not disturb a trial court's evidentiary ruling absent an abuse of discretion. *People v. Nelson*, 235 Ill.2d 386, 420 (2009). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Patrick*, 233 Ill.2d 62, 68 quoting *People v. Hall*, 195 Ill.2d 1, 20 (2000). Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. *People v. Harvey*, 211 Ill.2d 368, 392 (2004). A trial court may reject offered evidence on grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or possibly unfair prejudicial nature. *Harvey*, 211 Ill.2d at 392.

¶ 23 Respondent maintains that the videotape evidence he sought to present was relevant to the determination of whether he was a sexually violent person because it raised doubts about the weight to be given to the State's expert witnesses, Dr. Suire and Dr. Quackenbush. We disagree and find, as the trial court did, that because the videotapes depict events that preceded the sexual assault they are collateral "to whether or not he was guilty of, let alone convicted of, the sexual acts complained of back in 1986." At trial, the State had the burden of showing that: (1) respondent had been convicted of a sexually violent offense, (3) respondent had a mental disorder; and (3) that the mental disorder made it substantially probable that he would engage in future acts of sexual violence. 725 ILCS 207/5(f) (West 2008). Section 5(f)'s "conviction" element is fully satisfied upon admission of certified copies of a qualifying conviction. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 603-04 (2007). Here, respondent had been convicted of three sexually violent offenses, and videotape evidence re-creating the events that preceded one of those offenses was not relevant to whether respondent had been convicted of a sexually violent offense. Further, contrary to respondent's assertion, the exclusion of the videotapes did not deny him the right to present a defense. The opinion testimony of the State's expert witnesses was based, in part, on respondent's actions when he sexually assaulted a woman inside a vacant building. The events leading up to that assault were not relevant to that testimony and would not affect the weight to be given to that testimony. Collateral matters are not relevant to a material issue in the case. *People v. Santos*, 211 Ill.2d 395, 405 (2004). Accordingly, we cannot say that the trial court abused its discretion by granting the State's motion *in limine*.

¶ 24 Respondent next contends that the trial court abused its discretion by ordering him

confined for institutional care in a secure facility. Respondent asserts that the State failed to offer sufficient proof that conditional release was an unsuitable option for him where the testimony of the State's only witness, Dr. Suire, demonstrated that he performed an inadequate investigation of available community resources. Specifically, respondent states that Dr. Suire testified that he contacted three sex offender treatment providers in Cook County for information about community treatment options for respondent and received a response from only one provider and did not contact Liberty Healthcare, which is responsible for placing sexually violent persons on conditional release into treatment programs. Further, respondent contends that Dr. Suire failed to contact respondent's family members to gather information about possible living arrangements for respondent or make any inquiries that would help him to evaluate respondent's employment opportunities. Therefore, respondent asserts that the trial court did not have sufficient information to make a determination as to whether conditional release was appropriate for respondent.

¶ 25 Section 40(a) of the SVP Act provides that, when a person is found to be a sexually violent person, the court "shall order the person to be committed to the custody of the [DHS]." 725 ILCS 207/40(a) (West 2008). Section 40(b)(2) of the SVP Act provides that the order of commitment shall specify either institutional care in a secure facility or conditional release. 725 ILCS 207/40(b)(2) (West 2008). In making this determination, the court may consider (1) the nature and circumstances of the behavior that was the basis of the allegations in the State's petition; (2) the person's mental history and present mental condition; (3) where the person will live; (4) how the person will support himself; and (5) what arrangements are available to ensure

that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2008). We review the trial court's decision to commit respondent to a secure facility under an abuse of discretion standard. *Lieberman*, 379 Ill. App. 3d 585, 609 (2007). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Lieberman*, 379 Ill. App. 3d 609.

¶ 26 In this case, the record shows that the trial court heard and considered evidence pertaining to all of the relevant factors prior to ordering respondent committed to a secure facility. Dr. Suire and Dr. Quackenbush testified that respondent suffered from mental disorders that made it substantially probable that he would engage in future acts of sexual violence. Moreover, the record establishes that respondent has refused to acknowledge some of his past sexual offenses and voluntarily withdrew from treatment after receiving a one week suspension for threatening and intimidating behavior toward others. 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, and on review, we will not reweigh the relevant factors or substitute our judgment for that of the trial court. *See In re Detention of Erbe*, 344 Ill. App. 3d 350, 374 (2003). Here, considering all of the evidence, including the testimony of the State's expert witnesses, the nature and circumstances of respondent's behavior, the jury's finding regarding respondent's mental conditions, and respondent's refusal to continue with treatment, we cannot say that the trial court abused its discretion in ordering respondent committed to a secure facility.

¶ 27 With regard to respondent's assertion that Dr. Suire's investigation of community treatment options and possible living arrangements and employment opportunities for respondent was inadequate, we note that Dr. Suire testified that based on his experience, sex offender treatment offered by community-based providers was insufficient because it only offered limited hours of treatment per week, that it was not customary to contact Liberty Healthcare prior to a dispositional hearing, and that he did not have consent from respondent's family members to contact them and that doing so could have a negative effect for respondent if they provided information that could lead him to increase his estimation about respondent's risk of reoffending. Further, we note that respondent's attorney had an opportunity to cross-examine Dr. Suire about the thoroughness of his investigation. The trial court heard this testimony, as well as the testimony of respondent's expert, Dr. Witherspoon, and determined that Dr. Suire's testimony was more credible. As previously noted, the duty of evaluating the evidence and determining the credibility of the witnesses lies with the trier of fact and not the reviewing court. *Erbe*, 344 Ill. App. 3d at 374. We find that in weighing the evidence, the trial court did not abuse its discretion in finding that respondent should be confined in a secure institution.

¶ 28 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 29 Affirmed.