2017 IL App (4th) 160775-U

NO. 4-16-0775

FILED
July 13, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Commitment of TY SUTER,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 14MR454
TY SUTER,	)	
Respondent-Appellant.	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in ordering respondent's commitment to institutional care in a secure facility.

¶ 2 In June 2016, respondent stipulated to being, and the trial court entered a judgment adjudicating respondent, a sexually violent person (SVP) (725 ILCS 207/40 (West 2016)). In September 2016, the trial court held a dispositional hearing and ordered respondent's placement in institutional care in a secure facility. Respondent appeals, arguing the trial court (1) abused its discretion in not granting him conditional release and (2) failed to recall evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Respondent's Sexual Offense History

¶ 5 In April 1981, respondent was a teenager residing at the Cunningham Children's Home (Cunningham), a residential facility for behaviorally challenged children, when Urbana

police arrested him for sexually assaulting a four-year-old girl in a park. Instead of charging respondent with an offense, police made arrangements with Cunningham to provide him additional mental health treatment. In 1982, respondent left Cunningham and moved to Arapahoe County, Colorado, to reside with his grandmother.

¶ 6 In September 1982, police arrested respondent in Aurora, Colorado, after a witness reported the sexual assault of a child on a playground. According to the witness, respondent had "spread the girl's legs until her panties were pressed tight against her crotch. He then placed his right hand to her crotch." Respondent was charged with one count of sexual assault of a child, a Class 4 felony in Colorado. In March 1983, he pleaded guilty to misdemeanor sexual assault in the third degree and was sentenced to a deferred judgment of two years, conditional upon the completion of mental health counseling.

¶ 7 Later, in March 1983, in a bowling alley parking lot in Aurora, Colorado, respondent sexually assaulted the four-year-old nephew of a friend. While the friend went inside for a few minutes, respondent stayed in the car with the four-year-old boy and put his mouth on the child's penis. In April 1983, police arrested respondent for this offense. In November 1983, respondent pleaded guilty to sexual assault of a child and his deferred judgment was revoked. He was resentenced to three years and four months in the Colorado Department of Corrections (Colorado DOC) with the recommendation he enter the sexual offender treatment program.

¶ 8 In a separate offense, committed in April 1983, respondent drove up to a six-year-old female walking home from school and offered her candy. When she refused, he "picked her up and put her into the front passenger seat of his vehicle. He got into the car and sexually assaulted [her] by rubbing her vagina over her clothing. He then forced her to rub his penis over his clothing." Respondent was charged in Arapahoe County, Colorado, with sexual assault of a

child and second degree kidnapping. Police searched his car and found a book, *The Child in the City*, containing nude pictures of children. In December 1983, respondent pleaded guilty to sexual assault of a child and was sentenced to four years and six months in the Colorado DOC and one year of parole. This sentence was to be served concurrently with his November 1983 sentence.

¶ 9 Respondent served both sentences in Colorado DOC between 1983 and 1985, where he attended individual and group counseling. Colorado DOC records described his engagement in treatment as "counterproductive" and "superficial" and stated, "[H]e often lied about his behavior and feelings, and when he did discuss his sexual assaults, he would do so in simple and naïve terms." In 1985, respondent was released on one year's parole and attended outpatient treatment.

¶ 10 In June 1986, while on parole, respondent was arrested in Colorado for child pornography, but he was not charged. Police had found nine pornographic images of children, which respondent claimed to have purchased for $50.

¶ 11 In July 1986, Aurora police investigated respondent for sexually assaulting a seven-year-old female. A police report alleged respondent held the child by her feet over the edge of a building so he "could see up [her] shorts." On other occasions, witnesses saw respondent try to pull down the victim's pants. The victim's mother told police she previously confronted respondent after seeing him make thrusting motions into her daughter's pelvis with her legs straddled around his hips.

¶ 12 In September 1986, police in Arapahoe County received a report against respondent from his residence, the Blue Spruce Motel, alleging sexual misconduct involving a seven-year-old male, who told police respondent grabbed his penis while swimming and later

took him to a motel room and demanded he take off his clothes. In response, the child threatened to start yelling, and respondent let him go. Police charged respondent with sexual assault of a child, sexual assault of a child while in a position of trust, three counts of being a habitual criminal, and three counts of being a habitual sexual offender against children. In September 1987, respondent pleaded guilty to sexual assault of a child and was sentenced to 10 years in Colorado DOC and 5 years' parole.

¶ 13 While imprisoned for the 1986 and 1987 offenses, respondent obtained a high school equivalency diploma, but he did not participate in academic or vocational programs. In August 1989, he completed a "Basic Mental Health" program, and in January 1993, he completed an addiction recovery program with an "outstanding" evaluation. During this time, he repeated "Phase I" of the sex offender treatment program and was noted to have "fair participation" and "minimal progress." In 1994, respondent was released from the Colorado DOC and moved in with his mother and stepfather in Macon County, Illinois.

¶ 14 In August 1995, respondent was arrested and charged with aggravated criminal sexual assault, a Class X felony (720 ILCS 5/12-14(b)(1), (d) (West 1994)), following reports of him sexually assaulting a five-year-old male at an apartment complex swimming pool in Macon County, Illinois. Respondent had grabbed the victim's buttocks several times and had the victim accompany him to his apartment to look at seashells. At the apartment, respondent had the victim lie on a bed, pulled the child's shorts off, and put his mouth on the child's penis. In June 1996, after a jury found respondent guilty, the trial court sentenced respondent to 36 years in the Illinois Department of Corrections (IDOC).

¶ 15 Since respondent's entry into IDOC, he has admitted a history of sexual offenses. By respondent's own admission in April 2016, "he's assaulted at least 25 individuals, males and females ranging from age 3 to 12, for a total of 40 offenses."

¶ 16 B. Respondent's Participation in Treatment at IDOC

¶ 17 In August 1996, respondent entered IDOC, where he refused sexual offender treatment. In August 1998, respondent had received a book in the mail containing images of nude children. Prior to a mental health evaluation in September 1998, he refused to admit committing the sexual offense leading to his incarceration in IDOC. In his mental health evaluation, respondent acknowledged, at the time of his last sexual offense, he continued to masturbate to sexual fantasies of children. He also admitted two other unreported child sexual offenses.

¶ 18 Between November 2000 and December 2004, respondent attended sex offender treatment at Graham Correctional Center. During this time, he admitted ongoing sexual arousal to prepubescent males. An evaluation of his progress states:

> "[Respondent] has completed all basic requirements of the program. He understands principles of relapse prevention and is aware of his basic offense cycles and high risk factors. Even though he understands that pornography is high risk for him[,] he was confronted several times for ordering magazines and books of a questionable nature (e.g., photography books with pictures of nude children). On more than one occasion[,] [m]ailroom staff alerted this writer that he continued to order inappropriate material. Initially, [respondent] denied any particular intent to engage in high-risk behavior, but more recently he admitted to purposely doing this as substitute for pornography. [Respondent] demonstrates

> little remorse for this behavior or for any past offending. Although he has an intellectual understanding of victim empathy, it is quite superficial."

The evaluation further stated respondent "doesn't appear overly motivated to make a sincere effort to change" and "little insight [was] gained about his offending patterns." He was terminated from Graham Correctional Center's treatment program for minimal progress and transferred to another facility to participate in nonresidential group therapy.

¶ 19 In January 2005, respondent entered Dixon Correctional Center, where he initially refused sex offender treatment. In November 2005, he entered sex offender treatment consisting of an "open-ended closed focus group with individual support." During this time, respondent admitted sexually offending against 12 or 13 victims between five and eight years old, whereas he had only admitted offending against 8 victims while in Graham Correctional Center.

¶ 20 In January 2009, respondent requested and was admitted to the sexual offender treatment program at the Taylorville Correctional Center, where he actively participated in group discussions and regularly turned in his homework. He formed relationships with peers in his treatment program and "reported filling the void that he has felt" through religious studies. In 2011, he completed chapters in a *Paths to Wellness* workbook and worked on a "Relapse Prevention Plan." However, clinician notes from June through August 2012 indicate respondent "ha[d] slowed down with his homework" but was "opening up to the process of feeling." (Emphasis omitted.).

¶ 21 C. State's Petition and Dispositional Hearing

¶ 22 In May 2014, the State petitioned to involuntarily commit respondent as an SVP upon his scheduled release from IDOC in June 2014. When he was released, he was taken to the Department of Human Services (DHS) Treatment and Detention Facility (Facility). Several days

after entering the Facility, he agreed to enter sex offender treatment and waived his probable cause hearing. In June 2016, respondent stipulated to the State's petition and the trial court adjudged him an SVP.

¶ 23 In September 2016, the trial court held a dispositional hearing to determine whether respondent should be committed to institutional care in a secure facility or to conditional release under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/40(b) (West 2016)). At the dispositional hearing, the State offered the testimony of expert witness Richard Travis, Psy.D. Respondent offered the testimony of expert witnesses Brian R. Abbott, Ph.D., and Michael H. Fogel, Psy.D, as well as the testimony of lay witnesses Michael Kehart and Kyle Karsten. Their testimonies are summarized as follows:

¶ 24 1. *Dr. Richard Travis's Expert Testimony*

¶ 25 The State's witness, Dr. Travis, testified he is an SVP evaluator for DHS who has experience with the Facility, and he conducted a predispositional interview with respondent in August 2016. According to a penile plethysmograph performed in April 2016, respondent had "significant sexual arousal to one category. And that was to male grammar age or prepubescent males." Dr. Travis proceeded to conduct a Static-99R assessment, an actuarial instrument used to assess respondent's likelihood to sexually reoffend. On the Static-99R, Dr. Travis scored respondent at a seven, "mak[ing] him more than five times as likely as the typical sex offender to go out and commit another sexual offense," and which "is higher than 96 [%] of the sex offenders on whom [the Static-99R] was normed." On another assessment, the Static-2002R, respondent scored a nine, which is in the high-risk range to sexually reoffend and "is higher than 97 percent of the sex offenders on whom that instrument was normed," making individuals who

scored similarly to respondent "almost seven times as likely as a typical sex offender to commit another sexual offense."

¶ 26 Dr. Travis opined respondent was "thriving" at the Facility, referring to it as "a good place for him." He explained the Facility is the "first environment [respondent has] ever been in which is very oriented toward providing the best treatment that they can possibly provide." According to Dr. Travis, respondent was beginning to learn how to form relationships with adults, rather than children, at the Facility. Despite respondent's improvement, Dr. Travis found he lacked sexual arousal management strategies, which the Facility provides. He further expressed the need for respondent to practice a relapse prevention plan to discontinue masturbating to fantasies of children. Dr. Travis testified respondent's pedophilic sexual fantasies are triggered by stress, a struggle for SVPs on conditional release, especially for the first 30 days, when they are confined at home.

¶ 27 Dr. Travis concluded, "[U]ntil [respondent] has a good relapse prevention plan, and he can show that he can resist [pedophilic] urges, I do [not] think that conditional release would be helpful to him." He preferred respondent to undergo institutional care in a secure facility, which he opined as less restrictive than conditional release, stating respondent "is responding better to this treatment [at the Facility] than he has responded anywhere he [has] ever been in regards to his motivation to engage in treatment, the hard and excellent work he is doing in treatment, [and] the level of acceptance that he is coming to about himself."

¶ 28 2. *Dr. Brian Abbott's Expert Testimony*

¶ 29 Respondent's first expert witness, psychologist and sex offender evaluator Dr. Brian Abbott, testified respondent "could be treated under conditional release." Dr. Abbott

opined respondent has developed "egodystonic" pedophilic disorder since 2007, meaning he experiences distress by thoughts of sexually abusing children. He testified respondent claimed to have stopped viewing child pornography in 2004 and stopped looking at images of nude children in National Geographic in 2007. In 2014, respondent also stopped seeking arousal from reading psychology books about children being sexually abused. When asked about respondent's participation in treatment at the Facility, Dr. Abbott stated, "He participated actively and appeared to benefit from the treatment in terms of understanding his offense cycle, his triggers, [and] being able to develop adaptive ways of coping with his offense cycle and triggers."

¶ 30 Based upon clinical tests performed on respondent, he testified respondent's "level of arousal is much less than what it has been in the past when he was living out in the community." He criticized the Static-99R as too reliant on unchanging, historical factors, such as age, and not representative of respondent's risk to reoffend. Instead, Dr. Abbott administered not only a Static-99R, but also a Stable-2007, which is "a dynamic risk assessment measure," determining "more current risks versus historical risks." On the Stable-2007, respondent scored in the "moderate range." However, on cross-examination, Dr. Abbott stated the Stable-2007 "was originally developed on offenders who were in custody two years or less," and he admitted, "[T]he validity and reliability of the Stable-2007 has not been tested on offenders in custody as long as the respondent."

¶ 31 Dr. Abbott opined respondent is better suited for conditional release, where he can receive individualized as well as group therapy and claimed, "The odds for not reoffending increased by 38 percent for the community-based treatment programs as compared to those in the secured setting." Dr. Abbott indicated, if respondent were placed in a conditional release

program, he could attempt to form a community-based program, Circles of Support and Accountability (COSA). In COSA, "circles" of professional and nonprofessional individuals focus on a single offender to provide support not to reoffend. COSA is not available in Illinois or at the Facility, and respondent would have to form his own COSA "circle."

¶ 32 3. *Dr. Michael Fogel's Expert Testimony*

¶ 33 Respondent's second expert witness, clinical psychologist and sex offender evaluator Dr. Michael Fogel, testified, "[B]ased on the abilities of [respondent] in terms of financial resources[,] *** certainly a strategy could be created such that he is appropriate for conditional release." According to Dr. Fogel, sex offenders in individual therapy "recidivated much less," and the Facility lacks individual treatment for respondent. Dr. Fogel noted respondent could finance additional restrictions upon his conditional release, such as hiring security guards. On cross-examination, Dr. Fogel opined respondent's financial ability to pay for "additional safeguards" is "critical for conditional release."

¶ 34 When questioned about COSA, Dr. Fogel explained implementing COSA at the Facility would be "very difficult" because of "needing to have that contact with the individual. So, distance to travel, ease of access, creates additional complexities to further develop that relationship potentially." However, Dr. Fogel found the formation of COSA possible for respondent while on conditional release. According to Dr. Fogel, forming a COSA takes six months. In addition to COSA, Dr. Fogel testified 11 sex offender treatment providers would be in the general area of respondent.

¶ 35 4. *Michael Kehart's and Kyle Karsten's Testimonies*

¶ 36 Respondent presented two lay witnesses, Michael Kehart and Kyle Karsten. Kehart is an attorney representing respondent in civil matters, including his tax returns and

various trusts. Respondent is the beneficiary of two trusts, and according to Kehart, respondent has sufficient assets to pay for medical and psychological care while on conditional release.

¶ 37 Kyle Karsten is the development director for the Salvation Army in Decatur, Illinois. He has visited, shared letters, and spoken over the phone with respondent since 2011. Karsten testified he talks with respondent about topics ranging from respondent's deceased mother to religion and technology. Karsten stated he would support respondent on conditional release and maintain their relationship.

¶ 38 D. The Trial Court's Order

¶ 39 In September 2016, the trial court issued a two-page memorandum order, committing respondent to institutional care in a secure facility. The trial court's order inaccurately referred to Dr. Travis's testimony as Dr. Fogel's testimony, stating it gave "great weight in particular to the testimony and opinions of Dr. Fogel [*sic*] because of his extensive experience with [DHS], as a sexually violent person examiner, his personal work experience with the [Facility] unit in Rushville, and his personal familiarity with the [conditional release] program in Illinois." The trial court also stated, "the court agrees with Dr. Fogel [*sic*] that at the present time [the Facility] provides the least restrictive environment for the [r]espondent to receive effective treatment while providing safeguards to the community."

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 After a person is adjudged an SVP, the Act requires the trial court to order him or her "to be committed to the custody of [DHS] for control, care and treatment until such time as the person is no longer a sexually violent person." 725 ILCS 207/40(a) (West 2016). "[T]he order of commitment shall specify either institutional care in a secure facility or conditional

release." *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 608, 884 N.E.2d 160, 182 (2007). On appeal, respondent raises two arguments, alleging the trial court (1) abused its discretion in ordering him to institutional care in a secure facility and (2) violated his due process rights by failing to recall evidence.

¶ 43 A. Trial Court Order Committing Respondent to Institutional Care in a Secure Facility

¶ 44 In deciding whether to commit an SVP to institutional care in a secure facility or conditional release, the trial court must 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, and [(3)] 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 2016).

¶ 45 "[W]e will review the trial court's decision to commit [respondent] to a secure facility under an abuse of discretion standard." *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374, 800 N.E.2d 137, 157 (2003) (citing *People v. Bell*, 313 Ill. App. 3d 280, 282, 729 N.E.2d 531, 534 (2000)). " '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.' " *Id.* (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 46 On appeal, respondent first contends the trial court abused its discretion in declining to grant him conditional release. According to respondent, the evidence showed he was "motivated and cooperative in his treatment at [the Facility]" and he "is not at high risk to reoffend." He further contends the trial court abused its discretion by not adequately considering his "support system in the community" and the availability of additional safeguards on

conditional release. The State counters the trial court did not abuse its discretion by its careful application of section 40(b)(2) to the evidence. We agree with the State.

¶ 47 We find the trial court's findings are reasonable in light of the evidence under section 40(b)(2) of the Act (725 ILCS 207/40(b)(2) (West 2016)). See *In re Detention of Welsh*, 393 Ill. App. 3d 431, 455, 913 N.E.2d 1109, 1129 (2009) ("It is not [the appellate court's] function, in reviewing a challenge to the sufficiency of the evidence to retry the [respondent]."). Consideration of the nature and circumstances of respondent's acts included the trial court referencing respondent's admission to "ha[ving] sexually assaulted and/or abused 25 children ranging in age from 3 to 12 for a total of 40 offenses," as well as respondent "ha[ving] a history of committing sex offense[s] against children while on probation and other community-based release dispositions such as parole." Evidence further showed respondent's "superficial" attempts to participate in treatment, supporting the trial court's findings on his mental history, where the memorandum order states:

> "He has spent the vast majority of his adult years in the penitentiary. During that time the [r]espondent participated in some sex offender specific treatment, however the evidence shows that those attempts were either terminated for lack of progress or failed to have the desired effect, i.e.[,] significantly decreasing of [sic] the risk of acting out with children."

¶ 48 The trial court concluded respondent's "present mental condition" posed a risk to others, acknowledging both his stipulation to being an SVP and expert testimony showing "[r]espondent still experiences an attraction to prepubescent children." Respondent's score on the Static-99R confirmed these findings and could reasonably cause concern to any reasonable trier of fact by placing respondent in the "high risk" category. While the trial court considered

respondent's score in the "moderate range" on the Stable-2007, it found "the uncontradicted testimony shows that the reliability of the Stable-2007 has not been established for offenders who have been incarcerated for as long as respondent has." See *Welsh*, 393 Ill. App. 3d at 455, 913 N.E.2d at 1129 ("[I]t is the province of the trier of fact to evaluate witness credibility, resolve conflicts in the evidence, and draw reasonable inferences therefrom.").

¶ 49 The trial court referenced Dr. Travis's expert testimony in finding conditional release was not appropriate. Our review of the record shows the trial court did not abuse its discretion in adopting the same concerns as Dr. Travis by stating, "[r]espondent is only in stage two of a five-stage program for sex offender specific treatment, [r]espondent has yet to receive arousal management training, and [r]espondent has not yet developed a relapse prevention program." See *Lieberman*, 379 Ill. App. 3d at 609, 884 N.E.2d at 183 (The trial court did not abuse its discretion in relying on expert testimony alleged by appellant as flawed, stating, "the duty of evaluating the evidence and determining the credibility of the witnesses lies with the trier of fact and not the reviewing court."). The testimony of Dr. Travis about respondent's difficulty socializing with adults further supports the trial court's finding of respondent "need[ing] to be integrated into the community by developing appropriate relationships with other adults."

¶ 50 The trial court did not act unreasonably in considering the arrangements available to respondent on conditional release, explaining COSA is not available in Illinois. During the time it takes to start a COSA program in Illinois, respondent's pedophilic sexual fantasies could be triggered by the stressors of conditional release mentioned by Dr. Travis in his expert testimony.

¶ 51 The trial court reasonably considered respondent's need for individual therapy not available at the Facility. Dr. Abbott's testimony of respondent's progress at the Facility,

especially in light of respondent's past failures in treatment, supports the trial court's finding of respondent "deriving maximum benefits through participating in group counseling sessions at [the Facility]."

¶ 52 The reasoning of the trial court's memorandum order, based upon the evidence presented, indicates respondent's commitment to institutional care in a secure facility does not give rise to an abuse of discretion.

¶ 53 B. Failure To Recall Evidence

¶ 54 As to respondent's second argument, we find unconvincing his allegation the trial court violated his due process rights by "fail[ing] to recall and consider evidence" crucial to his case. Respondent claims the trial court, in its memorandum order, failed to recall evidence by erroneously stating respondent's witness, Dr. Fogel, found him unsuitable for conditional release. The State counters the trial court meant to refer to Dr. Travis, its only witness, in place of Dr. Fogel, as evident by statements in the memorandum order, which did not cause prejudice to respondent. We agree with the State.

¶ 55 "Our supreme court has held that the failure of the trial court to recall and consider evidence that is crucial to a criminal defendant's defense is a denial of the defendant's due process." *People v. Williams*, 2013 IL App (1st) 111116, ¶ 75, 2 N.E.3d 552 (citing *People v. Mitchell*, 152 Ill. 2d 274, 323, 604 N.E.2d 877, 901 (1992)). "A trial judge sitting as a trier of fact must consider all matters in the record before deciding the case, and where the record affirmatively shows the trial judge did not consider the crux of the defense when entering judgment, the defendant did not receive a fair trial." *People v. Bowen*, 241 Ill. App. 3d 608, 624, 609 N.E.2d 346, 359 (1993). While civil in nature, SVP proceedings are considered "quasi-criminal" proceedings, implicating a respondent's liberty interest, including his sixth amendment

right to a fair trial. *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶¶ 54-55, 14 N.E.3d 1163.

¶ 56 A claim of the trial court's failure to recall evidence is subject to *de novo* review. *Williams*, 2013 IL App (1st) 111116, ¶ 75, 2 N.E.3d 552. However, "[w]hile a question of law is decided *de novo*, a trial court's credibility determinations are entitled to great deference, and they will rarely be disturbed on appeal." *Id.* ¶ 76 (citing *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25, 920 N.E.2d 233, 240 (2009)).

¶ 57 "After finding a due process violation, an appellate court must still consider whether the violation was harmless." *Id.* ¶ 93. Finding harmless error requires the reviewing court to determine "(1) whether the error contributed to the defendant's conviction, (2) whether the other evidence in this case overwhelmingly supported the defendant's conviction, and (3) whether the excluded evidence would have been duplicative or cumulative." *People v. Anderson*, 2017 IL App (1st) 122640, ¶ 75, 72 N.E.3d 726. "An error is harmless only if the State can demonstrate, beyond a reasonable doubt, that the error did not contribute to the verdict." *Williams*, 2013 IL App (1st) 111116, ¶ 93, 2 N.E.3d 552.

¶ 58 The trial court's mistaken reference to Dr. Fogel neither violated defendant's due process rights nor rose beyond harmless error. Rather, the trial court's reference to Dr. Fogel is a mere scrivener's error. We infer from the memorandum order the trial court meant to cite Dr. Travis, not Dr. Fogel. For instance, where the trial court erroneously states Dr. Fogel has "extensive experience with [DHS], as a[n] [SVP] examiner," "experience with the [Facility] unit in Rushville," and "personal familiarity with the [conditional release] program in Illinois," the record shows these statements are true of Dr. Travis. Although Dr. Fogel did not opine, as stated in the memorandum order, "that at the present time [the Facility] provides the least restrictive

environment for the [r]espondent to receive effective treatment while providing safeguards to the community," the record shows Dr. Travis did offer such testimony. The memorandum order went on to reference specific findings by Dr. Travis in stating, "This finding is based on the following facts: [r]espondent is only in stage two of a five-stage program for sex offender specific treatment, [r]espondent has yet to receive arousal management training, and [r]espondent has not yet developed a relapse program."

¶ 59 The trial court's misnomer referring to Dr. Fogel does not rise to a due process violation where the trial court did not "consider the crux of the defense when entering judgment." *Bowen*, 241 Ill. App. 3d at 624, 609 N.E.2d at 359. Generally, cases involving mistaken recall of evidence will involve due process violations premised on far more than a misnomer. See *Williams*, 2013 IL App (1st) 111116, ¶ 98, 2 N.E.3d 552 (trial court mistakenly recalled defense expert as identifying deoxyribonucleic acid evidence with defendant); *Mitchell*, 152 Ill. 2d at 307, 604 N.E.2d at 894 (testimony was presented stating police told defendant he was not free to leave, but the trial court erroneously found " '[t]here was no testimony that I recall' " showing defendant was not free to leave). For these same reasons, the trial court's misnomer is harmless error. We simply do not find the trial court's mistaken reference to Dr. Fogel, instead of Dr. Travis, contributed to his commitment to institutional care in a secure facility. We affirm.

¶ 60 III. CONCLUSION

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

¶ 62 Affirmed.