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2011 IL App (5th) 100224-U  
NO. 5-10-0224  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 08-CF-402
	)	
TIMOTHY CROSBY,	)	Honorable
	)	Milton S. Wharton,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE DONOVAN delivered the judgment of the court.  
Presiding Justice Chapman and Justice Welch concurred in the judgment.

**ORDER**

¶ 1           *Held:* The defendant failed to show that he was denied his rights to procedural and substantive due process and deprived of his liberty based on a pending, unproven charge where the State presented other evidence, including prior convictions for sexual offenses against minors, to establish that the defendant is a sexually dangerous person. The defendant failed to show that his right to due process was infringed by the admission of the testimony of the evaluating psychiatrists where there is consensus among forensic psychiatrists regarding proper methods to assess the risks for recidivism.

¶ 2           After a bench trial in the circuit court of St. Clair County, the defendant, Timothy Crosby, was declared a sexually dangerous person and committed to the custody of the director of the Illinois Department of Corrections pursuant to the Sexually Dangerous Persons Act (Act) (725 ILCS 205/0.01 *et seq.* (West 2008)). On appeal, the defendant claims that the Act infringed on his procedural and substantive due process rights under the fifth and fourteenth amendments because it allowed for a renewed deprivation of his liberty based on: (1) a pending criminal charge without

proof of that charge and (2) the improper admission of the opinions of evaluating psychiatrists where the bases for their opinions lacked reliability and where their opinions were based, in part, on the pending but unproven criminal charge. The defendant also claims that the trial court erred in considering the reports of the evaluating psychiatrists as it decided whether the State had proven that the defendant was a sexually dangerous person under the Act, rather than relying only on their testimony during the trial. We affirm.

¶ 3           The defendant was charged by information with the offense of child abduction in violation of section 10-5(b)(10) of the Criminal Code of 1961 (720 ILCS 5/10-5(b)(10) (West 2002)). The information alleged that the defendant intentionally attempted to lure a child under the age of 16 years into a motor vehicle without the consent of a parent for other than a lawful purpose. Contemporaneous with the filing of the criminal information, the State filed a petition to proceed under the Act. In the petition, the State alleged that the defendant suffered from a mental disorder that has existed for more than a year, that he suffered from the disorder immediately prior to the filing of the pending petition, that he has criminal propensities to the commission of sex offenses, and that he has demonstrated propensities toward acts of sexual molestation of children. The State further alleged that the defendant has prior convictions in St. Clair County, Illinois, for the offenses of child pornography with a child victim under the age of 18 years and aggravated criminal sexual assault with a child victim under the age of 18 years and that he has been charged with the pending offense of child abduction in which the alleged victim is a minor child. The State asked the court, pursuant to section 4 of the Act (725 ILCS 205/4 (West 2008)), to appoint two qualified psychiatrists to evaluate the defendant for the purpose of determining whether he is a sexually dangerous person.

¶ 4           The trial court granted the State's request and appointed John S. Rabun, M.D., and Terry M. Killian, M.D., both psychiatrists, to evaluate the defendant and to file written reports setting forth the results of their respective examinations. Dr. Rabun and Dr. Killian examined the defendant and filed their reports with the court. Each determined that the defendant was a sexually dangerous person within the meaning of the Act. The defendant waived his right to a trial by jury. A bench trial followed.

¶ 5           During the trial, the State presented certified copies of the defendant's prior convictions. The evidence showed that the defendant had been convicted of sex offenses in five distinct cases: criminal sexual abuse in 1986, soliciting a prostitute in 1991, two counts of aggravated criminal sexual abuse against an individual between the ages of 13 and 16 in 1988, three counts of child pornography in 2002, and criminal sexual abuse in 2002.

¶ 6           Dr. Killian and Dr. Rabun testified in the State's case. Dr. Killian opined that the defendant was a sexually dangerous person under Illinois law. He based his opinion on his interview with the defendant, his review of the police reports and court records of the defendant's prior convictions, his review of the petition, the Diagnostic and Statistical Manual-IV (DSM-IV), three actuarial instruments designed to assess recidivism, and his training and clinical experience. Dr. Killian diagnosed the defendant with paraphilia. He testified that the defendant had that condition for more than 20 years prior to the filing of the petition. Dr. Killian said that under the DSM-IV, a person diagnosed with paraphilia experiences recurrent sexual fantasies, urges, or behaviors involving: children and other nonconsenting individuals, nonhuman objects, or humiliation of self or another person. Dr. Killian opined that the defendant has the propensity to commit sexual offenses, noting that the defendant's history revealed that he had victimized at least four children and a 20-year-old mentally

retarded man and that he had repeatedly engaged in sexual activity with persons who were unable to adequately consent. Dr. Killian testified that he employed three standardized actuarial instruments to screen the defendant for recidivism and that the results of each indicated that the defendant was at a high risk to commit sexual offenses in the future.

¶ 7 During a vigorous cross-examination, Dr. Killian acknowledged that he is not board certified in forensic psychiatry. Dr. Killian testified that he had no formal training in the use of the risk assessment instruments but that he had read the literature on those tools. Dr. Killian noted that the instruments had been subject to peer review and that all instruments were found to be valid and reliable. Dr. Killian stated that there was a substantial probability that the defendant would commit sexual offenses in the future and his opinion was based on his clinical judgment aided in large part by the actuarial instruments. Dr. Killian was asked about the differences between paraphilia and pedophilia. Dr. Killian explained that pedophilia is a more specific diagnosis than paraphilia. He stated that someone with pedophilia is attracted to prepubescent children and that someone with paraphilia could be attracted to prepubescent children, teenagers, or both. He stated that he could not rule out pedophilia as a diagnosis for the defendant, but he did not feel he had sufficient information to make the diagnosis. Dr. Killian testified that he considered the pending charge of child abduction only to a very limited extent in determining whether the defendant fit within the statutory definition of a sexually dangerous person because the allegations provided little information. Dr. Killian testified that the defendant's history of prior convictions for sexual offenses and the defendant's account of those events as compared and contrasted with the descriptions and account set forth in the court files and police reports was of far greater significance in

determining whether the defendant fit within the statutory definition of a sexually dangerous person.

¶ 8 Dr. Rabun opined that the defendant suffered from a specific type of paraphilia called pedophilia with an attraction to males of nonexclusive type. Dr. Rabun stated that pedophilia is an acquired mental disorder in which afflicted individuals act on their fantasies and urges and that the disorder causes afflicted individuals to engage in sexual acts with children who lack capacity to consent. Dr. Rabun pointed to the defendant's pattern of behavior involving boys. He noted that the defendant had engaged in prior sexual acts with young males, that he had acquired and saved male child pornography, that he had made a video of himself engaging in sexual acts with a young male, and that he had allegedly attempted to abduct a 10-year-old male. Dr. Rabun opined that the defendant's mental disorder existed for a period of not less than one year immediately prior to the filing of the petition and that the defendant's condition affects his emotional and volitional capacities and predisposes him to engage in sexual violence. Dr. Rabun also opined that there is a substantial probability that the defendant will commit future acts of sexual violence if not committed for treatment.

¶ 9 Dr. Rabun based his opinions on his interview with the defendant, the police reports, the photographic evidence and other information from the prior convictions, the DSM-IV, and his training and clinical experience. Dr. Rabun testified that the DSM-IV is the gold standard for diagnoses in psychiatry and that it has an excellent interrater reliability for validity in diagnoses. Dr. Rabun stated that two of the three actuarial instruments used by Dr. Killian were tools designed to be utilized at the end of a prison confinement to assess the risk of recidivism under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2008)). Dr. Rabun testified

that the third actuarial instrument was appropriate for assessing recidivism under the Sexually Violent Persons Commitment Act and the Sexually Dangerous Persons Act.

¶ 10 The defendant elected not to testify and he offered no evidence. The trial court ruled from the bench following the closing arguments. The trial court found that the State met its burden to prove beyond a reasonable doubt that the defendant suffers from a mental disorder which has existed for a period of not less than one year immediately prior to the filing of the petition, that the defendant has propensities to the commission of sex offenses, and that the defendant has demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children. The court found based upon all the evidence presented that the defendant is a sexually dangerous person and that it is substantially probable that the defendant will engage in the commission of sexual offenses in the future if he is not confined. The court declared that the defendant was a sexually dangerous person, appointed the Director of Corrections as the defendant's guardian, and remanded the defendant to a secure facility of the Illinois Department of Corrections while he received treatment. The court also declared that proceedings in the pending criminal case would be held in abeyance while the defendant received care and treatment.

¶ 11 In his first point, the defendant claims that the Act infringed on his procedural and substantive due process rights under the fifth and fourteenth amendments because it allowed for the renewed deprivation of his liberty based on: (1) a pending criminal charge without proof of that charge and (2) the improper admission of the opinions of the evaluating psychiatrists where the underlying bases for the opinions lacked reliability and where the opinions were based, in part, on the pending but unproven criminal charge.

¶ 12 Section 3 of the Act provides that if a person is charged with a criminal offense

and if it appears to the State's Attorney of the county in which the charge is pending that the person is a sexually dangerous person within the meaning of the Act, then the State's Attorney may file a petition setting forth facts tending to show that the person named in the petition is a sexually dangerous person. 725 ILCS 205/3 (West 2008). In order to proceed under the Act, the subject of the petition must be charged with a criminal offense, but the charged offense does not have to be sexually related. *People v. Hancock*, 329 Ill. App. 3d 367, 380-81, 771 N.E.2d 459, 469-70 (2002).

¶ 13 In order to prove that the subject of the petition is a sexually dangerous person under the Act, the State must prove beyond a reasonable doubt: "'(1) the existence of a mental disorder for more than one year; (2) the existence of criminal propensities to the commission of sex offenses; and (3) the existence of demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children.'" *People v. Allen*, 107 Ill. 2d 91, 105, 481 N.E.2d 690, 697 (1985) (quoting *People v. Pembrock*, 62 Ill. 2d 317, 321-22, 342 N.E.2d 28, 30 (1976)), *aff'd*, 478 U.S. 364 (1986). Proof beyond a reasonable doubt of these statutory elements meets minimal constitutional standards and does not violate due process. *People v. Masterson*, 207 Ill. 2d 305, 328, 798 N.E.2d 735, 748 (2003). The State is not required to prove that the subject of the petition is guilty of the pending charge in order to establish the existence of demonstrated propensities toward acts of sexual molestation. *Hancock*, 329 Ill. App. 3d at 380-81, 771 N.E.2d at 469-70. The State may meet its burden by proving beyond a reasonable doubt that the subject of the petition committed at least one act of or attempt at sexual assault or sexual molestation. *Allen*, 107 Ill. 2d at 105, 481 N.E.2d at 697; *Hancock*, 329 Ill. App. 3d at 380-81, 771 N.E.2d at 469-70.

¶ 14 In this case, the State filed an information charging the defendant with the criminal offense of child abduction and immediately thereafter it filed a petition to

proceed under the Act. During the trial on the petition, the State presented certified copies of five prior convictions which clearly established that the defendant had committed acts of sexual assault and sexual molestation against children. The State called two qualified psychiatrists, each of whom opined that the defendant suffers from a mental disorder, that there is a causal connection between the defendant's mental disorder and his propensity to commit sex offenses, that the defendant has demonstrated propensities toward sexual assaults or molestation of children, and that there is a substantial probability that the defendant will commit sex offenses in the future if not confined. Both psychiatrists testified that the bare allegations of the pending charge lacked sufficient information to serve as a significant basis for their diagnoses and opinions. Here, other evidence was offered to prove beyond a reasonable doubt that the defendant had demonstrated a propensity to commit sex offenses and that there was a substantial probability that he would reoffend. The State was not required to present evidence to prove the pending charge in order to meet its burden of proof. Upon considering all the evidence, the trial court determined that the State had proven beyond a reasonable doubt the necessary elements to establish that the defendant is a sexually dangerous person within the meaning of the Act, and its findings are supported by ample evidence in the record. The defendant has not shown that he was denied his rights to procedural and substantive due process and deprived of his liberty based on the pending, unproven charge where the State presented sufficient evidence to prove the required elements beyond a reasonable doubt.

¶ 15           The defendant also claims that he was denied due process and deprived of his liberty because the trial court erroneously accepted and relied on the opinions of the evaluating psychiatrists where the underlying bases for the opinions lacked reliability



and where the opinions were based, in part, on the pending but unproven criminal charge. The defendant argues that the testimony of the psychiatrists cannot withstand constitutional scrutiny because their opinions were contradictory and because there is no consensus in the scientific community regarding the methods of predicting recidivism and that the trial court erred in relying on the flawed opinions as a basis to find that the defendant is a sexually dangerous person under the Act.

¶ 16 At its core, the defendant's claim constitutes an attack on the admissibility and the weight of the evaluating psychiatrists' opinions and the sufficiency of the evidence to support the trial court's decision. In reviewing a challenge to the sufficiency of the evidence, it is not the function of this court to reweigh the evidence or retry the case. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 602, 884 N.E.2d 160, 177 (2007); *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 11, 754 N.E.2d 484, 488 (2001). The trier of fact is charged with evaluating the credibility of the witnesses, resolving conflicts in the evidence, and determining what inferences to draw from the evidence. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 11, 754 N.E.2d at 488. The only question is whether upon viewing the evidence in a light most favorable to the State, any rational trier of fact could find that the essential elements of the petition have been proved beyond a reasonable doubt. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 11, 754 N.E.2d at 488.

¶ 17 The admission of expert testimony is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 10, 754 N.E.2d at 487. Expert testimony is admissible when the expert has knowledge or experience that is not common to a layperson and would aid the trier of fact in determining the facts at issue. *In re Detention of Tittlebach*, 324 Ill. App. 3d at 10, 754 N.E.2d at 487. Experts may testify about facts

not in evidence as long as the facts are customarily relied on by experts in the field to form opinions. *People v. Bommersbach*, 228 Ill. App. 3d 877, 882, 593 N.E.2d 783, 787 (1992); *Wilson v. Clark*, 84 Ill. 2d 186, 193, 417 N.E.2d 1322, 1326 (1981). Scientific evidence is admissible at trial if the methodology or scientific principle upon which the opinion is based has gained general acceptance in the field. *In re Commitment of Simons*, 213 Ill. 2d 523, 821 N.E.2d 1184 (2004). The trier of fact decides issues regarding the credibility of the witnesses and the weight to be given the testimony. *People v. Wright*, 111 Ill. 2d 128, 154, 490 N.E.2d 640, 650 (1985).

¶ 18 With these principles in mind, we consider whether the trial court abused its discretion in admitting and relying on the opinions of the psychiatrists who evaluated the defendant.

¶ 19 Initially, we note that the record does not support the defendant's contention that the psychiatrists' respective diagnoses were conflicting. Dr. Killian and Dr. Rabun both opined that the defendant was sexually gratified by relations with persons, primarily male, who were unable to give consent and that the defendant had a paraphilia disorder. Dr. Rabun testified that he diagnosed the defendant as a pedophile and that pedophilia is a more specific subcategory of paraphilia. Dr. Rabun explained that his diagnosis was based, in part, upon observing that many of the defendant's victims had prepubescent body types and appeared to be prepubescent despite their actual ages. Dr. Killian testified that he diagnosed the defendant with paraphilia and that his diagnosis was based, in part, on the fact that the defendant's victims had reached the stated age for puberty. Dr. Killian stated that he could not rule out pedophilia, but he did not feel he had enough information to make the more specific diagnosis. Both experts noted that the DSM-IV, the gold standard of psychiatric diagnoses, classifies pedophilia as a type of paraphilia. Upon considering

the testimony of each psychiatrist, the trial court could have reasonably concluded that the defendant suffered from a paraphilia disorder and that though Dr. Rabun's diagnosis was more specific and narrow than Dr. Killian's diagnosis, the respective diagnoses were not inconsistent or otherwise in conflict.

¶ 20 The defendant argues the trial court erred in admitting the psychiatrists' opinions on recidivism because there is no consensus in the scientific community regarding the methods for predicting recidivism. Again, the record does not support this contention.

¶ 21 Dr. Rabun testified that the consensus among forensic psychiatrists is that it is best to determine recidivism by using clinical judgment based on an interview and a review of the individual's history. Dr. Rabun stated that there is consensus among forensic psychiatrists that actuarial tools or information from the actuarial tools may be used in conjunction with and not exclusive of interviews and clinical judgment. Dr. Rabun's testimony on this point was not impeached or rebutted.

¶ 22 Dr. Rabun and Dr. Killian both opined that there was a substantial probability that the defendant would commit sexual offenses in the future if not confined for treatment. Dr. Rabun testified that he based his opinion on his interview with the defendant, his review of the information and facts regarding the defendant's social and criminal history, and his training and clinical experience. Dr. Rabun stated that he did not use an actuarial instrument to assess the defendant's risk for recidivism. He said that he used some information from the actuarial tools. Dr. Rabun stated that two of three actuarial instruments used by Dr. Killian were designed to assess the risk of recidivism under the Sexually Violent Persons Commitment Act and not the Sexually Dangerous Persons Act. He said that the third instrument was appropriate to assess recidivism under either Act. Dr. Killian acknowledged that his opinion on risk of

recidivism was heavily based on the actuarial assessments, but he did not rely solely upon the actuarial instruments in assessing the defendant's risk for recidivism.

¶ 23 The trial court, as the finder of fact, was free to accept the opinion of one expert over another, or accept part and reject part of each expert's testimony. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 600, 884 N.E.2d 160, 175 (2007); *People v. McDonald*, 329 Ill. App. 3d 938, 946-47, 769 N.E.2d 1008, 1016 (2002). The trial court could have determined that there was a reasonable probability that the defendant would commit sexual offenses against minors in the future based solely on the unrebutted testimony of Dr. Rabun. Likewise, the court could have accepted the opinions of both experts on this issue but given less weight to the opinion of Dr. Killian. Either way, there is substantial evidence from which any rational trier of fact could have found beyond a reasonable doubt that there was a substantial probability that the defendant would commit sexual offenses against minors in the future.

¶ 24 The defendant next argues that the trial court erred in accepting the psychiatrists' opinions because the opinions were improperly based on allegations in the pending criminal charge. In this case, each psychiatrist testified that his diagnoses and opinions were based on his interview with the defendant, his review of the police and court records regarding the defendant's prior convictions, and his training and clinical experience. Dr. Killian was asked whether he considered the pending charge in formulating his opinions, and he stated that he reviewed the pending charge and determined that it was not significant because there was little factual information beyond the bare allegations. Dr. Rabun stated that during the interview process, he questioned the defendant about his prior convictions and the pending charge and that he found that the defendant's minimization of his behavior in regard to his prior convictions and the pending charge provided more significant information than the

allegations themselves. There is no evidence that either psychiatrist accepted the unproven allegations at face value or assumed that the defendant committed the acts alleged in the pending charge. There is no evidence that the opinions of either psychiatrist were tainted or otherwise influenced by the allegations in the pending charge. Upon reviewing this record, we find that the defendant has not shown that his right to due process was infringed or that he was otherwise unfairly prejudiced, because the evaluating psychiatrists reviewed and gave minimal consideration to the pending charge. See *People v. Studdard*, 82 Ill. App. 3d 736, 740-41, 403 N.E.2d 68, 71 (1980).

¶ 25 In summary, the defendant did not establish that the trial court erred in admitting and relying on the diagnoses and opinions of the evaluating psychiatrists or that his right to due process was infringed by the admission of the psychiatrists' testimony. Upon viewing the evidence in a light most favorable to the State, we conclude any rational trier of fact could have found that the State had proven beyond a reasonable doubt that the defendant is a sexually dangerous person under the Act.

¶ 26 In the defendant's next point, he claims that the trial court erred in considering the written reports of the evaluating psychiatrists as it decided whether the State had proven that the defendant was a sexually dangerous person under the Act, rather than relying solely on their trial testimony.

¶ 27 In this case, the trial court referred to the psychiatrists' reports only to debunk a claim made by the defendant's attorney during his closing argument that the evaluating psychiatrists had improperly relied on unsupported allegations in a newspaper article as a basis for their diagnoses and opinions. A review of the record shows that the trial testimony of the psychiatrists nearly tracked their written reports. Under these circumstance, we do not find that the trial court's reference to the written

reports unfairly prejudiced the defendant. Moreover, the record shows that when the court announced its decision, it specifically said that its findings and determination were based upon the evidence offered during the trial. The written reports of the evaluating psychiatrists were not in evidence. In a bench trial, the court is presumed to have considered only the relevant evidence offered at trial. *People v. Alexander*, 21 Ill. 2d 347, 352-53, 172 N.E.2d 785, 788 (1961). There is nothing in the record to support the defendant's claim that the trial court considered the written reports of the evaluating psychiatrists during its deliberation of the evidence.

¶ 28           Accordingly, the judgment of the circuit court of St. Clair County is affirmed.

¶ 29           Affirmed.