2021 IL App (4th) 190750-U

NO. 4-19-0750

FILED
April 13, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re DETENTION OF GREGORY MORRIS	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Cass County
v.	)	No. 98MR17
Gregory Morris,	)	
Respondent-Appellant).	)	Honorable
	)	Scott Douglas Larson,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded that (1) the evidence supported the jury's finding that respondent remained a sexually violent person and (2) the trial court did not abuse its discretion by denying respondent's (a) third motion *in limine* and (b) request for conditional release.

¶ 2 In May 1999, a jury adjudicated respondent, Gregory Morris, a sexually violent person (SVP), as defined by section 5(f) of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/5(f) (West 1998)). Later that month, the trial court committed respondent to the care, custody, and control of the Illinois Department of Human Services (DHS) until such time as he was no longer sexually violent.

¶ 3 In April 2018, respondent filed a petition for discharge. Prior to the trial on the petition for discharge, respondent filed three motions *in limine*. The trial court granted the first and second motions, in part, and denied respondent's third motion, which asked the court to bar the

State's experts from testifying about respondent's nonsexual criminal offenses and uncharged sex offenses.

¶ 4 In September 2019, the trial court conducted respondent's jury trial. The State's experts opined that respondent remained an SVP, relying in part on respondent's prior uncharged sex offenses. Respondent's expert testified that respondent was no longer an SVP and recommended conditional release or discharge.

¶ 5 The jury found that respondent remained an SVP. Following the jury's verdict, respondent filed a motion requesting the trial court to modify his commitment from secure care to conditional release. The court denied the motion.

¶ 6 Respondent appeals, arguing that (1) the evidence did not support the jury's finding that respondent remained an SVP, (2) the trial court abused its discretion by denying respondent's third motion *in limine*, and (3) the trial court abused its discretion by denying respondent conditional release.

¶ 7 We disagree and affirm.

¶ 8 I. BACKGROUND

¶ 9 A. The Procedural History Prior to Trial

¶ 10 In 1987, respondent was convicted of the aggravated criminal sexual assault (Ill. Rev. Stat. 1987, ch. 38, ¶ 12-14) of two women in two separate incidents and was sentenced to six years in prison for each conviction, with the sentences to run concurrently. In 1994, respondent was convicted of aggravated criminal sexual assault (720 ILCS 5/12-14 (West 1992)), and the trial court sentenced him to six years in prison.

¶ 11 In October 1998, the State filed a petition seeking an order of commitment in which it alleged that respondent was an SVP pursuant to the Act. The State attached to the petition

respondent's convictions for aggravated criminal sexual assault.

¶ 12 In May 1999, a jury adjudicated respondent an SVP under the Act (725 ILCS 207/5(f) (West 1998)). Respondent was committed to the custody of DHS for secure care and treatment. Respondent appealed, and in November 2000, this court affirmed. *In re Detention of Morris*, No. 4-99-0454 (2000) (unpublished order under Illinois Supreme Court Rule 23).

¶ 13 In 2016, Deborah Nicolai conducted respondent's reexamination, diagnosed him with sexual sadism disorder, and found that he remained an SVP. Following her report, the State filed a motion for a finding of no probable cause to warrant an evidentiary hearing as to whether respondent remained an SVP. In response, respondent moved for an independent examination, and the trial court granted that motion, appointing Luis Rosell to examine respondent. Prior to Rosell's examination, the State filed (1) respondent's 2017 reexamination report, which again found he remained an SVP and (2) a motion requesting a finding of no probable cause to warrant an evidentiary hearing.

¶ 14 In January 2018, respondent filed Rosell's report, which concluded that respondent did not suffer from sexual sadism disorder and was eligible for conditional release.

¶ 15 In April 2018, respondent filed a petition for discharge, and in June 2018, Rosell submitted an addendum to his report in which he recommended discharge.

¶ 16 In July 2018, the trial court conducted a probable cause hearing on respondent's petition for discharge and found probable cause to believe that his condition had so changed in the time since his last reexamination that he was no longer an SVP. Following that ruling, the State requested a further examination, and the trial court appointed Angeline Stanislaus to evaluate respondent.

¶ 17 In October 2018, Nicolai submitted a report containing her findings from her 2018

reexamination of respondent. Her conclusions were substantially similar to the conclusions in her 2016 report. She concluded that respondent remained an SVP and recommended his continued commitment.

¶ 18 In February 2019, Stanislaus submitted her report in which she concluded that respondent remained an SVP and recommended his continued commitment.

¶ 19 B. The Motions *in Limine*

¶ 20 Prior to the trial on the petition for discharge, respondent filed three motions *in limine*. The trial court granted the first motion, in part, which prohibited the parties from addressing respondent's prior sex offenses in opening statements unless they were relied upon by their respective experts in forming their opinions. The court granted the second motion, in part, which prohibited the parties' experts from testifying about the opinions of prior evaluators but allowed them to rely on the State's experts' prior evaluations in forming their own opinions. The court denied respondent's third motion, which asked the court to bar the State's experts from testifying about respondent's nonsexual criminal offenses and uncharged sex offenses.

¶ 21 C. The Trial

¶ 22 In September 2019, the trial court conducted respondent's jury trial.

¶ 23 1. *The State's Evidence*

¶ 24 a. Deborah Nicolai

¶ 25 Prior to Nicolai's testimony, the trial court instructed the jury that the material Nicolai relied on in forming her opinion was not evidence but could be considered by the jury in their determination of how much weight to give to her opinion. Nicolai testified that she performed respondent's 2018 reexamination and wrote a report based upon her review of his police records, court records, treatment records, an interview with respondent, and a risk assessment. Nicolai

diagnosed respondent with sexual sadism disorder and narcissistic personality disorder with antisocial features.

¶ 26 Nicolai explained that respondent's sexual sadism disorder diagnosis was based upon his criminal history, which included two 1987 convictions for aggravated criminal sexual assault. In one case, respondent picked up a woman in a car, drove her to a remote cabin, and forced her inside it. She refused to remove her clothing, so respondent repeatedly punched her in the face, pinned her to the ground, and banged her head against the floor. Respondent forced his penis into her mouth and threatened her with further beatings if she did not comply. Following this oral sexual assault, respondent forced his penis into her vagina. When respondent was finished, he locked her in a closet in the cabin and left. The woman escaped and ran to a nearby house for help, at which point she was rescued.

¶ 27 In the other case, respondent offered to give a woman a ride home and instead drove her to a bridge where he punched her in the face repeatedly, duct taped her hands together, and forced her to perform oral sex on him before he forced his penis into her vagina. Respondent also bit and choked her, causing numerous injuries. The police caught respondent in the act and arrested him. Respondent pleaded guilty but mentally ill to two counts of aggravated criminal sexual assault and was sentenced to six years in prison for each conviction. He was released in 1993.

¶ 28 In 1994, within one year of his release, respondent pleaded guilty to two counts of aggravated criminal sexual assault. Respondent was drinking at a woman's house when she got up to use the bathroom. He followed her into the bathroom, and when she asked him to leave, he waited outside. When the woman exited the bathroom, respondent grabbed her by the arm and dragged her down a hallway to a bedroom. He ripped off her clothes and sexually assaulted her vaginally, anally, and orally. Respondent scratched her face and pulled her hair out. Eventually,

the woman was able to knock respondent over and repeatedly yelled, "[h]e hurt me," which caused respondent to leave. The police arrested respondent shortly thereafter, and the trial court ultimately sentenced him to six years in prison. He was released in 1996.

¶ 29 In 1996, just hours after he was released from prison, respondent called an ex-girlfriend, who had since married another man, and asked her to meet him at a hotel with a paddle, whip, and rope. She declined and asked him to not call her again. Respondent was later arrested for disorderly conduct because he continued calling and threatened the ex-girlfriend's husband with physical violence. However, the charges were dismissed. Nicolai explained to the jury that although the use of whips, paddles, and rope during sex is not illegal, the behavior could further support the diagnosis of a mental disorder.

¶ 30 In 1997, respondent was convicted of resisting a peace officer, and the trial court found he violated his parole. In that case, a nine-year-old girl called the police to report that respondent had pushed her mother down some stairs. The police arrived on the scene and saw that the woman was bloody. The woman reported that respondent had choked and hit her the previous day. Respondent resisted arrest at the scene and also resisted the police when they tried to get him out of the police car at the police station.

¶ 31 Nicolai further testified that respondent had several uncharged sexual offenses that she reviewed in reaching her diagnosis. Four women had provided written statements in 1999 about events that took place between 1985 and 1997. The statements were given voluntarily during an Illinois Attorney General investigation into respondent's background prior to his initial SVP commitment proceeding. Three of the women reported that respondent (1) forced them to have sexual intercourse and (2) while having sex, urinated on them, hit them, slapped them, called them a "bitch," and bit them. One woman reported that respondent inserted vegetables inside her vagina

during the abuse, and another reported that respondent abducted her for six days in 1997, during which time respondent sexually assaulted her. Nicolai stated that because none of these statements resulted in criminal charges, she gave them less weight in her overall assessment of respondent.

¶ 32 Nicolai testified that based upon respondent's offending history, she diagnosed him with sexual sadism disorder. Because the disorder predisposed respondent to commit acts of sexual violence, it was a qualifying mental disorder under the Act. Nicolai also explained that respondent's behavior was distinguishable from other sexual assaults because he engaged in bondage and gratuitous violence. Nicolai also explained that respondent's narcissistic personality disorder diagnosis was based upon his treatment records, which documented that respondent exhibited grandiose and entitled behavior. This diagnosis further elevated his risk of committing future acts of sexual violence.

¶ 33 Nicolai testified that she assessed respondent's likelihood of reoffending using two actuarial assessments, the Static-99R and Static-2002R. Nicolai scored respondent a five on the Static-99R, which meant his risk of reoffending was 2.7 times more likely than the average sex offender, placing him at an above average risk of reoffending. Nicolai scored respondent an eight on the Static-2002R, which meant his risk of reoffending was five times higher than the average sex offender and placed him in the highest possible risk category. Nicolai also said that respondent had the following dynamic risk factors: (1) deviant sexual interest, (2) resistance to rules and supervision, (3) lack of intimately emotional relationships with an adult, (4) hostility and grievance, (5) a personality disorder, (6) intoxication during an offense, (7) lifestyle impulsivity, and (8) poor problem solving.

¶ 34 Nicolai further testified that respondent's age, 56 years old, reduced his risk, and that this was included in the assessment scores. However, respondent lacked sufficient treatment

progress to warrant any further reduction in risk. Respondent was in the second phase of a five-phase treatment program and had not progressed further because of his aggression in response to feedback and inability to recognize a need for change. Respondent was enrolled in "Power to Change," an additional group designed to help him recognize the need to change and motivate him to make treatment progress. Respondent had not developed any interventions that could reduce his risk of reoffending, such as a relapse prevention plan.

¶ 35 Nicolai acknowledged that in 2016 respondent was subjected to a penile plethysmograph (PPG) test, which assesses sexual arousal in order to aid in diagnosis of sexual disorders. In the test, respondent was presented with various rape and sadism scenarios, and he showed no significant arousal. However, respondent was taking duloxetine at the time, which is a medication that can suppress interest in sex and make a person unable to maintain an erection.

¶ 36 Nicolai opined that respondent was substantially probable to engage in future acts of sexual violence and remained an SVP.

¶ 37 b. Angeline Stanislaus

¶ 38 Before Stanislaus testified, the judge gave a limiting instruction substantially similar to the one given prior to Nicolai's testimony. Stanislaus testified that she evaluated respondent and wrote a report with her findings after reviewing his prior convictions, police reports, treatment records, conducting an interview with respondent, and performing an actuarial assessment.

¶ 39 Based on respondent's offense history, Stanislaus diagnosed respondent with sexual sadism disorder. Respondent's offense history showed repeated sexual encounters involving physical violence. Stanislaus also diagnosed respondent with "other specified personality disorder with narcissistic and antisocial traits."

¶ 40 Stanislaus administered the Static-99R to assess respondent's risk of reoffending. Stanislaus scored respondent a 4, reflecting an above average risk. Stanislaus also found that respondent exhibited the following dynamic risk factors: (1) deviant sexual interest, (2) sexualized violence, and (3) sexual preoccupation.

¶ 41 Stanislaus found no factors that warranted a reduction in risk, although she acknowledged that respondent's age accounted for a modest reduction in his Static-99R score. Respondent's treatment progress also was insufficient to warrant any reduction. Stanislaus also considered respondent's 2016 PPG test and noted that although it showed no significant arousal, respondent was taking duloxetine, which can interfere with a person's ability to have an erection.

¶ 42 Stanislaus also considered an 81-page story that respondent wrote in 2011 that depicted him repeatedly sexually assaulting a woman, biting her, and inflicting pain and humiliation upon her. Respondent had intended to mail the story to a woman. Stanislaus found the story significant because it showed that respondent continued to fantasize about sadistic sexual behavior.

¶ 43 Stanislaus opined that respondent was substantially probable to commit future acts of sexual violence and that he remained an SVP.

¶ 44 2. *Respondent's Evidence*

¶ 45 Before Luis Rosell testified, the judge gave a limiting instruction substantially similar to the one given prior to Nicolai's and Stanislaus's testimonies. Rosell testified that he evaluated respondent by reviewing respondent's prior records, Nicolai's report, Stanislaus's report, and conducting an interview with respondent.

¶ 46 Rosell wrote a report in which he found that respondent did not suffer from sexual sadism disorder and recommended conditional release. After respondent petitioned for discharge,

Rosell wrote an addendum to his report also recommending discharge.

¶ 47 Rosell diagnosed respondent with other specified personality disorder with antisocial features. Rosell noted that this diagnosis could be a qualifying disorder under the Act, but Rosell believed that respondent's age reduced his risk of reoffending below a substantial probability. Rosell also diagnosed respondent with alcohol use disorder, but he did not believe this was a qualifying disorder under the Act.

¶ 48 Rosell did not believe that respondent had a qualifying mental disorder under the Act because (1) his prior offenses were old and (2) his 2016 PPG did not reflect significant arousal. Rosell disagreed respondent's medication interfered with the results.

¶ 49 Rosell testified that respondent's uncharged offenses were not entitled to any weight in his evaluation because respondent denied that they occurred, the victims disclosed the incidents years after the fact, and respondent was never arrested or charged for these alleged incidents.

¶ 50 Rosell agreed that the DSM-5 was a regularly relied upon source for diagnosing mental disorders, but he stated that he found the DSM-5's diagnostic criteria for sexual sadism to be "fairly limited." Rosell noted that one study identified 11 factors for identifying severe sexual sadism and that respondent exhibited 4 or 5 of those 11 factors. More factors tended to validate a sexual sadism diagnosis but did not automatically warrant that diagnosis because sexual sadism disorder is "difficult to diagnose."

¶ 51 Rosell did not think that respondent's lackluster treatment progress was a major problem because, although treatment can reduce the risk of reoffending, some SVPs stop reoffending without treatment. Rosell opined that respondent independently made progress because he self-reported that he was unlikely to reoffend and recognized that he had harmed his

victims.

¶ 52 Rosell opined that respondent did not suffer from sexual sadism disorder and was no longer an SVP.

¶ 53 Respondent chose not to testify.

¶ 54 3. *Closing Arguments and Posttrial Motions*

¶ 55 Prior to closing arguments, the trial court granted respondent's fourth motion *in limine* and barred the parties from arguing the facts of his prior convictions as substantive evidence. Following closing arguments, the court again instructed the jury that for the information the experts testified they relied upon, that information should be considered by the jury only for the purpose of deciding how much weight to give to each expert's opinion and not as substantive evidence.

¶ 56 The jury found that respondent remained an SVP.

¶ 57 Following the jury's verdict, respondent filed a motion requesting that the trial court modify his commitment from secure care to conditional release. The court explained it was denying the motion based upon the testimony and exhibits presented at trial and respondent's failure to initially petition for conditional release.

¶ 58 This appeal followed.

¶ 59 II. ANALYSIS

¶ 60 Respondent appeals, arguing that (1) the evidence did not support the jury's finding that respondent remained an SVP, (2) the trial court abused its discretion by denying respondent's third motion *in limine*, and (3) the trial court abused its discretion by denying respondent conditional release.

¶ 61 A. The Evidence Supported the Jury's Finding

¶ 62 First, respondent argues that the evidence did not support the jury's finding that he remained an SVP. We disagree.

¶ 63 1. *The Law*

¶ 64 The State's burden at trial was that they had to prove respondent remained an SVP beyond a reasonable doubt. 725 ILCS 207/65(a)(2) (West 2018). A person remains an SVP if (1) he was convicted of a sexually violent offense, (2) he suffers from a mental disorder, and (3) that mental disorder makes it substantially probable that he will commit future acts of sexual violence. *Id.* § 5(f). "When reviewing claims challenging the sufficiency of the evidence, we consider whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could find the elements proved beyond a reasonable doubt." *In re Commitment of Fields*, 2014 IL 115542, ¶ 20, 10 N.E.3d 832.

¶ 65 2. *This Case*

¶ 66 Nicolai and Stanislaus evaluated respondent and opined that he remained an SVP. We discussed the information they relied on at length above and need not reiterate that information here. See *supra* ¶¶ 25-43. Based on respondent's history, his lack of progress in treatment, his scores on the Static-99R and Static-2002R actuarial assessments, his behavior writing a sexually violent story, and his sexual sadism diagnosis, the jury had ample evidence to conclude that respondent remained an SVP.

¶ 67 Respondent notes that despite not completing his sex therapy, he has completed multiple ancillary groups. Respondent also notes that he is nearly 60 years old, which is a protective factor against him reoffending. Respondent also argues the PPG test shows that he did not react to rape and sexual sadism scenarios.

¶ 68 When viewing the evidence in the light most favorable to the State, it is clear that

a rational trier of fact could conclude the elements were proved beyond a reasonable doubt.

¶ 69 B. The Trial Court Did Not Abuse Its Discretion by Denying Respondent's Third Motion *in Limine*

¶ 70 Next, respondent argues that the trial court committed reversible error when it denied respondent's third motion *in limine*, which sought to bar the State's experts from describing the uncharged offenses because that information (1) was substantially more prejudicial than it was probative, (2) relied upon hearsay, and (3) was cured only by a jury instruction that was confusing and inadequate. Purported errors related to evidentiary rulings are reviewed for an abuse of discretion. *People v. Nepras*, 2020 IL App (2d) 180081, ¶ 20, 157 N.E.3d 1151. "A trial court abuses its discretion only when its decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the trial court's view." *Id.* ¶ 21.

¶ 71 1. *Evidence of Uncharged Offenses Was Not Substantially More Prejudicial Than Probative*

¶ 72 Respondent argues that the evidence of uncharged offenses should have been excluded because it was substantially more prejudicial than probative. Evidence is inadmissible under Illinois Rule of Evidence 403 (eff. Jan. 1, 2011) if its "probative value is substantially outweighed by the danger of unfair prejudice ***."

¶ 73 In this case, the uncharged conduct was part of the basis for the expert opinions. The jury was informed of the circumstances of this evidence, such as that the information was from women who came forward years after the fact and that the information did not result in criminal charges. Just about any information the State could present that would advance its case would cast defendant in a negative light. The question is not simply whether the evidence prejudices the jury against the defendant, but instead whether that information is so prejudicial that

it *substantially outweighs* the probative value. Because it was important for the jury to consider the basis for the experts' opinions, we conclude that the trial court did not abuse its discretion by allowing the jury to hear this evidence. Further, as we discuss below, any undue prejudice was cured by the trial court's instructions.

¶ 74 2. *The Evidence Was Not Inadmissible Hearsay*

¶ 75 Respondent argues that this evidence should have been excluded because it was inadmissible hearsay. However, expert testimony that refers to facts not in evidence is not considered hearsay because it is not offered for the truth of the matter asserted; instead, it is admissible to explain the basis of the expert's opinion. *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 32, 982 N.E.2d 953. Because evidence of the uncharged offenses in this case was not offered for the truth thereof but instead to explain the basis of the expert opinions, this evidence was not inadmissible hearsay.

¶ 76 We note that respondent also argues that this evidence "should have been excluded, even as the basis of the opinion." Respondent asserts that the opinions lacked foundation. We disagree. Based upon the ample foundational evidence presented, the trial court was well within its discretion to accept the expert opinions pursuant to Illinois Rule of Evidence 703 (eff. Jan. 1, 2011).

¶ 77 3. *The Jury Instruction Was Proper*

¶ 78 Additionally, respondent argues that despite the fact that the trial court instructed the jury that they were only to consider this evidence for how much weight to give to the expert opinions and not as substantive evidence, that instruction was inadequate and the jury would inevitably consider the evidence for its truth. We disagree because (1) the evidence was admissible for the reasons stated previously and (2) respondent requested the instruction himself.

Accordingly, any inadequacies in the instruction were invited error. See *People v. Lewis*, 2019 IL App (4th) 150637-B, ¶ 82, 123 N.E.3d 1153.

¶ 79 C. The Trial Court Did Not Abuse Its Discretion by Denying Respondent Conditional Release

¶ 80 Finally, respondent argues that the trial court abused its discretion when it denied his request for conditional release. We disagree.

¶ 81 1. *The Law*

¶ 82 Following a discharge hearing, the Act states, "If the court or jury is satisfied that the State has met its burden of proof under paragraph (b)(2) of this Section, the court *may* proceed under Section 40 of this Act to determine whether to modify the person's existing commitment order." (Emphasis added.) 725 ILCS 207/65(b)(3) (West 2018). Section 40 of the Act states, "In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15, the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment." *Id.* § 40(b)(2).

¶ 83 The word "may" indicates that discretion is left to the trial court. See *I-57 & Curtis, LLC v. Urbana & Champaign Sanitary District*, 2020 IL App (4th) 190850, ¶ 47 (citing *Krautsack v. Anderson*, 223 Ill. 2d 541, 554, 861 N.E.2d 633, 644 (2006)). "An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, or such that no reasonable person would take the view adopted by the trial court." *In re Commitment of Lingle*, 2018 IL App (4th) 170404, ¶ 47, 103 N.E.3d 564.

¶ 84 2. *This Case*

¶ 85 The trial court did not abuse its discretion. The court noted, "[The Statute] says the Court may proceed under Section 40 of the Act to determine whether to modify the existing commitment order. The may language is not by accident." The court continued to explain as follows:

> "The Court can then consider the testimony and exhibits, opinion witnesses from the trial, and I guess using the Court's discretion, the Court is not going to be proceeding under Section 40 modifying the commitment order. ***
>
> So for all of those reasons, the Court would not be inclined to proceed under Section 40 after the trial in this case."

¶ 86 The State presented compelling evidence at trial that showed that respondent, despite some progress, remained too high a risk to the community. The trial court was entitled to use its discretion to determine that the commitment order should not be modified.

¶ 87 III. CONCLUSION

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

¶ 89 Affirmed.