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Division III
State of Washington

NO. 30639-9

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

In re the Detention of Stanford Anderson:

STATE OF WASHINGTON,

Respondent,

v.

STANFORD ANDERSON,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUE PRESENTED

Where the opinion by the State's expert was unrebutted, and the jury heard evidence about Anderson's lengthy criminal sexual history, was there substantial evidence supporting the jury's finding that Anderson's mental abnormality made him likely to commit predatory acts of sexual violence if he was not confined in a secure facility?

II. STATEMENT OF THE CASE

A. Procedural History

On June 29, 2009, the State filed a sexually violent predator (SVP) petition in Benton County, seeking the involuntary civil commitment of Stanford Anderson (Anderson) as a sexually violent predator (SVP), pursuant to RCW 71.09. CP at 1-2. A jury trial was held on January 9-13 and 17, 2012. 2RP – 4RP.¹ On January 17, 2012, the jury returned a verdict finding Anderson to be an SVP. CP at 429. The trial court then entered an order civilly committing him, which Anderson timely appealed. CP at 430.

B. Anderson's Criminal Sexual History

The State adopts Anderson's Statement of the Case in the Amended Opening Brief of Appellant at 1-10, supplemented by additional facts presented in the arguments below.

¹ The State adopts the same convention as Anderson for referencing the VRPs from the jury trial:

2RP January 9-11, 2012;
3RP January 12, 2012; and
4RP January 13, 17, 2012.

III. ARGUMENT

Anderson argues that the State failed to produce substantial evidence he is likely to commit predatory acts of sexual violence if released, because the recidivism percentages associated with his actuarial scores did not exceed 50 percent. The actuarial data, however, was merely one component relied on by the State's expert, Dr. Christopher North (North), in a comprehensive risk assessment. The jury's finding was supported by North's expert opinion testimony, as well as evidence about Anderson's long history of committing sexual offenses against children and adolescents.

A. Standard of Review

In reviewing the sufficiency of the evidence under the SVP statute, a reviewing court applies the criminal standard. *In re the Detention of Thorell*, 149 Wn.2d 724, 744, 72 P.3d 708 (2003). "Under this approach, the evidence is sufficient if, when viewed in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* The court upholds the commitment if any rational trier of fact could have found the essential elements beyond a reasonable doubt. *In re Detention of Audett*, 158 Wn.2d 712, 727-28, 147 P.3d 982 (2006). All reasonable inferences from the evidence are drawn in favor of the State and interpreted most

strongly against the appellant. *Id.* at 727. Appellate courts defer to the trier of fact regarding a witness's credibility, conflicting testimony, and the persuasiveness of the evidence. *In re Detention of Broten*, 130 Wn. App. 326, 335, 122 P.3d 942 (2005).

B. Substantial Evidence Supported the Jury's Finding that Anderson was Likely to Commit Predatory Acts of Sexual Violence if not Confined in a Secure Facility

The State was required to prove, among other things, that Anderson is "likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18). A person is "likely" to commit such offenses if they will do so "more probably than not[.]" RCW 71.09.020(7). North testified that, in his opinion, Anderson was likely to engage in predatory acts of sexual violence if not confined in a secure facility. 3RP at 396.

Anderson first argues that "the actuarial tests that Dr. North employed did not constitute evidence of what current risk Mr. Anderson was for reoffense. Rather, they only provided an assignment of risk many years into the future." Amended Opening Brief of Appellant at 15. This same argument was rejected by the Washington Supreme Court in *In re Detention of Moore*, 167 Wn.2d 113, 216 P.3d 1015 (2009). The appellant in *Moore* argued that the State must prove a person is likely to reoffend within the "foreseeable future." 167 Wn.2d at 123. The Court

disagreed, holding that proof of the required elements constitutes proof of current dangerousness: “We believe that, by properly finding all the statutory elements are satisfied to commit someone as an SVP, the fact finder impliedly finds that the SVP is currently dangerous.” *Id.* at 124.

Anderson next argues that North’s opinion was unsupported by the actuarial instruments he used because Anderson’s scores on those instruments were associated with group recidivism rates that were under 50 percent; *i.e.*, they did not indicate Anderson “more probably than not” would reoffend. Amended Opening Brief of Appellant at 15-17. His argument does not establish a lack of substantial evidence because it addresses only the weight to be given to North’s opinion, and this Court does not reweigh the evidence. *Keene Valley Ventures, Inc. v. City of Richland*, ___ Wn. App. ___, 298 P.3d 121, 124 (2013).

Nevertheless, North explained that actuarial estimates are considered underestimates and that he relies on other factors not accounted for by those instruments. Additionally, the jury heard about Anderson’s long and persistent criminal sexual history - evidence that also supported North’s opinion and the element at issue.

Actuarial data is only a “beginning point to assess an offender’s risk.” 3RP at 400. North began by scoring Anderson on the three most commonly used actuarial instruments: The Static 99R; the Static 2002R

and the Minnesota Sex Offender Screening Tool - Revised (MnSOST-R). 3RP at 401. On the Static 99R Anderson received a score of seven. 3RP at 406. Offenders with the same score recidivated at a rate of 49 percent within ten years after release. 3RP at 412. On the Static 2002R, Anderson received a score of eight. 3RP at 417-18. Offenders with the same score recidivated at a rate of 46 percent within ten years after release. 3RP at 418. On the MnSOST-R, Anderson received a score of eight, and the associated recidivism rate was 30 percent within six years of release. 3RP at 419-20.

Actuarial instruments have limited applicability in SVP cases because of their small sample sizes and a variety of predictive shortcomings. *Thorell*, 149 Wn.2d at 753. North testified that actuarials give conservative underestimates of risk because their data does not include undetected sexual offenses. 3RP at 413-14. The Static 99R, for example, includes data about charges or convictions, but not about crimes committed but never reported, or where the perpetrator was never found or charged. 3RP at 420-21; *In re Detention of Lewis*, 134 Wn. App. 896, 906, 143 P.3d 833 (2006). A number of studies over the years have concluded that sexual offenses are significantly under-reported. 3RP at 421-22.

The common practice in North's field, therefore, is to also consider non-actuarial information. 3RP at 423; *In re Detention of Thorell*, 149 Wn.2d 724, 753, 72 P.3d 708 (2003) (actuarial results "may be adjusted (or not) by expert evaluators considering potentially important factors not included in the actuarial measure."). North relied on the totality of Anderson's record, including "all of the pages of discovery, the notes on his participation and treatment, his interviews with me, all of that gets factored into this decision." 3RP at 397. For example, Anderson was interviewed prior to his entry into the Sexual Offender Treatment Program in the Washington Department of Corrections. 3RP at 384. North found Anderson's statements to the interviewer to be significant. He paraphrased Anderson as saying: "I'm sick. I need help. I'm tired of doing this, and I don't want to create further victims." 3RP at 384.

As recommended by the leading expert in the field, North also considered "dynamic," or changeable psychological factors that are correlated with recidivism. 3RP at 423-25; see *In re Jacobson*, 120 Wn. App. 770, 783-84, 86 P.3d 1202 (2004) (expert's conclusion that person continued to meet SVP criteria supported by consideration of dynamic factors). For example, the dynamic factor "sexual preoccupation" applied to Anderson. 3RP at 426-27. Anderson "admits that he's pretty much always been sexually preoccupied[.]" 3RP at 427.

Even while in prison he sexually harassed other inmates and was kicked out of the treatment program twice because of his predatory behavior. 3RP at 427. Another applicable factor was "lack of emotionally intimate relationships with adults." 3RP at 428. Anderson is unable to establish close relationships with adults; North found evidence of only one adult relationship that "wasn't really a romantic relationship." 3RP at 428-29. North concluded that, because Anderson met the criteria of many of the dynamic risk factors he considered, there was significant evidence of "unmet treatment needs" that indicated Anderson should be assessed using the "high risk norms." 3RP at 432.

North also considered "protective factors" which, if present, could have lowered Anderson's risk. 3RP at 433. They were not present. Anderson had not been in the community for at least five years without reoffending, and had no physical or medical problems that would limit his ability to commit future offenses. 3RP at 433. North did find that Anderson did not have a high level of psychopathic traits, which would have exacerbated his risk. 3RP at 434-35.

Anderson's release environment would have affected his risk, for better or worse. 3RP at 446. North found Anderson's plans to be "unfortunate for him." 3RP at 446. He testified:

I think it tends to increase his risk. He doesn't really have anybody that can help him out. He's going out into a community where he will know no one. We know that he struggles often with feeling lonely and depressed, and when he gets lonely and depressed he's even more likely to seek out a victim or someone that he can have sex with to try to help him feel better.

3RP at 446-47.

Asked to summarize how the components of his risk assessment supported his ultimate opinion, North gave a thoughtful synopsis of Anderson's history and prognosis. 3RP at 447-48. Anderson had a terrible childhood; he was molested and his twin brother committed suicide. 3RP at 447. He has been sexually attracted to children since he was 11 to 13 years old. 3RP at 447. North found Anderson's long-term suicide risk to be "fairly high." 3RP at 448. He concluded:

As I've indicated, due to this ongoing sexual attraction to prepubescent and pubescent children, his very high sex drive, his tendency to try to meet his sexual and emotional needs through sexual activity, his loneliness, all of those, I think, combine to create a portrait of a very unhappy, unfortunate individual who is sexually deviant and who is, I think, at high risk for re-offense.

3RP at 448. This ultimate opinion by North, which was well-supported by a range of components, constituted substantial evidence that Anderson is likely to sexually recidivate if released unconditionally to the community. And North's opinion was un rebutted, because Anderson decided not to call his own expert or any other witness. 4RP at 623-24.

In addition to North's opinion, the jury learned about Anderson's long history of sexually assaulting boys. A person's sexual history is admissible in SVP proceedings because it is highly probative of that person's recidivism risk. *In re Detention of Young*, 122 Wn.2d 1, 53, 857 P.2d 989 (1993) ("In assessing whether an individual is a sexually violent predator, prior sexual history is highly probative of his or her propensity for future violence."). Anderson sexually assaulted his ten- or 11-year-old nephew in the mid-1980s but was never prosecuted for it. 2RP at 151. He was convicted for sexually assaulting a nine-year-old victim in 1985. 2RP at 178, 182, 185, 210. In 1988 he was convicted of communication with a minor for immoral purposes, against a 13-year-old victim. 2RP at 192, 194-97. In 1991 he was convicted of third degree child molestation against a 14-year-old. Exhibit 11. He was convicted of a sexually motivated fourth degree assault against a 23-year-old victim in 1997. Exhibit 16; 2RP at 230-35. In 2003 he grabbed at the clothed genitals of a 14-year-old and made sexual remarks to him. 2RP at 253-57. In 2004, Anderson was convicted of the third degree rape of a 17-year-old boy. Exhibit 20.

Looking at all of this evidence in a light most favorable to the State, and drawing all reasonable inferences in the State's favor, a rational jury could have found, beyond a reasonable doubt, that Anderson was

likely to commit future sexually violent crimes if not confined. *Audett*, 158 Wn.2d at 727-28. This Court should therefore affirm Anderson's commitment order.

IV. CONCLUSION

For the foregoing reasons, the State requests that this Court affirm Anderson's commitment as a sexually violent predator.

RESPECTFULLY SUBMITTED this 1st day of May, 2013.

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NO. 30639-9-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

In re the Detention of:

STANFORD ANDERSON,

Respondent.

DECLARATION OF
SERVICE

I, Elizabeth Jackson, declare as follows:

On May 1, 2013, I deposited in the United States mail true and correct copies of Brief of Respondent and Declaration of Service, postage affixed, addressed as follows:

Peter Tiller
P.O. Box 58
Centralia, WA 98531-0058

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of May 2013, at Seattle, Washington.


ELIZABETH JACKSON