

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 29385-8-III

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

In re the Detention of:

GARY CAMERON,

Appellant,

v.

THE STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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Attorney General

JAMES BUDER, WSBA #36659
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I. ISSUE PRESENTED

- A. Whether sufficient evidence supports the finding that Mr. Cameron suffers from a mental abnormality when (1) expert testimony supports the finding; (2) the expert testimony was corroborated by other evidence, and (3) the Court adopted the State's expert opinions in making its finding that Mr. Cameron suffers from a mental abnormality.**

II. STATEMENT OF THE CASE

A. Procedural History

On July 14, 2006, the State filed a sexually violent predator (SVP) petition seeking the involuntary civil commitment of Gary Cameron pursuant to RCW 71.09. CP at 1. When the petition was filed, Mr. Cameron was serving a prison sentence for Rape of a Child in the First Degree and was scheduled to be released into the community on July 18, 2006. Ex. 16; CP at 12. On July 19, 2006, the court entered an order affirming that probable cause existed to believe Mr. Cameron was an SVP, and he was transported to the Special Commitment Center (SCC) on McNeil Island. CP at 95.

Mr. Cameron waived his right to a jury, and his commitment trial proceeded by bench trial June 21, 2010, through June 23, 2010. RP at 26-560. On July 9, 2010, the trial court found that the State had proved beyond a reasonable doubt that Mr. Cameron is an SVP. CP at 73-87. On August 18, 2010, the trial court entered the Findings of Facts, Conclusions

of Law, and Order of Commitment. CP at 88. On September 10, 2010, Mr. Cameron filed a timely Notice of Appeal. CP at 91.

B. Sexually Violent Predator Trial

1. Sex Offense History

Appellant, Gary Cameron, has a long and extensive history of molesting and raping children. Ex. 8, 12, 16; Ex. 17 at 44:11-46:16, 68:1-20; RP at 35. He reports being aroused to children since age 15, and has admitted to daily sexual fantasies of prepubescent children. RP at 69. Mr. Cameron's strongest arousal is to boys, aged 8-10. RP at 78.

In 1976, Mr. Cameron was arrested for Indecent Liberties after having sexual contact with two boys. Ex. 17 at 33:4. The boys were about 13 years old and would visit Mr. Cameron at his home. *Id.* At trial, Mr. Cameron testified¹ that he had sex with each boy once. *Id.* After these offenses were detected, Mr. Cameron was sent to Eastern State Hospital (ESH). *Id.*

On September 26, 1984, Mr. Cameron was on probation for Burglary and Taking a Motor Vehicle. Ex. 1, 12, 17 at 39:6. The Department of Corrections filed a Petition to Revoke/Modify Probation against him for attempting to molest a minor named Brandon. Ex. 1. This

¹ Mr. Cameron's testimony was presented via video deposition, a transcript of which was marked as Exhibit 17 at trial. RP at 2.

charge was ultimately dismissed due to the victim's lack of competency, not because the prosecutor doubted the allegation. Ex. 2. Mr. Cameron received a sanction of 45 days in jail for other violations. Ex. 1, 3.

In July 1985, Mr. Cameron was arrested for having sex with an 11-year-old girl named Tammy. Ex. 17 at 44:7. Tammy's mother was an acquaintance of Mr. Cameron and left Tammy in his care so she could take her younger daughter to the hospital. *Id.* at 43:6. Mr. Cameron later testified that she pulled his penis out while he was alone with her in her bedroom. *Id.* at 44:11. She then removed her clothing, and Mr. Cameron placed his penis "in between her legs." *Id.* Mr. Cameron testified he did this because he "wanted to." *Id.* at 46:16. He also admitted he was "turned on" by Tammy. RP at 174-175.

On July 8, 1985, Mr. Cameron was charged with Indecent Liberties for his sexual contact with Tammy. Ex. 9. He pled guilty and was sentenced to 20 months incarceration. Ex. 10-12. Based on this conviction and other allegations of inappropriate contact with children, Mr. Cameron's probation was also extended for five years. Ex. 4-7.

In 1993, Mr. Cameron was arrested for raping his eight-year-old son, Aaron. Ex. 14; Ex. 17 at 63:8. Mr. Cameron admitted he anally raped Aaron numerous times over a five-month period. RP at 35. He told the presentencing investigator he did not stop raping his son because he

“was having too much fun.” *Id.* He also said he was unable to stop himself, and that “being locked-up is the only way” to stop him. *Id.*

On May 19, 1993, Mr. Cameron was charged with Rape of a Child in the First Degree for raping his son. Ex. 14. He accepted a plea agreement and was sentenced to 158 months of incarceration for this offense. Ex. 15-16.

Mr. Cameron has also admitted to several unadjudicated sexual offenses against children. RP at 68:1. He sexually assaulted two 10-year-old boys in the 1980’s. Ex. 17 at 68:9-20. He assaulted one boy four times, and the other once. *Id.* While Mr. Cameron denied sexual contact with a 13 year-old boy named Ken earlier in his deposition, later in his testimony he admitted to having sex with him one time. Ex. 17 at 51:22-52:21; 67:22-68:8. The evidence at trial proved that Mr. Cameron has sexually assaulted at least eight children.

2. Dr. Phenix

The State presented expert testimony from licensed psychologist Dr. Amy Phenix. RP at 40, 42. Dr. Phenix specializes in SVP evaluations and has evaluated or treated about 400 sex offenders in her practice. RP at 48-51.

Dr. Phenix was asked to evaluate Mr. Cameron for civil commitment as an SVP in 2005 by the Washington End of Sentence

Review Committee (ESRC). RP at 53. Dr. Phenix reviewed extensive records related to Mr. Cameron. RP at 54. They included criminal history, institutional, and psychological records, all of which are of the type commonly relied upon by experts who evaluate SVPs. RP at 52, 54. She also interviewed Mr. Cameron on two occasions. RP at 54-57. Prior to trial, Dr. Phenix reviewed additional records from the SCC, depositions, and the report by Mr. Cameron's trial expert, Dr. Abbott. RP at 57.

Dr. Phenix opined, to a reasonable degree of psychological certainty, that Mr. Cameron suffers from Pedophilia and that, in Cameron's case, it qualifies as a mental abnormality under RCW 71.09. RP at 62, 67, 82, 262-263. Pedophilia involves sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with prepubescent children that cause distress. RP at 67. Dr. Phenix based this diagnosis on Mr. Cameron's self-report and the pattern and duration of his offending behavior against children. RP at 68.

In addition to Pedophilia, Dr. Phenix diagnosed Mr. Cameron with Mild Mental Retardation (MMR) and Antisocial Personality Disorder (ASPD). RP at 67. Diagnosing MMR requires a low IQ measurement combined with impairments in adaptive functioning. RP at 83. ASPD involves a pervasive pattern of disregard for, and violation of, the rights of other people. RP at 89. Dr. Phenix held her opinion regarding each of

these diagnoses to a reasonable degree of psychological certainty. RP at 87, 109-110.

Dr. Phenix testified that Mr. Cameron's Pedophilia, MMR, and ASPD each impaired his volitional and emotional capacity. RP at 112-115. She also testified that these three conditions predispose Mr. Cameron to the commission of criminal sexual acts, and cause him to be a menace to the health and safety of others. RP at 116. Additionally, Dr. Phenix testified that each of these conditions causes Mr. Cameron to have serious difficulty controlling his behavior. RP at 116-117.

While Dr. Phenix opined that Mr. Cameron's Pedophilia, MMR, and ASPD collectively worked together to predispose him to commit criminal sexual behavior, she clarified that the Pedophilia diagnosis was a necessary component of Mr. Cameron's mental abnormality. RP at 121, 203. Neither MMR nor ASPD on its own would constitute a mental abnormality in Mr. Cameron's case. RP at 203.

Dr. Phenix also opined that Mr. Cameron's mental abnormality makes him likely to continue to commit acts of sexual violence in the future. RP at 127. In fact, Dr. Phenix testified that Mr. Cameron was likely to engage in predatory acts of sexual violence of not confined to a secure facility. RP at 127-128. She held this opinion to a reasonable degree of psychological certainty. *Id.*

3. Dr. Abbott

Mr. Cameron presented testimony from his expert, Dr. Brian Abbott. RP at 278. Dr. Abbott disagreed with Dr. Phenix's diagnoses. RP at 290-294, 303-304. He opined that Mr. Cameron's sexual offenses, impulse control problems, and antisocial behavior were better accounted for by a diagnosis of Dementia due to Head Trauma. RP at 288, 295, 303-304.

On cross examination, Dr. Abbott conceded that he made his dementia diagnosis without neuropsychological testing, contrary to generally accepted practice. RP at 438, 483. Instead, he based his diagnosis on "secondhand information" that did not indicate the location or the severity of a brain injury for Mr. Cameron. RP at 432-433.

Dr. Abbott found insufficient evidence to make a Pedophilia diagnosis. RP at 294. However, he testified that he would not expect Mr. Cameron to be forthcoming about his current sexual fantasies. RP at 450. Dr. Abbott also failed to order a penile plethysmograph (PPG) test to measure any sexual arousal Mr. Cameron might have to children despite Mr. Cameron reporting to Dr. Abbott sexual fantasies and behaviors involving children. RP at 438-451. Dr. Abbott did not deny that Mr. Cameron is sexually aroused to prepubescent children. RP at 452.

III. ARGUMENT

Mr. Cameron argues that the trial court erred when it committed him as an SVP because the State failed to prove beyond a reasonable doubt that he suffers from a mental abnormality. His argument is without merit. There was substantial evidence below that he suffers from a mental abnormality. Because of the overwhelming evidence at trial regarding Mr. Cameron's mental abnormality, this Court should affirm Mr. Cameron's commitment as an SVP.

A. Standard of Review

The criminal standard of review applies to sufficiency of the evidence challenges under the SVP statute. *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." *Thorell*, 149 Wn.2d at 744.

In reviewing the sufficiency of the evidence, the reviewing court does not determine whether *it* believes the evidence at trial was proven beyond a reasonable doubt. *State v. Hughes*, 154 Wn.2d 118, 152, 110 P.3d 192 (2005), *overruled on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). This Court must look at the evidence in the light most favorable to the State and

the commitment must be upheld if any rational trier of fact could have found the essential elements beyond a reasonable doubt. *In re the Detention of Audett*, 158 Wn.2d 712, 727-28, 147 P.3d 982 (2006).

Additionally, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against Appellant. *See Id*, 158 Wn. 2d at 727. An appellate court should not second guess the credibility determinations of the fact-finder. *In re the Detention of Halgren*, 156 Wn.2d 795, 811, 132 P.3d 714 (2006); *see also In re the Detention of Davis*, 152 Wn.2d 647, 680, 101 P.3d 1 (2004) ("A trial court's credibility determinations cannot be reviewed on appeal, even to the extent there may be other reasonable interpretations of the evidence.") Appellate courts defer to the trier of fact regarding a witness's credibility, conflicting testimony, and the persuasiveness of the evidence. *In re the Detention of Broten*, 130 Wn. App. 326, 335, 122 P.3d 942 (2005). "Determinations of credibility are for the fact finder and are not reviewable on appeal." *Hughes*, 154 Wn.2d at 152.

B. Cameron Was Properly Found to Suffer From a Mental Abnormality

There was sufficient evidence for the trial court to find, beyond a reasonable doubt, that Mr. Cameron suffers from a mental abnormality. In

fact, when viewed in a light most favorable to the State, the evidence overwhelmingly supported the trial court's finding.

An SVP is an individual "who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility."² RCW 71.09.020(18). A mental abnormality is:

A congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sex acts in a degree constituting such person a menace to the health and safety of others.

RCW 71.09.020(8). Additionally, the mental abnormality or personality disorder, coupled with the person's history of sexually predatory acts, must support the conclusion that the person has serious difficulty controlling his behavior. *Thorell*, 149 Wn.2d at 742.

The definition of mental abnormality is tied directly to present dangerousness. *In re the Detention of Henrickson*, 140 Wn.2d 686, 692, 2 P.3d 473 (2000). Due process requires that an individual be both mentally

² "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that "the person more probably than not will engage in such acts" if unconditionally released. RCW 71.09.020(7). A mental abnormality is "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others." RCW 71.09.020(8).

ill and presently dangerous before he may be civilly committed. See *In re the Detention of Young*, 122 Wn.2d 1, 27, 857 P.2d 989 (1993).

When a person is incarcerated prior to the civil commitment trial, the State may rely on the offender's offense history, mental condition, expert testimony, and other relevant, probative evidence to establish the offender's current dangerousness. See *Froats v. State*, 134 Wn. App. 420, 438-39, 140 P.3d 622 (2006). "The point of *Young* is that an individual's conduct during incarceration is not necessarily probative of current dangerousness given the relative difficulty, if not impossibility, of committing an offense during incarceration." *Id.*, 134 Wn. App. at 439. The Washington Supreme Court has held that, by properly finding all the statutory elements are satisfied to commit someone as an SVP, the fact-finder impliedly finds that the person is currently dangerous. *In re the Detention of Moore*, 167 Wn.2d 113, 124-25, 216 P.3d 1015 (2009). Unchallenged findings are verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004); *In re Detention of Anderson*, 166 Wn.2d 543, 549, 211 P.3d 994 (2009).

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences must be drawn in favor of the State. *Audett*, 158 Wn.2d at 727. Dr. Phenix testified in detail about how she assessed Mr. Cameron's mental state. See RP at 62-121, 262-267,

483-494. Dr. Phenix testified that in her expert opinion, to a reasonable degree of psychological certainty, Cameron suffers from a mental abnormality. RP at 120-121. Viewing the evidence in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, a rational trier of fact would have found that Cameron suffers from a mental abnormality. *See Audett*, 158 Wn.2d at 727-28.

1. Sufficient Evidence was Presented at Trial to Find Cameron Suffers from a Mental Abnormality

Mr. Cameron argues that insufficient evidence supports the finding that Mr. Cameron suffers from a mental abnormality. Appellant's Brief at 16. However, there was substantial evidence at trial that Mr. Cameron's mental deficiencies constituted a mental abnormality.

Dr. Phenix testified that Mr. Cameron's Pedophilia was the "driving force" behind his mental abnormality. RP at 113-114. The ASPD and MMR disorders also worked together with Mr. Cameron's Pedophilia to affect his predisposition to engage in criminal sexual behavior. RP at 121. Her testimony about the bases of her opinion, as well as other evidence, supported her diagnostic opinions.

a. Pedophilia

Pedophilia involves sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with prepubescent children that cause

distress. RP at 67. The criteria to make this diagnosis are found in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (*American Psychiatric Association, 4th ed. 2000*), the standardized diagnostic manual used by psychologists in the United States. RP at 62-64. Dr. Phenix used these criteria when diagnosing Mr. Cameron with Pedophilia and his other disorders. *Id.*

Dr. Phenix based her Pedophilia diagnosis on Mr. Cameron's self-report, and the pattern and duration of his offending behavior against children. RP at 68. In their interview, Mr. Cameron admitted to her that he had almost daily fantasies of prepubescent children for many years when he was offending. RP at 69. He also told her that his strongest sexual arousal was to boys, aged 8-10. RP at 78.

Records Dr. Phenix relied upon in forming her opinions reveal that, since 1976, Mr. Cameron has had numerous victims under the age of 12. RP at 52, 54, 69-78. In 1976, he sodomized three boys, aged 8, 10, and 12, several times during the course of a summer. RP at 69-70. He was alleged to have molested a minor named Brandon in 1984. RP at 71. In 1985, he was convicted of sexually assaulting 11-year-old Tammy. RP at 72-73, Ex. 12. In fact, the offense against Tammy came to light when police were investigating allegations that Mr. Cameron had molested a two-year-old boy named Shawn. RP at 275, Ex. 17 at 21:22. Before

Mr. Cameron was incarcerated in 1993, he was convicted of raping his eight-year-old son, Aaron, 2-3 times per week over the course of four months. RP at 77.

Mr. Cameron admitted to most of these offenses at trial. Ex. 17 at 33:4-35:5, 44:7-46:16, 63:8-24, 67:22-68:24, 70:1. He testified that sex with somebody younger “feels better.” Ex. 17 at 70:5-10. He also admitted several of his offenses to Dr. Phenix. RP at 173-177.

Mr. Cameron discussed his sexual interest in children with others who testified at trial. He told Rob Van Allen, the presentencing investigator for his 1993 Rape of a Child conviction, that he had molested “quite a few kids.” RP at 35. He told his own expert, Dr. Abbott, that he had sexual thoughts about his 1985 victim. RP at 439.

Mr. Cameron testified that, while he liked the feeling of having sex with children earlier in his life, it was no longer fun for him. Ex. 17 at 69:4-16. Accordingly, he quit having sex with boys in 1993. *Id.* at 68:25-69:3. Dr. Phenix opined that Mr. Cameron did not just “quit” being sexually interested in kids. RP at 120. Pedophilia is a pervasive and enduring disorder, and Mr. Cameron has a chronic history of sexually assaulting children. RP at 80. He has not had offenses since 1993 because he has been continually incarcerated since that time, and he has not had access to children during his incarceration and detention. RP at 118.

Dr. Phenix testified that, given the pervasive nature of Pedophilia, Mr. Cameron still experiences the disorder. RP at 80, 118. She noted that Mr. Cameron had reoffended against children each time he was released from incarceration or ESH. RP at 119. Additionally, she opined that minimization of pedophilic interest is not uncommon on SVP cases because Respondents such as Mr. Cameron, know there could be negative implications to such admissions in this context. RP at 79, 267.

Based on this evidence, a rational trier of fact could easily have found that Cameron suffers from Pedophilia; indeed, no rational trier of fact could have concluded otherwise.

b. MMR

Diagnosing MMR requires a low IQ measurement combined with impairments in adaptive functioning. RP at 83. Dr. Phenix based her diagnosis of MMR for Mr. Cameron on his low IQ scores, and historically being diagnosed with MMR several times in the past. RP at 83. Impairments in Mr. Cameron's adaptive functioning noted by Dr. Phenix included communication problems, poor grooming, inability to keep a job, and needing structured day treatment programs in the community. RP at 84-85, 239. Dr. Phenix testified that Mr. Cameron's MMR was not as pronounced at the SCC because of its structured setting and the daily repetition he can rely on in that setting. RP at 490.

c. ASPD

ASPD involves a pervasive pattern of disregard for and violation of the rights of other people. RP at 89. In addition to his sex offenses, Mr. Cameron testified to a long history of this type of behavior at trial. He went to juvenile detention in 1973 for taking a car for a joyride. Ex. 17 at 25:22-27:8. In the same year, he was arrested for stealing tools from a farmer because he thought he needed them himself. *Id.* at 27:13-28:11. He was expelled from school for pulling a knife on a teacher. *Id.* at 29:14-30:23. In 1980, Mr. Cameron was arrested for stealing a car from a lot with a friend. *Id.* at 39:6-40:21. He was arrested for stealing another car in 1990. *Id.* at 55:21-57:17. This time, Mr. Cameron stole a car from a farmer after his car caught on fire in a ditch. *Id.*

Like all personality disorders, ASPD has a chronic course. RP at 118. Based on Mr. Cameron's self-report and corroborating records, Dr. Phenix found that Mr. Cameron met each of the criteria for ASPD. RP at 87-110. In fact, she opined that Mr. Cameron's ASPD was a "pretty classic" case of the disorder. RP at 237.

d. Mental Abnormality

Each of the three disorders Dr. Phenix diagnosed Mr. Cameron with work together with the other disorders to predispose him to commit criminal sexual behavior. RP at 121. However, Dr. Phenix opined that

Mr. Cameron's Pedophilia is the "driving" mental disorder out of the three. RP at 112, 118. In fact, Dr. Phenix testified that the Pedophilia diagnosis is a necessary component of Mr. Cameron's mental abnormality. RP at 203.

In addition to diagnosing Mr. Cameron with Pedophilia, Dr. Phenix opined that his disorder affects Mr. Cameron's emotional and volitional capacity and causes him to have serious difficulty controlling his behavior. RP at 112-117. While not necessary components of his mental abnormality, Mr. Cameron's MMR and ASPD also affect these capacities. *Id.* Therefore, while Mr. Cameron's Pedophilia is sufficient to establish his mental abnormality, the existence of MMR and ASPD exacerbate it.

(1) Emotional Capacity

A disorder affects a person's emotional capacity when a person's emotional response to a situation is abnormal and can further their sexual offending. RP at 65-66. Dr. Phenix explained that Mr. Cameron's Pedophilia affects his emotional capacity because it causes him to be willing to sexually assault children. RP at 112. His ASPD affects this capacity because it causes Mr. Cameron to lack remorse and makes him willing to violate the rights of others. RP at 111. Dr. Phenix illustrated this point by pointing out that Mr. Cameron continued sodomizing his son

despite Aaron screaming from the pain. *Id.* Mr. Cameron's MMR also affects his emotional capacity by causing him to have more shallow emotions and a lack of responsiveness. RP at 112.

(2) Volitional Capacity

Volitional capacity involves a person's behavioral controls. RP at 66. As the driving force of his mental abnormality, Mr. Cameron's Pedophilia compels him to gratify himself sexually with children. RP at 113-114. Dr. Phenix noted that this compulsion in Mr. Cameron was very chronic compared to other types of pedophiles. *Id.* His ASPD affects Mr. Cameron's volition because it disinhibits mechanisms that would tell him that his sexual thoughts of children are abnormal and illegal. RP at 113. The ASPD helps Mr. Cameron act on his pedophilic urges. *Id.* Mr. Cameron's MMR also affects his behavioral controls because it affects his ability to think through the consequences of acting on his pedophilic urges. *Id.*

(3) Serious Difficulty Controlling Behavior

Mr. Cameron's sexual attraction to children is so pervasive that it causes him serious difficulty controlling his sexually violent behavior. Dr. Phenix opined that, generally, pedophiles can control their urges and fantasies to have sex with children. RP at 116-117. However, looking at

Mr. Cameron's pattern of offending behavior, he clearly has serious difficulty controlling himself. *Id.*

Mr. Cameron seems to understand his own poor behavioral controls because he admitted that being "locked up" is the only way to prevent him from offending. RP at 35, 119. He has also admitted in the past that he did not stop offending because he was having "too much fun" and he could not stop himself. RP at 35. At trial, he acknowledged that he did not like prison, and did not want to go back. Ex 17 at 48:6-9. However, he did return to jail for his sex offending. Ex. 16.

Based on this evidence, a rational trier of fact could find that Mr. Cameron suffers from a mental abnormality.

2. The Trial Court's Findings Were Supported by the Evidence.

Mr. Cameron argues that the trial court "fashioned its own lay theory for Mr. Cameron's mental abnormality." Appellant's Brief at 14. This argument also lacks merit. At trial, Drs. Phenix and Abbott presented conflicting opinions about Mr. Cameron's mental state. The trial court found Dr. Phenix' opinion to be more credible.

In its oral ruling, the Court found that:

"[t]he State has established with evidence beyond a reasonable doubt that [Cameron] suffers from a mental abnormality or personality disorder, which is Pedophilia,

which makes him likely to engage in sexual violence if not confined to a secure facility.”

CP at 85-86. In the order civilly committing Mr. Cameron, the Court made the same finding. CP at 88.

Dr. Phenix testified, to a reasonable degree of psychological certainty, that Mr. Cameron suffers from a mental abnormality. RP at 184. She described Mr. Cameron’s Pedophilia as the “driving” mental disorder behind the mental abnormality. RP at 112, 118. She also testified that she would be unable to find that Mr. Cameron suffered from a mental abnormality without the Pedophilia diagnosis.³ RP at 203. The Court’s findings are congruent with Dr. Phenix’s opinion.

Mr. Cameron argues that, because the court did not make explicit findings regarding Dr. Phenix’s diagnoses of MMR and ASPD, it had an insufficient basis to find a mental abnormality. Appellant’s Brief at 15-16. This is absurd. Mr. Cameron is essentially arguing that because, in addition to his Pedophilia, evidence of two other disorders exacerbating his mental condition were presented at trial, somehow evidence of his Pedophilia vanishes. This is clearly not the case. As detailed above, an abundance of evidence was presented at trial concerning how

³ Mr. Cameron argues that MMR and ASPD were essential to Dr. Phenix’s mental abnormality finding. Appellant’s Brief at 14. However, Dr. Phenix makes no such statement in her testimony. The only diagnosis essential to Mr. Cameron’s mental abnormality is his Pedophilia. RP at 112, 118, 203.

Mr. Cameron's Pedophilia affected his emotional and volitional capacity, and predisposed him to commit sexual offenses against children, his comorbid disorders notwithstanding. Mr. Cameron's MMR and ASPD compound his Pedophilia, and do not make it insufficient as Mr. Cameron argues.

C. A Court May Accept or Reject Portions of Expert Testimony in Making its Findings

Mr. Cameron takes issue with the trial court allegedly rejecting portions of Dr. Phenix's testimony. Appellant's Brief at 15. Even if true, this argument is inconsistent with the law governing how fact-finders use expert testimony. A fact-finder has the power to accept or reject an expert's testimony, wholly or partly, and a reviewing court will not second guess their credibility decisions. *Kohfeld v. United Pac. Ins. Co.*, 85 Wn. App. 34, 42, 931 P.2d 911 (1997). Expert testimony does not, as a matter of law, take precedence over lay testimony. *Windsor v. Bourcier*, 21 Wn.2d 313, 316, 150 P.2d 717 (1944). A fact-finder, therefore, enjoys broad latitude in deciding how much weight to assign the expert testimony. *Windsor*, 21 Wn.2d at 316; *Marriage of Sedlock*, 69 Wn. App. 484, 491, 849 P.2d 1243 (1993). It has long been recognized that:

“There is, generally speaking, no rule of law which requires controlling effect or influence to be given to, and the court and jury are not required to accept in the place of their own judgments, the opinion testimony of expert witnesses

merely because of the special knowledge of the witnesses concerning the matters upon which they give their testimony. Expert opinions are not ordinarily conclusive in the sense that they must be accepted as true on the subject of their testimony, but are generally regarded as purely advisory in character; the jury may place whatever weight they choose upon such testimony and may reject it, if they find that it is inconsistent with the facts in the case or otherwise unreasonable. Generally speaking, no distinction is made in this regard between expert testimony and evidence of other character.”

Richey & Gilbert Co. v. N.W. Nat. Gas Corp., 16 Wn.2d 631, 649-50, 134 P.2d 444 (1943) (quoting 20 Am. Jur. 2d (Costs) at 1059). Therefore, even assuming that the trial court accepted part of Dr. Phenix’s testimony and rejected other parts, such was well within the fact-finder’s discretion. The Court had substantial evidence to make its finding that Mr. Cameron is an SVP.⁴

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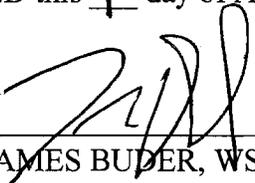
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⁴ An SVP may suffer from multiple mental abnormalities or personality disorders. The legislative purpose of the SVP statute would be thwarted if an SVP with only one requisite condition could be civilly committed, but a person suffering from multiple requisite conditions could not. *See In re Young*, 122 Wn.2d 1, 58, 857 P.2d 989 (1993).

IV. CONCLUSION

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

RESPECTFULLY SUBMITTED this 1st day of April, 2011.



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NO. 29385-8-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

In re the Detention of:

GARY CAMERON,

Respondent.

DECLARATION OF
SERVICE

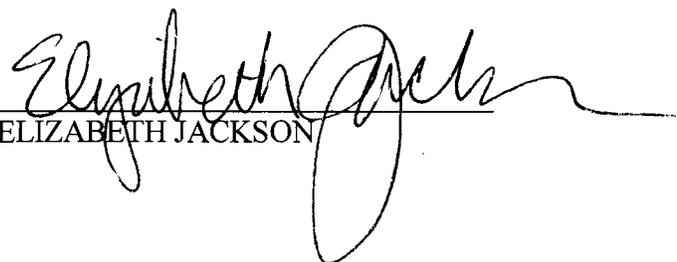
I, Elizabeth Jackson, declare as follows:

On this 15th day of April, 2011, I deposited in the United States mail true and correct copies of Brief of Respondent and Declaration of Service, postage affixed, addressed as follows:

Eric Nielsen
Nielsen Broman & Koch PLLC
1908 E Madison Street
Seattle, WA 98122-2842

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

DATED this 15th day of April, at Seattle, Washington.


ELIZABETH JACKSON

ORIGINAL