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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Hon. Roger M Young, Circuit Court Judge

Appellate Case No. 2020-000697

IN THE MATTER OF THE CARE AND TREATMENT OF
CRAIG A CARROLL, APPELLANT

APPELLANT'S PETITION FOR RECONSIDERATION

Rehearing is appropriate and necessary in this case because the panel misapprehended appellant's burden of proof under SC Code § 44-48-110 necessary to establish that probable cause exists to believe that appellants mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence. By affirming the trial court's decision denying appellant's request for a release trial under SC Code § 44-48-110, the panel misapprehended the quantum of proof necessary to establish probable cause under this statute. The trial court considered the testimony from both appellant's and the State's expert and decided that the State's expert was more credible. The trial court failed to follow the probable cause standard of proof in evaluating appellant's evidence. In considering whether appellant satisfied his probable cause burden, the trial court should have focused its attention upon the existence of appellant's proof as opposed to the relative weight to be given to the proof. *Probable cause does not demand any showing that such a belief be correct or more likely true than false.* In re Care & Treatment of Chandler v. State, 382 S.C. 250, 257-58, 676 S.E.2d 676,

680 (2009) By weighing the relative credibility of the testimony from the two competing experts, the trial court appeared to follow a preponderance of the evidence standard and not a mere probable cause standard to evaluate appellant's proof. If left to stand, the trial court's decision creates a unique definition of probable cause for use under § 44-48-110.

In drafting the Sexually Violent Predator Act, the legislature adopted "probable cause" as the relevant burden of proof for two separate proceedings under the Act. A release hearing under § 44-48-110 and a probable cause determination and hearing under SC Code §§ 44-48-070 and 44-48-080. There is no evidence that the legislature intended for the quantity and quality of proof necessary to establish probable cause burden under § 44-48-110 to be any different than would be required under §§ 44-48-070 and 44-48-080.

The term probable cause is not defined by the act The SVP Act, thus its meaning must *be interpreted in accordance with its usual and customary meaning. Courts should not merely consider the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.* S.C. Energy Users Comm. v. S.C. PSC, 388 S.C. 486, 492, 697 S.E.2d 587, 590 (2010) *citing* Branch v City of Myrtle Beach, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000). In considering if the State met its probable cause burden under § 44-48-80, probable cause has been described *as a flexible, common-sense standard and that very term itself, "probable cause," does not import absolute certainty.* Brown v State, 372 S.C. 611, 619, 643 S.E.2d 118, 122 (Ct. App. 2007). In Brown the State appealed the trial court's decision that State failed to establish probable cause under § 44-48-80. The Brown court explained the probable cause standard under the statute as follows: *In the context of probable cause to believe someone to be a sexually violent predator, probable cause requires that the evidence presented would lead a reasonable person to believe and*

conscientiously entertain suspicion that the person meets the definition of a sexually violent predator. Id. Brown v. State, 643 S.E.2d 118, 122-23.

The court was presented with two expert opinions. The court-appointed expert Dr. Michelle Jones Ph. D. and Appellant's independent expert, Dr Yadira Baez Lockard, PsyD. The trial court allowed Dr Lockard to testify as an expert in the field of forensic psychology. Dr Lockard is a licensed psychologist in the field of forensic and clinical psychology. She has a master's degree from the Adler School of Professional Psychology. She also has a doctoral degree from the Adler School of Professional Psychology from Chicago. She has both a forensic practice and a clinical practice.

If the panel were to apply the same probable cause burden on appellant as stated in Brown, the issue becomes whether Dr Lockard's testimony would be sufficient to lead a reasonable person to believe and conscientiously entertain **suspicion** that appellant no longer met the definition of a sexually violent predator. Therefore in order to affirm the trial court's decision, the panel had to have determined that Dr Lockard's testimony was so lacking in value that it was insufficient to create even a reasonable suspicion that appellant was no longer a sexually violent predator.

If the trial court had found that appellant met its probable cause burden, the Court then must set a date for a release trial. At a release trial under § 44-48-110 the State must prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence. If the trial court had found that appellant met his probable cause burden, then the fact finder would hear both Dr Lockard's as well as and that of the State's expert Dr. Michelle Jones, Ph.D. The fact finder would then have the opportunity to weigh the credibility of the experts' testimony in reaching its verdict. However, by ruling that appellant failed to establish probable

cause, the trial court usurped the factfinder's prerogative to consider the credibility of the witnesses' testimony.

CONCLUSION

Based upon the foregoing matter set forth in the Brief of Appellant, appellant respectfully requests that the panel reverse its unpublished opinion, and remand this matter back to the trial court to set a date for a release trial pursuant to SC Code § 44-48-110.

s/ James Falk

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