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STATE OF SOUTH CAROLINA

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IN THE COURT OF APPEALS

NOV 05 2014

SC Court of Appeals

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF ANDREW GOODWIIN,

APPELLANT

APPELLATE CASE NO. 2014-001038

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by denying Goodwin's motion for a directed verdict where the state failed to present sufficient evidence he was a sexually violent predator?

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Andrew Goodwin at the April 15, 2009 term of General Sessions for murder and two counts of first degree criminal sexual conduct.¹ R. 177; R. 180. On May 13, 2010, Goodwin pled guilty before the Honorable J. Michelle Childs to voluntary manslaughter, first degree criminal sexual conduct, and the lesser included offense of third degree criminal sexual conduct. Assistant Solicitor Heather Weiss represented the state, and Anastasia L. Walker represented Goodwin. Judge Childs sentenced Goodwin to five years imprisonment for voluntary manslaughter, five years concurrent for first degree criminal sexual conduct, and ten years concurrent for third degree criminal sexual conduct. R. 178; R. 181; R. 143, l. 17 – 144, l. 5.

Prior to his release from prison, the South Carolina Department of Corrections referred Goodwin to the Multi-Disciplinary Team to determine whether Goodwin satisfied the definition of a sexually violent predator (SVP) pursuant to S.C. Code Ann. § 44-48-30. R. 1. On June 24, 2013, the Multi-Disciplinary Team found Goodwin met the statutory definition of a sexually violent predator and referred his case to the Prosecutor's Review Committee to determine whether there was probable cause to believe Goodwin was a sexually violent predator. R. 1. Goodwin's case was reviewed by the Prosecutor's Review Committee on July 18, 2013. The Committee found probable cause to believe Goodwin "has been convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes [him] likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." R. 1.

¹ The murder indictment and one count of first degree criminal sexual conduct pertained to the same victim. The second count of first degree criminal sexual conduct was unrelated and involved a different victim.

On July 24, 2013, the state filed a Petition Pursuant to the Sexually Violent Predator Act requesting the court find there is probable cause to believe Goodwin is a sexually violent predator. R. 1-5. The Honorable L. Casey Manning signed a Probable Cause Order on July 31, 2013 and a probable cause hearing was held where probable cause was found. R. 43. On October 7, 2013, the court ordered Goodwin undergo a psychiatric evaluation to determine whether he is a sexually violent predator. Goodwin was ultimately evaluated on December 12, 2013 by the South Carolina Department of Mental Health.

On May 12, 2014, Goodwin proceeded to trial before the Honorable James R. Barber, III, and a jury. R. 44. Assistant Attorney General Nicole T. Wetherton represented the state, and David E. Belding represented Goodwin. R. 44. The jury found that Goodwin was a sexually violent predator according to the SVP Act. R. 174, ll. 3-16. Judge Barber issued an order committing Goodwin to the Department of Mental Health for long term control, care, and treatment. R. 189.

This appeal follows.

ARGUMENT

The court erred by denying Goodwin's motion for a directed verdict where the state failed to present sufficient evidence he was a sexually violent predator.

Relevant Facts

The state presented the testimony of only two witnesses: Dr. Kimberly Harrison and Heather Weiss. R. 45.

Dr. Harrison, who was qualified as an expert in forensic psychology without objection, testified that Goodwin had three prior convictions for sexually violent offenses. She maintained that Goodwin pled guilty in 1975 to the rape of a ninety-one year old woman. The allegations pertaining to this conviction were that Goodwin, who was only sixteen years old at the time, and two friends burglarized the woman's home, stole ten dollars, and raped her. According to Harrison, Goodwin was sentenced to twenty years imprisonment suspended upon the service of fifteen years imprisonment for this conviction. R. 95, l. 13 – 96, l. 8.

Harrison also testified that Goodwin was convicted of voluntary manslaughter and first degree criminal sexual conduct after the "body of a 32-year-old woman was found in a wooded area and it was determined that she had been raped and strangled." R. 90, ll. 14-20. This incident allegedly occurred in October 1999. R. 94, ll. 8-9. Harrison indicated that Goodwin received a sentence of five years imprisonment for this offense. R. 91, ll. 10-12.

Lastly, Harrison testified that Goodwin was also convicted of third degree criminal sexual conduct after Goodwin "led [a woman] to a vacant lot and told her that he had a gun on him and then proceeded to force her to engage in both oral and vaginal sex."

Harrison explained that Goodwin was originally charged with first degree criminal sexual conduct in regards to this event but was convicted of the lesser included offense and sentenced to ten years imprisonment. R. 93, ll. 4-18. This incident allegedly occurred in September 1999. R. 94, ll. 9-10.

Moreover, Harrison listed Goodwin's other prior convictions, specifically possession of marijuana, grand larceny of a vehicle, shoplifting, forgery, possession of a stolen vehicle, criminal domestic violence, possession of crack cocaine, drinking alcohol in a public conveyance, unlawful carrying of a weapon, and failure to register as a sex offender. R. 96, l. 18 – 97, l. 1. She maintained that these prior convictions were significant because they indicated Goodwin's "resistance to rules and supervision" which is a risk factor for reoffending. She also said his criminal history "suggests an antisocial orientation, that he continually violates the rights of others in various ways, not just through sex offending but in other ways as well." R. 97, ll. 2-13.

Harrison testified that she met with Goodwin for two hours and forty minutes as part of her evaluation. R. 100, ll. 15-17. She testified that it is her opinion Goodwin "has both a mental abnormality and a personality disorder." R. 103, ll. 23-24. She said, "In terms of the mental abnormality, I diagnosed him with something that's called Other Specified Paraphilic Disorder, specifically biastophilia." R. 103, l. 24 – 104, l. 1. She explained that a "paraphilia disorder basically means that someone has deviant sexual interests" and that Goodwin "meets criteria for a specific paraphilia called bisatophilia which is basically becoming aroused to rape scenarios, so being aroused to having sex with nonconsenting individuals." R. 104, ll. 1-12. Harrison testified that biastophilia is not considered curable, but "may be treatable or manageable if the person desires to stop

their behavior and is given the appropriate tools or is placed in confinement where they're not allowed to have sex with nonconsenting partners." R. 104, l. 23 – 105, l. 4.

Additionally, Harrison maintained that Goodwin has "Antisocial Personality Disorder." R. 105, ll. 8-19. She explained, "So antisocial just means that someone doesn't like following the rules. They don't care about violating the rights of other people. They tend to be deceptive, impulsive." R. 105, ll. 19-22. However, she maintained that "most people who are in prison, a large majority of them would meet criteria for Antisocial Personality Disorder, just this chronic rule-breaking behavior." R. 105, ll. 23-25. Harrison again indicated that Antisocial Personality Disorder is not curable, but can be managed. R. 106, ll. 11-14.

Furthermore, Harrison maintained that because of Goodwin's mental abnormality and personality disorder he is likely to reoffend and the combination of a "sexual deviance" and "antisocial orientation" "tends to make for the most dangerous sex offenders." R. 106, l. 18 – 107, l. 12.

Lastly, Harrison testified that it is her opinion Goodwin has the propensity to commit future sexually violent offenses and that he has difficulty controlling his sexual behavior. She said, "I would say that his [Goodwin's] biastophilia, in combination with the Antisocial Personality Disorder, does make him likely to commit acts of sexual violence." She also maintained that "based on a reasonable degree of psychological certainty," Goodwin meets the legal criteria to be found to be a sexually violent predator. R. 109, ll. 24 – 110, l. 18.

On cross-examination, Harrison talked specifically about the Static-99R, which is a risk assessment test she performed to reach her conclusions. She explained, "It's sort of

like . . . a checklist of risk factors . . . that we use to help determine risk of sexual violence in the future.” R. 112, ll. 11-20. She maintained that the Static-99R is the only objective risk assessment instrument available. R. 126, ll. 19-21. According to Harrison, the range one can score on the on the Static-99R is as low as negative three and as high as ten. She testified that Goodwin “scored a four,” which is “considered in the moderate range.” R. 127, ll. 18-23.

Additionally, Harrison explained that the Static-99R provides “an estimate of the sexual recidivism of people with a given score.” She testified, “the sample of sex offenders that they looked at, of everybody who scored the same as Mr. Goodwin, about 15 percent of them re-offended sexually over five years, and about 22 to 23 percent of them re-offended sexually over the next ten years.” Put more simply, Harrison said that one out of four individuals who score a four on the Static-99R reoffended in ten years. R. 129, ll. 11-24.

Heather Weiss testified that she used to work for the Fifth Circuit Solicitor’s Office in Richland County and that she was assigned to prosecute Goodwin’s criminal sexual conduct cases in 2007. R. 137, l. 13 – 138, l. 7. She explained that they were “two very old cases” and were both from 1999. One case involved a murder and first degree criminal sexual conduct and the other only involved a charge of first degree criminal sexual conduct. R. 138, l. 22 – 139, l. 1.

Weiss testified that when Goodwin was arrested in 2007 for failing to register as a sex offender, the state obtained a sample of his DNA and entered it into the CODIS

database.² She explained that there was “a CODIS hit” and that Goodwin’s DNA was a match to DNA recovered “from a deceased victim back in 1999.” R. 139, ll. 2-8. Weiss testified that after a Schmerber³ hearing where the state obtained another sample of Goodwin’s DNA, the State Law Enforcement Division (SLED) “verified that it was his [Goodwin’s] D.N.A. that was found on the body of the deceased victim.” R. 139, ll. 14-24.

Weiss further explained that a cold case investigator with the Columbia Police Department eventually made a connection between this case and another criminal sexual conduct case from 1999. She testified that that investigator located the other victim and showed her a photographic lineup where she identified Goodwin as the perpetrator. However, Weiss maintained that because of the passage of time DNA evidence from the second case had been lost or destroyed. R. 139, l. 25 – 140, l. 14.

According to Weiss, due to the weaknesses in each case, she offered Goodwin a favorable plea deal with the hopes of later seeking to classify him as a sexually violent predator so “he would be kept away from society.” R. 140, l. 15 – 143, l. 16.

Motion for a Directed Verdict

At the conclusion of the state’s case, trial counsel moved for a directed verdict arguing the state failed to present sufficient evidence Goodwin was a sexually violent predator. R. 148, ll. 12-13. Counsel emphasized Dr. Harrison’s testimony that there was only a fifteen percent chance Goodwin would reoffend in the next five years and only a

² CODIS is an acronym for the “Combined DNA Index System” and is a national database containing DNA profiles contributed by participating federal, state, and local forensic laboratories.

³ Schmerber v. California, 384 U.S. 757 (1966).

twenty-two percent chance he would reoffend in the next ten years. He argued that “in no statistical analysis would that be considered likely to re-offend.” R. 148, ll. 15-23.

Trial counsel also argued that the state failed to show Goodwin displayed a pattern of behavior suggesting he would reoffend in the future. He stressed that there was a twenty-five year gap between Goodwin’s first conviction for a sexually violent offense and the events that led to his criminal sexual conduct convictions in 2010. R. 148, l. 24 – 149, l. 5. Counsel concluded that “under the standard . . . set forth by the United States Supreme Court, I don’t think that they [the state] have shown that he [Goodwin] is likely to engage in future acts of sexual violence unless he is committed for, you know, long-term treatment, care, and control.” R. 149, ll. 6-11.

The court ultimately denied Goodwin’s motion finding “the doctor testified that there’s evidence that he [Goodwin] was convicted of a sexually violent offense and there’s evidence that, based on the doctor’s testimony, that he suffers from a mental abnormality and a personality order that makes him likely to engage . . . in an act of sexual violence.” R. 150, ll. 11-17.

Discussion

The court erred by denying Goodwin’s motion for a directed verdict where the state failed to present sufficient evidence he was a sexually violent predator.

“In ruling on a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight.” In the Matter of the Care and Treatment of Johnny Matthews, 345 S.C. 638, 647, 550 S.E.2d 311, 315 (2001) (citing State v. Cooper, 334 S.C. 540, 551-552, 514 S.E.2d 584, 590 (1999)). S.C. Code Ann. § 44-48-30(1) defines “sexually violent predator” as someone who “has been convicted of a sexually violent

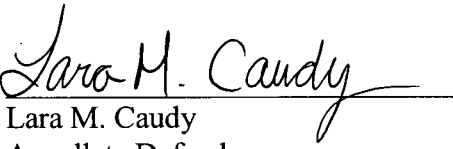
offense” and “suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.” “Mental Abnormality” is defined in the Act as “a mental condition affecting a person’s emotional or volitional capacity that predisposes the person to commit sexually violent offense.” S.C. Code Ann. § 44-48-30(3). Additionally, “likely to engage in acts of sexual violence” under the Act “means the person’s propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.” S.C. Code Ann. § 44-48-30(9).

While the state presented evidence that Goodwin has been convicted of a sexually violent offense and that he suffers from a mental abnormality or personality disorder, the state wholly failed to present sufficient evidence that Goodwin was “likely to engage in acts of sexual violence if not confined in a secure facility” as required under the Act. Dr. Harrison testified that individuals with the same score as Goodwin on the Static-99R risk assessment test were only fifteen percent likely to reoffend in the next five years and only twenty-two percent likely to reoffend within the next ten years. See R. 129, ll. 11-24. Statistically, these numbers make it extremely unlikely that Goodwin will “engage in acts of sexual violence” within the next ten years. Therefore, the trial court erred by failing to direct a verdict in favor of Goodwin. This Court should vacate the order of commitment, direct a verdict in favor of Goodwin, and order he be released.

CONCLUSION

Based on the foregoing argument, this Court should direct a verdict in favor of Appellant, vacate the order of commitment, and order Appellant be released.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of November, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

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APPELLANT

APPELLATE CASE NO. 2014-001038

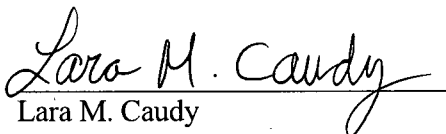
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andrew Goodwin states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before the Honorable James R. Barber, III, which was held on May 12, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Andrew Goodwin.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of November, 2014.

STATE OF SOUTH CAROLINA

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Appeal from Richland County

James R. Barber, III, Circuit Court Judge

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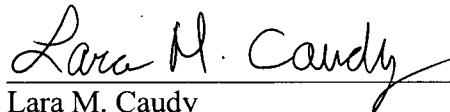
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Petition Pursuant to the Sexually Violent Predator Act dated July 24, 2013;
- (2) Probable Cause Order dated July 31, 2013;
- (3) Entire trial transcript dated May 12, 2014;
- (4) State's Exhibit No. 1;
- (5) State's Exhibit No. 2;
- (6) State's Exhibit No. 3;
- (7) Order of Commitment dated May 12, 2014.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 5th, 2014



Lara M. Caudy
Appellate Defender

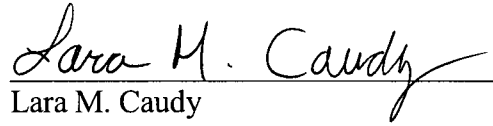
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 5, 2014



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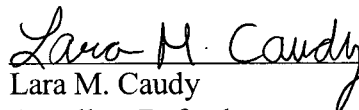
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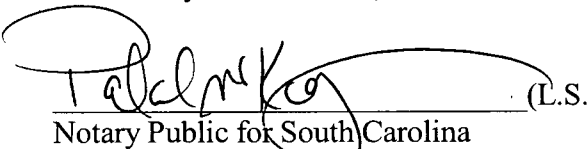
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Andrew Goodwin, #298432 at Sexual Violent Predator Program, 7901 Farrow Road, Columbia, SC 29203, this 5th day of November, 2014.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of November, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022