ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF DUSTY A. CYR,

APPELLANT

APPELLATE CASE NO. 2012-211486

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing the forensic expert, Dr. Peggy Wadman, to testify about the details of the sexually violent offenses that Appellant Cyr previously pled guilty to during his trial for commitment to the Sexually Violent Predator Program?

STATEMENT OF THE CASE

In April 2005, Dusty Cyr pled guilty to three counts of committing a lewd act on a minor child. He was sentenced to ten years on each charge with all to run concurrently. See State's Exhibit 1-3. Prior to his release from incarceration, Cyr was referred to the Multidisciplinary Team to determine if there were probable cause that he met the requirements to be a sexually violent predator pursuant to the Sexually Violent Predator Act, S.C. Code Section 44-48-30. Probable cause was found at each of the steps in the evaluation for the sexually violent predator program.

On April 9, 2012, Cyr proceeded to trial before the Honorable William P. Keesley who had granted Cyr's motion for a bench trial. Cyr was represented by Anna R. Good, and the state was represented by James G. Bogle. Judge Keesley found that Cyr was a sexually violent predator. Judge Keesley issued an order committing Cyr to the Sexually Violent Predator Program. Cyr's attorney filed an appeal. This appeal follows.

ARGUMENT

The trial court erred in allowing the forensic expert, Dr. Peggy Wadman, to testify about the details of the sexually violent offenses that Appellant Cyr previously pled guilty to during his trial for commitment to the Sexually Violent Predator Program.

At the beginning of Cyr's trial, defense counsel made a motion for a bench trial instead of a jury trial. She related that Cyr wanted a bench trial, and the state had not requested a jury trial within thirty days of the probable cause hearing as required by statute. R. 44, ll. 11 – 23.

The state argued that it was their standard practice to request a jury trial. R. 45, ll. 16 – R. 46, ll. 22. The judge stated that he did not have a demand for a jury trial in his file. R. 46, ll. 23 – 25. The judge granted Cyr's request for a bench trial. R. 50, ll. 14 – R. 51, ll. 7.

Dr. Peggy Wadman, the forensic psychiatrist who evaluated Cyr, testified at his trial, that Cyr had three convictions for committing a lewd act on a child. R. 57, ll. 4 – R. 61, ll. 25. While he was incarcerated on these three charges, he was indicted in the state of Connecticut for sexual assault in the first degree, and sexual assault in the second degree involving three young male relatives. These occurred when Cyr was approximately 12 – 14 years old. R. 71, ll. 2 – R. 72, ll. 15.

As Dr. Wadman started to describe the details of the six offenses, defense counsel objected to the details of the offenses being admitted. Counsel argued that the state had to prove only that he had the conviction, and that he suffered from a mental abnormality or personality disorder that would make him more likely to engage in sexually violent acts. Counsel argued that the details did not go to the fact of whether he had a mental abnormality

or personality disorder. The details only went towards prejudicing the judge about the facts of the case. R. 62, ll. 24 – R. 63, ll. 12.

The state argued that the Supreme Court held that the details were relevant and the prejudicial value was outweighed by the probative value under Rule 403, SCRE. The state also argued that the details were significant as the psychiatrist relied on these to make her evaluation. The state cited the cases of Luckabaugh and Ettel. R. 63, ll. 13 – R. 64, ll. 4.

Defense counsel argued in response that the indictments contained all the details that were needed for the doctor to make her evaluation. The trial judge overruled the objection. R. 64, ll. 6 – 14.

Dr. Wadman described the first incident as occurring in August 2000 when Cyr was approximately eighteen years old. R. 65, ll. 2 – 8; R. 87, ll. 19 – R. 88, ll. 1. The victim was a ten year old girl who told her mother that Cyr tried to put his hand down the back of her pants when he was baby-sitting her. Then on another occasion, he made her lay down and humped her. This was a guilty plea also. R. 67, ll. 1 – R. 68, ll. 19.

The second incident involved a five year old girl who was in a shed with Cyr who allegedly made the girl lay down. He then thrust his pelvis and genital area against her genital area. The girl said he "humped" her. Cyr pled guilty to this offense. R. 65, ll. 9 – 25; R. 12 – R. 67, ll. 15.

The third incident involved a seven year old girl whose aunt was Cyr's girlfriend. The girl said that Cyr touched her genital area with her clothes on several times between July 1, 2004 and December 31, 2004. Cyr denied these allegations but said he gave her baths. R. 69, ll. 6 – 25.

The Connecticut incidents involved his sister's three sons ages three, four, and five. R. 71, ll. 14 – R. 72, ll. 18.

Dr. Wadman diagnosed Cyr as having a mental abnormality of pedophilia which is an attraction to prepubescent children. R. 106, ll. 16 – 23. She said he also suffered from a bipolar disorder. R. 107, ll. 1 – 25. She also diagnosed him as having an antisocial personality disorder. This meant that he exhibited behavior that included a disregard for the rights of others, failure to conform to social norms, and a lack of concern for the welfare of others. R. 108, ll. 14 – 22.

Dr. Wadman testified that Cyr met the legal criteria to be a sexually violent predator and was likely to commit future acts of sexual violence unless he was committed to a facility for long-term control, care, and treatment. R. 111, ll. 1 – 25.

The trial judge found that the state had established that Cyr met the criteria to be a sexually violent predator. R. 147, ll. 14 – R. 148, ll. 25.

The sexually violent predator act at S.C. Code Section 44-48-30 provides that a sexually violent predator had to have convicted of a sexually violent offense as provided in the statute and has a mental abnormality or personality disorder that would make him likely to commit sexually violent acts in the future unless he was committed to a facility for long-term care, control and treatment.

In the case of In the Matter of the Care and Treatment of James P. Ettel, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008), the Court of Appeals ruled that prior incidents that did not result in a conviction could be admitted. The court ruled they were relevant and admissible. However, there was no discussion of whether the details of the offenses and incidents were at issue.

In the case of In re Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002), the Supreme Court ruled that the state did not prove that Luckabaugh was a sexually violent predator and remanded the case for a new hearing. The main issues dealt with the constitutionality of the SVP statute, and that the trial judge did not include sufficient facts in his order.

Cyr's case is distinguished from both as the issue of the details of the offense being admitted was not specifically addressed in either case with sufficient specificity

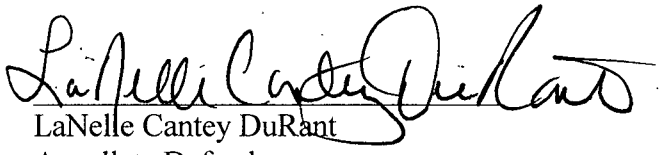
In the case of In the Matter of the Care and Treatment of John Phillip Corley, 353 S.C. 202, 577 S.E.2d 451 (2003), the Supreme court held that indictments outlining details underlying the defendant's convictions for assault and battery of a high and aggravated nature (ABHAN) and criminal sexual conduct (CSC) were admissible. The Court wrote that the probative value of the details underlying the ABHAN and CSC convictions, as presented in the indictments, outweighed the danger of prejudice.

Defense counsel in Cyr's case argued to the court that the indictments contained sufficient details for the evaluation, and that more in-depth details were not needed. It is clear from the ruling in Corley, id. that the Supreme Court agreed. The trial court erred in allowing the prejudicial details which were outside the indictments to be admitted.

CONCLUSION

Based on the above, the trial judge's order of commitment should be reversed and Cyr released; or in the alternative remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of September, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 5th, 2013

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of September, 2013.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.