

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Ferrell Cothran, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF ANTONIO D. YOUNG,

RECEIVED
DEC 31 2019
SC Court of Appeals

ORIGINAL

APPELLANT.

APPELLATE CASE NO. 2019-000823

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by refusing to direct a verdict for Appellant when the state failed to present sufficient evidence he was a sexually violent predator?

STATEMENT OF THE CASE

On August 3, 2017, the Attorney General filed a petition seeking to involuntarily commit Appellant pursuant to the Sexually Violent Predator Act (SVPA). R. 212-312. The trial commenced on April 17, 2019 before the Honorable R. Ferrell Cothran, Jr., and a jury. R. 1. James G. Bogle, Jr. represented the state, and James K. Falk represented Appellant. R. 1.

On April 18, 2018, the jury found Appellant was a sexually violent predator under the SVPA. R. 202, ll. 9-14. Judge Cothran ordered Appellant be committed to the Department of Mental Health for long-term control, care, and treatment. R. 313.

This appeal follows.

STANDARD OF REVIEW

“When reviewing a trial court’s ruling on a directed verdict motion, this court will reverse if no evidence supports the trial court’s decision or the ruling is controlled by an error of law.” McKaughan v. Upstate Lung & Critical Care Specialists, P.C., 421 S.C. 185, 189, 805 S.E.2d 212, 214 (Ct. App. 2017) (quoting Burnett v. Family Kingdom, Inc., 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010)). “When reviewing the trial court’s decision on a motion for directed verdict, this court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” Id. “The trial court must deny a directed verdict motion where the evidence yields more than one inference or its inference is in doubt.” Id.

ARGUMENT

The trial judge erred by refusing to direct a verdict for Appellant when the state failed to present sufficient evidence he was a sexually violent predator.

Relevant Facts

The state presented the testimony of a single witness: Dr. Donna Maddox. Dr. Maddox is a forensic psychiatrist who was court appointed to evaluate Appellant pursuant to the SVPA. R. 55, ll. 3-13. She was qualified as an expert in forensic psychiatry without objection. R. 54, ll. 22-25.

Dr. Maddox only met with Appellant once on October 27, 2017, nearly eighteen months before trial. R. 56, ll. 8-16. She diagnosed Appellant with antisocial personality disorder. R. 75, ll. 7-16. She also diagnosed him with “other specified paraphilic disorder.” R. 85, l. 20 – 86, l. 20. “Paraphilia” is a “disease” of “deviant sexual behavior or deviant sexual interest.” R. 86, ll. 2-4. Dr. Maddox admitted that “other specified” signifies Appellant does not meet all the criteria for a more specific diagnosis. R. 109, ll. 16-22. She claimed Appellant is aroused to “nonconsenting sex or nonconsenting acts” based on his history. R. 86, ll. 4-7.

Dr. Maddox relied mostly on Appellant’s prior convictions in rendering her opinion. In 1994, Petitioner pled guilty to assault and battery of a high and aggravated nature (ABHAN). However, he was originally indicted for first degree criminal sexual conduct (CSC). R. 68, l. 16 – 69, l. 13. In February 1996, Appellant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) to third degree CSC for conduct that occurred on December 17, 1994. R. 59, ll. 4-7; R. 66, l. 21 – 67, l. 21. In 2002, Appellant was indicted for third degree CSC, but ultimately pled guilty to ABHAN. R. 64, ll. 7-24. Lastly, on April 1, 2014, Appellant was charged with first degree CSC after a sixty-one year old woman, with whom Appellant had had prior sexual

relations, claimed Appellant “raped her.” R. 61, l. 3 – 63, l. 9. However, Appellant maintained it was consensual sex. R. 63, ll. 10-15. He ultimately pled guilty pursuant to Alford in April 2017 to ABHAN and was sentenced to three years’ incarceration. R. 63, l. 16 – 64, l. 1. Third degree CSC is Appellant’s only conviction that constitutes a sexually violent offense under the SVPA. R. 59, ll. 21-24. Dr. Maddox maintained that these offenses, which spanned over a twenty-two year period, demonstrated “a pattern of nonconsensual sexual behavior.” R. 70, ll. 19-24.

Despite claiming Appellant was likely to engaged in acts of sexual violence unless he is confined, Dr. Maddox admitted the actuarial table used to predict reoffending rates among sex offenders showed only *a seven percent chance* that Appellant would commit another sex offense in the next five years. R. 89, l. 23 – 90, l. 18 (emphasis added). Dr. Maddox also acknowledged that the state sought to commit Appellant pursuant to the SVPA on two prior occasions in 1998 and 2006. However, both actions were dismissed by a circuit court judge before they ever reached a jury based on insufficient evidence Appellant met the criteria to be classified as a sexually violent predator. R. 98, l. 5 – 100, l. 10.

After the state rested, Appellant moved for a directed verdict arguing a seven percent chance that Appellant would reoffend in the next five years is too low to qualify as “likely” to reoffend pursuant to the SVPA. R. 131, l. 20 – 132, l. 7. He renewed his motion after his presentation of evidence. R. 169, l. 24 – 170, l. 14. The trial judge denied the motion finding there was “sufficient evidence in the record for the case to go forward.” R. 132, ll. 5-7; R. 170, l. 24 – 171, l. 5.

Discussion

The trial judge erred by denying Appellant's motion for a directed verdict when the state failed to present sufficient evidence he was a sexually violent predator pursuant to the SVPA.

"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)). Section 44-48-30(1) of the SVPA 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." S.C. Code Ann. § 44-48-30(1). "Mental Abnormality" is defined in the SVPA 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 SVPA "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 Appellant has been convicted of a sexually violent offense and that he allegedly suffers from a mental abnormality or personality disorder, the state wholly failed to present sufficient evidence that Appellant was "likely to engage in acts of sexual violence if not confined in a secure facility" as required under the SVPA. Dr. Maddox testified that individuals with the same score as Appellant on the Static-99R risk assessment test were only seven percent likely to reoffend in the next five years. See R. 89, l. 23 – 90, l. 18. Statistically, these numbers make it unlikely that Appellant will "engage in acts of sexual

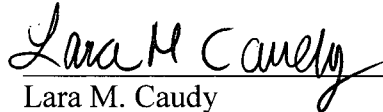
violence” in the future. Therefore, the trial judge erred by failing to direct a verdict in favor of Appellant.

Respectfully, this Court should vacate the order of commitment, direct a verdict in favor of Appellant, 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 31st day of December, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Ferrell Cothran, Circuit Court Judge

IN THE MATTER OF THE CARE AND
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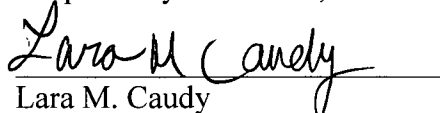
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antonio D. Young states:

1. She is an 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, which was held on April 17-18, 2019 before the Honorable R. Ferrell Cothran, 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 Antonio D. Young.

Respectfully Submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of December, 2019.

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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) Complete Trial Transcript Dated April 17-18, 2019;
- (2) State's Exhibit No. 1 (CSC Indictment and Sentence Sheet);
- (3) Court's Exhibit No. 1 (Proposed Jury Instructions);
- (4) State's Petition Pursuant to the Sexually Violent Predator Act filed August 3, 2017;
- (5) Order of Commitment filed April 18, 2019.

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

December 31, 2019



Lara M. Caudy
Appellate Defender

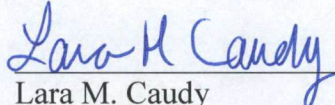
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(803) 734-1330

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."

December 31, 2019.


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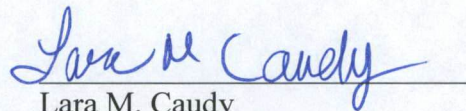
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CERTIFICATE OF SERVICE

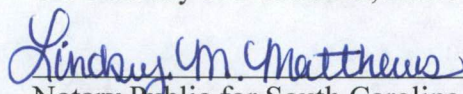
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter has been served upon Antonio D. Young, at 4546 Broad River Road, Columbia, SC 29210, this 31st day of December, 2019.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of December, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 22, 2024.