STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2018-001843

In the Matter of the Care and Treatment of
William Ralph Wilson, III,

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court did not abuse its discretion in admitting the expert's testimony regarding Appellant's unconvicted sexual offenses because the expert relied on Appellant's entire offense history in reaching her opinions regarding Appellant's mental abnormality diagnosis and risk assessment for reoffending if not confined for long term control, care and treatment, and the probative value of the evidence in the context of a civil commitment proceeding under the SVPA far outweighed its prejudicial effect.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In 2010, Appellant William Ralph Wilson, III, pled guilty in Lexington County to two counts of lewd act against a child, and was sentenced to concurrent terms of fifteen years incarceration on one count, and fifteen years, suspended to fourteen months incarceration and three years probation on the second count. Prior to Appellant's release from incarceration, Respondent State of South Carolina commenced proceedings pursuant to the Sexually Violent Predator Act (SVPA) seeking Appellant's commitment to the South Carolina Department of Mental Health as a sexually violent predator, for long term, control case and treatment. The matter was called for a jury trial on September 4, before the Honorable Walton J. McLeod, IV, Circuit Court Judge.

Appellant moved pre-trial to exclude any testimony by the State's expert regarding his past criminal offenses that did not result in a conviction, and which he continued to deny. He argued a full evidentiary hearing was required to test the reliability of those allegations, and to determine if the probative value outweighed the prejudicial impact. The State argued the unconvicted conduct was admissible under SVPA case law, and the expert would testify it was necessary to consider all the sexual allegations against Appellant in order to render an appropriate diagnosis and assess Appellant's risk to reoffend sexually if released. The circuit court denied Appellant's motion to exclude the testimony, noting the expert would be subject to cross-examination regarding her use of the information. (Trial Transcript [TT], pp. 28-39; Record on Appeal [R.], pp.15-26).

Donna Swartz Maddox, M.D., who was qualified as an expert in the field of forensic psychiatry without objection, testified she evaluated Appellant pursuant to a court order. Her evaluation methodology included reviewing all documents regarding Appellant's criminal offenses, and interviewing Appellant for approximately one and a half hours. She stated the information she obtained and considered is the type of information typically and reasonably relied on by experts in her field. (TT, pp. 67-75; R., pp. 39-47).

Dr. Maddox testified a person's past sexual offense behavior is the best predictor of future behavior. Appellant had two convictions for lewd act on a minor involving members of a youth group at a church where Appellant served a youth pastor. (TT, pp. 75-82; R., pp. 47-54). In addition, Dr. Maddox reviewed incident reports, victim statements and witness statements indicating Appellant offended against at least eight other minors between the ages of twelve and fourteen in the same way he offended in the cases leading to his convictions. The offenses took place frequently over a one year period. She testified the information established a pattern of behavior for purposes of diagnosis and risk assessment. (TT, pp. 75-96; R., pp. 47-68).

Appellant did not participate in an available sex offender treatment program while incarcerated. He told Dr. Maddox his case manager told him he did not have to participate in the treatment program, and he believed he would have to attend sex offender treatment as part of his probation. Dr. Maddox considered Appellant's lack of sex offender treatment to be a risk factor for reoffending, in part because he had little insight into his sexual disorder, did not recognize his need for treatment, or what he needed to do to keep from reoffending. (TT, pp. 96-99; R., pp. 68-71).

Dr. Maddox testified her report indicated a diagnosis of pedophilic disorder, which is an attraction to children thirteen years old and younger, but because Appellant's victims ranged from twelve to fourteen years old, the appropriate technical diagnosis was unspecified paraphilic disorder. She stated his disorder is exclusive to male children, which creates a higher risk of reoffending, but the fact Appellant was able to engage in adult consensual relationships as well could be a good factor for him. (TT, pp. 99-102; R., pp. 71-74).

Dr. Maddox testified there are two types of risk factors associated with sexual reoffending. Static risk factors are unique to the person's criminal history and cannot be changed. Dynamic

risk factors are things that predispose the person to reoffend, but can be changed with treatment. Appellant's dynamic risk factors included an emotional congruence with children, a sexual pre-occupation with children, and offending against children while he had access to an adult partner. His static risk factors as measured by an actuarial risk assessment tool put him at a little higher than average risk to reoffend when compared with known reoffense rates of other sex offenders. (TT, pp.102-108; R.,74-80).

Dr. Maddox testified to a reasonable degree of medical certainty that Appellant has a mental abnormality involving sexual attraction to young boys between the ages of twelve and fourteen, and he is likely to commit future acts of sexual violence if not confined for treatment. She stated Appellant's mental abnormality seriously affects his ability to control his sexual impulses toward children, and without proper treatment, he has the propensity to commit future acts of sexual violence against young males. She further opined to a reasonable degree of medical certainty that Appellant's propensity to reoffend threatened the health and safety of twelve to fourteen year old boys who might be in his presence without supervision. (TT, pp. 108-112; R., pp. 80-84).

The jury found beyond a reasonable doubt that Appellant is a sexually violent predator, and the circuit court placed him in the custody of the South Carolina Department of Mental Health for long term control, care and treatment. (TT, p. 197, Order of Commitment filed September 5, 2018; R., pp. 157, 253). This appeal followed.

STANDARD OF REVIEW

"The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice." State v. Jackson, 384 S.C. 29, 681 S.E.2d 17, 19 (Ct. App. 2009).

ARGUMENT

The circuit court did not abuse its discretion in admitting the expert's testimony regarding Appellant's unconvicted sexual offenses because the expert relied on Appellant's entire offense history in reaching her opinions regarding Appellant's mental abnormality diagnosis and risk assessment for reoffending if not confined for long term control, care and treatment, and the probative value of the evidence in the context of a civil commitment proceeding under the SVPA far outweighed its prejudicial effect.

Appellant contends the circuit court erred in admitting Dr. Maddox's testimony regarding allegations of Appellant's other sexual offenses against children in addition to the two lewd act convictions because he denied the allegations, and the probative value was substantially outweighed by the danger of prejudice to Appellant "given that it was wholly unreliable and based solely on hearsay." This contention flies in the face of established case law, and ignores the context of the evidence as it related to the SVPA proceedings.

The SVPA created a non-punitive, civil process for the commitment and treatment of sexually violent predators. In re Care & Treatment of Canupp, 380 S.C. 611, 671 S.E.2d 614, 617 (Ct. App. 2008) (*citing* In re Matthews, 345 S.C. 638, 550 S.E.2d 311, 316 [2001] [the United States Supreme Court deemed Kansas' Sexually Violent Predator Act, on which the South Carolina Act is modeled, to be a civil, non-punitive scheme]); In re Care and Treatment of Brown v. State, 372 S.C. 611, 643 S.E.2d 118, 121 (Ct.App.2007). "The Act is designed to: (1) meet the special needs of sexually violent predators; (2) address the significant likelihood that they will engage in repeated acts of sexual violence if not treated for their mental conditions; and (3) assess the risks requiring their involuntary civil commitment in a secure facility for long-term control, care, and treatment." Brown, 643 S.E.2d at 621 (*citing* S.C. Code Ann. §44–48–20).

The SVPA affords evaluators "reasonable access to the person for the purpose of the examination, as well as access to all **relevant** medical, psychological, **criminal offense**, and disciplinary records and reports." S.C. Code Ann. § 44–48–90 (2018) (emphasis added). The

person's criminal offenses can include both convictions and offenses not resulting in convictions as long as they are relevant to the determination of whether a person is a sexually violent predator. *See* White v. State, 375 S.C. 1, 649 S.E.2d 172, 176 (Ct.App. 2007) (past convictions and prior offenses not resulting in convictions that bear on whether a person is a sexually violent predator are admissible in SVPA cases). "Because a 'person's dangerous propensities are the focus of the SVP Act," consideration of "[p]ast criminal history is therefore directly relevant to establishing 44–48–30(1)(a),' which in turn bears directly on whether one suffers from a mental abnormality under section 44–48–30(1)(b)." In re Care & Treatment of Ettel, 377 S.C. 558, 660 S.E.2d 285, 287 (Ct. App. 2008) (*quoting* In re Care and Treatment of Corley, 353 S.C. 202, 577 S.E.2d 451, 453–454 [2003]). Prior unconvicted sexual offenses may establish a "pattern of behavior of sexual assaults," which aids in the diagnosis of a mental abnormality and goes to the person's propensity to commit future sexual offenses. *Id.* at 288.

In SVPA cases, the possibility of unfair prejudice does not substantially outweigh the probative value of evidence regarding prior unconvicted sexual offenses. In Ettel, the evaluator used information about prior unconvicted sexual offenses as part of the basis for a paraphilia diagnosis, and to form an opinion regarding his ability to control his behavior. *Id.* at 288.

In this case, Appellant's two convictions involved fondling minor boys by touching them on their inner thighs in order to satisfy Appellant's sexual desires. The records related to his unconvicted offenses indicated he engaged in similar behavior with numerous other young boys. Significantly, Appellant had access to most of the victims through his position as a youth minister. As in Ettel, Dr. Maddox used Appellant's prior unconvicted sexual offenses to determine if he had a "pattern" of sexual misconduct with minors, which she testified was directly relevant to her ultimate paraphilia diagnosis, as well as her opinion regarding his risk to reoffend sexually if not

confined for long term control, care and treatment. (TT, pp. 76-96, State's Exhibit 1 [Sentencing Sheet], State's Exhibit 2 [Sentencing Sheet]; R., pp. 260).

Contrary to Appellant's assertion Dr. Maddox "relied solely" on the unconvicted offenses to reach her conclusions, Dr. Maddox also relied on, and testified about, other factors she considered in reaching her opinion.[1] Those factors included: 1) Appellant's decision not to participate in sex offender treatment offered to him while he was incarcerated; 2) his need for treatment; 3) his sexual preoccupation with children; 4) his offending against children while he had access to an adult partner (his wife); 5) his use of grooming behaviors with his victims; 6) his lack of insight into his offending behaviors; and 6) his plan to avoid reoffending by simply not being around children. (TT, pp. 96-99; R., pp. 68-71). *See* Ettel, 660 S.E.2d at 288 (expert's diagnosis and opinion was based in part on information other than the unconvicted offenses, including interviews and administrative records).

Appellant's reliance on Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), as authority for excluding evidence regarding his unconvicted offenses is misplaced. While the trial judge does serve as a gatekeeper as to the admissibility of evidence, that function cannot be viewed in a vacuum, with no consideration regarding the type of case and the importance of the evidence to an expert's testimony.[2]

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[1] In fact, Dr. Maddox specifically testified it would be unethical to base an opinion regarding Appellant based on his criminal offenses alone. (TT, p. 82; R., p. 54)

[2] Appellant's assertion the State argued Ettel and its progeny made hearsay always admissible is inaccurate. The State merely argued those cases allowed experts in SVPA cases to consider unconvicted offenses **if** relevant to the expert's ultimate opinion (TT, pp. 30-34; R., pp. 17-21). That argument in no way advocated for complete abrogation of the hearsay evidentiary rule. Appellant's argument, however, would exclude all such evidence in a SVPA trial unless the victims testified about the allegations. Requiring victims, usually minors, to testify about how they were molested would be unnecessarily cruel.

Dr. Maddox testified the records and information she reviewed regarding Appellant's unconvicted offenses were the type of records and information normally relied on by experts in the mental health field, and she relied on them in reaching the conclusions she was required to make pursuant to the SVPA. (TT, pp. 68-75; R., pp. 40-47). Watson, 699 S.E.2d at 175 (an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions). The relevancy of such information, as well as it **substantial** probative value in an SVPA case, cannot be seriously disputed.

As to the hearsay nature of the information, Appellant was able to cross-examine Dr. Maddox about the source of her information, even calling it hearsay, and elicited from her the fact she never spoke to any of the victims. (TT, pp. 114-116; R., pp.86-88). The jury was then free to determine what weight to give Dr. Maddox's testimony about Appellant's unconvicted offenses. Watson, 699 S.E.2d at 174-175 ("Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves.")

The record amply supports the circuit court's ruling and the jury's verdict. Accordingly, Appellant's commitment as a sexually violent predator should be affirmed.

CONCLUSION

Based on the foregoing, the State respectfully submits the judgment of the circuit court and Appellant's civil commitment pursuant to the SVPA should be affirmed.

Respectfully submitted,

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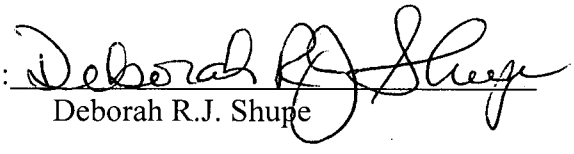
BY: 
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March 20, 2020

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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