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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF MARK RAINEY A/K/A MARK RANEY,

APPELLANT

APPELLATE CASE NO. 2018-001974

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

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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 July 10, 2017, the Attorney General filed a petition seeking to involuntarily commit Appellant pursuant to the Sexually Violent Predator Act (SVPA). R. 222-227. The trial commenced on October 29, 2018 before the Honorable Roger M. Young, Sr., and a jury. R. 1. James G. Bogle, Jr. represented the state, and James K. Falk represented Appellant. R. 1.

On October 31, 2018, the jury found Appellant was a sexually violent predator under the SVPA. R. 212, ll. 19-25. Judge Young ordered Appellant be committed to the Department of Mental Health for long-term control, care, and treatment. R. 327.

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. Marie Gehle. Dr. Gehle is a psychologist for the Department of Mental Health and was court appointed to evaluate Appellant pursuant to the SVPA. R. 57, ll. 2-20. She was qualified as an expert in forensic psychology without objection. R. 55, l. 22 – 56, l. 24.

Dr. Gehle only met with Appellant once in November 2017, almost a year before trial. R. 59, ll. 12-14. She diagnosed Appellant with antisocial personality disorder. R. 87, ll. 8-13; R. 96, ll. 5-6. She also diagnosed him with “other specified paraphilic disorder backed by biastophilia.”¹ R. 81, ll. 5-8; R. 96, ll. 2-4. Dr. Gehle admitted an “other specified paraphilic disorder” signals that while one might have “symptoms characteristic of a paraphilic disorder,” he does “not meet the full criteria for any disorders in the paraphilic disorders diagnostic class.” R. 83, ll. 10-16. She further conceded that biastophilia is not included in the DSM-5 (Diagnostic and Statistical Manual, Fifth Edition), meaning it is not a recognized diagnosis. R. 102, ll. 16-18.

Despite claiming Appellant was likely to engaged in acts of sexual violence unless he is confined, Dr. Gehle admitted the actuarial table used to predict reoffending rates among sex offenders showed only a twenty-seven percent chance that Appellant would commit another sex offense in the next five years. R. 92, l. 1 – 93, l. 6; R. 97, ll. 15-22. She also acknowledged that the results of the Static-99R, the risk assessment tool she used, did not account for the nearly

¹ Dr. Gehle testified that biastophilia is “a pattern of sexual arousal toward coercive sexual acts with a nonconsenting person.” R. 82, ll. 19-21.

twenty-three years Appellant spent incarcerated since his conviction and the change and development Appellant experienced during that period. Setting aside Appellant's age, Dr. Gehle conceded that Appellant's score would have been the same today as it was when he was first incarcerated over two decades ago as the other factors the instrument considered had not changed. R. 110, l. 3 – 112, l. 8.

Additionally, Dr. Gehle acknowledged that during Appellant's incarceration he had no disciplinary infractions that were sexual in nature nor did he engage in any assaultive conduct. The minor infractions Appellant did have related to possession of marijuana or other contraband during the early years of his incarceration. R. 107, ll. 9-23; R. 112, l. 18– 114, l. 9.

Appellant testified in his own defense and explained the significant changes he made as a person during his lengthy incarceration. He outlined the numerous classes and programs he was involved in while incarcerated and how he "turned [his] life over to Christ" through involvement with the Kairos Prison Ministry. R. 150, l. 12 – 164, l. 13. He also described the community supervision program he would be required to complete if he was released, which included weekly reporting, six months of GPS monitoring, and mandatory sexual predator counselling. R. 148, l. 13 – 150, l. 6. Appellant will also have to register as a sex offender every ninety days for the rest of his life. R. 150, ll. 7-9.

Appellant's wife, Angela Raney, also testified. Angela and Appellant first met in the late 1980s and reconnected while Appellant was incarcerated. R. 123, l. 22 – 126, l. 1. They got married in 2007. R. 127, ll. 3-5. Angela visited Appellant every weekend. R. 127, ll. 6-8. Appellant's mother eventually moved in with Angela and also visited Appellant on the weekends until her death. R. 126, ll. 4-20. Angela rented a home in Laurens and had worked for the Department of Disabilities and Special Needs for twenty-four years. R. 124, ll. 12-17; R. 131, l.

21 – 132, l. 6. If Appellant had been released, he would have moved in with Angela. Angela had met with Appellant's parole officer and understood Appellant's parole obligations. R. 132, l. 16 – 133, l. 8. She testified to the changes Appellant had gone through since she reconnected with him and the great remorse Appellant feels for his prior actions. R. 134, ll. 4-19. "He's not the same man." R. 134, l. 4.

After the state rested, Appellant moved for a directed verdict. R. 122, ll. 19-20. He renewed his motion after his presentation of evidence. R. 182, ll. 20-21. The trial judge denied the motion finding "the state has presented enough evidence to get it to the jury." R. 182, ll. 22-24.

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).

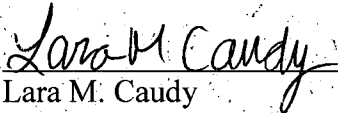
While the state presented evidence that Appellant has been convicted of a sexually violent offense and that he suffers from a mental abnormality or personality disorder, the state wholly failed to present sufficient evidence that Appellant was “likely to engage in acts of sexual violence if not confined in a secure facility” as required under the SVPA. Dr. Gehle testified that individuals with the same score as Appellant on the Static-99R risk assessment test were only twenty-seven percent likely to reoffend in the next five years. See R. 92, l. 1 – 93, l. 6. Statistically, these numbers make it unlikely that Appellant will “engage in acts of sexual violence” within the next five years. 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 18th day of July, 2019.

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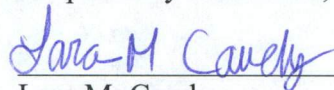
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mark Rainey 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 October 29-31, 2018 before the Honorable Roger M. Young, 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 Mark Rainey.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

This 18th day of July, 2019.

ATTORNEY FOR APPELLANT

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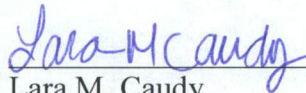
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Complete Trial Transcript dated October 29-31, 2018;
- (2) State's Exhibit No. 1 (Indictment and Sentence Sheet);
- (3) State's Petition Pursuant to the Sexually Violent Predator Act filed July 10, 2017;
- (4) Order of Commitment filed on October 31, 2018.

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

July 18, 2019



Lara M. Caudy
Appellate Defender

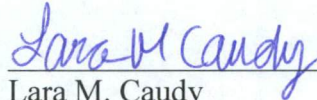
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ATTORNEY FOR APPELLANT

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."

July 18, 2019.



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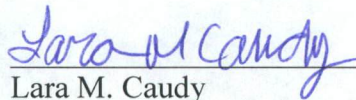
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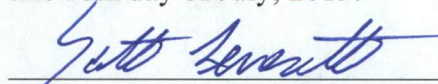
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Mark Rainey at 4546 Broad River Road, Columbia, SC 29210, this 18th day of July, 2019.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.