

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-09-00218-CV**

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**IN RE COMMITMENT OF EDDIE CARL MCBRIDE**

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**On Appeal from the 435th District Court**  
**Montgomery County, Texas**  
**Trial Cause No. 08-09-09223 CV**

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**MEMORANDUM OPINION**

A jury determined that Eddie Carl McBride is a sexually violent predator under Texas law. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 841.001-.150 (Vernon 2010) (SVP statutes). The jury found that McBride suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. McBride presents two issues in his appeal from the trial court’s judgment and order of civil commitment. We find no error and affirm the jury’s verdict and the judgment.

In his first issue, McBride argues that the trial court abused its discretion in preventing his attorney from asking the venire the following question: “Now, is there anyone here that would not be able to follow the law and consider all the evidence, and say well, if you have one sexual offense, you’re going to do it again, no matter what?”

The trial court ruled, *sua sponte*, that the question posed by McBride's attorney was a commitment question, and did not allow McBride's attorney to ask the panel that question. During a bench conference, the trial court told McBride's attorney that he would allow him to rephrase the question, but that the question as phrased put "a fact in front of the jury about a sex-related offense, and you can not do that."

McBride argues that the trial court's ruling denied him the opportunity to select a fair and unbiased jury. The State contends that because McBride's attorney did not attempt to rephrase the question, the issue was not preserved for appellate review.

We apply an abuse of discretion standard in determining whether questions asked by attorneys during voir dire were proper, recognizing that trial courts should allow litigants broad latitude to discover any bias or prejudice by potential jurors. *Babcock v. Nw. Mem'l Hosp.*, 767 S.W.2d 705, 709 (Tex. 1989). "When the voir dire includes a preview of the evidence, a trial court does not abuse its discretion when 'refusing to allow questions that seek to determine the weight to be given (or not to be given) a particular fact or set of relevant facts.'" *In re Commitment of Barbee*, 192 S.W.3d 835, 846 (Tex. App.–Beaumont 2006, no pet.) (quoting *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 753 (Tex. 2006)).

Here, the voir dire previewed a fact that would later be introduced during the trial, as the evidence during the trial would demonstrate the existence of sexual offenses. The trial court could have reasonably viewed the question in issue as a question seeking to

weigh how one fact might affect each of the jurors if the venireperson were to be seated on the jury. We hold that the question now in dispute previewed a fact involved in the case, as there would be evidence of prior sexual offenses, and the trial court could have reasonably viewed the question as an attempt to determine the weight that jurors might place on this type of evidence.

Nevertheless, while the trial court under these circumstances can exercise its discretion to prohibit the question the trial court views as improper, it cannot foreclose all inquiry about a relevant topic. *Vasquez*, 189 S.W.3d at 758. The trial court in this case did not foreclose McBride's attorney from rephrasing the question he had posed. If the trial court has restricted the attorney from asking a question, the questioner must propose a different question or articulate a specific area of inquiry to preserve error. *Id.* In this case, McBride did not do so. Therefore, we conclude that McBride has not preserved his complaint for purposes of appellate review. We overrule McBride's first issue.

#### Legal Sufficiency

In issue two, McBride challenges whether the jury's verdict is supported by legally sufficient evidence. The SVP statute requires the State to prove beyond a reasonable doubt that a person is a sexually violent predator. *See* TEX. HEALTH & SAFETY CODE ANN. § 841.062(a) (Vernon 2010). Because the State has the burden of proving its case beyond a reasonable doubt, we apply the same appellate standard of review that we apply in criminal cases for legal sufficiency of the evidence. *In re Barbee*, 192 S.W.3d at

839. In determining whether the evidence is legally sufficient to support an affirmative jury finding, we review all of the evidence in a light most favorable to the verdict. *Id.* Therefore, we review the evidence introduced to the jury during McBride’s trial to decide if a rational jury could have found, beyond a reasonable doubt, that McBride suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. *See id.*

In his legal sufficiency challenge, McBride asserts that the State’s expert witnesses provided “no basis” for their conclusions that he suffers from a behavioral abnormality. McBride further asserts that the testimony of the State’s expert witnesses “establishes conclusively that the acts which [McBride] committed, that form the basis for this lawsuit were committed . . . under his full volitional control.” Then, McBride argues that the State’s expert witnesses did not expressly testify that McBride “lacked or presently lacks volitional control over his actions[.]” Therefore, McBride concludes that the jury’s determination that McBride did lack volitional control is not supported by legally sufficient evidence.

However, we disagree that the testimony from the State’s experts does not support the jury’s verdict. An expert’s opinion that has a supporting basis is not merely conclusory, and a reliability challenge is necessary to preserve a complaint about the testimony to allow the court to evaluate the underlying methodology, technique, or foundational data. *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816-17 (Tex. 2009).

Here, McBride did not object to the testimony of the State's experts on the premise that their opinions were unreliable. Both of the State's experts explained the supporting basis for their opinions.

Dr. Price, who is board certified in forensic psychology and clinical neuropsychology, testified regarding the methodology he used in formulating his opinions. Dr. Price testified that he examined historical records pertaining to McBride, interviewed McBride, interviewed the mother of children victimized by McBride, and administered risk assessment instruments and actuarial tests. Specifically, Dr. Price administered the "Static 99," which is used to measure the risk of sexual recidivism; the "Minnesota Sex Offender Screening Test-Revised" (MnSOST-R), which predicts the risk of future sexual offenses; and the "Psychopathy Checklist-Revised" (PCL-R), which is also used to measure psychopathy and the risk of reoffending. Dr. Price scored McBride with a "27" on the PCL-R, giving McBride a "moderate level" of a psychopath's personality traits. McBride's score on the Static 99 was a "4," which Dr. Price explained gives McBride a "moderate to high likelihood of reoffending." On the MnSOST-R, McBride's score of "8" places McBride in the "highest risk category" for recidivism, according to Dr. Price.

Dr. Price diagnosed McBride as having "pedophilia, which is a paraphilia[;]" "alcohol dependence in remission secondary to incarceration[;]" "personality disorder not otherwise specified with antisocial and psychopathic tendencies[;]" and "paraphilia not

otherwise specified related to both exhibitionism and voyeurism.” Dr. Price explained that he was aware of the circumstances that related to McBride’s sexual offenses resulting in McBride having served time in prison. Dr. Price also identified several factors that he felt enhanced the probability that McBride would reoffend, including (1) McBride had problems with alcohol, as evidenced by his use of alcohol during some of his offenses; (2) McBride committed noncontact sexual offenses; (3) McBride suffered from exhibitionism and voyeurism; (4) McBride used verbal threats and physical coercion when he committed his offenses; (5) McBride failed to take full responsibility for his sexual offenses; (6) McBride lacked full empathy for his victims; (7) McBride chose victims from a wide age range; (8) McBride exhibited personality traits of a psychopath; and (9) McBride had a relatively low level of intelligence and lack of sufficient education. Dr. Price concluded that McBride has a behavioral abnormality that affects his emotional and behavioral capacity and that predisposes him to engage in predatory acts of sexual violence.

The State’s other expert, Dr. Gaines, is a board certified psychiatrist and child adolescent psychiatrist. Dr. Gaines testified regarding the methodology she used in formulating her opinions. Dr. Gaines explained that she examined historical records pertaining to McBride and that she interviewed McBride. In her evaluation, Dr. Gaines considered McBride’s prior convictions. According to Dr. Gaines, McBride’s actions were “sometimes premeditated, sometimes impulsive, kind of a mix of the two.” Dr.

Gaines diagnosed McBride with “pedophilia and alcohol dependence in remission due to incarceration.” Dr. Gaines identified several factors that enhanced the probability that McBride would reoffend, including (1) the age of his victims; (2) the longevity of McBride’s misconduct against his victims; (3) the number of McBride’s victims, eight; (4) the manipulative conduct McBride used against his victims; (5) the manner used by McBride when he spoke about his victims; (6) McBride’s failure to fully admit to what he had done; (7) McBride’s lack of understanding concerning the impact of his offenses; (8) concern with McBride’s not having a good support system; and (9) McBride’s possession of a low average intellectual level. McBride told Dr. Gaines that having children in his home, being around children in a home, and being around parks where children play would be high risk situations for him. Dr. Gaines testified that “it’s likely that [McBride] will reoffend[.]” and that McBride has a behavioral abnormality that predisposes him to commit acts of sexual violence.

Having reviewed the record, we conclude that it contains legally sufficient evidence that allowed the jury to conclude that McBride is a sexually violent predator. Reviewing the evidence in the light most favorable to the jury’s verdict, a rational jury could have found, beyond a reasonable doubt, that McBride has serious difficulty in controlling his behavior and that he meets the statutory definitions that apply to sexually violent predators. Issue two is overruled.

Having overruled both of McBride's issues, we affirm the jury's verdict and the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on June 11, 2010  
Opinion Delivered September 9, 2010  
Before McKeithen, C.J., Kreger and Horton, JJ.