In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00231-CV

IN RE COMMITMENT OF BILLY ROBERT TAYLOR

On Appeal from the 435th District Court
Montgomery County, Texas
Trial Cause No. 09-08-08244 CV

MEMORANDUM OPINION

The State filed a petition seeking to involuntarily civilly commit Billy Robert Taylor. *See* Tex. Health & Safety Code Ann. §§ 841.001-.150 (West 2010). The jury found that Taylor has a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. *See id.* § 841.003(a)(2). We conclude the trial court did not err in refusing appellant's request for additional definitions in the jury charge, the trial court did not abuse its discretion in admitting certain expert testimony, and the evidence is legally sufficient to support the jury's finding. We therefore overrule appellant's three issues and affirm the trial court's judgment.

Taylor was convicted in 1975 of burglary of a habitation with intent to commit rape. He had a knife during the offense and fled the house when someone rang the doorbell. He received seven years probation.

Taylor's probation was revoked when he was convicted in a 1979 burglary of a habitation with intent to commit rape. He broke into the home of his neighbor, punched her, and dragged her outside. He used a knife during the offense. He fled the scene when he learned that the victim's daughter had gone to get help. He was sentenced to eighteen years in prison.

Taylor was released in December 1985. In 1986, Taylor pled guilty to the offenses of aggravated robbery, burglary of a habitation with the intent to commit sexual assault, and aggravated sexual assault. Taylor broke into the home of a woman over sixty-five years of age, raped her, attempted to have the victim overdose on prescription medication that was in the home, and took money from the victim. One month later, he broke into the home of another woman over the age of sixty-five and raped her. He used a knife during the offense. Five days later, the victim called the police and reported that Taylor was attempting to break in her home again. The trial court sentenced him to thirty-five years in prison, which Taylor was serving at the time of the commitment proceeding that is the basis for this appeal.

Dr. Stephen Thorne, a forensic psychologist, testified for the State. He reviewed records related to Taylor's criminal history including victim statements, interviewed

Taylor, and used actuarial instruments in rendering his opinion. Thorne testified that based on his education, training, experience, and the methodology accepted by others in his field, he believes Taylor has a behavioral abnormality that makes him likely to engage in predatory acts of sexual violence.

Dr. Stanley Self, a forensic psychiatrist, also testified for the State. Dr. Self interviewed Taylor and reviewed records related to his criminal and medical history. Self stated that based on his education, experience, and the methodology utilized by others in the same field, he believes Taylor suffers from a behavioral abnormality as defined by statute.

At trial, Taylor denied committing the sexual offenses in 1975 and 1979, but admitted entering the victims' homes on the dates of the offenses and fleeing from the scene in both instances. He admitted committing the sexual assaults in 1986. Although Taylor stated he does not think he has any difficulty controlling his temper or sexual impulses, he agreed he still needed sex offender treatment.

EMOTIONAL OR VOLITIONAL CAPACITY

Taylor argues in his first issue that due to the trial court's refusal "to define [in the jury charge] 'emotional or volitional capacity' as meaning 'serious difficulty controlling behavior,' there was legally insufficient evidence to show beyond a reasonable doubt that the jury understood and applied that essential finding." Taylor's third issue asserts the trial court abused its discretion in denying Taylor's request to include in the jury charge a

definition of "emotional or volitional capacity." We address his third issue first, because his first issue assumes charge error argued in the third issue.

The statute defines "sexually violent predator" as a person who "(1) is a repeat sexually violent offender; and (2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence." *Id.* §§ 841.002(9), 841.003. "[P]roof of serious difficulty in controlling behavior" is required in order to civilly commit a defendant under the statute. *See Kansas v. Crane*, 534 U.S. 407, 413, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002). The Court in *Kansas v. Crane* explained

> [W]e did not give to the phrase "lack of control" a particularly narrow or technical meaning. And we recognize that in cases where lack of control is at issue, "inability to control behavior" will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.
> . . . .
> . . . [O]ur cases suggest that civil commitment of dangerous sexual offenders will normally involve individuals who find it particularly difficult to control their behavior -- in the general sense described above. And it is often appropriate to say of such individuals, in ordinary English, they are "unable to control their dangerousness."

Id. at 413-15 (citations omitted).

The trial court is to submit such instructions and definitions as shall be proper to enable the jury to render a verdict. Tex. R. Civ. P. 277. The trial court has considerable discretion in determining the necessity and propriety of explanatory instructions and

definitions. *See Tex. Workers' Comp. Ins. Fund v. Mandlbauer*, 34 S.W.3d 909, 911 (Tex. 2000). The trial court may refuse to give a requested instruction or definition that is not necessary to enable the jury to render a verdict, even if the instruction or definition is a correct statement of the law. *White v. Liberty Eylau Indep. Sch. Dist.*, 920 S.W.2d 809, 812 (Tex. App.—Texarkana 1996, writ denied). A trial court's error in refusing an instruction or definition is reversible if it "probably caused the rendition of an improper judgment[.]" Tex. R. App. P. 61.1(a); *Union Pac. R.R. Co. v. Williams*, 85 S.W.3d 162, 166 (Tex. 2002).

Taylor argues the trial court's denial of his requests probably "caused the rendition of an improper judgment since 'emotional or volitional capacity' is not a term with a common and ordinary meaning upon which a jury could easily agree." Taylor maintains it cannot be fairly presumed that the jury understood and applied the term without a definition in the jury charge. In broad-form submission, the charge asked the jury if Taylor "suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence[.]" The jury charge defined "behavioral abnormality" as defined in the SVP statutes as "a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person." Tex. Health & Safety Code Ann. § 841.002(2); *see In re Commitment of Fisher,* 164 S.W.3d 637, 649 (Tex. 2005) (By definition, those persons committed under

the statute are suffering from an abnormality that prevents them from exercising adequate control over their behavior.).

When, as here, a case is governed by a statute, the jury charge should track the language of the statutory provision as closely as possible. *See Toennies v. Quantum Chem. Corp.*, 998 S.W.2d 374, 377 (Tex. App.—Houston [1st Dist.] 1999). Rule 277 requires the trial court, "whenever feasible," to submit the cause on broad-form questions. Tex. R. Civ. P. 277. Here, the charge tracked the language of the statute, broad-form submission was used, and definitions were submitted to assist the jury in answering the question of whether Taylor is a sexually violent predator. The trial court did not err in refusing to include in the jury charge a definition of "emotional or volitional capacity" as meaning "serious difficulty controlling behavior," because the jury charge adequately presented the issue of volitional control to the jury. *See In re the Commitment of Almaguer*, 117 S.W.3d 500, 505-06 (Tex. App.—Beaumont 2003, pet. denied) (citing *In re Commitment of Browning*, 113 S.W.3d 851, 862-63 (Tex. App.—Austin 2003, pet. denied)); *see also In re Commitment of Shaw*, 117 S.W.3d 520, 524 (Tex. App.—Beaumont 2003, pet. denied); *In re Commitment of Graham*, 117 S.W.3d 514, 515 (Tex. App.—Beaumont 2003, pet. denied). Issue three is overruled.

Taylor argues that the evidence was legally insufficient to prove beyond a reasonable doubt that he presently has serious difficulty controlling his behavior. Although he primarily bases his legally sufficiency argument on the charge error issue we

have overruled, we will address the legally sufficiency of the evidence that he presently has serious difficulty controlling his behavior. Because the statute employs a beyond-a-reasonable-doubt standard, we review all the evidence in a light most favorable to the verdict and consider whether a rational fact finder could have found, beyond a reasonable doubt, that Taylor has serious difficulty controlling his behavior. *See In re Commitment of Mullens*, 92 S.W.3d 881, 885 (Tex. App.—Beaumont 2002, pet. denied) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)); *see also* Tex. Health & Safety Code Ann. § 841.062(a).

The inability to control behavior "must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case." *Crane*, 534 U.S. at 413. Dr. Thorne diagnosed Taylor with "impulse control disorder" and explained that "going back to the '70's there are numerous references to problems with . . . controlling impulses, going back a long, long time. He's been diagnosed with that in the past, and I believe he continues to meet criteria for that diagnosis of just having problems controlling impulses." Thorne explained that Taylor's lifelong history of impulsive behavior is a risk factor, and that Taylor still is having problems controlling his impulses. Thorne noted that three of Taylor's offenses were committed while he was on supervision. Thorne testified that during Taylor's incarceration from 1986 to 2002 he had ninety-six disciplinary infractions, and from 2004

to June 2009 he had nine disciplinary infractions. He thinks Taylor "is a high risk for reoffending."

Dr. Self testified that the fact that Taylor committed the 1979 offense while on probation for the same type of offense was significant, because it shows Taylor "couldn't put the brakes on that impulse." Self explained that Taylor's arrest while on parole also shows he does not have control over his impulses and behavior because he had already "had a prison stretch and he knew what it was like to be in prison and it was not a deterrent." *See generally In re Commitment of Fisher*, 164 S.W.3d at 649-50 (unlikely to be deterred by the threat of confinement).

The jury determines the credibility of the witnesses and the weight to be given their testimony. *In re Commitment of Mullens*, 92 S.W.3d at 887 (citing *Barnes v. State*, 876 S.W.2d 316, 321 (Tex. Crim. App. 1994)). The jury heard the opinions of the State's experts and obviously found their testimony credible. Furthermore, the jury may draw reasonable inferences from the evidence. *See Lacour v. State*, 8 S.W.3d 670, 671 (Tex. Crim. App. 2000). A lack of volitional control could reasonably be inferred from the other evidence in this case, including Taylor's past behavior, his history of violating probation conditions and parole, and his own testimony. *See In re Commitment of Martinez*, No. 09-05-493 CV, 2006 Tex. App. LEXIS 7459, at *14 (Tex. App.—Beaumont Aug. 24, 2006, no pet.). A rational jury could find beyond a reasonable doubt that Taylor has serious difficulty in controlling his behavior. Issue one is overruled.

RELIABILITY CHALLENGE

In issue two, Taylor asserts the evidence was legally insufficient to prove beyond a reasonable doubt that he suffers from a behavioral abnormality because the expert witness testimony was unreliable. Specifically, Taylor complains that Thorne's "opinion is unreliably based on speculation that [Taylor] as an individual conformed to the general results of the actuarials[,]" and it is not determinable "to what extent Thorne's opinion was formed or influenced by the actuarial tests[.]" Taylor argues that the basis of Thorne's and Self's opinions was '"risk factor speculation[,]' [and] therefore, not relevant or reliable." Taylor also asserts that "Dr. Self's understanding of the SVP statute does not require a finding that the person has serious difficulty controlling behavior that distinguishes him from other sex offender recidivists."

Expert testimony must have some basis to demonstrate its reliability. *See generally Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726 (Tex. 1998). Expert testimony is unreliable if there is "too great an analytical gap between the data and the opinion proferred." *Id.; see In re Martinez*, 2006 Tex. App. LEXIS 7459, at *10; *In re Estate of Robinson*, 140 S.W.3d 782, 792 (Tex. App.—Corpus Christi 2004, pet. denied). Thorne and Self explained the methodologies they employed in determining whether Taylor suffers from a behavioral abnormality, and stated that their evaluations were conducted in accordance with their training and the accepted standards for their respective fields. Both experts stated they reviewed information provided to them which

included records related to Taylor's criminal history, incarceration history, and psychological/psychiatric history. Both doctors interviewed Taylor. Thorne explained that he administered actuarial tests to Taylor that are commonly used in his field to aid in assessing whether a person has a behavioral abnormality. Self testified he did not administer actuarials in evaluating Taylor because, according to Self, psychologists are probably more qualified to administer the tests.

The trial court was within its discretion in concluding the experts based their opinions on a reliable method used in their fields of expertise in forming an opinion, and that they applied that method reliably to the facts of this case. We see no analytical gap in their testimony, and no abuse of discretion by the trial court in admitting the testimony into evidence. Issue two is overruled.

We affirm the trial court's judgment and order of civil commitment.

AFFIRMED.

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DAVID GAULTNEY
Justice

Submitted on November 4, 2010
Opinion Delivered December 2, 2010

Before Gaultney, Kreger, and Horton, JJ.