

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00377-CV

IN RE COMMITMENT OF ROBERT L. LUNA

**On Appeal from the 435th District Court
Montgomery County, Texas
Trial Cause No. 09-10-09478 CV**

MEMORANDUM OPINION

Robert L. Luna challenges his civil commitment as a sexually violent predator. *See* Tex. Health & Safety Code Ann. §§ 841.001-.150 (West 2010 & West Supp. 2011) (SVP statute). We find no error and affirm the trial court’s judgment.

In a single issue, Luna argues the evidence was legally insufficient to prove beyond a reasonable doubt that he suffers from a behavior abnormality. Although Luna notes that the record contains the opinions of experts concerning whether he has a behavior abnormality that predisposes him to engage in a predatory act of sexual violence, Luna argues that the opinions offered by the State’s experts are conclusory and unreliable. According to Luna, the opinions at issue are conclusory because the State’s

experts did not explain how each followed a valid methodology to reach his respective opinion, and that the respective opinions are unreliable because each expert failed to connect the data that he relied on in concluding that Luna has a behavior abnormality.

Under the SVP statute, the State must prove, beyond a reasonable doubt, that “the person is a sexually violent predator.” Tex. Health & Safety Code Ann. § 841.062(a) (West 2010). “[T]he burden of proof at trial necessarily affects appellate review of the evidence.” *In the Interest of C.H.*, 89 S.W.3d 17, 25 (Tex. 2002); see *City of Keller v. Wilson*, 168 S.W.3d 802, 817 (Tex. 2005). Because the SVP statute employs a beyond-a-reasonable-doubt burden of proof, when reviewing the legal sufficiency of the evidence, we assess all the evidence in the light most favorable to the verdict to determine whether any rational trier-of-fact could find, beyond a reasonable doubt, the elements required for commitment under the SVP statute. *In re Commitment of Mullens*, 92 S.W.3d 881, 885 (Tex. App.—Beaumont 2002, pet. denied). It is the responsibility of the trier-of-fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* at 887.

A person is a “sexually violent predator” if the person: “(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.” Tex. Health & Safety Code Ann. § 841.003(a) (West 2010). By statutory definition, the term “[b]ehavioral abnormality” means 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.” *Id.* at § 841.002(2) (West Supp. 2011). “‘Predatory act’ means an act directed toward individuals, including family members, for the primary purpose of victimization.” *Id.* at § 841.002(5).

Since Luna’s appeal argues that the opinions of the expert witnesses were conclusory, we note that the Texas Supreme Court has held that “[o]pinion testimony that is conclusory or speculative is not relevant evidence, because it does not tend to make the existence of a material fact ‘more probable or less probable.’” *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009) (quoting *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004) (footnote omitted)). “Bare, baseless opinions will not support a judgment even if there is no objection to their admission in evidence.” *Id.* “When a scientific opinion is admitted in evidence without objection, it may be considered probative evidence even if the basis for the opinion is unreliable.” *Id.* at 818. “But if no basis for the opinion is offered, or the basis offered provides no support, the opinion is merely a conclusory statement and cannot be considered probative evidence, regardless of whether there is no objection.” *Id.* “[W]hen a reliability challenge requires the court to evaluate the underlying methodology, technique, or foundational data used by the expert, an objection must be timely made so that the trial court has the opportunity to conduct this analysis.” *Id.* at 817 (quoting

Coastal Transp. Co., 136 S.W.3d at 233 (citations omitted)); see *In re Commitment of Barbee*, 192 S.W.3d 835, 843 (Tex. App.—Beaumont 2006, no pet.).

In light of Luna’s reliability challenge, we also note that expert testimony based on technical or other specialized knowledge should ordinarily have some basis in principles, research, and methodology to demonstrate its reliability. See generally *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 725-26 (Tex. 1998). Expert testimony is considered unreliable if there is “too great an analytical gap between the data and the opinion proffered.” *Id.* at 726; see *In re Martinez*, No. 09-05-493-CV, 2006 Tex. App. LEXIS 7459, at *10 (Tex. App.—Beaumont Aug. 24, 2006, no pet.); *In re Estate of Robinson*, 140 S.W.3d 782, 792 (Tex. App.—Corpus Christi 2004, pet. denied).

Here, during trial, Luna did not object to the reliability of the opinion testimony of the State’s experts. Dr. Price and Dr. Self were called as witnesses by the State. We also note that Luna called an expert, Dr. Saunders. The record demonstrates that each of the experts explained the supporting basis or foundation for his respective opinion, so we are not persuaded on this record that the opinions are conclusory. Each expert holds a license in his respective field. Each conducted an interview of Luna, and each reviewed records that relate to Luna’s history. The records that each of the experts reviewed are the type of records that are relied upon by health experts, and each expert performed his assessment in accordance with his training as a professional. Each expert explained how Luna’s records contributed to the opinion the expert ultimately reached. Dr. Price also relied

upon actuarial tests that Luna took in evaluating Luna's risk to reoffend. After each of the State's experts explained his respective methodology and how he had applied that methodology to Luna, each of the State's experts concluded that Luna suffers from a behavioral abnormality.

In contrast, Luna's expert—Dr. Saunders—testified that “given [Luna's] current state,” he did not believe Luna could be “accurately assessed[.]” When asked whether it was likely that Luna would reoffend, Dr. Saunders stated that it is difficult to tell, but “outside of his mental state,” Luna would be “at low risk for reoffense.”

We hold that the opinions offered by the State's experts are not speculative, conclusory, or completely lacking in probative value. Since the opinions at issue are neither conclusory nor unreliable, it was up to the jury to decide whether Luna had a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. Juries determine the credibility of the witnesses and the weight to be given their testimony. *In re Commitment of Mullens*, 92 S.W.3d at 887. Contradictions and conflicts in the evidence may be resolved by believing all, part, or none of the witnesses' testimonies. *Id.* A jury may draw reasonable inferences from basic facts to determine ultimate fact issues. *Id.* In Luna's case, the jury was free to believe the opinions offered by the State's experts and to disbelieve the opinion offered by Luna's expert.

Reviewing the record in the light most favorable to the jury's verdict, we conclude a rational trier-of-fact could find, beyond a reasonable doubt, that Luna suffers from a

behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. We hold the trial court did not err by denying Luna's motion for directed verdict. Accordingly, we overrule Luna's sole issue and affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on October 14, 2011
Opinion Delivered December 15, 2011
Before McKeithen, C.J., Kreger and Horton, JJ.