FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-0443

CHARLES DAVID SHAW,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Aaron K. Bowden, Judge.

June 8, 2021

PER CURIAM.

Charles David Shaw challenges a final judgment finding him to be a sexually violent predator and civilly committing him under Florida's Involuntary Civil Commitment of Sexually Violent Predators Act, sections 394.910–394.932, Florida Statutes (the "Jimmy Ryce Act"). Shaw raises five issues, four of which we reject without discussion. As to the remaining issue, we affirm for the reasons below.

In its petition to have Shaw committed to custody as a sexually violent predator, the State alleged that Shaw had previously been convicted of a sexually violent offense and designated three prior convictions—an indecent liberties with a child conviction in a 1997 North Carolina case, a breaking and

entering conviction in a 1994 North Carolina case, and a false imprisonment conviction in a 2009 Duval County, Florida case. At trial, the State introduced the judgments for the indecent liberties with a child and false imprisonment convictions, and Shaw testified that he had been convicted of all three offenses listed in the petition. The State's experts testified that they diagnosed Shaw with mental abnormalities and personality disorders and opined that he posed a high risk of reoffending in a sexually violent manner. They based their opinions on the three offenses alleged in the petition, 1994 child molestation allegations, risk assessment test scores, interviews with Shaw, and Shaw's criminal history.

During the charge conference, Shaw requested that the jury be instructed that it had to find that the non-sexual prior convictions relied on by the State were sexually motivated beyond a reasonable doubt. The State countered that the reasonable doubt instruction did not apply because Shaw had been convicted of an enumerated sexual offense or a comparable offense from another jurisdiction. The trial court agreed with the State and rejected Shaw's request. The jury was instructed in pertinent part:

> To prove that the respondent, Charles David Shaw, is a sexually violent predator, the state must prove each of the following three elements by clear and convincing evidence:
>
> 1. Charles David Shaw has been convicted of a sexually violent offense; and
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> 2. Charles David Shaw suffers from a mental abnormality or personality disorder; and
>
> 3. The mental abnormality or personality disorder makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.
>
> A sexually violent offense is:
>
> 1. Indecent Liberties with a Child.

At the end of the trial, the jury returned a verdict finding that Shaw was a sexually violent predator.

"A trial court's instructions to the jury are subject to an abuse of discretion standard of review." *Beltran v. Rodriguez*, 36 So. 3d 725, 728 (Fla. 3d DCA 2010). "If the jury instructions, as a whole, fairly state the applicable law to the jury, the failure to give a particular instruction will not be an error." *City of Delray Beach v. DeSisto*, 197 So. 3d 1206, 1209 (Fla. 4th DCA 2016) (quoting *Barton Protective Servs., Inc. v. Faber*, 745 So. 2d 968, 974 (Fla. 4th DCA 1999)).

The Jimmy Ryce Act provides that the "court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator." § 394.917(1), Fla. Stat. (2016). The Act defines a sexually violent predator as "any person who: (a) Has been convicted of a sexually violent offense; and (b) 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." § 394.912(10), Fla. Stat (2016).

The sole exception to the application of the clear and convincing evidence standard arises where the State relies on one type of predicate offense to satisfy the "sexually violent offense" requirement in paragraph (10)(a). Section 394.912(9) defines a "sexually violent offense" in a manner that creates three categories of sexually violent offenses: (1) enumerated sexual offenses listed in paragraphs (9)(a) through (f); (2) comparable felony offenses from other jurisdictions or similar Florida felony offenses that existed before October 1, 1998, as described in paragraph (9)(g); or (3) "[a]ny criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated," as described by paragraph (9)(h). For an offense that falls within the third category, the State must show "that one of the purposes for which the defendant committed the crime was for sexual gratification." § 394.912(8), Fla. Stat. (2016). Under these provisions, when the State relies on paragraph (9)(h) to prove a prior conviction for a sexually violent offense, the reasonable doubt standard applies.

On appeal, Shaw suggests that where the State relies on more than one predicate offense, the reasonable doubt standard in paragraph (9)(h) is triggered if one or more of those offenses is a non-sexual offense that is alleged to have been sexually motivated. But section 394.912(10)(a) requires a conviction for "*a* sexually violent offense" to satisfy the first part of the sexually violent predator definition. (Emphasis added). Similarly, section 392.912(2) defines "Convicted of *a* sexually violent offense," by referring to the requisite sexually violent offense in the singular. (Emphasis added). Thus, the plain language of the statute requires a single conviction for a sexually violent offense to make a defendant eligible for commitment under section 394.912(10)(a). *Cf. Westerheide v. State*, 831 So. 2d 93, 100 (Fla. 2002) ("While only individuals convicted of a sexually violent offense are *eligible* for commitment under the Ryce Act, the previous conviction must be coupled with a current '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' in order to meet the statutory definition of a sexually violent predator." (quoting § 394.912(10), Fla. Stat.) (emphasis in original)).

Other prior convictions and allegations are then relevant, even where they are not proven beyond a reasonable doubt, when they support the existence of the current mental abnormality or personality disorder that creates a high risk of reoffending in a sexually violent manner required by section 394.912(10)(b).[*] *Cf.* § 394.9155(4), Fla. Stat. (2016) ("The court may consider evidence of prior behavior by a person who is subject to proceedings under this part if such evidence is relevant to proving that the person is a sexually violent predator."); *Clark v. State*, 41 So. 3d 1052, 1055–57 (Fla. 3d DCA 2010) (upholding a civil commitment order based in part on police reports alleging that defendant was keeping company with teenaged boys after he had been convicted of committing sexual offenses against teenaged boys where those police reports were relevant to the experts' opinions on defendant's risk of reoffending); *Masters v. State*, 958 So. 2d 973, 974–75 (Fla.

[*] Insofar as such evidence is based on hearsay, it is subject to the limitations in section 394.9155(5), Florida Statutes.

5th DCA 2007) (affirming a civil commitment order where the State's experts based their opinions that defendant qualified as a sexually violent predator in part on disciplinary reports that described the defendant masturbating while watching underage female visitors and a female corrections officers); *Pesci v. State*, 963 So. 2d 780, 786–87 (Fla. 3d DCA 2007) (affirming a civil commitment order where the State's experts based their opinions that defendant qualified as a sexually violent predator in part on a New York arrest for a sex offense that had not yet been tried). It is undisputed here that the clear and convincing evidence standard applies to the requirements in paragraph (10)(b).

Given the plain language of the statute, where the State proves a predicate conviction for a sexually violent offense that is an enumerated offense in section 394.912(9)(a) through (9)(f) or a comparable sexual offense from another jurisdiction as permitted by paragraph (9)(g), the requirements of section 394.912(10)(a) have been satisfied and the reasonable doubt standard from paragraph (9)(h) does not apply. Here, the State proved that Shaw was convicted of an offense in North Carolina that is comparable to an enumerated Florida offense. For that reason, the trial court properly instructed the jury to apply the clear and convincing evidence standard to all elements of the sexually violent predator determination and rejected Shaw's request for an instruction on the reasonable doubt standard.

AFFIRMED.

RAY, C.J., and BILBREY and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and M. J. Lord, Assistant Public Defender, Tallahassee, for Appellant.

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