

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

JIMMY DEAN STOEY SR.

Appellant

No. 333 MDA 2013

Appeal from the Judgment of Sentence February 5, 2013  
In the Court of Common Pleas of Cumberland County  
Criminal Division at No(s): CP-21-CR-0002372-2011

BEFORE: LAZARUS, J., OTT, J., and JENKINS, J.

MEMORANDUM BY OTT, J.:

**FILED JUNE 27, 2014**

Jimmy Dean Stoe, Sr., appeals from the judgment of sentence entered February 5, 2013, in the Cumberland County Court of Common Pleas. Stoe was sentenced to an aggregate term of four to eight years' imprisonment, following his negotiated guilty plea to involuntary deviate sexual intercourse ("IDSI") and aggravated indecent assault.<sup>1</sup> On appeal, he challenges his classification as a sexually violent predator ("SVP") pursuant to the Sex Offender Registration and Notification Act ("SORNA"), 42 Pa.C.S. § 9799.10 *et seq.*<sup>2</sup> For the reasons set forth below, we affirm.

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<sup>1</sup> 18 Pa.C.S. §§ 3123 and 3125, respectively.

<sup>2</sup> In its opinion accompanying the order classifying Stoe as an SVP, the trial court refers to Stoe's assessment under Megan's Law II. However, we note that SORNA replaced Megan's Law effective December 20, 2012, and applies (*Footnote Continued Next Page*)

The facts underlying Stoey's arrest and conviction were aptly summarized by the trial court as follows:

On August 6, 2011, the victim in this case, NS, 16 years of age at the time, reported to the police that she had been subjected to and engaged in various sexual acts with [Stoey], the victim's stepfather. NS related to the police that she was 15 when [Stoey] began to inappropriately hug her and make sexual comments to her. [Stoey] continued to touch her over and under her clothes, but inappropriate touching did not begin until after she reached the age of 16. [She reported the acts began around December 2010 and continued into July 2011.] The acts continued and expanded with [Stoey] feeling NS's breasts and vagina under her clothes and placing his fingers in her vagina. NS was unable to tell the police exactly how many times [Stoey] had touched her as there were too many occasions to count. These acts occurred at her residence, in the woods near her home, and in the car when she was alone with [Stoey]. [Stoey] often demanded during these acts that NS touch [his] penis or instead he would place her hand on his penis.

NS described one incident in particular to the police. NS had requested [Stoey] help her open a checking account. Before leaving, [Stoey] told NS to come into his bedroom and told her she would have to do certain things for him before he would help her open the bank account. [Stoey] forced her to remove her clothes and lay on the bed while he performed oral sex on her, during which he exposed himself and ejaculated on her stomach. [Stoey] forced NS to perform oral sex on him at least ten times. [Several times, Stoey purportedly took NS to practice for her driving test, but would actually have sexual contact with her in the woods.]

Additionally, [Stoey] sent numerous text messages of a sexual nature to NS. She showed a text message she had

*(Footnote Continued)* \_\_\_\_\_

in this case. **See** 42 Pa.C.S. 9799.13(3.1)(i)(A) (SORNA applies to a person convicted of a "sexually violent offense" between 1/23/2005 and 12/19/2012); § 9799.12 (defining "sexually violent offense" as Tier I, II, or III offense listed in § 9799.14); § 9799.14(d)(4), (7) (classifying IDSI and aggravated indecent assault as Tier III sexual offenses).

received that day to the police which read “[w]hen u going to blow me again and when can I get some pussy.” A later text stated “[m]ake sure u delete them texts.” NS told police that if she tried to ignore [Stoey], he would relentlessly “pester” her until he got what he wanted.

When asked why she did not report these incidents earlier, NS stated she was afraid of [Stoey] as he controlled almost every part of her life and had been violent towards her sisters in the past. [NS testified that she was worried Stoey would hurt her or even kill her because he always carried a knife with him.] [Stoey] dictated where she was allowed to go, who she could speak to, when she could eat, or even when she could shower. Oftentimes, [Stoey] would confiscate her cell phone and demand sex for its return. The incidents only came to light when NS told a friend, who in turn told the friend’s mother. The friend’s mother encouraged NS to tell the police, and in fact brought NS to the police station.

Trial Court Opinion, 1/18/2013, at 2-4 (footnotes and internal citations omitted).

On May 2, 2012, Stoey entered a negotiated guilty plea to one count each of IDSI and aggravated indecent assault, in exchange for an aggregate sentence of four to eight years’ imprisonment. The trial court deferred sentencing and ordered Stoey to undergo an assessment by the Pennsylvania Sexual Offenders Assessment Board (“SOAB”) to determine whether he was an SVP. **See** 42 Pa.C.S. § 9799.24.

An SVP hearing was conducted on January 7, 2013, during which both the Commonwealth and Stoey presented expert testimony. Thereafter, on January 18, 2013, the trial court entered an order, and accompanying opinion, concluding that Stoey met the criteria for classification as an SVP. On February 5, 2013, the trial court imposed the negotiated sentence of an

aggregate four to eight years' imprisonment, and this timely appeal followed.<sup>3</sup>

On appeal, Stoey contends the trial court erred in concluding the Commonwealth presented clear and convincing evidence that he met the statutory requirements for classification as an SVP. Specifically, he argues the Commonwealth failed to prove that he "engaged in predatory behavior as defined by the statute." Stoey's Brief at 22-23.

Our standard of review of a challenge to an SVP determination is well-settled:

Questions of evidentiary sufficiency present questions of law; thus, "our standard of review is *de novo* and our scope of review is plenary." In conducting sufficiency review, we must consider the evidence in the light most favorable to the Commonwealth, which prevailed upon the issue at trial.

***Commonwealth v. Meals***, 912 A.2d 213, 218 (Pa. 2006) (citations omitted). Furthermore, "the Commonwealth bears the burden of proving that the defendant is an SVP by clear and convincing evidence." ***Id.***

The clear and convincing standard requires evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.

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<sup>3</sup> On February 20, 2013, the trial court ordered Stoey to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Stoey complied with the trial court's directive, and submitted a concise statement on March 12, 2013.

**Commonwealth v. Bishop**, 936 A.2d 1136, 1141 (Pa. Super. 2007) (citation omitted).

Once a defendant is convicted of a sexually violent offense,<sup>4</sup> SORNA mandates that the trial court must order an assessment to determine if the defendant is an SVP.<sup>5</sup> 42 Pa.C.S. § 9799.24(a). The Act defines an SVP as follows:

**“Sexually violent predator.”** An individual determined to be a sexually violent predator under section 9795.4 (relating to assessments) prior to the effective date of this subchapter or an individual convicted of an offense specified in: ...

(3) section 9799.14(d)(1), (2), (3), (4), (5), (6), (7), (8) or (9) or an attempt, conspiracy or solicitation to commit an offense under section 9799.14(d)(1), (2), (3), (4), (5), (6), (7), (8) or (9)

who, on or after the effective date of this subchapter, is determined to be a sexually violent predator under section 9799.24 (relating to assessments) **due to a mental abnormality or personality disorder that makes the individual likely to engage in predatory sexually violent offenses.** ...

42 Pa.C.S. § 9799.12 (“Sexually violent predator.”). Further, a “predatory” offense is defined as one that is “directed at a stranger or at a person with whom a relationship has been initiated, established, maintained or promoted, in whole or in part, in order to facilitate or support victimization.”

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<sup>4</sup> **See** 42 Pa.C.S. § 9799.14.

<sup>5</sup> The Act lists numerous factors the SOAB should consider in making an SVP determination. **See** 42 Pa.C.S. § 9799.24(b).

**Id.** (“Predatory.”). When a defendant appeals an SVP determination, however, “[t]he task of the Superior Court is one of review, and not of weighing and assessing evidence in the first instance.” **Meals, supra**, 912 A.2d at 223.

Here, Stoeys does not challenge the SOAB’s determination that he suffers from a mental abnormality, specifically, paraphilia not otherwise specified (“Paraphilia NOS”).<sup>6</sup> Indeed, his own expert witness agreed with this diagnosis. N.T., 1/7/2013, at 45. Rather, Stoeys argues the Commonwealth failed to prove that he engaged in **predatory behavior**. Stoeys emphasizes that he had no criminal record, and there was only one victim, despite the opportunity for multiple victims. Stoeys’s Brief at 15. Further, he contends the Commonwealth failed to provide any evidence that he initiated his relationship with the victim’s mother, in whole or in part, for the purpose of sexually assaulting the victim, or that he “suddenly began acting in a father figure role in order to victimize his stepdaughter.” **Id.** at 21-22. Rather, he asserts he “always maintained a parental relationship with his stepchildren[.]” **Id.** at 22.

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<sup>6</sup> **See** 42 Pa.C.S. § 9799.12 (defining “mental abnormality” as “[a] congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.”).

While it is certainly true that there was no evidence Stoey initiated his relationship with the victim's mother in order to sexually assault her daughter, the SOAB expert opined that Stoey maintained and promoted his relationship with the victim "in order to facilitate victimization." 42 Pa.C.S. § 9799.12. Specifically, the SOAB expert testified:

[T]his was a dominating, coercive and controlling environment or controlling relationship. This was not a dating relationship. This was a predatory relationship. The victim felt compelled out of fear to do what the defendant asked. As would be expected in a relationship like this, at times she put up no resistance at all. There was repeated pestering for sex and this was consistent, in my opinion, with the sexually predatory behavior pattern.

\* \* \* \*

With the first sexual act that was unwanted, it established a sexually victimizing relationship. Those acts were then maintained through repetition and promoted through behaviors such as threats and gift buying or privileges, made privileges available that continued to maintain compliance.

N.T., 1/17/2013, at 16, 28.

Contrary to Stoey's argument, a "predatory" act is not limited to one in which the relationship was **initiated** solely for the purpose of victimization. **See** Stoey's Brief at 21. Rather, as here, a defendant may exhibit predatory behavior when he **maintains or promotes** an existing relationship in order to sexually assault the victim. Indeed, Stoey's own expert, Dr. Stanley E. Schneider, testified that he **agreed** that Stoey had exhibited predatory behavior when he maintained and/or promoted his

relationship with the victim to further victimization.<sup>7</sup> **Id.** at 51. As the trial court concluded:

[Stoey] carried out these repeated sexual assaults despite knowing that his behavior was wrong. He used intimidation, persistence, manipulation, control and bribery to maintain a sexually victimizing relationship with his stepdaughter. These repeated acts created, maintained, and promoted a sexually victimizing relationship. Based on all the information provided to the Court, the fact [Stoey] suffers from paraphilia NOS, as well as the length of time involved and [Stoey's] persistence in maintaining the relationship, the Court finds [Stoey] is a sexually violent predator.

Trial Court Opinion, 1/18/2013, at 8. We find no reason to disagree, and, therefore, conclude that Stoey is entitled to no relief.<sup>8</sup>

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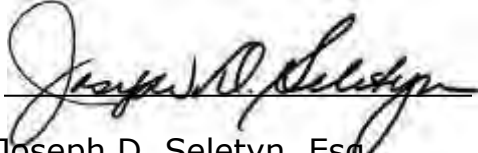
<sup>7</sup> While Dr. Schneider agreed with the SOAB expert's opinion that Stoey suffered from a mental disorder, and exhibited predatory behavior, he concluded, based on his evaluation of the risk factors listed in Section 9799.24, that Stoey was not at risk to re-offend. N.T., 1/17/2013, at 47. Rather, he opined that Stoey's sexual assault of a minor was "a once and done deal." **Id.** Conversely, the SOAB expert found that Stoey was likely to reoffend: "Because of the persistence of these acts, the duration of these acts, if placed in a similar situation, in other words, unsupervised with underage girls, there would be unacceptable risk of these sort of acts happening again." **Id.** at 21. The trial court found the SOAB expert to be a more credible witness on this issue, as was its prerogative. **Commonwealth v. Fuentes**, 991 A.2d 935, 944 (Pa. Super. 2010) (*en banc*) (noting that when considering an SVP classification on appeal, "[w]e do not weigh the evidence presented to the sentencing court and do not make credibility determinations.") (citation omitted), *appeal denied*, 12 A.3d 370 (Pa. 2010).

<sup>8</sup> We note that Stoey's reliance on **Commonwealth v. Plucinski**, 868 A.2d 20 (Pa. Super. 2005), is misplaced. In that case, similar to the present case, the defendant was the stepfather of the minor victim, and lived with her six years before he began sexually assaulting her. **Id.** at 21-22. However, in **Plucinski**, unlike in the present case, the SOAB's diagnosis of a  
(Footnote Continued Next Page)



Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/27/2014

(Footnote Continued) \_\_\_\_\_

mental disorder was called into question both by Plucinski's expert witness, and this Court on appeal. Furthermore, Plucinski's expert disagreed with the SOAB expert's conclusion that the defendant engaged in predatory behavior. On appeal, a panel of this Court reversed Plucinski's classification as an SVP, finding that "numerous statutory factors necessary to support a SVP classification were absent; significantly absent is a showing of the likelihood of re-offense." *Id.* at 27. However, the Pennsylvania Supreme Court in **Meals, supra**, specifically disapproved of this type of weighing the statutory factors. 912 A.2d at 222-223. Therefore, in addition to the factual differences, the holding in **Plucinski** was called into question by the Supreme Court in **Meals**.