

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

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**NO. 09-10-00492-CV**

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**IN RE COMMITMENT OF DOUGLAS RAY REESE**

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**On Appeal from the 435th District Court**  
**Montgomery County, Texas**  
**Trial Cause No. 09-12-11975-CV**

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**MEMORANDUM OPINION**

The State of Texas filed a petition to commit Douglas Ray Reese as a sexually violent predator. *See* Tex. Health & Safety Code Ann. §§ 841.001-.150 (West 2010). A jury found that Reese suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. The trial court rendered a final judgment and an order of civil commitment. On appeal, Reese contends the evidence is legally insufficient to support the jury's determination that he has a behavioral abnormality under Chapter 841 of the Health and Safety Code and he argues that the trial court erred in submitting an improper jury charge. We affirm the trial court's judgment.

## Legal Sufficiency

Reese argues the evidence is legally insufficient to support the jury's determination that he has a behavioral abnormality because the testimony of the State's two expert witnesses, Jason Dunham, Ph.D. and Sheri Gaines, M.D., is speculative and conclusory. Reese does not challenge the experts' qualifications or contend that a particular method used by the expert witnesses was faulty; rather, Reese contends that the experts used no method at all.

### Dr. Jason Dunham's Testimony

The State's forensic psychologist, Dr. Jason Dunham, testified regarding his evaluation of Reese, which he conducted in accordance with his education, training, and accepted standards in the field of forensic psychology. He reviewed approximately 800 to 900 pages of Reese's records, including offense reports, police reports, victims' statements, prison records, medical records, and school records. He also reviewed Reese's deposition transcript. He has reviewed records that span Reese's lifetime. He also conducted a personal interview with Reese that lasted an hour and thirty-five minutes. Dunham explained that his interview with Reese was shorter than most of his interviews because Reese denied the offenses, was short with his answers, and was not very engaging.

Dunham testified that according to the records he has reviewed, Reese has had two sexual offense victims. According to Dunham, a jury convicted Reese of burglary of a

habitation with the intent to commit sexual assault. While on probation for this offense, a jury convicted Reese of aggravated sexual assault with a deadly weapon. Dunham identified a number of risk factors associated with Reese's potential for reoffending, including: (1) multiple offenses; (2) the force and violence associated with his sexual offenses; (3) pattern of escalating behavior; (4) offenses with elements of planning; (5) the different types of sexual acts involved; (6) an offense that occurred in a public place; (7) sexual offense while in a relationship; (8) sexual offense while on probation; (9) numerous sexual partners; (10) offenses against stranger victims; (11) sexual preoccupation; (12) antisocial personality disorder; (13) criminal versatility; (14) physical violence in general; (15) poor institutional adjustment; (16) lack of sex offender treatment; (17) lack of anger management treatment; (18) marijuana and alcohol abuse; (19) lower cognitive skills; (20) lack of remorse, empathy, accountability; (21) grievance thinking or victim stance, i.e. he feels like he is the victim and is always falsely accused; and (22) poor appraisal of his own risk for reoffending. Dunham testified that he was unable to identify any protective factors for Reese. Dunham did indicate that it was a positive factor that Reese did not have any sexual misconduct victims in prison.

Dunham testified that Reese has had "a lifelong pattern of breaking the law and not caring and having reckless disregard for other people's safety." According to Dunham, as a juvenile, Reese was convicted of robbery, assault, unlawful carrying of a weapon, and possession of marijuana. During his interview with Dunham, Reese

admitted that as a juvenile he was suspended from school; got in numerous fights starting at age eleven; experienced early drug use; engaged in vandalism; and broke into homes, cars, and stores.

As an adult, Reese continued to exhibit a pattern of non-sexual criminal behavior. Dunham testified that Reese received multiple convictions, including a DWI, an assault, two convictions for possession of marijuana, burglary of a habitation, assault by contact, and two convictions for aggravated assaults. He admitted to Dunham that he broke into twenty homes, four cars, and ten stores for which he was never prosecuted. While in prison, Reese has had “71 disciplinary cases and 31 major disciplinary cases.” Prison officials confiscated pornographic material from him, including teen pornography and rape pornography.

Using the Diagnostic and Statistical Manual for Mental Disorders, (“DSM-IV”), Dunham diagnosed Reese with “paraphilia nonconsent” and “antisocial personality disorder with psychopathy.” The fact that Reese had two sexual assault cases spread out over two years indicates a pattern, which is evidence of Reese’s paraphilia. Dunham also diagnosed Reese with marijuana and alcohol abuse. Dunham explained that these two substances are disinhibitors that might lower Reese’s ability to withstand an impulse. Dunham testified that psychopathy combined with paraphilia is dangerous.

Dunham also used the Hare Psychopathy Checklist Revised (“PCL-R”) in evaluating Reese. He explained that this test is the standard within forensic psychology

for evaluating whether someone is a psychopath and the level of the psychopathy. He testified the PCL-R has a scoring sheet, which includes twenty categories that make up psychopathy. The score range is from “0 to 40.” For research purposes, a “score of 30 [or] above” is classified as psychopathic. Dunham explained that he interprets the score on a continuum: “25 [to] 32” is indicative of high in psychopathy; “over 32” is very high. Reese scored “30.5,” which is high in psychopathy. Dunham testified that the PCL-R test is subjective in that another psychologist could come up with a different score. He testified that Reese’s initial evaluator administered the PCL-R and scored Reese at a “36,” which is in the very high range of psychopathy.

Dr. Dunham administered two actuarial instruments designed to estimate the risk for sexual offending: the Static-99 Revised and the Minnesota Sex Offender Screening Tool, Revised, (“MnSOST-R”). Reese scored a “4” on the Static-99, which places him at a moderate high risk for being reconvicted. Dr. Dunham testified that he believed that Reese’s level of risk was higher than actually represented in the Static-99 since the results do not take into account clinical judgment. Reese scored a “plus 12” on the MnSOST-R, which places Reese in a high-risk category for being rearrested for hands-on sex offenses within six years. Dunham testified that he believed this score accurately reflected Reese’s level of risk.

Dunham testified that he never bases behavioral abnormality solely on actuarials, but rather he looks at the actuarial scores in light of the whole picture presented in his

evaluation. He considers whether factors exist that would elevate the risk or mitigate the risk of reoffending. Based on his education, training, experience and procedures used, Dunham concluded that Reese suffers from a behavioral abnormality that predisposes him to engage in predatory acts of sexual violence.

#### Dr. Sheri Gaines's Testimony

Dr. Sheri Gaines testified as a medical doctor with a specialty in psychiatry. Gaines reviewed police records, arrest records, prison records, medical records from prison, disciplinary cases from prison, Reese's deposition transcript, Dr. Charles Woodrick's evaluation, and Dr. Dunham's deposition transcript. As is typical by experts in her field, Dr. Gaines relied on these records to form the basis of her opinion in this case.

Dr. Gaines also conducted a face-to-face two-hour interview with Reese. She testified that Reese denies his two offenses and demonstrates no remorse. She testified that he has told multiple versions of his side of these two offenses, which is significant because lying is one of the criteria for antisocial personality disorder and psychopathy. She testified that Reese has poor interactive social skills, as revealed through his inappropriate smiling when speaking about sad or violent matters, and in his relaxed attitude and insincerity during the interview process. Gaines testified that she saw no evidence that Reese has gained any insight during his twenty-three years of incarceration.

Gaines diagnosed Reese with paraphilia not otherwise specified, antisocial personality disorder and marijuana and alcohol dependence. Gaines testified that it is significant that Reese was married when he committed the two sex offenses because “presumably in a marriage there’s healthy sex available . . . [and] Reese went outside of that healthy sex to engage in violent, brutal sex.” Reese has not received treatment for his paraphilia, and has failed to acknowledge that he has a problem, which is an indicator that he still has a problem.

Gaines explained that antisocial personality disorder is a lifelong pattern of unlawful behavior. She testified that Reese continues to show signs of this disorder through his “[a]ssaults in prison, lying, no remorse, disrespect for authority, disrespect for the system and the rules in TDC.” She further testified that this disorder may attenuate with age, but does not go away.

Gaines testified that she believes Reese is a psychopath. In diagnosing a psychopath, Gaines testified that she looks for certain characteristics, including antisocial personality disorder characteristics, pathological lying, superficial charm, and grandiosity. Reese demonstrates all of these characteristics.

Gaines identified numerous risk factors that Reese would reoffend: (1) non-sexual criminal behavior, (2) psychopathy, (3) violence and force of the sexual acts, (4) use of a weapon in the sexual act, (5) stranger victims or at most casual acquaintances, (6) substance abuse, (7) failure to accept responsibility for his actions, and (8) committed

offense while on probation. Gaines considers the risk factors to see if they are sufficient to support a determination that someone has a behavioral abnormality and is likely to reoffend. After reviewing all of the information, based on her education, training and experience and using accepted standards in the field of psychiatry and her clinical judgment, Dr. Gaines testified that Reese has a behavioral abnormality that predisposes him to commit predatory acts of sexual violence. She testified that Reese is “really likely to reoffend.”

Dr. Gaines testified that Reese has maladaptive coping skills, which means that when Reese is presented with a stress or a frustration, he acts out violently or deceitfully to handle the situation. She testified that Reese’s sex offenses are part of his maladaptive coping skills. She testified that there is no evidence that Reese has grown or developed adaptive coping skills while in prison. Dr. Gaines used the DSM-IV-TR to make her diagnosis.

Reese did not present expert testimony on his behalf, but he testified that he has learned to control his behavior. He denied being a sex offender or needing treatment. He denied having an anger problem or needing anger management. Reese denied pleading guilty to and ultimately being convicted of burglary of a habitation with the intent to commit a sexual assault. However, Reese later admitted to the jury that he was on probation for this offense when he was arrested for aggravated sexual assault. He testified the victim probably made up the burglary and the attempted sexual assault, as he



had never seen the victim before and did not know her. Reese admitted to previously admitting to prosecutors that he had burglarized the victim's home.

Reese admitted he was convicted for aggravated sexual assault, but he denied all of the facts supporting the conviction. He testified that the victim in this case also manufactured the sexual assault. Reese further denied drug and alcohol abuse. Reese denied various offenses he had in prison, despite that his denial was in conflict with his prior deposition testimony.

The State introduced, without objection, two pen packets, which contained judgments showing that Reese had pleaded guilty to and had been convicted of burglary of a habitation, and aggravated sexual assault.

We review all of the evidence in the light most favorable to the verdict, and we consider whether a rational jury could have found, beyond a reasonable doubt, that Reese suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. *See In re Commitment of Mullens*, 92 S.W.3d 881, 885 (Tex. App.—Beaumont 2002, pet. denied). The trier of fact has the responsibility to resolve conflicts in the testimony fairly, to weigh the evidence, and may draw reasonable inferences from basic facts to ultimate facts. *Id.* at 887.

A “sexually violent predator” is 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.” Tex. Health & Safety Code Ann. §

841.003(a). A “‘behavioral abnormality’ [is] 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.* § 841.002(2). A “‘predatory act’ [is] an act directed toward individuals, including family members, for the primary purpose of victimization.” *Id.* § 841.002(5).

“Opinion 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)). “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. When there is no basis in the record for an expert’s opinions, or the basis offered provides no support, those opinions are conclusory and cannot support the judgment. *Id.*

Dr. Dunham and Dr. Gaines both maintain licensure in their respective fields. They both reviewed Reese’s records and conducted a face-to-face interview with Reese. Both experts testified that they relied on the types of records generally relied on by experts in their respective fields and performed their evaluations in accordance with their

education and training. Both experts testified that they based their opinions on the facts and data they gathered from the records, their interview with Reese, the risk assessments they conducted, and the actuarial tests Dr. Dunham administered. Both Dr. Dunham and Dr. Gaines concluded that Reese suffers from a behavioral abnormality. The testimony of the State's experts is not so speculative or conclusory as to be completely lacking in probative value. Having considered Reese's arguments, and having reviewed the record in the light most favorable to the verdict, we conclude a rational jury could have found beyond a reasonable doubt that Reese has a behavioral abnormality that predisposes him to commit a predatory act of sexual violence and is likely to reoffend; therefore, the evidence is legally sufficient. *See Mullens*, 92 S.W.3d at 885, 887. Accordingly, we overrule this issue.

#### The Jury Charge

Reese also contends that the trial court erred by refusing his proposed jury charge, which submitted the question: "Do you find beyond a reasonable doubt that DOUGLAS RAY REESE suffers from a behavior abnormality that makes him likely to engage in a predatory act of sexual violence?" The trial court marked Reese's requested jury charge as "REFUSED." The State argues that Reese's failure to specifically object during the charge conference to the use of the word "predisposes" as opposed to the word "likely" waived any objection to the trial court's alleged error. We disagree. According to Rule 276 of the Rules of Civil Procedure, when a trial court marks a submitted question as

having been “refused,” we are required to conclusively presume that the party timely submitted the question, excepted to its refusal, and met all other requirements, such that the party is entitled to have the trial judge’s refusal reviewed without preparing a formal bill of exceptions. Tex. R. Civ. P. 276. The record reflects that the trial court marked Reese’s proposed jury charge as “REFUSED.” Therefore, we presume that Reese timely and specifically brought to the trial court’s attention the variance between his proposed question and the question ultimately submitted to the jury. *See id.* We hold that Reese sufficiently preserved his jury charge complaint, thereby allowing us to review it on appeal. *See id.*; *see also In re Commitment of Beasley*, No. 09-08-00371-CV, 2009 Tex. App. LEXIS 8664, at \*17-18 (Tex. App.—Beaumont Nov. 12, 2009, pet. denied) (not yet designated for publication).

Reese argues the jury charge was erroneous because it included the word “predisposes” instead of the word “likely.” We recently addressed this issue in *In re Commitment of Briggs*, No. 09-10-00316-CV, 2011 Tex. App. LEXIS 6998, at \*1 (Tex. App.—Beaumont Aug. 25, 2011, no pet. h.) (not yet designated for publication) and in *In re Commitment of Myers*, No. 09-10-00507-CV, 2011 Tex. App. LEXIS 6965, at \*1 (Tex. App.—Beaumont Aug. 25, 2011, no pet. h.) (not yet designated for publication). We held that the jury question should precisely track the language of section 841.062(a) thereby requiring the judge or jury to “determine whether, beyond a reasonable doubt, the person is a sexually violent predator.” *Briggs*, 2011 Tex. App. LEXIS 6998, at \*4

(quoting Tex. Health & Safety Code Ann. § 841.062(a)). In *Myers*, we held that the question should be phrased, “Do you find beyond a reasonable doubt that [Respondent] is a sexually violent predator?” *Myers*, 2011 Tex. App. LEXIS 6965, at \*17. We further held that the charge should include the applicable statutory definitions of the statutorily defined terms. *Id.*

Here the trial court failed to precisely track the statutory language of section 841.062(a); therefore, we will determine whether Reese suffered harm because of the form of the jury question. We will not reverse unless the alleged error “probably caused the rendition of an improper judgment” or “probably prevented the appellant from properly presenting the case to the court of appeals.” Tex. R. App. P. 44.1(a). “Charge error is generally considered harmful if it relates to a contested, critical issue.” *Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 856 (Tex. 2009). “Error in the omission of an issue is harmless ‘when the findings of the jury in answer to other issues are sufficient to support the judgment.’” *Shupe v. Lingafelter*, 192 S.W.3d 577, 579-80 (Tex. 2006) (quoting *Boatland of Houston, Inc. v. Bailey*, 609 S.W.2d 743, 750 (Tex. 1980)). We consider the entire record to determine whether the jury charge probably caused an improper judgment. *Transcon. Ins. Co. v. Crump*, 330 S.W.3d 211, 225 (Tex. 2010).

Reese contends that the jury question caused harm by lowering the State’s burden of proof and affecting the jury’s proper determination. Having previously determined the

evidence was legally sufficient to support the jury's finding, our review of the entire record demonstrates that the evidence in this case was not so sharply conflicting as to warrant reversal because of the alleged error. *See Crump*, 330 S.W.3d at 226; *see also Briggs*, 2011 Tex. App. LEXIS 6998, at \*9. We overrule this issue.

Having overruled Reese's two issues, we affirm the trial court's judgment.

AFFIRMED.

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CHARLES KREGER  
Justice

Submitted on July 8, 2011  
Opinion Delivered September 22, 2011

Before Gaultney, Kreger, and Horton, JJ.