In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-14-00303-CV

IN RE COMMITMENT OF KARL DAVID HEINEMANN

On Appeal from the 435th District Court
Montgomery County, Texas
Trial Cause No. 14-01-00381-CV

MEMORANDUM OPINION

Karl David Heinemann appeals from a jury verdict that resulted in his civil commitment as a sexually violent predator. *See* Tex. Health & Safety Code Ann. § 841.081(a) (West Supp. 2015). In three issues, Heinemann contends that the trial court abused its discretion in allowing the State to develop cumulative and prejudicial evidence, and he challenges the legal and factual sufficiency of the evidence supporting the jury's verdict. We overrule the issues and affirm the trial court's judgment.

Admission of Prejudicial and Cumulative Evidence

In issue one, Heinemann argues that the trial court abused its discretion under Rule 403 of the Texas Rules of Evidence. "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Tex. R. Evid. 403. "Evidence is unfairly prejudicial when it has an undue tendency to suggest that a decision be made on an improper basis, commonly, but not necessarily, an emotional one." *In re Commitment of Anderson*, 392 S.W.3d 878, 882 (Tex. App.—Beaumont 2013, pet. denied). "In applying Rule 403, factors that should be considered include the probative value of the evidence, the potential of the evidence to impress the jury in some irrational way, the time needed to develop the evidence, and the proponent's need for the evidence." *Id*.

The State read to the jury Heinemann's responses to the State's requests for admissions at the beginning of the State's case in chief. Heinemann's admissions established that in 1999, Heinemann committed many sexual offenses against a nine-year-old child and a six-year-old child, and he currently has or has had a sexual fetish with urine. Heinemann contends that the trial court abused its discretion by allowing the State to develop further testimony concerning these

subjects in its direct examination of Heinemann, and through the expert testimony of a psychiatrist, Dr. Michael Arambula, over Heinemann's objection that the testimony was cumulative. The trial court declined to grant a running objection that Dr. Arambula's testimony about the details of Heinemann's sexual offenses was more prejudicial than probative. The State argues that Heinemann failed to preserve error because he failed to object to the evidence every time the State offered it. Heinemann responds that because his objection was to the cumulative nature of the evidence, his objection was not waived by his failure to object to reading his responses to the State's requests for admissions to the jury.

We agree that Heinemann did not waive error by waiting until the evidence was repeated to complain that it was cumulative. *See In re Commitment of Ford*, No. 09-11-00425-CV, 2012 WL 983323, at *1 (Tex. App.—Beaumont Mar. 22, 2012, no pet.) (mem. op.). However, Heinemann was required to object each additional time the cumulative evidence was repeated. *See id.* "To preserve error in the admission of evidence, a party must object and obtain an adverse ruling each time the complained-of evidence is presented or obtain a running objection to the evidence." *Id.* Heinemann objected once when counsel for the State asked him if he could see women urinating from outside a locked public park's restroom facility that he frequented when he was approximately twenty years old, but counsel

continued to question Heinemann about how his urophilia (sexual arousal from urine) and voyeurism (sexual arousal from watching others urinate) affected his behavior without further objection. Similarly, when Dr. Arambula mentioned details of the offenses Heinemann committed against each of the victims, Heinemann initially objected, but then allowed Dr. Arambula to discuss the details of the offenses without further objection. Because any harm that Heinemann suffered from the objected-to evidence was subsumed within the effect of evidence that the State developed without objection, we are precluded from finding that the evidence probably caused the rendition of an improper judgment. *See* Tex. R. App. P. 44.1(a)(1).

Furthermore, we disagree that Dr. Arambula's testimony about Heinemann's fetish and the details of the sexual offenses was cumulative of Heinemann's responses to the State's requests for admissions. Dr. Arambula referred to the details of Heinemann's offenses to explain the basis for his opinion that Heinemann suffers from a behavioral abnormality that makes him likely to engage in a predatory act or sexual violence. *See* Tex. R. Evid. 705. Dr. Arambula's discussion of the details of Heinemann's past sexual conduct assisted the jury in weighing Dr. Arambula's testimony and the opinion he offered regarding the ultimate issue in the case. *See Ford*, 2012 WL 983323 at *2, *see also In re*

Commitment of Day, 342 S.W.3d 193, 198-99 (Tex. App.—Beaumont 2011, pet. denied). Dr. Arambula explained to the jury that the concerning diagnosis was pedophilia, and Heinemann's urophilia and voyeurism holds a minor role that is pathologic because he fused his fetish with the sexual abuse of a child. "Having an expert explain which facts were considered and how those facts influenced the expert's evaluation assist[s] the jury in weighing the expert's testimony and the opinion offered regarding the ultimate issue in the case." *In re Commitment of Robinson*, No. 09-14-00162-CV, 2015 WL 1736754, at * 2 (Tex. App.—Beaumont Apr. 16, 2015, pet. dism'd w.o.j.). We overrule issue one.

Sufficiency of the Evidence

In his final two issues, Heinemann challenges the legal and factual sufficiency of the evidence supporting the jury's finding that he is a sexually violent predator. He argues that the State failed to prove, beyond a reasonable doubt, that he has serious difficulty controlling his behavior. According to Heinemann, the evidence established that "he has learned about how to control his behavior and how to avoid situations and behaviors which could start an offense cycle." We address these issues together.[1]

[1]These complaints were presented to the trial court only through Heinemann's motion for new trial.

Under a legal sufficiency review, 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 civil commitment as a sexually violent predator. *In re Commitment of Mullens*, 92 S.W.3d 881, 885 (Tex. App.—Beaumont 2002, pet. denied). Under a factual sufficiency review in a civil commitment proceeding, we weigh the evidence to determine "whether a verdict that is supported by legally sufficient evidence nevertheless reflects a risk of injustice that would compel ordering a new trial." *Day*, 342 S.W.3d at 213.

A person is a "sexually violent predator" if he is a repeat sexually violent offender and he suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. Tex. Health & Safety Code Ann. § 841.003(a). A "[b]ehavioral 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 condition which affects either emotional capacity or volitional capacity to the extent a person is predisposed to threaten the health and safety of others with acts of sexual violence is an abnormality which causes serious difficulty in behavior

control." *In re Commitment of Almaguer*, 117 S.W.3d 500, 506 (Tex. App.—Beaumont 2003, pet. denied).

Heinemann was incarcerated on three convictions for possession of child pornography, three convictions for indecency with a child, and three convictions for aggravated sexual assault of a child. These offenses occurred in 1999 and 2000. At the time of the trial, Heinemann had been imprisoned for almost fifteen years. Heinemann had a good disciplinary history in the prison. While incarcerated, Heinemann obtained an associate's degree in graphic design and received a welding certificate. Before his imprisonment, he worked in Internet design.

Heinemann was scheduled for release from the prison system by August 2016. At the time of the trial, Heinemann had been in a twice-a-week sex offender treatment program for approximately one year. Heinemann stated that he was in the second phase of the sex offender treatment program, and he had not yet created a relapse prevention plan. If he completed the sex offender treatment program on schedule, Heinemann would be released on parole approximately six months after the civil commitment trial. Heinemann was forty-three years old at the time of the trial.

Heinemann described himself as an active participant in group therapy. He stated that he learned techniques for avoiding situations that create triggering

events. He stated that he does not allow himself to be in situations where he will have access to his triggers, which Heinemann stated included having sex with a woman, masturbation, seeing a naked girl or seeing a girl urinate, smelling urine or body odor, and feeling stress and rejection. He used the techniques that he learned in sex offender treatment group therapy a week before the trial when he had a sexual thought about a child. Heinemann testified that he no longer has any sexual desires.

Dr. Arambula has been conducting behavioral abnormality evaluations for approximately ten years. His expertise and methodology is unchallenged in this appeal. Dr. Arambula provided his professional opinion that Heinemann suffers from a behavioral abnormality that makes him likely to commit a predatory act of sexual violence. According to Dr. Arambula, Heinemann is a pedophile whose sexual interest in children started in adolescence and preceded his relationships with the two children he was convicted of abusing. Dr. Arambula explained that Heinemann's pedophilia affected his emotional or volitional capacity, as indicated by Heinemann's in-court admission that when he committed the sexual offenses, he was addicted to offending and could not make himself stop. Dr. Arambula believed Heinemann had made progress in accepting his responsibility for his offenses against his female victim, but that he demonstrated reluctance to explore

and accept responsibility for his homosexual conduct with his male victim. Heinemann testified that the six-year-old boy demanded sexual attention.

In addition to pedophilia, based upon Heinemann's self-reported trouble interacting with people his age, Dr. Arambula also diagnosed Heinemann with general personality disorder. The personality disorder was an aggravating factor because Heinemann resorted to interacting with children for his sexual gratification because of his discomfort with his peers. Notes relating to Heinemann's sex offender treatment indicated a significant lack of participation that Dr. Arambula attributed to the personality disorder, but Dr. Arambula thought that Heinemann's participation would improve with more treatment. Dr. Arambula stated that Heinemann understood the concepts of sex offender treatment more with reference to his female victim. Future treatment, however, was still needed to address the male victim and child pornography.

Heinemann suggests that the jury could not rationally find that he currently suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence because he showed that he can manage his pedophilia. He also testified that he no longer has an attraction to children. Incorporating his legal sufficiency arguments into his factual sufficiency argument, Heinemann argues he learned the consequences of his behavior, and how to control

his behavior in the future, through his active participation in sex offender treatment.

In his testimony, Heinemann discussed concepts that were covered in the sex offender treatment program and suggested how those concepts applied to his case. Dr. Arambula acknowledged that Heinemann had made progress in treatment, but expressed his opinion that Heinemann's thirty-year history of sexual deviance reveals a severe chronic condition that requires additional treatment. Heinemann did not present testimony from an expert to refute Dr. Arambula's analysis or to provide a psychiatric basis for concluding that a person who is conversant with sex offender treatment concepts is not likely to engage in a predatory act of sexual violence.

Serious difficulty controlling behavior can be inferred from Heinemann's past behavior, his own testimony concerning his inability to control his impulses before he received sex offender treatment, and Dr. Arambula's evaluation of Heinemann's progress in sex offender treatment. *See In re Commitment of Washington*, No. 09-11-00658-CV, 2013 WL 2732569 at *6 (Tex. App.—Beaumont June 13, 2013, pet. denied) (mem. op.). Dr. Arambula's opinion testimony represents "a reasoned judgment based upon established research and techniques for his profession and not the mere *ipse dixit* of a credentialed witness."

Day, 342 S.W.3d at 206. The jury, acting in its exclusive role as the sole judge of the credibility of the witnesses and the weight to be given their testimony, resolved any conflicts and contradictions in the evidence and accepted the opinion of the State's expert. *See In re Commitment of Kalati*, 370 S.W.3d 435, 439 (Tex. App.—Beaumont 2012, pet. denied). Viewing the evidence in the light most favorable to the verdict, a rational jury could have found, beyond a reasonable doubt, that Heinemann is a sexually violent predator; therefore, the evidence is legally sufficient. *See* Tex. Health & Safety Code Ann. § 841.062(a) (West 2010); *see also Kansas v. Crane*, 534 U.S. 407, 413 (2002); *Mullens*, 92 S.W.3d at 885, 887. Furthermore, weighing all of the evidence, we conclude the verdict does not reflect a risk of injustice that would compel ordering a new trial. *See Day*, 342 S.W.3d at 213. We overrule issues two and three and we affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on April 6, 2015
Opinion Delivered January 28, 2016

Before Kreger, Horton, and Johnson, JJ.