



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-23-00065-CV

IN RE: THE COMMITMENT OF INES GONSALEZ

On Appeal from the Criminal District Court 1
Tarrant County, Texas
Trial Court No. CDC1-S-14893-21, Honorable Everett Young, Presiding

June 29, 2023

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant Ines Gonzalez appeals the trial court's order by which he was adjudicated a sexually violent predator and ordered to be civilly committed for sex-offender treatment and supervision pursuant to the Texas Health and Safety Code. He challenges the legal and factual sufficiency of the evidence to support the jury's finding

that he is a sexually violent predator and contends the trial court abused its discretion by overruling his objection to an aspect of the State's jury argument. We affirm.¹

Background

Gonzalez has an extensive criminal history, including convictions for both sexual and nonsexual offenses. For instance, in 1977, he was convicted of sexual assault in Nebraska and sentenced to eighteen months' probation. In 1984, he was convicted of the sexual assault of a child, his nephew, and sentenced to four to eight years' confinement. In 2006, he was convicted in a Texas court of aggravated sexual assault of a woman and has been imprisoned as a consequence for the past seventeen years. Both before and in between his convictions for sexual offenses, appellant also committed several other offenses, including evading arrest, DWI, assault, and theft. He allegedly also committed at least two other sexually based offenses, though he had yet to be tried for them.

The State petitioned that he be designated a sexually violent predator and civilly committed for treatment. The cause was tried to a Tarrant County jury, which jury found for the State. Based on the verdict, the trial court so adjudicated him and committed him for continuing sex offender treatment and supervision.

Sufficiency of the Evidence

Through his first two issues, appellant argues that the evidence was legally and factually insufficient to support the jury's verdict. We overrule them.

¹ Because this appeal was transferred from the Second Court of Appeals, we are obligated to apply its precedent in the event of a conflict between the precedents of that court and this one. See TEX. R. APP. P. 41.3.

Our analysis begins with the claim of legal insufficiency. Appellant acknowledges that the applicable standard likens to that used when assessing the sufficiency of the evidence supporting a criminal conviction.² It requires us to “assess the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could find the statutory elements required for commitment beyond a reasonable doubt.” *In re Commitment of Jackson*, No. 02-21-00275-CV, 2022 Tex. App. LEXIS 5603, at *12 (Tex. App.—Fort Worth Aug. 4, 2022, no pet.) (mem. op.).

Next, in carrying its burden to prove its case beyond a reasonable doubt, the State must establish that “the person (1) is a repeat sexually violent offender, and (2) suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence.” See TEX. HEALTH & SAFETY CODE ANN. § 841.003 (defining “sexually violent predator”); § 841.062(a) (imposing a “beyond reasonable doubt” burden of proof). 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). That said, we turn to the record before us.

No doubt, the record contains evidence illustrating Gonzalez was a “repeat sexually violent offender.” The evidence of his multiple sexual offenses was more than ample to permit a rational factfinder to so conclude beyond reasonable doubt.

² In closing his argument, though, Gonzalez invoked the standard of review discussed *In re J.F.C.*, 96 S.W.3d 256 (Tex. 2002). *In re J.F.C.* dealt with the termination of parental rights. The standard of review utilized in such cases when gauging the legal sufficiency of the evidence differs from that applied when testing the quantum of evidence proving guilt beyond reasonable doubt. We explained as much in *In re K.P.*, Nos. 07-17-00179-CV, 07-17-00185-CV, 2017 Tex. App. LEXIS 8925, at *5–6 (Tex. App.—Amarillo Sept. 20, 2017, no pet.) (mem. op.).

The thrust of appellant's argument seems directed at the remaining element, his status as suffering from a behavioral abnormality. And, he describes the testimony and opinion of the State's expert assigning him such an abnormality as "misleading, conclusory, and speculative" and, therefore, no evidence.³ We disagree.

The State retained Dr. Christine Reed to evaluate Gonzalez and provide testimony as to whether he has the requisite behavioral abnormality defined by § 841.002(2). Her testimony included a description of her qualifications, a discussion of her extensive experience in forensic psychology and conducting behavioral abnormality evaluations, and an explanation of the methodology and tests utilized in conducting her evaluations. So too did she 1) explain the extent of her research into Gonzalez, his circumstances, and criminal history and 2) apply her methodologies and tests to same to develop psychologically related opinions about him. After doing so, she opined that he suffered from a behavioral abnormality that makes him likely to again engage in a predatory act of sexual violence. She further testified that he:

has a sexual deviance and antisocial lifestyle or orientation. And what that means is that he is willing to break the rules, willing to violate the rights of others. In that – in many cases in which involves him sexually violating them in violent ways and then he doesn't take responsibility for it and doesn't show remorse for those behaviors.

Simply put, our review of the record and Dr. Reed's testimony reveals more than some evidence supporting her opinions about Gonzalez. Contrary to the latter's belief, they are not conclusory, misleading, baseless, or speculative. From it, a rational jury

³ The reliability of the expert's testimony underlies much of his argument. Yet, he did not object to the testimony as unreliable or otherwise inadmissible. So, that aspect of his argument, i.e., inadmissibility due to purported unreliability, was waived.

could find beyond a reasonable doubt that he suffered from a behavioral abnormality making him likely to engage in a predatory act of sexual violence. That means the jury's finding about him being a sexually violent predator has the support of legally sufficient evidence.

Unlike in criminal cases, a party may raise factual sufficiency in cases like these. *In re Commitment of Eddings*, No. 02-19-00290-CV, 2020 Tex. App. LEXIS 4969, at *32 (Tex. App.—Fort Worth July 2, 2020, pet. denied) (mem. op.). When reviewing the factual sufficiency of the evidence, we determine whether, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding, along with undisputed facts contrary to the finding, is so significant that the factfinder could not have found beyond a reasonable doubt that the statutory elements were met. *In re Commitment of Stoddard*, 619 S.W.3d 665, 668, 677 (Tex. 2020); *In re Commitment of Coles*, No. 02-21-00173-CV, 2022 Tex. App. LEXIS 3264, at *14 (Tex. App.—Fort Worth May 12, 2022, no pet.) (mem. op.). Applying that standard, we say the following.

The record contains evidence contradicting Dr. Reed's opinion about Gonzalez. Some comes from appellant himself and some from Dr. Reed. But none was sufficiently significant to prevent a rational factfinder from concluding that appellant had a behavioral abnormality. See *In re Commitment of Stoddard*, 619 S.W.3d at 668. And, as the factfinder, the jury was charged with weighing the evidence, judging the credibility of the witnesses' testimony, and resolving any conflicts in the evidence. See *In re Commitment of Coles*, 2022 Tex. App. LEXIS 3264, at *17. It was also free to believe all, part, or none

of anyone's evidence, including that of Gonzalez. See *id.* at *18. We overrule the second issue.

Improper Jury Argument

Gonzalez finally complains about a bit of jury argument made by the State. It occurred after the State stressed evidence purporting to illustrate that he refused to take responsibility for his earlier crimes. At that point, the State's counsel uttered the following: "And if you want to believe him, you have to find that all of these other people are lying. The officers in Nebraska. The officers in Texas. The officers in Galveston" Gonzalez's counsel interrupted with an objection about the argument being "inappropriate comment on the evidence." The trial court overruled it. Gonzalez now tells us that his objection should have been sustained because the "prosecutor's injection of inflammatory language, referencing hearsay statements that were not part of the trial record, exacerbated the incorrect emphasis on a confessional requirement that is not part of the statute, leading to a verdict decided on an improper basis." We overrule the issue.

The standard of review is abused discretion. *In re Commitment of Parkinson*, No. 02-22-00275-CV, 2023 Tex. App. LEXIS 2279, at *12 (Tex. App.—Fort Worth Apr. 6, 2023, no pet.) (mem. op.). A trial court abuses its discretion when acting without reference to any guiding rules or principles, that is, when acting arbitrarily or unreasonably. *In re Commitment of Jones*, 650 S.W.3d 692, 699 (Tex. App.—Fort Worth 2022, pet. denied). Moreover, we must uphold the decision if any legitimate basis supports it. *Id.*

Next, jury argument is normally confined to the evidence and arguments of opposing counsel. TEX. R. CIV. P. 269(e); see *In re Commitment of Parkinson*, 2023 Tex. App. LEXIS 2279, at *11–12. Within that realm falls reasonable deductions from the evidence. *In re Commitment of Ybarra*, No. 09-14-00394-CV, 2016 Tex. App. LEXIS 1665, at *2 (Tex. App.—Beaumont Feb. 18, 2016, no pet.) (mem. op.). We conclude that reasonable minds can interpret the utterance at issue as reasonable deductions from the evidence.

One element of the State’s burden encompassed proving Gonzalez was a repeat sexually violent offender. Evidence illustrated he was. Yet, he refused to assume responsibility for his misconduct, according to Dr. Reed. So refusing could be interpreted as suggesting he did nothing wrong, i.e., did not commit prior criminal acts of sexual violence. To accept that he did nothing wrong, though, would mean that someone, like a juror, would have to disbelieve everyone who accused him of such criminality. The State argued as much. Furthermore, the category of individuals accusing him of those crimes would implicitly include people who investigated the criminal acts, like police officers. Indeed, counsel for Gonzalez had earlier insinuated, in closing, that people make mistakes when attempting to explain why 1) the thrust of Dr. Reed’s testimony should be discounted and 2) Gonzalez’s testimony about being rehabilitated should be accepted. If nothing else, that suggests others, like investigating officers, may have made mistakes too. So, given these surrounding circumstances, the State’s argument can reasonably be viewed as 1) rebutting Gonzalez’s innuendos about doing nothing wrong and 2) stressing the evidence establishing his repeated prior violent sexual misconduct.

Consequently, the trial court's decision to overrule Gonzalez's complaint comported with guiding principles and fell within the zone of legitimate discretion.

Having overruled the three issues, we affirm the trial court's judgment. The State's pending *Motion to Strike Documents from Gonzalez's Brief* is hereby denied as moot.

Brian Quinn
Chief Justice