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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. TIMOTHY BOWMAN, Defendant and Respondent.	B288164 (Los Angeles County Super. Ct. No. ZM035562)

APPEAL from an order of the Superior Court of Los Angeles County. Robert S. Harrison, Judge. Affirmed.

Jackie Lacey, Los Angeles County District Attorney, Phillis C. Asayama and Matthew Brown, Deputy District Attorneys for Plaintiff and Appellant.

Public Defender of Los Angeles County, Albert J. Menaster, Karen Osborne, and Lara Kislinger, Deputy Public Defenders for Defendant and Respondent.

Plaintiff and appellant the People of the State of California (the People), by and through the District Attorney of Los Angeles County, appeal from the trial court's order dismissing a petition to commit respondent Timothy Bowman (Bowman) as a sexually violent predator (SVP) under the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.).[1] We affirm the trial court's order.

BACKGROUND

On March 8, 2017, the People filed a petition pursuant to the SVPA to commit Bowman as an SVP. The probable cause hearing on the petition took place over several nonconsecutive days between October and December 2017. The trial court admitted into evidence a certified prison packet under Penal Code section 969b and a certified rap sheet showing that Bowman was convicted on August 27, 2007, of one count of a lewd act on a child under the age of 14, a qualifying sexually violent offense under the SVPA. (§6600.1.)

Probable cause hearing

Six witnesses testified at the probable cause hearing: Detective Acevedo, the investigating officer of the qualifying offense, Detective Geaney and parole agents McLemore and Quesada, who testified about Bowman's subsequent conviction for possession of child pornography, and two psychologists, Dr. Dern and Dr. Simonet, who testified that Bowman qualified as an SVP.

Detective Acevedo testified that during his investigation of the 2007 qualifying offense, Bowman reported to him that Bowman had sexually molested, over a period of years, three daughters of a couple he had known since the 1980's. Bowman was a close friend of the girls' parents and would regularly visit

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[1] All further statutory references are to the Welfare and Institutions Code, unless stated otherwise.

the family home, including during holidays. He even lived in the home for a year or two. Detective Acevedo testified, based on his interviews with the witnesses, that Bowman was like a family member to the victims' family.

On Thanksgiving Day of 2006, nine-year-old Celena reported that Bowman had touched her vaginal area for several seconds. The parents confronted Bowman, who abruptly left the home. Celena subsequently told Detective Acevedo that Bowman had rubbed her vaginal area over her clothes for several seconds while she was in her room watching television. She said a similar incident had occurred a few months before while she was in the family's motor home. Although Celena's mother was in the motor home at the time, she did not see the incident.

Detective Acevedo also interviewed Trisha (then age 19), who said that Bowman had been touching her sexually for many years, beginning when she was six or seven years old. As with Celena, Bowman would rub Trisha's vaginal area or breasts over her clothing. This behavior continued until Trisha was in her teens. Trisha estimated that Bowman touched her once or twice a week, or approximately 200 times.

Bowman admitted to Detective Acevedo that he had molested Celena on two occasions and Tricia over 200 times when she was between the ages of 5 and 14. He said he also molested another sibling, Candis, approximately 20 times, but Candis denied that Bowman had ever touched her. Candis told Acevedo that she never liked Bowman and that she never trusted him.

Based on the incidents with Celena and Tricia, Bowman was convicted of one count of violating Penal Code section 288 subdivision (a), and was sentenced to six years in prison.

While Bowman was on parole in March 2014, law enforcement agents searched his computer and found a video of an adult male sexually abusing a pre-pubescent boy, who

appeared to be between the ages of 8 and 10. Officers found other videos as well as a peer-to-peer file sharing program often used for sharing child pornography. The program had archived search terms indicating searches for child pornography. Bowman pleaded guilty to one count of violating Penal Code section 311.11, subdivision (b), and was sentenced to four years in prison.

Both Drs. Dern and Simonet diagnosed Bowman with pedophilic disorder, based on his long-term sexual activity with Tricia and Celena, his possession of child pornography, and his significant lack of adult sexual partners.

Both Dern and Simonet opined that Bowman was likely to reoffend, based on his above average risk assessment under the Static-99. Both psychologists further opined that Bowman's future crimes would likely be predatory. Dr. Dern based her opinion on an interview with Bowman regarding the qualifying offense:

> "So in regards to predatory, I did find that the crimes or the qualifying case with Celena was predatory in that I very specifically asked [Bowman] about his engagement with the girls: did he give them rides to school; did he help them with homework; did he babysit; any of those sorts of interactions. And he stated no. He stated he considers himself friends with the family as a whole, but predominantly, he went over to listen to music with the dad, and he had worked for the mother in the past. He had lived with the parents prior to Celena being born, and so he did not have a relationship with the girls outside of just having been in the same space with them."

Dr. Simonet testified as follows:

> "[W]ith respect to predatory, although I did find that [Bowman] had a significant relationship with the parents of the victims, I did not find that his

> relationship with the victims was a substantial relationship; and therefore, I considered his offenses predatory, and I believed that his future offenses, if they occur, would also be predatory."

Dr. Simonet reiterated his opinion on cross-examination. When asked if he was aware that Bowman was a close friend of the family, Simonet responded: "He was a close friend of the father . . . . Maybe not as close, but still pretty connected to the mother. But my impression in talking to him and also reading the accounts of the daughters was that I would definitely not say he was a close friend of theirs." Simonet explained that he based this impression on an interview with Bowman:

> "He said that he had known [Celena] from a young age. He saw her with reasonable frequency, I think a couple times per month. At one point he said he felt like she was family to him. And then I started asking more specifically about the nature of the relationship. Questions like did he spend any time with her individually? Did you ever do anything one to one with her? Did she ever come to you with problems? Did she ever talk to you about things of a personal nature? Did she ever come to you for help? Then he answered no to all those questions."

Trial court's ruling

The trial court issued its written ruling on December 28, 2017, finding that the People had presented sufficient evidence as to three of the four necessary criteria for a probable cause finding that Bowman was an SVP -- (1) he had been convicted of a qualifying sexually violent offense; (2) he had a diagnosable mental disorder; and (3) the disorder makes it likely that he would engage in sexually violent criminal behavior if released. The court found, however, that the evidence was insufficient as to

the fourth criterion -- that the future sexually violent criminal conduct would be predatory in nature.

The trial court disagreed with the psychologists' assessment that Bowman's criminal sexual acts against the victims were predatory in nature, noting that Bowman "was continually present in their lives practically since birth and he was at their home constantly." The court observed that Dr. Dern "had difficulty in conceiving that [Bowman] was not a stranger to them, or a mere acquaintance without a substantial relationship, because, perhaps, she thought children can only have a relationship with their immediate family and here, the children expressed a dislike for Mr. Bowman."

The trial court explained that it disagreed with the psychologists' assessment that Bowman's qualifying offense was "predatory" within the meaning of the SVPA, given Bowman's continual presence in the victim's lives and their home "practically since birth" and that "neither evaluator explained, analyzed, or offered scientific authority to show how Mr. Bowman presents a predatory risk based only on sex crimes against the children of his best friends." The court further stated that "[a]s Mr. Bowman has never committed a violent sex crime against a stranger, there is no basis to assume he would now become a sexually violent predator absent specific supporting facts and analysis."

The trial court dismissed the petition, but stayed its decision to February 16, 2018, to allow the People to seek review. This appeal followed.

DISCUSSION

I. Overview of the SVPA

The SVPA provides for the involuntary civil commitment of a criminal defendant who, after serving a prison term, is found to be an SVP. (§§ 6600-6604.) An SVP is defined as "a person who

has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health or safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1).)

Screening and petition for commitment

The commitment process begins with the screening of a defendant undertaken by the Department of Corrections at least six months before the defendant's scheduled release date from prison. (§ 6601.) If the screening results in a determination that the defendant is likely to be an SVP, the defendant is referred to the Department of Mental Health for an evaluation by two psychiatrists or psychologists. (§ 6601, subds. (b), (c).) If both evaluators find that the defendant "has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody" (§ 6601, subd. (d)), the Department of Mental Health forwards a petition for commitment to the county of the defendant's last conviction. (*Ibid.*) If the county's designated counsel (in this case the district attorney) concurs with the recommendation, a petition for commitment is filed in the superior court. (§ 6601, subd. (i).)

Once a petition for commitment has been filed, it is reviewed by a superior court judge to determine whether it "states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release." (§ 6601.5.) If the judge determines that the petition, on its face, supports a finding of probable cause, the judge orders the defendant to be detained in a secure facility and sets a probable cause hearing at which the defendant is entitled to counsel and to confront and call witnesses. (§§ 6601.5, 6602.)

Probable cause hearing

A probable cause hearing under section 6602 "is analogous to a preliminary hearing in a criminal case. . . . Like a criminal preliminary hearing, the only purpose of the probable cause hearing is to test the sufficiency of the evidence supporting the SVPA petition. [Citation.]" (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 247 (*Cooley*).) The outcome of the probable cause hearing determines whether or not the defendant must proceed to a trial for civil commitment as an SVP. (§ 6602, subd. (a).) If the judge determines there is not probable cause, the petition is dismissed. If the judge determines that probable cause exists, the matter proceeds to a trial at which the court or jury must determine whether or not the defendant is an SVP. (§ 6604.)

The petitioner at the probable cause hearing must present evidence to establish the following elements: (1) the defendant has been convicted of a qualifying sexually violent offense against one or more victims; (2) the defendant has a diagnosable mental disorder; (3) the disorder makes it likely the defendant will engage in sexually violent criminal conduct if released; and (4) the sexually violent conduct will be predatory in nature. (*Cooley, supra*, 29 Cal.4th at p. 236.)

Predatory offenses

"Predatory" as defined in the SVPA "means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization." (§ 6660, subd. (e).)

The purpose of limiting commitment under the SVPA to persons who commit predatory acts, "a much smaller group than the class of persons who commit sexually violent criminal acts," is that SVPs include "the most dangerous offenders." (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1187.) As the California

Supreme Court has observed: "Because predatory offenders could strike at any time and victimize anyone, they pose a much greater threat to the public at large. In contrast, a defendant likely to commit crimes only against family members or close acquaintances is less likely to reoffend because potential victims will be aware of the defendant's status as a sex offender. The public at large, however, is inevitably more defenseless against acts committed by strangers." (*Id.* at pp. 1187-1188.)

At the probable cause hearing, the judge must determine whether there is "probable cause to believe that a potential SVP presents a *serious and well-founded risk* of committing sexually violent criminal acts that will be of a predatory nature." (*Cooley, supra*, 29 Cal.4th at p. 256; § 6602, subd. (a).) That determination "entails a decision *whether a reasonable person could entertain a strong suspicion that the offender is an SVP*." (*Id.* at p. 252.) In making that decision, "the superior court may evaluate the validity of any evidence presented by an expert, as well as judge the credibility of any expert witness who testifies at the hearing." (*Id.* at p. 257.)

II. Standard of review

"[W]hen reviewing a probable cause determination made pursuant to [the SVPA], '[t]he character of judicial review . . . depends on whether the [superior court] has exercised [its] power to render findings of fact. If [it] has made findings, those findings are conclusive if supported by substantial evidence. [Citations.] If [it] has not rendered findings, however, the reviewing court cannot assume that [it] has resolved factual disputes or passed upon the credibility of witnesses. A dismissal unsupported by findings therefore receives the independent scrutiny appropriate for review of questions of law.' [Citation.]" (*Cooley, supra*, 29 Cal.4th at p. 257.)

III. Future predatory risk

The People contend the trial court improperly rejected the psychologists' opinions that Bowman's likely future sexually violent crimes would be predatory, based on the predatory nature of his qualifying offense. The trial court disagreed with the psychologists' determination that Bowman lacked a substantial relationship with the victims, and that his offenses against them were therefore predatory. The court noted that the victims were the children of Bowman's "best friends," that Bowman was a "family friend" who "was continually present in their lives practically since birth," and that "he was at their home constantly." The trial court further noted that the psychologists' opinions were based solely on Bowman's qualifying offense and the premise that past conduct is a predictor of future conduct, but that Bowman had never committed a violent sex crime against a stranger.

Substantial evidence supports the trial court's factual determinations. Detective Acevedo testified that Bowman was a close friend of the parents since the 1980's and was like a family member. Acevedo further testified that Bowman had known the parents since before the children were born, that he continued to be close to the parents after the children's birth, and that he visited the family home regularly, including for holidays. Acevedo's interview of Tricia indicated that Bowman was in the home on a weekly basis during the years he molested her. Certified copies of Bowman's state prison records show that the 2007 qualifying conviction is his only sexually violent offense.

We disagree with the People's assertion that the trial court made no factual findings, and ruled solely as a matter of law that there was a lack of probable cause. While it is true that the trial court made no findings about whether the facts presented were reliable, or about the credibility or qualifications of the experts,

the court's written ruling clearly includes factual determinations concerning the nature of Bowman's relationship with the victims.

The People argue that a reasonable factfinder could conclude that Bowman lacked a substantial relationship with the children, and that the psychologists' conclusions that Bowman's frequent contact with the victims, without more, did not establish a substantial relationship under the SVPA. They point out that Bowman never babysat the victims, took them to school, helped with homework or discussed personal matters or problems with them.

That the psychologists relied on other evidence as the basis for their conclusions does not alter the result. The trial court's factual determinations concerning the nature of Bowman's relationship with the victims are supported by substantial evidence and are therefore conclusive. (*Cooley, supra*, 29 Cal.4th at p. 257.) We do not reweigh the evidence to challenge those findings.[2]

We also disagree with the People's assertion that the trial court exceeded its role at the probable cause hearing by rejecting the psychologists' determination that Bowman's qualifying offense was predatory. At the probable cause hearing, "'"the [superior court] may weigh the evidence, resolve conflicts, and give or withhold credence to particular witnesses."' [Citation.]" (*Cooley, supra*, 29 Cal.4th at p. 257.) The trial court did so here,

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[2] We do not address Bowman's argument on appeal that the predatory nature of his qualifying offense is not a proper subject of expert opinion. We also do not address the parties' arguments as to whether the statutory definition of a "predatory" act as one that is directed toward "a casual acquaintance with whom no substantial relationship exists" (§ 6600, subd. (e)), involves a two-part analysis: (1) whether the victim was a "casual acquaintance" and (2) whether a substantial relationship existed between the victim and the offender.

found that Bowman had a substantial relationship with the victims, and on that basis concluded that the prior offense was not predatory. Because the psychologists' testimony about Bowman's likelihood of committing future predatory crimes was based solely on the allegedly predatory nature of his prior offense, the trial court could properly discount that testimony. (*Ibid.*)

The trial court did not err by concluding the evidence was insufficient to support the SVPA petition.

DISPOSITION

The order dismissing the petition is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT