

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Sanford

580 Pa. 604 (2004) (Pa. 2004) · No. No. 44 MAP 2003 · Decided December 21, 2004

SUMMARY

The Supreme Court of Pennsylvania considered whether the Superior Court properly reversed a trial court's determination that Michael L. Sanford was a sexually violent predator under Megan's Law II. The court held that the Superior Court improperly disregarded the expert's testimony when evaluating the sufficiency of the evidence and remanded for reconsideration under the proper standard, while distinguishing sufficiency review from challenges to evidentiary admissibility.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Cappy; Cappy, C.J.; Castille, J.; Nigro, J.; Newman, J.; Saylor, J.; Eakin, J.; Baer, J.
JURISDICTION	Pennsylvania
DECIDED	December 21, 2004
DOCKET	No. 44 MAP 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth petitioned for allowance of appeal from the Superior Court's reversal of a trial court order designating Sanford a sexually violent predator under Megan's Law II. The Supreme Court granted allocatur, reversed the Superior Court, and remanded for reconsideration of the sufficiency claim under the proper legal standard.
STANDARD OF REVIEW	The question whether the Commonwealth presented sufficient evidence to establish SVP status is reviewed de novo, with plenary scope of review. In assessing sufficiency, the reviewing court must consider all evidence presented and view it in the light most favorable to the Commonwealth, without excluding evidence merely because it may be inadmissible.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Pennsylvania; precedential.
PARTIES	Commonwealth of Pennsylvania v. Michael L. Sanford

TOPICS

criminal procedure

evidence

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

criminal procedure

evidence

sexually violent predator proceedings

appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court erred by reversing the trial court's SVP designation on sufficiency grounds after disregarding the Commonwealth expert's testimony because it relied on facts contained in the affidavit of probable cause and charging documents.
2. Whether, in reviewing the sufficiency of the evidence at an SVP hearing, an appellate court may exclude evidence from consideration because the evidence may have been inadmissible.

HOLDINGS

1. An appellate court reviewing the sufficiency of the evidence may not eliminate evidence from consideration merely because it deems that evidence inadmissible. Admissibility is distinct from sufficiency; if improperly admitted evidence was considered, the appropriate remedy is a new hearing or trial rather than a finding that the remaining evidence was insufficient.
2. The Superior Court must reconsider whether the evidence was sufficient to establish Sanford as a sexually violent predator by considering the entire body of evidence introduced at the SVP hearing, including the entirety of Valliere's testimony, and viewing that evidence in the light most favorable to the Commonwealth.

KEY QUOTATIONS

“The question of sufficiency is not assessed upon a diminished record. Where improperly admitted evidence has been allowed to be considered by the jury, its subsequent deletion does not justify a finding of insufficient evidence. The remedy in such a case is the grant of a new trial.” (431-432)

FACTUAL BACKGROUND

Sanford pleaded guilty to sexually assaulting a fifteen-year-old girl after ignoring her request to stop intercourse. At the subsequent SVP hearing, Commonwealth psychologist Veronique N. Valliere relied on police reports, the affidavit of probable cause, charging documents, Sanford's criminal history, and other behavioral information. Valliere opined that Sanford was an SVP based on, among other things, antisocial personality disorder, the circumstances of the assault, and his prior assaultive conduct; the trial court credited her testimony and also considered Sanford's expert's view that he was borderline for SVP status.

PROCEDURAL HISTORY

Sanford pleaded guilty to sexual assault. After an SVP hearing, the trial court found by clear and convincing evidence that he was a sexually violent predator. The Superior Court reversed, concluding that the evidence was insufficient because the Commonwealth's expert relied on allegations in the affidavit of probable cause and

charging documents that were not established in the guilty plea. The Supreme Court reversed and remanded, holding that the Superior Court improperly conflated admissibility with sufficiency and had to consider all evidence introduced at the hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Superior Court was directed to reconsider the sufficiency-of-the-evidence claim by considering all evidence introduced at the SVP hearing, including the entirety of Valliere's testimony, and viewing the evidence in the light most favorable to the Commonwealth. The Superior Court could also address Sanford's other claims preserved and presented in his appellate brief. Jurisdiction was relinquished.

CASES CITED

- Commonwealth v. Weston, 561 Pa. 199, 749 A.2d 458, 460 n. 8 (2000)
- Commonwealth v. Smith, 523 Pa. 577, 568 A.2d 600, 603 (1989)

OPINION

Commonwealth v. Sanford 863 A.2d 428

CAPPY, J.

863 A.2d 428 (2004) COMMONWEALTH of Pennsylvania, Appellant, v. Michael L. SANFORD, Appellee. No. 44 MAP 2003. Supreme Court of Pennsylvania. Submitted June 17, 2003. Decided December 21, 2004.

*429 Mark Carlyle Baldwin, Iva C. Dougherty, Reading, for Com. of PA.

Jeanne Trivellini, Pine Forge, for Michael L. Sanford. BEFORE: CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN and BAER, JJ.

OPINION

Chief Justice CAPPY. This matter is before us on allowance of appeal. The issue presented is whether the Superior Court erred when it reversed the trial court's order determining that Michael L. Sanford ("Appellee") is a sexually violent predator ("SVP") pursuant to Megan's Law II, 42 Pa.C.S. § 9791 et seq. For the reasons that follow, we reverse and remand this matter to the Superior Court. Appellee was arrested on charges arising out of a sexual assault of a fifteen year old girl. Appellee ultimately pled guilty to one count of sexual assault, 18 Pa.C.S. § 3124.1.[1] During the plea, Appellee presented his version of the facts. Appellee's version of events reads, in its entirety, as follows: In the early evening hours [of October 16, 2000, Appellee] encountered the victim on the corner of 9th and Cherry Streets. He and the victim agreed to engage in sexual relations in exchange for \$20. The victim accompanied [Appellee] to his former apartment at 15 South Tenth Street. At that time, once they started to engage in the act of intercourse, the victim

asked [Appellee] to stop. He ignored her request to stop and that he engaged in sexual intercourse with her without her consent and the act of intercourse that he admits to is the by penis to vagina. N.T., 2/28/2001, at 8. Subsequently, hearings were held pursuant to 42 Pa.C.S. § 9795.4 to determine whether Appellee was an SVP. At this hearing, the Commonwealth presented, inter alia, the testimony of Veronique N. Valliere ("Valliere"), a psychologist who is a member of this Commonwealth's State Sexual Offenders Assessment Board ("Board"). At the outset of her testimony, Valliere stated that she based her opinion on "all the police reports, criminal complaints, prior evidence gathering ... [as *430 well as Appellee's] past criminal behavior and past behavioral history." N.T., 6/19/2001, at 36. She also noted that all of the information upon which she relied in forming her opinion had been listed at the beginning of her assessment report, which had been entered into evidence as Commonwealth's Exhibit One. Id. Among the items listed in Valliere's assessment report are the affidavit of probable cause and the criminal complaints in the instant matter. Commonwealth's Exhibit One. Valliere then opined that Appellee was indeed an SVP. In forming this opinion, she stated that Appellee has an antisocial personality disorder. N.T., 6/19/2000., at 39-40. She highlighted that this was a violent crime in that Appellee dragged the victim off of the street and sexually assaulted her even after encountering "significant resistance" from the victim. Id. at 40. Valliere commented that Appellee's assault on the victim included his forceful attempts to assault the victim anally, orally, and vaginally. Id. at 40-41. Valliere also noted that Appellee had a prior criminal history of assaults against women, noting that he had "a prior conviction for an attempted rape," id. at 39, and stating that the conviction for this crime was for indecent assault. Id. at 54.[2] At the close of hearings, the trial court determined that Appellee was an SVP. The trial court stated that Valliere's testimony "sufficiently established by clear and convincing evidence that [Appellee] is an [SVP]." Tr. ct. slip op. at 10. It also noted that Appellee's own expert conceded that Appellee "is on the borderline of being [an SVP]." Id. In light of these two opinions, the trial court determined that the evidence was clear and convincing that Appellee should be classified as an SVP. Id. Appellee appealed to the Superior Court, raising three separate challenges to the trial court's determination that he was an SVP. The Superior Court reversed the order of the trial court on the basis that the evidence was not sufficient to establish that Appellee was an SVP.[3] The court noted that the Commonwealth's principal witness at the SVP hearing was Valliere. The Superior Court concluded that Valliere's testimony, however, was insufficient to sustain the trial court's finding that Appellant was an SVP. It stated it was "compelled" to find that the evidence was insufficient since "Valliere's testimony was almost entirely dependent upon the original warrant and charging document in this case, and their unproven allegations, rather than the actual basis of the guilty plea." Super. Ct. slip. op. at 9. It opined that by relying on the charging document and the affidavit for probable cause, Valliere introduced facts that had not been proven at the guilty plea nor stipulated to by Appellee. For example, Appellee's statement at the guilty plea did not intimate that the sexual assault was violent, whereas Valliere noted that the victim had been forcibly removed from the street and that Appellee had tried to anally and orally

rape the victim prior to successfully raping her vaginally. Id.[4]

*431 The Commonwealth then filed a Petition for Allowance of Appeal with this Court, asserting that the Superior Court erred in its determination that there was insufficient evidence to establish that Appellee is an SVP. We granted allocatur. For the reasons that follow, we now reverse.[5]

In analyzing this question, we first review the process by which a trial court determines whether a defendant is an SVP. There are multiple steps in this process. After a defendant is convicted of an offense specified in 42 Pa.C.S. § 9795.1[6], the trial court orders the Board to prepare an assessment of the defendant. In preparing this assessment, the Board is to consider, *inter alia*, the facts of the current offense, the defendant's prior offense history, and characteristics of the defendant. 42 Pa.C.S. § 9795.4(b). This assessment is then forwarded to the Commonwealth. The Commonwealth may then *praecipe* to convene a hearing to determine whether the defendant is an SVP. 42 Pa.C.S. § 9795.4(e)(1). These SVP hearings are not perfunctory affairs in which the parties and the judge merely review the trial or guilty plea colloquy proceedings. Rather, they are evidence gathering mechanisms. Section 9795.4 specifically states that the district attorney and the defendant "shall be given notice of the hearing and an opportunity to be heard, the right to call witnesses, the right to call expert witnesses and the right to cross-examine witnesses." 42 Pa.C.S. 9795.4(e)(2). Additionally, the defendant is granted the right to counsel. Id. The Commonwealth bears the burden of proof at this hearing, and it must establish by clear and convincing evidence that the defendant is an SVP. 42 Pa.C.S. § 9795.4(e)(3). As this is a question of law, our standard of review is *de novo* and our scope of review is plenary. See *Commonwealth v. Weston*, 561 Pa. 199, 749 A.2d 458, 460 n. 8 (2000). As noted *supra*, the Superior Court held that the Commonwealth did not meet this burden. In making this determination, it refused to credit Fallers testimony as it was predicated on facts that were not contained in Appellees guilty plea. While we are uncertain as to the precise thrust of the Superior Courts rationale, it appears that the Superior Court found the evidence to be insufficient because Vallieres testimony was somehow inadmissible due its reliance on the affidavit for probable cause and the charging documents. A defendant such as Appellee may, of course, raise a challenge to the admissibility of evidence adduced by the Commonwealth at an SVP hearing; an appellate court may ultimately find such a challenge to be meritorious and that the defendant is entitled to a new SVP hearing.[7] Yet, a challenge to the admissibility of evidence is separate from a sufficiency claim. Indeed, it is improper for a court, when reviewing a sufficiency challenge, to eliminate from its consideration any evidence which it deems to be inadmissible. This court has stated with great precision that in addressing sufficiency of the evidence claims,

*432 we are called upon to consider all of the testimony that was presented to the jury during the trial, without consideration as to the admissibility of that evidence. The question of sufficiency is not assessed upon a diminished record. Where improperly admitted evidence has been allowed to be considered by the jury, its subsequent deletion does not justify a finding of insufficient evidence. The remedy in such a case is the grant of a new trial.

Commonwealth v. Smith, 523 Pa. 577, 568 A.2d 600, 603 (1989) (emphasis supplied). Accordingly, to the extent that the Superior Court disregarded Valliere's testimony because it found the testimony to be inadmissible, it erred. In conducting its review of this claim, the lower court should have examined all the evidence adduced by the Commonwealth, "without consideration as to the admissibility of that evidence." *Id.* Thus, it should have viewed all of the evidence introduced at the hearing including the entirety of Vallieres testimony in the light most favorable to the Commonwealth to determine whether this corpus of evidence was sufficient to sustain the SVP designation. For the foregoing reasons, we reverse the order of the Superior Court and remand this matter to the Superior Court for it to reconsider the sufficiency of the evidence claim utilizing the proper legal standard. Furthermore, the Superior Court may address any other claims Appellee preserved and presented in the appellate brief Appellee filed with that court. Jurisdiction relinquished. Justice SAYLOR dissents.

NOTES

[1] In its memorandum opinion, the Superior Court states that Appellee pled guilty to indecent assault. Super. Ct. slip op. at 1. This is incorrect. The guilty plea colloquy and the trial court opinion clearly state that Appellee pled guilty to sexual assault. See N.T., 2/28/2001, at 2; tr. ct. slip op. at 2.

[2] We note that Appellee had a full opportunity to cross-examine Valliere and was allowed to introduce testimony from his own psychiatric expert.

[3] As the Superior Court granted Appellee relief on this issue, it did not consider Appellee's other two issues.

[4] The Superior Court also stated that Valliere improperly referred to Appellee's previous conviction stemming from a sexual assault of a different victim as a conviction for attempted rape whereas the conviction was in fact for indecent assault. Super. Ct. slip op. at 9. Valliere did colloquially refer to Appellee's assault on another woman as an "attempted rape". N.T., 6/19/2000., at 39. However, she clearly stated in her testimony that the charge on which he stood convicted for that crime was indecent assault. *Id.* at 54.

[5] We note that Appellee did not file a brief with this Court. Accordingly, there are no counterarguments to the Commonwealth's position for us to address.

[6] Sexual assault, the crime of which Appellee has been convicted, is one of the crimes listed in § 9795.1.

[7] We render no opinion on whether Vallieres reliance on the affidavit of probable cause and the charging documents somehow rendered her testimony inadmissible as this issue is not before this court.