Columbia, South Carolina
March 13, 2007

ANDERSON, J.: The State appeals the circuit court's order finding the State had not shown probable cause to believe Renauld L. Brown is a sexually violent predator. We reverse and remand.[1]

FACTUAL/PROCEDURAL BACKGROUND

At approximately 6:00 a.m., on September 10, 2000, Renauld L. Brown was caught peeping in the windows of a thirty-six year old woman's home. In November of that year, Brown was indicted on one count of eavesdropping/peeping tom for the incident. Thereafter, Brown was seen looking into the same victim's windows on January 13, 2001 at approximately 3:00 a.m., and again on April 10, 2001 at 4:00 a.m. On October 10, 2001, Brown was convicted of one count of stalking and two counts of entering premises after notice in connection with the 2000 and two 2001 incidents. He was sentenced to thirty days with credit for time served.

On the evening of October 12, 2001, two days after being released from jail, Brown was seen peeping into the windows of the same woman's abode. While his victim was on the telephone calling police, Brown attempted to break down her back door. He was subsequently apprehended and charged with voyeurism, stalking, and attempted burglary. On December 19, 2002, Brown was convicted on all three charges and sentenced to three years suspended to 433 days (time served) for voyeurism, one year for stalking, and five years suspended to 433 days (time served) for attempted burglary.

On January 13, 2003, twenty-five days after being released from jail on the December 2002 convictions, Brown was seen shortly before midnight peeping into the windows of a house belonging to the sister of the victim of his earlier offenses. When police arrived, Brown attempted to flee but was captured after a brief foot chase. After he was arrested and placed in the patrol car, Brown kicked one of the officers and began kicking the vehicle's doors. He was charged with eavesdropping/peeping tom and resisting arrest.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

On January 7, 2005, Brown pled guilty to voyeurism and was sentenced to three years suspended to thirty months and three years probation, with credit for time served. The sentencing judge made a specific finding that the offense should be considered a sexually violent act under the South Carolina Sexually Violent Predator Act (S.C. Code Ann. §§ 44-48-10 to 44-48-170 (Supp. 2006)).

Brown arrived at the South Carolina Department of Corrections on January 10, 2005, and was released on probation on January 11, 2005. On June 4, 2005, less than six months after being released on probation, Brown was seen looking into the windows of yet another home. The house belonged to a twenty-eight year old female, unrelated to his prior victims. Brown pled guilty to one count of eavesdropping/peeping tom on June 29, 2005, and was sentenced to eighteen months incarceration, with the special condition that he receive mental health counseling.

Pursuant to the Sexually Violent Predator Act, and particularly in light of the fact he had a previous qualifying offense, prior to Brown's release from the Department of Corrections, the multidisciplinary committee reviewed his case. On October 24, 2005, the committee found probable cause to believe Brown to be a sexually violent predator. On November 22, 2005, the prosecutor's review committee also found probable cause to believe Brown is a sexually violent predator and referred the case for further proceedings under the Act.

On December 2, 2005, the State commenced an action seeking to commit Brown for long term control, care, and treatment. The circuit judge found the State's petition set forth sufficient probable cause to believe Brown to be a sexually violent predator and ordered his detention pending a probable cause hearing.

The matter was called for a probable cause hearing in the circuit court on February 15, 2006. Brown was present with counsel. The state argued Brown's history indicated he has a mental abnormality that causes him serious difficulty in controlling his deviant behavior. The State further averred Brown's lack of sex offender treatment of any kind make him a significant risk to re-offend if not confined for long-term control, care and

treatment. In light of the evidence indicating Brown's inability to control his behavior and his significant risk to re-offend, the State asked the circuit court to find probable cause and order that Brown be evaluated by a qualified expert pursuant to the Code.

Brown argued that even though his conduct was against the law, he had not committed an act of violence, and therefore, the State could not show probable cause that he would commit future acts of sexual violence.

During the proceeding, the circuit court stated:

> [I]t's not like he's [Brown] just oblivious to the fact that [his offenses] ought to be considered some sort of deviant behavior.
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> . . .
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> He ought to have sense enough to know he needs counseling based upon his prior behavior. And if he had that treatment or that counseling at his request, it might be that the state wouldn't even be here with this petition today, you see.
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> That's one concern they have, is that he's not received any treatment for his obvious misbehavior and it's likely that it's needed, and that's likely to be true. And therefore I say he ought to understand that just based on his prior behavior and his difficulties. That's got nothing to do with probable cause.

The circuit court dismissed the action, finding the State had not established probable cause to believe Brown is a sexually violent predator. The entire substantive body of the judge's order read:

> This matter came before this Court for hearing on the petition of the petitioner, pursuant to S.C. Code Ann. Section 44-48-80, for the Court to determine whether probable cause exists to believe

control, care, and treatment. S.C. Code Ann. § 44-48-20 (Supp. 2006). Noting "the nature of the mental conditions from which sexually violent predators suffer and the dangers they present," our General Assembly found "it is necessary to house involuntary committed sexually violent predators in secure facilities separated from persons involuntarily committed under traditional civil commitment statutes." S.C. Code Ann. § 44-48-20 (Supp. 2006).

The SVP Act defines a "sexually violent predator" as a person who: "(a) has been convicted of a sexually violent offense; and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." S.C. Code Ann. § 44-48-30 (1) (Supp. 2006).

Commitment of someone under the SVP Act typically begins when a person convicted of a sexually violent offense is scheduled to be released from custody. See S.C. Code § 44-48-40(A) (Supp. 2006). When a person has been imprisoned for a sexually violent offense, law requires that the agency with jurisdiction over that person give notice to both the Attorney General and a multidisciplinary team specially designed to evaluate the particular offender. Id. Typically, such notice must be provided in writing at least one hundred eighty days prior to the person's release. See § 44-48-40(A)(1) (Supp. 2006).

The multidisciplinary team must consist of: "(1) a representative from the Department of Corrections; (2) a representative from the Department of Probation, Parole and Pardon Services; (3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with expertise in treating sexually violent offenders; (4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2-19-100; and (5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year." S.C. Code Ann. § 44-48-50 (Supp. 2006). This team reviews the person's records to determine if he or she satisfies the definition of a sexually violent predator. Id. If the multidisciplinary team determines that the person meets the definition, the

and that the accused committed it. Brown, 460 U.S. at 742, 103 S. Ct. 1535 (quoting Carroll v. United States, 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543 (1925)). Probable cause may be found somewhere between suspicion and sufficient evidence to convict. State v. Blassingame, 338 S.C. 240, 250, 525 S.E.2d 535, 540-41 (Ct. App. 1999) (citing Thompson v. Smith, 289 S.C. 334, 336-37, 345 S.E.2d 500, 502 (Ct. App. 1986), overruled in part on other grounds by Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990)).

In the context of probable cause to believe someone to be a sexually violent predator, probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person meets the definition of a sexually violent predator. See People v. Hardacre, 109 Cal. Rptr. 2d 667, 673 (Cal. App. 2 Dist. 2001); see also Matter of Hay, 953 P.2d 666, 676 (Kan. 1998) (a probable cause determination in a sexual predator case requires evidence sufficient for a person of ordinary prudence and action to conscientiously entertain a reasonable belief that the person in question is a sexually violent predator). Probable cause "does not demand any showing that such a belief be correct or more likely true than false." Brown, 460 U.S. at 742, 103 S. Ct. 1535.

In a seven-month span in 2000 and 2001, Brown was discovered peeping into the same victim's windows on three separate occasions, the latter two incidents occurring after he had already been indicted for the first. Only two days after completing his first sentence, Brown was apprehended for recommitting his previous offense, this time attempting to break down the woman's door. He was imprisoned and shortly after being released from confinement was caught peeping in windows at the home of the previous victim's sister. During this arrest, Brown behaved violently. He resisted capture and kicked a police officer in the process. After being incarcerated for approximately two years for this offense, Brown was yet again found looking into someone's home.

This chronology demonstrates a disturbing pattern, no sign of rehabilitation or remorse, and shows increasingly violent aspects of deviant behavior. A person's dangerous propensities to commit future acts of sexual violence are the focus of the SVP Act. See In re Care and Treatment of Corely, 353 S.C. 202, 207, 577 S.E.2d 451, 454 (2003). There is

"showing a disposition to injure or exploit others for one's own gain." Webster's New Collegiate Dictionary 898 (1979).

Additionally, Brown committed acts of violence. In connection with two of his voyeurism incidents, he attempted to break down one victim's door, resisted arrest, and kicked a law enforcement official. Such behavior indicates that Brown's urges transcend the act of passively watching women through their windows at night.

A cursory reading of the transcript reveals the circuit court believed there was sufficient evidence to suggest Brown suffers from sexually deviant urges and needs therapy and psychiatric care. The court stated that Brown should "know he needs counseling based upon his prior behavior," and that the State's contention that Brown needed sex offender treatment was "likely to be true." Yet incredibly, the circuit court stated Brown's need for treatment "based upon his prior behavior and his difficulties" had "nothing to do with probable cause." In contrariety, the need for treatment to prevent repeat offenses is the central focus of the SVP Act, and thus is directly relevant to such probable cause determinations. In the face of those statements on the record, however, the circuit court inexplicably found no probable cause and dismissed the case.

The circuit court's finding of no probable cause is not supported by the evidence. It is in contraposition to the record as well as the court's stated recognition that Brown has deviant urges and needs treatment. If the circuit court's order is given viability, Brown will not be evaluated to determine the extent of his obvious sexually deviant urges and what treatment he needs to control them. Rather, he will remain free to terrorize other unsuspecting females, and will not receive the treatment he requires.

CONCLUSION

We hold that the trial record irrefutably establishes probable cause within the mandate of the South Carolina Sexually Violent Predator Act. We come to the adamantine and inescapable conclusion that the evidentiary record dictates **REVERSAL**.

This case is remanded to the circuit court for further proceedings in accordance with the South Carolina Sexually Violent Predator Act, including a psychiatric evaluation and a trial on the merits.

ACCORDINGLY, THE ORDER OF THE CIRCUIT JUDGE IS REVERSED AND THE CASE IS REMANDED.

KITTREDGE and SHORT, JJ., concur.