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SUPREME COURT OF TEXAS
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Cause Number 19-0561

In re the Commitment of

Jeffery Lee Stoddard

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State's Reply Brief on the Merits

As Petitioner

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On Appeal from Cause # D371-S-13391-16

In the 371st District Court of

Tarrant County, Texas

Judge Don Chrestman, Presiding

And

Cause # 02-17-00364-CV

In the Court of Appeals, Second Judicial District

Fort Worth, Texas

Chief Justice Sudderth, Justices Walker and Birdwell, originally Presiding

Chief Justice Sudderth, Justices Gabriel and Birdwell, finally Presiding

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The State requests oral argument.

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In re the Commitment of

Jeffery Lee Stoddard

To the Honorable Justices of the Supreme Court:

Petitioner, the State of Texas, files this Reply Brief to correct misunderstandings about the law and the State's positions on civil commitment.

Issues Presented

First Ground for Review: Because the SVP Act requires proof beyond a reasonable doubt, appellate courts have always applied the criminal standard for legal sufficiency reviews. They applied the criminal standard for factual sufficiency reviews until it was abolished by the Court of Criminal Appeals in *Brooks v. State*. Should factual sufficiency reviews also be abolished in these civil cases that require proof beyond a reasonable doubt?

Second Ground for Review: In all sufficiency reviews, the evidence presented at trial is compared to the elements required to be proven. The appellate court improperly conducted the factual sufficiency review when it considered evidence

outside of the record and created new elements not mandated by this Court or the SVP Act. Did the appellate court employ an improper standard for review and substitute the jury's determinations with its own?

Summary of the Argument

Stoddard argues that factual sufficiency reviews, conducted in a neutral light, should be the law. Such a review is contrary to controlling authorities. Adopting the *Jackson v. Virginia* standard will not operate to render civil commitments quasi-criminal because the law would still not punish, nor seek to punish, those committed. Establishing *Jackson v. Virginia* as the sole standard for review will constitutionally protect the person committed.

The State agrees that similarly situated cases should be treated similarly. However, this is not what the lower appellate court did. It sought out a handful of cases that were not similar to Stoddard and used those cases to find the evidence in this case factually insufficient. Cases similarly situated to Stoddard have passed sufficiency reviews.

Under either ground for review, the opinion of the lower appellate court should be reversed.

Argument

First Ground for Review: Because the SVP Act requires proof beyond a reasonable doubt, appellate courts have always applied the criminal standard for legal sufficiency reviews. They applied the criminal standard for factual sufficiency reviews until it was abolished by the Court of Criminal Appeals in *Brooks v. State.* Should factual sufficiency reviews also be abolished in these civil cases that require proof beyond a reasonable doubt?

Stoddard fails to consider or acknowledge that the State had to prove he suffers from a behavioral abnormality.

The State does not now, nor has it ever, argued that it only has to show some degree of risk to civilly commit a person. Respondent fails to consider or acknowledge that the State must prove he suffers from a *behavioral abnormality* — a congenital or acquired condition that, by affecting his emotional or volitional capacity, predisposes him to commit a sexually violent offense, to the extent that he is a menace to the health and safety of another person.[1] Proof of a behavioral abnormality meets the constitutional standards for civil commitment.

Contrary to Stoddard's briefing, not every prisoner, nor every sexual recidivist, automatically qualifies for civil commitment. Respondents in civil commitment cases frequently have experts testify the person on trial has no behavioral abnormality.[2] Additionally, it has been shown over time that less than 5% of the repeat sexually

[1] § 841.002(2)

[2] A Westlaw search shows Drs. Mauro, Tennison, and Shursen haves testified for respondents in 70 cases.

violent offenders who enter the civil commitment screening process are ever actually committed.[3,4]

Setting a single standard for review will not make the SVP Act quasi-criminal.

A quasi-criminal matter is a civil proceeding which seeks to penalize a person for the commission of an alleged offense. The lower appellate court in *Fisher* determined the SVP Act was either civil or quasi-criminal.[5] This Court reversed that determination and declared the Act civil.[6]

Juvenile proceedings are quasi-criminal — they are civil proceedings which often to penalize a juvenile for committing a crime.[7] Forfeiture proceedings are quasi-criminal — they are civil proceedings which seek to penalize a defendant for committing a crime.[8] The SVP Act has never sought to punish a person and abolishing factual sufficiency reviews will not change the civil nature of these proceedings.

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[3] See p. 7 of Biennial Report regarding the Texas Civil Commitment Office, December 1, 2016-November 30, 2018, found at https://tcco.texas.gov/sites/tcco/files/documents/plans-reports-rules/tcco-biennial-report-2018.pdf . In fiscal years 2010-2018, 6944 people were presented to the multidisciplinary team for consideration. Only 334 were committed. That is a 4.8% commitment rate.

[4] Only people believed to be *repeat sexually violent offenders* are referred to the multidisciplinary team. § 841.021(a).

[5] *Commitment of Fisher v. State,* 123 S.W.3d 828, 835 (Tex. App. -Corpus Christi 2003), *rev'd sub nom. In re Commitment of Fisher,* 164 S.W.3d 637 (Tex. 2005).

[6] *Fisher* at 653.

[7] Tex. Family Code § 51.01(2)(A); *In re C.O.S.*, 988 S.W.2d 760, 765 (Tex. 1999).

[8] *One 1958 Plymouth Sedan v. Com. of Pa.*, 380 U.S. 693, 700, 85 S. Ct. 1246, 1250, 14 L. Ed. 2d 170 (1965).

The standard of review does not render any act civil, criminal, or quasi-criminal. Rather, it is considerations such as legislative intent and the statute's purposes and effects that determine the nature of a law.[9] The SVP Act has already been determined to be civil, not punitive.[10] Abolishing factual sufficiency reviews will not make the statute quasi-criminal.

Review should be granted on the first ground and the *Jackson v. Virginia* standard for review should be adopted as the sole standard for review in these civil cases that carry a burden of proof beyond a reasonable doubt.

Second Ground for Review: In all sufficiency reviews, the evidence presented at trial is compared to the elements required to be proven. The appellate court improperly conducted the factual sufficiency review when it considered evidence outside of the record and created new elements not mandated by this Court or the SVP Act. Did the appellate court employ an improper standard for review and substitute the jury's determinations with its own?

Stoddard's position makes reviewing courts thirteenth jurors.

Stoddard argues factual sufficiency reviews should continue and should be conducted in a neutral light. This Court, the Court of Criminal Appeals, and the United States Supreme Court all require reviewing courts not to sit as thirteenth

[9] *Fisher,* 164 S.W.3d at 646-653.
[10] *Fisher* at 653.

jurors.[11] Yet that is what the lower appellate court did and that is what Stoddard is urging should continue.

Stoddard argues factual sufficiency reviews should continue, despite the holdings of *Brooks v. State,* because this civil case deserves more protection than criminal cases. There is nothing to support this argument. Our system has always protected criminal defendants above and beyond any respondent in a civil case.

Stoddard briefs that only six people have ever been released from civil commitment. He missed Eddie McBride, cause No. 08-09-09223-CV, committed April 2009, released April 2016. A review of these seven cases reveals that they have all been released since the tiered-treatment program was initiated in 2015. That program is working. That the others have not been released speaks to the severity of their behavioral abnormalities, not an injustice of commitment. The people in treatment all get biennial reviews and are free to petition the court for release at any time.[12] The statute anticipates that when it is safe for the person to be released into society, the person will be.

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[11] *See Windrum v. Kareh*, 581 S.W.3d 761, 781 (Tex. 2019), reh'g dismissed (May 24, 2019); *Brooks v. State*, 323 S.W.3d 893, 911 (Tex. Crim. App. 2010); *and see Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979) (all requiring reviewing courts not to substitute their opinions for the juries').

[12] Chapter 841, Subchapters F and G.

There is no need for a reviewing court to determine whether a person is part of the small be extremely dangerous group mentioned by the Legislature.

Proper sufficiency reviews entail comparing the evidence to the things that had to be proven.[13] The lower appellate court in the case at bar erroneously compared the evidence to something that did not have to be proven. The Legislature stated its intent that commitment be limited to a small be extremely dangerous group. As explained in the *amicus* brief, the Legislature then tailored the SVP Act to limit commitment to that small but extremely dangerous group.[14] The Legislature's definitions and stated requirements for commitment do not mention a small-but-extremely-dangerous group. Because that group is not mentioned in the definitions of *sexually violent predator, repeat sexually violent offender, behavioral abnormality,* or *predatory act,* it is not something the State has to prove as an element of its case.[15]

The statutory requirements of the SVP Act constitutionally narrow the class of people committed to those different from typical recidivists in other criminal matters.[16]

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[13] *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 762 (Tex. 2003).

[14] See pp. 7-9 of *amicus* brief.

[15] *See In re Commitment of Williams*, 539 S.W.3d 429, 438 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (holding that State did not have to prove Williams was not amenable to traditional treatment modalities, as mentioned in § 841.001, the Legislative Findings).

[16] *See generally Kansas v. Crane,* 534 U.S. 407, 122 S. Ct. 867, 151 L. Ed. 2d 856 (2002) (holding the Kansas civil commitment statue constitutional and contrasting it was a prior Louisiana statute that sought to civilly commit "any convicted criminal" after the completion of a prison term.)

The lower appellate court failed to treat similar cases similarly.

Stoddard briefs that "similar cases should be decided similarly."[17] The State agrees. But that is not what the reviewing court did in Stoddard's case. The reviewing court found a handful of people who were not similarly situated and erroneously determined those cases rendered the evidence against Stoddard factually insufficient.

There are cases that are similarly situated to Stoddard and whose evidence was determined to be legally and factually sufficient. Prior case law holds no diagnosis is required for commitment.[18] Static scores do not control commitment.[19] Psychopathy is not required for commitment.[20] There is no requirement that the person be incarcerated more than one time.[21]. Under the theory that "similarly situated cases should be decided similarly," the evidence in this case would have passed a sufficiency review.[22]

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[17] See p. 29 of Respondent's Brief, fn20.

[18] *In re Commitment of Bohannan,* 388 S.W.3d 296, 306 (Tex. 2102) (holding "the principal issue in a commitment proceeding is not a person's mental health but whether he is predisposed to sexually violent conduct.").

[19] See fn 89 of State's brief on merits.

[20] *In re Commitment of H.L.T.*, 549 S.W.3d 656 (Tex. App.—Waco 2017, pet. denied) (holding lack of testing for psychopathy did not deprive trial court of jurisdiction over commitment); In re Commitment of Ochoa, 09-15-00486-CV, 2016 WL 5417441, at *1-*3 (Tex. App.—Beaumont Sept. 29, 2016, pet. denied) (mem. op.) (upholding denial of motion to dismiss based on lack of testing for psychopathy due to Ochoa's failure to cooperate with evaluation.

[21] *See In re Commitment of Smith*, 07-17-00147-CV, 2018 WL 5832178 (Tex. App.—Amarillo Nov. 7, 2018, no pet.) (mem. op.) (rejecting argument that a person must be imprisoned on more than one occasion to be a *repeat sexually violent predator).*

[22] *See In re Commitment of Anderson,* 05-17-00769-CV, 2018 WL 3968499, at *5 (Tex. App.—Dallas Aug. 20, 2018, no pet.) (mem. op.) ("Although appellant argues on appeal that the evidence is insufficient because Proctor concluded he is not a psychopath and he only scored a two on the Static-99R, the jury also heard ample evidence that appellant has a condition that predisposes him to

The second ground for review should be granted and a single, proper standard of review should be assigned, properly accounting for the elevated burden of proof in this case.

Prayer

The State prays that this Honorable Court grant review and oral argument in this case. Further, the State prays that this Honorable Court find the *Jackson v. Virginia* standard for review is the only standard for review in these civil cases that require proof beyond a reasonable doubt. Because the lower appellate court has already determined the evidence in this case meets that standard, the judgment of the trial court should be affirmed and the judgment of the appellate court reversed.

commit another sexually violent offense to the extent he is a menace to the health and safety of another person.").

In the alternative, the State prays that this Honorable Court establish a standard for factual sufficiency reviews in these cases, giving due consideration to the elevated standard of proof and the province of the jury. The case should then be remanded to the lower appellate court with instructions to conduct a proper factual sufficiency review.

Respectfully Submitted,

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I hereby certify that, according to Microsoft Word, this brief, excluding the portions allowed by statute, contains a total of only 2083 words. The length of this document is in compliance with the Texas Rules of Appellate Procedure.

/s/ Melinda Fletcher

Melinda Fletcher

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I hereby certify that a true and correct copy of the foregoing State's Brief was served on Teresa Simpson Dunsmore, the attorney for Stoddard, and A. Lee Czocher, Office of the Attorney General, via e.file.txcourts.gov, on this the 18th day of March, 2019, addressed to:

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