IN THE SUPREME COURT OF MISSOURI

SC87804

In the Matter of the Care
and Treatment of Mark Murrell,

Appellant,

v.

State of Missouri,

Respondent.

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

On March 2, 2005, a Jackson County jury determined that Mark Murrell is a Sexually Violent Predator. LF 280.[1] The facts, viewed in the light most favorable to the verdict, are as follows:

Mark Murrell pled guilty to child molestation in the 2nd degree on December 10, 1996. LF 1-2. According to Murrell, he was watching movies with a 13 year old and her 14 year old friend when, during the second movie, he got tired and rested his hand on the "chest" of the victim. He stated that because the victim had not developed breasts, he saw no reason he could not touch her. LF 8.

Sixteen years before Murrell pled guilty to child molestation, in 1980, he was convicted of rape. Murrell approached the victims with a double barrel shotgun and abducted one of the victims from her vehicle. Murrell forced the victim to engage in oral sex and vaginal intercourse. Before releasing the victim, Murrell held the shotgun to her throat and told her – "I know where you live, you have a son, if you finger me, I will kill you." LF 7. Murrell downplayed the rape as a date rape and indicated that the victim had been inviting men at a party to have intercourse with her. He further stated that he did not

[1] The record below consists of a Legal File (LF), Supplemental Legal File (SLF), a Trial Transcript (Tr), and a Video Transcript of Dr. Gunnin's testimony (Vid. Tr.).

believe she was frightened of the shotgun because he carried it with him wherever he went. LF 7. Murrell was sentenced to 15 years. LF 7. Murrell committed the rape only three months after he had been arrested for aggravated battery. LF 6. He was sentenced to serve a concurrent 10-year sentence on that charge. LF 6.

At Murrell's pretrial evaluation in September 1979, before he pled guilty to rape, Murrell acknowledged he had problems with drugs and alcohol and wanted to stop using them because he didn't want any more trouble with the law. Tr. 446.

Between the 1980 rape conviction and the 1996 child molestation conviction, Murrell spent little time outside of the Department of Corrections (DOC). In 1991, while under parole for the rape conviction, Murrell was arrested for unlawful use of a weapon and cocaine possession. LF 7-8. Murrell was convicted of these charges and his parole was revoked. LF 8.

Again, at the time he was returned to DOC, Murrell admitted that he has a problem with drugs and alcohol and said he only gets in trouble when he's drinking and that he needs help with drinking. Tr. 447. But Murrell did not complete any programs to help his drinking problem. Tr. 448. In June 1992, Murrell's parole officer reported that Murrell: "Is viewed as having virtually no inner control system. His behavior while on conditional release is viewed by this officer as running wild with no sincere desire to change, no conscious effort on his part to refrain from chemical use." Tr. 451.

During Murrell's subsequent incarceration for child molestation, Murrell indicates in a self-assessment that "[b]ehaviors occur due to instinct and you have no control over

them." Tr. 452. Later, in February 2000, after taking some anger management classes and shortly before his scheduled release, Murrell stated that he did not find the classes helpful and that he didn't believe he should change but planned on going back to his old way of life. Tr. 453.

On January 24, 2000, DOC notified the Attorney General that Murrell may meet the criteria of a sexually violent predator (SVP). LF 1. On February 24, 2000, the Prosecutor's Review Committee met pursuant to Section 632.483 and determined that Murrell meets the definition of an SVP. LF 2, 15. The Attorney General filed a petition to have Murrell committed as an SVP. LF 1-15.

In August 2000, Dr. Deborah Gunnin, a psychologist with the Department of Mental Health (DMH), conducted an SVP evaluation of Murrell. LF 89-99. Dr. Gunnin concluded that: 1) Murrell suffered from Antisocial Personality Disorder (APD) as well as Depressive Disorder and Polysubstance Dependence; and 2) Murrell, based on Dr. Gunnin's calculation of his scores on the Static-99 and MnSOST-R as well as his APD, was more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility. LF 98-99.

On the Static-99 actuarial measure Murrell scored a 5, placing him in the "medium-high" risk category for committing another sexual offense. LF 98. Research indicates that 40% of sex offenders with that score were reconvicted of a sexual offense within 15 years of release. LF 98-99.

On the MnSOST-R scale, Murrell's score of 14 placed him in the "very high" risk

level range. Individuals scoring over 12 had an 88% risk of being rearrested for a sexual offense within six years of release. LF 99. As Dr. Gunnin noted, both the reconviction rate measured by the Static-99 and the rearrest rate measured by the MnSOST-R are lower rates than the actual reoffense rate. She concluded that Murrell's likelihood of committing another sexual offense is greater than the 40% reconviction rate predicted by the Static-99 and the 88% rearrest rate predicted by the MnSOST-R. LF 99.

While Murrell's SVP case was pending, the United States Supreme Court decided *Kansas v. Crane*, 534 U.S. 407, 122 S.Ct. 867 (2002), and this Court decided