

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF THE CARE
AND TREATMENT OF JERRY DAVIS,
A/K/A JERRY M. DAVIS, JR., A/K/A
JERRY MILLER DAVIS, JR.**

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD83673

DATE: September 14, 2021

Appeal From:

Buchanan County Circuit Court
The Honorable David L. Bolander, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge and Roy L. Richter, Special Judge

Attorneys:

Amy E. Lowe, St. Louis, MO, for appellant.

Kristen S. Johnson, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF THE CARE AND TREATMENT OF JERRY DAVIS, A/K/A
JERRY M. DAVIS, JR., A/K/A JERRY MILLER DAVIS, JR., APPELLANT,**

v.

STATE OF MISSOURI, RESPONDENT.

WD83673

Buchanan County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge and Roy L. Richter, Special Judge

Jerry Davis ("Davis") appeals from the judgment of the Circuit Court of Buchanan County, Missouri ("trial court") finding Davis to be a sexually violent predator ("SVP") under the Sexually Violent Predator Act ("the Act") and committing her to the Missouri Department of Mental Health. On appeal, Davis argues that: (1) trial counsel was ineffective for failing to investigate the fact that Davis is transgender, because her status as a transgendered woman impacts her risk assessment for future dangerousness; (2) trial counsel was ineffective for failing to litigate that Davis is transgender for the same reasons; and (3) the trial court erred and abused its discretion in refusing Davis's proposed jury instruction informing the jury that, as a matter of law, possession of child pornography is not a sexually violent offense as defined by the Act.

AFFIRMED.

Division Four holds:

Although individuals have a right to effective counsel in SVP proceedings, the Missouri Supreme Court has not yet provided guidance as to whether claims of ineffective assistance of counsel in SVP proceedings are reviewed through the "meaningful hearing standard" utilized in parental termination proceedings or the more exacting "*Strickland*" standard utilized in criminal proceedings. *See Strickland v. Washington*, 467 U.S. 1267, 104 S.Ct. 3562, 82 L.Ed.2d 864 (1984). Davis has not shown her counsel to have been ineffective under either standard because she has not set forth the method or scope of investigation she believes reasonable counsel should have undertaken under the meaningful-hearing standard, nor does Davis show prejudice for her trial counsel's failure to investigate and litigate whether Davis's self-identification as a transgender woman impacts her risk for future dangerousness. Davis has not pointed to any evidence that her identification as a transgender woman would in fact make her less dangerous to reoffend, and even after she began to identify as female, she still had strong improper sexual urges, still identified with children, was still attracted to children, still had multiple paraphilia, still entertained the idea of a pursuing a sexual relationship with a relative she had met as a child and who had recently attained the age of majority, still enjoyed child pornography, and still masturbated to her sexual fantasies regarding children.

It was not error for the trial court to refuse to give to the jury Davis's offered verdict-directing instruction that expressly informed the jury that possession of child pornography was not a sexually violent offense as defined by the Act. The verdict director given to the jury by the court accurately reflected the law and the elements that the State was required to prove for Davis to be found to have committed a sexually violent offense and to be determined a sexually violent predator, directing that Davis could be found an SVP *only* if the jury found that Davis had been found guilty of the Florida felony offense of attempted sexual battery against her eight or nine year old step-daughter and that this was a sexually violent offense under the act.

Opinion by: Gary D. Witt, Judge

September 14, 2021

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