

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 3, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP3173**

**Cir. Ct. No. 2002CI3**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE COMMITMENT OF THOMAS A. ROBINSON:**

**STATE OF WISCONSIN,**

**PETITIONER-APPELLANT,**

**v.**

**THOMAS A. ROBINSON,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Brown County:  
SUE E. BISCHER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The State appeals an order dismissing its sexual predator petition against Thomas Robinson after the court concluded that the State

failed to establish probable cause that Robinson was a sexually violent person.<sup>1</sup> The State argues that the trial court made several factual and legal errors that resulted in its probable cause determination. Because we conclude that the State's arguments are based on mischaracterizations of the evidence and the trial court's decision, we affirm the order.

¶2 The State must establish that there is probable cause to believe that Robinson is a sexually violent person. *See* WIS. STAT. § 980.04(2). A sexually violent person is one who has been convicted of a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in acts of sexual violence. WIS. STAT. § 980.01(7). The State was required to establish a “believable or plausible account” that Robinson was a sexually violent person. *See State v. Watson*, 227 Wis. 2d 167, 204-05, 595 N.W.2d 403 (1999). It must establish a mental disorder, substantial probability that Robinson will commit acts of sexual violence in the future, and a causal nexus between his disorder and his dangerousness. *See State v. Post*, 197 Wis. 2d 279, 306, 541 N.W.2d 115 (1995).

¶3 The State's only witness at the probable cause hearing was Dr. Debra Anderson. She initially concluded that Robinson was not a sexually violent person because, although he suffered from a personality disorder and actuarial tests showed a high likelihood that he would re-offend, she could not conclude that his personality disorder predisposes him to acts of sexual violence.

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<sup>1</sup> The court initially found probable cause and a jury found that Robinson was a sexually violent person. The trial court then granted a new trial and ultimately granted Robinson's motion to revisit the probable cause determination. The State also appeals the order granting a new trial, but concedes that we need not address that issue if we affirm the finding that the State failed to establish probable cause. Wherefore, we limit this appeal to the probable cause determination.

Anderson was then informed that Robinson had been convicted of a sex crime in Illinois in 1980. Based on the details of the Illinois incident, she revised her opinion and diagnosed Robinson with paraphilia, and concluded that this condition caused him to be substantially probable to commit future acts of sexual violence.

¶4 It was later learned that Robinson was not convicted of the Illinois charges. Although the precise details remained unclear, it appears that the charges were dismissed after the alleged victim admitted that she requested money from Robinson, supporting his assertion that she made a false rape accusation after not being paid for prostitution services.

¶5 Anderson's revised opinion did not depend on Robinson's conviction of the Illinois offense. Rather, it depended on the details of the accusation. Anderson noted that dismissals occur for numerous reasons and a psychological expert would consider the underlying facts in making a diagnosis without regard to whether there was an actual conviction.

¶6 The only source of Anderson's information about the details of the Illinois charge came from a police report in which an officer summarized the alleged victim's allegations. The trial court found that the police report constituted unreliable double hearsay that could not form the basis of a probable cause finding. Although an expert witness's testimony may be admissible even though it is based on inadmissible hearsay, the trial court was entitled to give it no weight. *Watson*, 227 Wis. 2d at 200-03. A psychologist's opinion based solely on inadmissible hearsay does not constitute probable cause. *Id.* At the postjudgment hearing, Anderson confirmed that the sole reason for her revised diagnosis was the details provided in the police report. Without considering the hearsay report, the

State provided no evidence that Robinson suffered from a mental disorder that caused him to be likely to commit future acts of sexual violence.

¶7 The State argues that three factual and legal errors tainted the trial court's ruling. First, the State misconstrues Anderson's testimony regarding Robinson's personality disorder. Citing *State v. Adams*, 223 Wis. 2d, 60, 67-69, 588 N.W.2d 336 (Ct. App. 1998), the State notes that a personality disorder can qualify as a mental disorder if it predisposes a person to commit acts of sexual violence. The State construes Anderson's testimony as suggesting that she did not believe a personality disorder could qualify as a mental disorder under WIS. STAT. § 980.01(2). That argument mischaracterizes Anderson's testimony. She testified that Robinson's mental disorder did not predispose him to commit acts of sexual violence. Her testimony does not suggest any misunderstanding of that legal element.

¶8 Second, the State notes that Anderson testified that she could diagnose paraphilia even assuming that Robinson had not been convicted of the Illinois sexual assault. Anderson did testify, however, that her diagnosis depends on the accuracy of the information contained in the police report. Because the State presented no evidence of the report's accuracy, it did not provide any foundation for her revised diagnosis. The State argues that Robinson never denied the conduct, only the fact of conviction, and therefore his silence should be regarded as an adoptive admission. The record does not support that argument. Robinson has consistently denied committing the Illinois assault. Furthermore, exercising his right to remain silent cannot be construed as a tacit admission. *See* WIS. STAT. § 980.03(2)(b).

¶9 Finally, the State argues that the court incorrectly believed that Anderson's testimony would not establish probable cause to believe that Robinson was substantially probable to re-offend. The State correctly notes that Robinson's score on various tests, without considering the Illinois incident, showed a likelihood that he would re-offend. The problem with the State's case does not arise from the failure to meet the element that Robinson is likely to re-offend. Rather, the difficulty arises from its failure to establish a mental disorder that causes him to be likely to re-offend. Regardless of the amount of actuarial scoring that indicates a likelihood of re-offense, probable cause that Robinson is a sexually violent person depends on establishing a mental condition and a nexus between the condition and the prediction of his future acts of sexual violence.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

