IN THE CIRCUITE COURT OF THE 22ND JUDICIAL CIRCUIT
STATE OF MISSOURI
Honorable David C. Mason, Judge

State of Missouri, vs. John D. Gormon,
Moveant Respondent

CAUSE NO. 0722—PR00522

MEMORANDUM AND ORDER

This Court now takes up the motion of Respondent John Gormon for Dismissal or Directed Verdict on the grounds that the conviction that he received in 1977 for statutory rape of a person under the age of 16 is an insufficient conviction for the purposes of the Sexually Violent Predator Act, S 632.480 through 0.513.

The argument of Respondent is premised on the position that the Sexually Violent Predator Act, Sect. 632.480-513 (hereinafter "SVPA") includes statutory rape in the first degree as an allowable predicate act but does not include statutory rape in the second degree. The respondent's 1977 conviction for Statutory Rape was based only on a finding that he had sex with a 15 year old girl. He further argues that the statutory rape for which he was convicted in 1977 would amount to statutory rape in the second degree under the law in effect at the time the SVPA was passed due to the age of the victim.

In Section 632.480(4) a "sexually violent offense" is defined by a listing of several sex related crimes. At the time that the SVPA was passed, the crime of sexual intercourse with a 15 year old would fall under Statutory Rape in the Second Degree. Since the SVPA does not list Statutory Rape in The Second Degree, that crime was intentionally excluded by the legislature.

The SVPA is a remedial statute and must be interpreted broadly to give effect to the legislative purpose. *In re the Care and Treatment of Holtcamp*, 259 S.W.3d 537 (Mo. Banc 2008). Respondent is correct in respondent's suggestion that this Court must be governed by the four corners of the statute itself. However, the statute is clearly intended to allow the State to seek the civil commitment of those individuals who have been deemed, after appropriate psychiatric or psychological analysis or diagnosis, to be of such a high—risk of engaging in another violent sexual offense that they must be forcibly submitted to custodial treatment until such time as the risk has been sufficiently abated. This is the clear remedial purpose. The State has presented sufficient evidence for a jury to find that Respondent does fall under the purpose of the SVPA.

Section 632.480(4) of the SVPA also includes the felony of Forcible Rape as a prior predicate act supporting civil commitment. The legislature is presumed to know, and in fact by

the way this statute is drafted almost assuredly did know, that the statutes governing sex offenses had undergone some changes and rewording. *State of Missouri, ex rel. Hunter v. Lippold*, 143 S.W.3d 241 (Mo. App. W.D. 2004). The issue before the Court, therefore, is does the crime that the defendant was convicted of in 1977 fall under one of the enumerated crimes in the SVPA.

Respondent in his argument has focused exclusively on his conviction under the count of Statutory Rape. Looking at that in isolation, Respondent could have a fungible argument. However, the record reveals the defendant was convicted not only of statutory rape at that time but also of kidnapping. Moreover, the act kidnapping was proven to be part of the continuing pattern of criminal conduct involving the same victim and contemporaneous to the sexual act perpetrated on the victim.

This becomes important in this Court's analysis of the present case. In looking at the Respondent's own appeal of his case, in *State v. John D. Gormon*, 584 S.W.2d 429 (Mo. App. ED 1979), the defendant attempted to argue that trying him and convicting him of kidnapping amounted to double jeopardy in that the kidnapping was merely incidental to the crime of statutory rape and therefore insufficient to prove the separate crime of kidnapping.

In other words, the defendant took the position on appeal that the kidnapping was simply part of the *res gestae* of the

crime itself. The Court rejected that argument and concluded that since the statutory rape itself merely was having sex with a minor under the age of 16, there was no element of that crime that required the kidnapping and thus two charges and two convictions were appropriate.

However, the act of kidnapping itself could have been set forth as the element of forcible compulsion had the State at that time choose to charge Gormon with Rape. The same would be true under the crime of forcible rape as listed in the SVPA. Kidnapping can be used as proof of the forcible compulsion necessary to prove forcible rape. This analysis can be found specifically in *State ex rel Hines vs. Sanders*, 803 S.W.2d 649 (Mo. App. E.D. 1991).

In Hines, the defendant involved had committed an act of kidnapping while in St. Louis County which was followed by an act of sodomy and rape in the City of St. Louis. The State first sought a conviction for Kidnapping in the 21st Circuit Court. The jury in that case found Hines not guilty of Kidnapping. The State then subsequently sought a conviction for Forcible Rape and Sodomy in the 22nd Circuit, relying on the act of kidnapping as the act of forcible compulsion. In *Hines*, the Court of Appeals ruled that the forcible rape and sodomy cannot subsequently be proven as to the acts in the City of St. Louis on the grounds that the only element of forcible compulsion was

the kidnapping. Since the jury had found Hines not guilty of Kidnapping, there was a collateral estoppel effect which disallowed a further criminal prosecution that required a finding of forcible compulsion by kidnapping.

The very analysis of this case, however, clearly suggests and establishes that the kidnapping itself could be the evidence of forcible compulsion in a forcible rape case. Had the State charged forcible rape and sodomy in St. Louis and used the kidnapping merely to prove the element of forcible compulsion, they would have been able to establish the necessary element of forcible compulsion in the forcible rape that occurred in St. Louis City.

Of course, logic supports that removing a person, particularly a minor, by force and confining her in a car puts her under such fear that she would necessarily believe that in order to avoid bodily harm, or to be released from confinement, she must submit to a sexual act. Therefore, the total crime committed by Respondent Gormon in 1977 of forcibly detaining and kidnapping a 15—year—old and then in the course of that, taking her some place and having sex with her against her will could easily have been a single charge of forcible rape in 1977 or under present statutes and as that law is enumerated in the SVPA.

The Court THEREFORE finds then that the Respondent's conviction of Statutory Rape under the then existing Missouri Statute 559.260, together with the underlying act of kidnapping, which was also proven beyond a reasonable doubt in the 1977 criminal case, could in the law that existed as of the date of the present petition constitute Forcible Rape with the kidnapping being the evidence and proof of force.

Therefore, the 1977 "Statutory Rape" conviction under the facts and circumstances that were proven beyond a reasonable doubt was correctly and appropriately interpreted by the petitioner's witness as a sexually violent act and appropriately pled by the State of Missouri as a predicate act under the SVPA. THE RESPONDENT'S MOTION FOR DIRECTED VERDICT IS THEREFORE DENIED.

SO ORDERED,

December 2, 2010

DAVID C. MASON
CICRUIT JUDGE 33536