No. 96773

IN THE
SUPREME COURT OF ILLINOIS

IN RE ROBERT S.,	)	Appeal from Appellate Court
	)	Second Judicial District
	)	No. 2-02-0262
(People of the State of Illinois,	)	
Petitioner-Appellee,	)	Original Appeal from the Circuit
	)	Court of the Sixteenth Judicial
v.	)	Circuit, Kane County, Illinois,
	)	No. 01-MH-261
Robert S.,	)	
Respondent-Appellant).	)	The Honorable Franklin D. Brewe
	)	Judge Presiding.

BRIEF AND ARGUMENT FOR PEOPLE-APPELLEE

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

STANDARD OF REVIEW

The constitutionality of a statute is reviewed *de novo*. Arangold Corp v. Zehnder, 204 Ill.2d 142, 146, 787 N.E.2d 786 (2003). An expert's qualification to testify and the relevancy of that expert's testimony is reviewed for abuse of discretion. Donaldson v. Central Illinois Public Service Co., 199 Ill.2d 63, 767 N.E.2d 315, 340 (2002). Issues of statutory construction are reviewed *de novo*. People v. Phelps, __ Ill.2d __, 2004 WL 116365 *5 (Ill. 2004).

STATEMENT OF FACTS[1]

On November 19, 2001, a petition for administration of authorized involuntary treatment was filed by Doctor Romulo Nazareno in the Circuit Court of Kane County, asserting that respondent, a pretrial detainee found unfit to stand trial, had refused to submit to treatment by psychotropic medication and lacked the capacity to give informed consent. Dr. Nazareno stated that because of respondent's mental illness or developmental disability, he exhibited deterioration of the ability to function, suffering and threatening behavior. (C. 2-3). Specifically, Dr. Nazareno requested that respondent for 90 days, be administered Risperidone, an oral medication, and alternatively Haldol, Haldol Decanoate, and Cogentin, if necessary, for any side effects which might occur. Dr. Nazareno did not request electro-convulsive therapy. (C. 2-3). Notices of the hearing on the petition were sent to the State's Attorney's Office, to Doctor Romulo Nazareno, to the Guardianship and Advocacy Commission, and to respondent himself. (C. 6-9).

On November 30, 2001, the parties appeared before the court. Respondent's counsel requested that an independent evaluation be performed by F.P. Johnson. The State did not object

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[1]The People offer this statement of facts, since respondent's statement of facts is not complete.

to an independent evaluation, but requested, in order to limit costs, that the Kane County Diagnostic Center perform the evaluation. (R. 5). Respondent objected on the basis that there were no psychiatrists at the Diagnostic Center, only psychologists, whom respondent argued did not have expertise in administration of medication. (R. 6). The court ordered that the independent evaluation be performed by the Diagnostic Center. (R. 7).

On January 4, 2002, the court granted a request by respondent to represent himself, and the case was continued by agreement. (Transcript, January 4, 2002, pp. 2-8).

The hearing commenced on January 18, 2002. Elgin Mental Health Center ("Elgin") Staff psychiatrist Dr. Romulo Nazareno testified that he had been a psychiatrist for 15 years, and had treated over 200 patients at Elgin. (R. 35, 37). Nazareno testified that his job was to evaluate and diagnose patients, assess their fitness to stand trial, and treat them with medication and counseling. (R. 35-38). At the time of the hearing, Nazareno was responsible for 25 patients, including respondent, (R. 38), and was licensed to prescribe psychotropic medication. (R. 38). Nazareno was qualified as an expert. (R. 39).

Nazereno testified that he first saw respondent in April of 1999, and has treated him since then. (R. 39, 44-45). In 1999, respondent was diagnosed as a schizophrenic, paranoid-type (R. 43-44). Nazareno explained that respondent still suffers from schizophrenia, and has deteriorated over time. (R. 44-45). In addition, respondent suffers from hallucinations, delusions, and deterioration in the ability to function. (R. 45). Respondent related to Nazareno that he has heard voices since the 1970's, and that since 2001 the voices have intensified, causing respondent to have problems sleeping. (R. 65). Some nights the voices would keep respondent up all night, and the next day he would be agitated and short-tempered. (R. 65).

Nazereno further testified that respondent is delusional and believes that there is a microchip implanted in his brain so that others can read his mind. Respondent interprets people's actions and movements as giving messages to the mind readers. (R. 65-66). Respondent also suffers from sexual delusions, believing that other patients received sexual visitors while respondent slept. (R. 65). Respondent believes that these sexual visitors are really meant for him, and he gets angry and threatens to kill the patient with whom the visitor purportedly has sexual relations. (R. 66).

Nazereno related that respondent was on court ordered medication from December of 2000 to March of 2001. During that period, respondent improved, slept well, did not hear voices, was pleasant and able to socialize and attend activities, and was not threatening or agitated. (R. 66). Dr. Nazareno and respondent discussed further medication to help respondent; however, respondent has declined since he does not believe he is mentally ill. (R. 66-67, 76-77, 80). Dr. Nazereno believes that respondent's refusal to take medication is part of his disease. (R. 81).

Nazareno testified that after the previously court ordered medication expired, the voices in respondent's head came back. (R. 66). Additionally, respondent became more paranoid. In August of 2001, he accused another patient of stealing his woman, and told the staff at Elgin that he would kill the other patient if he could. (R. 67-68). In September of 2001, respondent threatened a female staff member and said he was going to kill her. (R. 75). At night, respondent hits his mattress and screams, "stop the voices." (R. 68). This behavior has continued since the medication was discontinued. (R. 68). Nazareno stated that respondent had much less suffering when he was medicated. (R. 69). Respondent's medical regimen included three milligrams of Risperdal in the morning, and three milligrams at night. (R. 70). He had no side effects from that drug. (R. 70).

Respondent originally told Nazareno that he would continue the medication, but did not. (R. 84). Nazareno described respondent's suffering when he is off the medication as severe. (R. 85).

Nazareno wanted to administer Risperdal, and would only resort to Haldol if respondent refused, since Haldol is injectable. (R. 78). Respondent did not need Cogentin, a drug used for side effects, when he previously took the Risperdal. (R. 79). Risperdal generally has fewer side effects than Haldol, although it can cause dizziness, light-headedness, seizures, nausea, vomiting, muscular rigidity, difficulty swallowing, constipation, tardive dyskinesia, or neuroleptic malignant syndrome. (R. 82). The fact that respondent did not previously have an adverse reaction to Risperdal was an indicator that he would not suffer any such reaction in the future. (R. 83). While the benefits of Haldol are the same as Risperdal, there are more side effects associated with Haldol. (R. 85). However, Nazareno believed the benefits of either drug outweighed the possible side effects in respondent's case. (R. 86). Nazareno testified that respondent lacked the capacity to make a reasoned decision regarding whether to take medication. (R. 89). According to Nazareno, respondent would not improve without medication. Counseling and other less restrictive services would not work, because respondent historically failed to participate while off the medication. (R. 90-91). Nazareno testified that respondent's general health would be monitored while he was on medication. (R. 88).

Dr. Nazareno admitted that, although he never saw respondent exhibit any signs of side effects to the medication, respondent may have said he felt tired and nauseous. (R. 96). Nazareno testified that with the possible exception of gym, respondent has not attended activities at Elgin since April, 2001 (R. 99-101); that respondent has never threatened Nazareno (R. 102); and that respondent does not have disorganized thinking, but has disorganized social functioning. (R. 107).

Nazareno explained that when a schizophrenic focuses on an activity, he can function (R. 106-108), which explained why respondent was able to represent himself at the hearing. The symptoms associated with respondent's disease are more acute at night. (R. 108).

Kelli Childress[2] testified that in 1999 she worked for the Kane County State's Attorney's Office, and that year was assigned to a hearing on a motion to quash a subpoena regarding a case involving respondent. (R. 47-48). On October 31, 2001, respondent telephoned Childress (R. 48), who said that he remembered her from that 1999 hearing and had been thinking about her ever since. (R. 49). During the conversation, respondent accused Childress of helping the government in a scheme to read his mind. (R. 49). He then asked Childress if she could help him so they could "rap the whole thing up" and be together romantically. (R. 50).

Childress continued that the conversation made her nervous. She told respondent that she was involved with someone else, and that he was not correct in his belief that she wanted to be with him. She also told respondent that she no longer worked for the government and was not in a conspiracy against him. Childress instructed respondent that they should have no further conversation (R. 50-51), yet respondent telephoned Childress again on December 31, 2001. (R. 52). Childress testified that the December conversation had more of a romantic tone - and respondent told Childress that he had not stopped thinking about her and that she was beautiful. (R. 52). Respondent said he had been told by the government that they were supposed to be together and that she felt the same way he did. (R. 52). Respondent said he had thought about them getting married, having children, and moving to California. (R. 52). After both conversations, Childress contacted

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[2]Doctor Nazareno's testimony was interrupted to accommodate Kelli Childress, who had a plane to catch, which is why her testimony appears where it does in the transcript of proceedings.

the police and the court liaison with Elgin, but, after discussing the matter with her family, she decided not to pursue any action against respondent to avoid aggravating the situation. (R. 54-59). On cross examination, Childress stated that respondent never specifically threatened her.

Lesley Kane testified that she was not yet a physician or a doctor, but was an intern at the Kane County Diagnostic Center and was working on her doctorate. (R. 115-117). She testified that in 1988 she received a bachelor's degree in psychology, and in 1991 received a master's degree in counseling psychology. She had been in a doctorate program for about eight years, and was in her final year. (R. 117). Kane stated that during her master's program, she completed nine months of counseling, working with adolescents and their families. (R. 119). She also did a six-month internship at Mercy Center in Aurora in the hospital unit. She additionally worked for eight years in a counseling agency, and primarily did crisis intervention counseling for juvenile delinquents. (R. 1999).

In 1999, Kane worked at the Kane County Police Department, and from 1999 to 2000 she was an extern at the Kane County Diagnostic Center, as well as at Cook County Jail, where she worked with some patients with severe mental illness and some with adjustment disorders. (R. 119-120). Kane testified that she evaluated respondent for purposes of the hearing. (R. 117). She spoke with respondent for about an hour and a half, spoke with his case worker, and talked with respondent about a week after the evaluation, when he telephoned her to ask what her evaluation was. (R. 118, 122). Kane also looked at about three years of respondent's records. (R. 118). Kane had previously testified in court as an expert. (R. 119). Kane testified that she was not licensed to practice psychology. (R. 131). The court found Kane qualified as an expert. (R. 132).

Kane stated that a review of respondent's records revealed that he had deteriorated over the last several months. (R. 120-121). During her interview with respondent, respondent was unwilling to discuss his psychosis. (R. 128-129). Kane testified that respondent suffers from auditory hallucination, in that he believes the government speaks to him through an electronic device, and sets up other patients to be with his women. (R. 134). Respondent believes that everyone hears the voices that he hears. (R. 136-137). Respondent did not deny that voices kept him awake at night, but said he did not want to talk about it. (R. 137). According to respondent's charts, in March of 2001, respondent believed that actress Julia Roberts wanted to be with him, but was "set up" with a lower functioning patient. (R. 137). Reports indicated that in April of 2001, respondent became increasingly anxious and preoccupied with women, becoming fixated on Lisa Ling from the television show "The View." (R. 138). In May of 2001, respondent threatened to kill two patients for "taking his women." (R. 139). In June of 2001, when respondent was asked by staff personnel to move to the side of the hallway, he made a fist, swore, and stated, "someone must pay." (R. 139). In July of 2001, respondent left his unit without permission to follow and threaten another patient. (R. 140). In August of 2001, respondent again accused another patient of getting his woman, and also verbally abused some female staff members. (R. 141). Notes from September and October of 2001 reflected respondent's inability to sleep, his complaints about voices, and his continued sexual fantasies. (R. 141).

Kane testified that respondent was oriented as to person, place and time. (R. 142). He denied delusions, and hallucinations. He was also polite and cooperative, yet evasive. (R. 143). However, Kane believed that respondent suffered from a serious mental disease, paranoid type. (R. 143). Kane also testified that because of his mental illness, respondent exhibited deterioration of his ability

to function, suffering and threatening behavior. She also testified that respondent's sexual preoccupations have increased over time. (R. 144). She believed all this would decrease with medication, and that the benefits of medication would outweigh the harm (R. 145-146), and since respondent lacked insight into his illness, less restrictive services would not be beneficial without medication. (R. 147).

On cross-examination, Kane testified that she has never made an evaluation without supervision. (R. 148-149). However, she stated that to make an evaluation for involuntary medication, a person does not have to be licensed. (R. 150). Kane stated that she did not observe respondent exhibit any delusional symptoms during the interview or in court. (R. 160).

Doctor Romulo Nazareno was recalled and testified that respondent had no capacity to make a rational decision as to whether to take medication, and that his decision or judgment was impaired by the mental illness. (R. 163-164).

Mark Thomas testified that he is a licensed clinical social worker and has worked at Elgin for over 20 years. (R. 168-169). Thomas met respondent in 1999, and was his primary therapist for the three months prior to the hearing. (R. 171). Thomas stated that respondent's psychiatric diagnosis is schizophrenia paranoid-type. (R. 172). Thomas concurred with the opinion that respondent has been deteriorating psychologically and psychiatrically. (R. 173). He noted an increase in agitation, verbal outbursts, verbal aggression, and direct threats, two or three of which involved Thomas personally. (R. 173-175). Thomas believed respondent conducted himself well at trial because he was very intelligent, and could focus for short periods of time at a task at hand if he tried. (R. 179).

Thomas testified that at each of his meetings with respondent over the last three months, respondent has said he hallucinates and has delusions. (R. 180). Over the last three months, his delusions centered mostly around women, television stars and Ms. Childress. (R. 181). Two days prior to the hearing, respondent asked a female psychology intern if she would "get together" with him. (R. 181). Respondent told Thomas that he wanted to have babies with Ms. Childress, and his pet name for her was "peach." (R. 182). Respondent believed that women have been reserved for him by the mind readers. (R. 183). Most of respondent's outbursts result from his belief that these women who have been reserved for him are being sent to have sexual relationships with other patients. (R. 184).

Thomas testified that respondent told him that the voices used to be derogatory but now focus on women. (R. 186-188). Over the previous two or three months, respondent's suffering had increased and his ability to function had decreased. (R. 189). Of the thirty persons that Thomas supervises, respondent poses the most risk and is one of the patients that Thomas fears most. (R. 189-190).

Respondent called Denise Dojka, a psychologist, to testify. (R. 237). Dojka stated that she had many conversations with respondent, and that he is appropriate and coherent, although not always logical. (R. 223). Respondent told her that he studies very hard to get rid of the voices he hears. (R. 225). Dojka testified that at Elgin she has seen patients become violent, but never saw respondent violent. (R. 229). However, Dojka prepared a risk assessment of petitioner and found that he has several risk factors. (R. 229-230). Dojka testified that respondent has displayed anger to her about others, but has never directed anger at her. (R. 230).

On cross-examination, Dojka testified that she is respondent's psychological therapist. (R. 242). Respondent has told her on numerous occasions that he hears voices. (R. 242). The voices call him derogatory names, torment him, and prevent him from getting a good night's sleep. They also inform him that women with whom he would like to have a sexual relationship are being brought to other patients. (R. 243). Respondent believed that Kelli Childress had been paid large sums of money to engage in sexual relationships with another patient. (R. 243). Dojka considered respondent to be dangerous based on a previous history of violence. (R. 247). She stated that, if the arresting violation were shown to be true, he committed serious acts of violence. (R. 251). Respondent's prior acts of violence involved a delayed period of time between the stimuli and the act of violence. (R. 251). Dojka believed that respondent could act on the delusional belief of intimacy he sought between himself and Ms. Childress. (R. 251). Dojka believed respondent needs medication since he has constant auditory hallucinations and delusions which affect his sleep and his ability to function to his fullest potential. When respondent was previously medicated, he was much more relaxed, his sleep improved, and he was able to participate in programs off the unit. (R. 254). Respondent is suffering and tormented, (R. 255), and might be a danger to others. (R. 257).

Elgin activity therapist Becky Mitchell (R. 266) testified that she has accompanied respondent to about one activity per month. (R. 267). Respondent never presented any problems. (R. 268).

Jose Padilla, a member of the Elgin activity staff (R. 279-280), testified that respondent never presented any problems while in the weight room. (R. 279-280). Respondent was always congenial and did not talk about voices or sleep deprivation. (R. 282). Padilla only sees respondent about once a month. (R. 286).

After arguments, the circuit court stated that the applicable statute provides that involuntary treatment shall not be administered to the recipient unless it has been determined by clear and convincing evidence that the recipient has a serious mental illness or developmental disability (R. 302); that because of his mental illness, respondent exhibited deterioration of his ability to function, suffering, and threatening behavior (R. 302-306); that the illness has existed for a period of time (R. 306); that the benefits of the treatment outweighed the harm; (R. 306); and that because of his illness the respondent lacked the capacity to make a reasoned decision about the treatment. (R. 307-309). The court granted the petition as requested. (C. 27, R. 310). On March 8, 2002, the court denied a motion to reconsider. (Transcript, 3/8/02, p. 20).

On June 30, 2003, the Illinois Appellate Court, Second Judicial District, affirmed the order of the circuit court granting the petition to involuntarily administer psychotropic medication. In re Robert S., 341 Ill.App.3d 238, 792 N.E.2d 421 (2nd Dist. 2003). On October 7, 2003, this Court granted respondent's petition for leave to appeal pursuant to Supreme Court Rule 315(a).

ARGUMENTS

I.

THE APPELLATE COURT CORRECTLY FOUND THAT SECTION 2-107.1 OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT ("ACT") WAS CONSTITUTIONALLY APPLIED TO A PRETRIAL DETAINEE WHO HAD BEEN FOUND UNFIT TO STAND TRIAL, WHERE HIS MENTAL ILLNESS RESULTED IN DETERIORATION OF HIS ABILITY TO FUNCTION, SUFFERING AND THREATENING BEHAVIOR, WHERE THE BENEFITS OF THE PROPOSED TREATMENT OUTWEIGHED THE HARM, AND WHERE LESS RESTRICTIVE ALTERNATIVES WERE INAPPROPRIATE.

Respondent argues that section 2-107.1 of the Mental Health and Developmental Disabilities Code ("Code")(405 ILCS 5/2-107.1) should not apply to a pretrial detainee who has been found unfit to stand trial, and that section 2-107.1 was never intended to be applied to a non-dangerous pre-trial detainee, and that applying the statute to such individuals would be unconstitutional. Respondent is incorrect, and this Court should affirm the decision of the appellate court below. *See* In re Robert S., 341 Ill.App.3d 238, 792 N.E.2d 421, 436 (2nd Dist. 2003).

The appellate court conducted a detailed analysis of these issues. The appellate court began by noting that section 2-107.1 of the Code does not exempt pretrial detainees from its coverage. Robert S., 792 N.E.2d at 436. The court also relied on In re Evelyn S., 337 Ill.App.3d 1096, 788 N.E.2d 310 (5th Dist. 2003), which rejected the argument that the Code of Criminal Procedure, rather than the Mental Health Code, governed the administration of psychotropic medication to pretrial detainees found unfit to stand trial. The Evelyn S. court based its decision, in part, on the fact that the Criminal Code does not contain provisions for determining whether the treatment of a pretrial detainee found unfit to stand trial may include the involuntary administration of psychotropic

medication. In the absence of the procedural safeguards provided by section 107.1 of the Code, there would be no procedural safeguards at all. Robert S., 792 N.E.2d at 436 (*citing* Evelyn S., 337 Ill.App.3d at 1104).

In addition, the appellate court found little merit to respondent's argument that the application of section 2-107.1 deprived him of his constitutional right to a fair trial. Respondent relied primarily on United States v. Gomes, 289 F.3d 71 (2nd Cir. 2002), vacated and remanded, 539 U.S. 166, 123 S.Ct. 2605 (2003); United States v. Sell, 282 F.3d 560 (8th Cir. 2002), vacated and remanded, 539 U.S. 166, 123 S.Ct. 2174 (2003); and United States v. Brandon, 158 F.3d 947 (6th Cir. 1998). In Gomes, Sell and Brandon, the courts addressed whether the government could forcibly administer psychotropic medication *for the sole purpose of rendering a detainee competent to stand trial*. *See* In re Robert S., 792 N.E.2d at 436 (*citing* Gomes, 289 F.3d at 75; Sell, 282 F.3d at 562; Brandon, 158 F.3d at 949)(emphasis added)). The appellate court noted that the United States Supreme Court recently vacated the Eighth Circuit's decision in Sell and held that the Constitution permits the involuntary administration of psychotropic medication for the sole purpose of rendering a defendant competent to stand trial "if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests." In re Robert S., 792 N.E.2d at 436 (*citing* Sell, 123 S.Ct. at 2184).

But, as the appellate court here recognized, the trial court was not asked to decide whether respondent could be subjected to the involuntary administration of psychotropic medication *solely* for the purpose of rendering him competent to stand trial. Indeed, the record is devoid of any evidence that the petition to administer psychotropic medication was filed for the purpose of

rendering respondent fit for trial. Moreover, respondent never argued in the trial court that the purpose of the State's petition was to render him fit for trial. As a result, the trial court reviewed each of the factors necessary for involuntary administration of medication under the Code and found that respondent suffered a mental illness, which resulted in a deterioration of his ability to function, suffering, and threatening behavior. Id. Moreover, the trial court found that the benefits of the proposed treatment outweighed the harm and that less restrictive alternatives were inappropriate. The appellate court believed that it was evident that the trial court granted the State's petition because it found the involuntary administration of psychotropic medication to be medically appropriate. And, notably, in rendering its decision, the trial court never mentioned respondent's fitness to stand trial. Accordingly, the appellate court found that respondent's reliance on Gomes, Sell, and Brandon was misplaced, and on that basis rejected respondent's constitutional challenges. Robert S., 792 N.E.2d at 437 (*citing* United States v. Keeven, 115 F.Supp.2d 1132, 1137 (E.D. Mo. 2000)(finding procedural safeguards outlined in Brandon inapplicable where the purpose of the petition was to manage and prevent the recipient's dangerousness).

Respondent argues that, since he was a pretrial detainee charged with a crime, the State's relationship to him is adverse and therefore section 2-107.1 cannot apply to him. (Respondent's brief, pp. 18-22). Respondent believes that the safeguards announced in Riggins v. Nevada, 504 U.S. 127, 134-35, 112 S.Ct. 1810 (1992), and Sell must therefore be followed, and that unless one of the two situations allowing involuntary medication under Riggins or Sell exists, the State must dismiss the criminal charges and proceed against the respondent civilly. (Respondent's brief, pp. 22-29). Respondent also points out that under 2-107.1 there is no requirement of a finding as to how potential side effects might affect respondent's demeanor or ability to participate or assist in his own

defense in the criminal trial, and that, unlike in Riggins and Sell, the seriousness of the crime charged is irrelevant.

In Sell, the Supreme Court addressed the question of whether the constitution permits the government to administer psychotropic drugs involuntarily to a mentally ill criminal defendant - in order to render that defendant competent to stand trial for serious, but nonviolent crimes. The court concluded that the Constitution allowed the government to administer the drugs, even against the defendant's will, in limited circumstances. Sell, 123 S.Ct. at 2178. The court framed the question presented as: "Does forced administration of antipsychotic drugs to render Sell competent to stand trial unconstitutionally deprive him of his 'liberty' to reject medical treatment?" The Court found that two precedents, Washington v. Harper, 494 U.S. 221, 110 S.Ct. 1028 (1990), and Riggins set forth the framework for determining the legal question. Sell, 123 S.Ct. at 2183.

In Harper, the Court considered a state law authorizing forced administration of drugs to inmates who are gravely disabled or represented a significant danger to themselves or others. Id. at 226. The State established that Harper, a mentally ill prisoner, had a medical disorder which was likely to cause harm if not treated. Id. at 222. The treatment decision was made by a psychiatrist, approved by a reviewing psychiatrist, and medication was ordered only after it was found to be in the prisoner's medical interests, given the legitimate confinement. Id. The Court found that the State's interest in administering the medication was legitimate and important, and held that the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest. Id. at 227. The Court concluded that the state law authorizing involuntary treatment amounted to a constitutionally permissible accommodation between an

inmate's liberty interest in avoiding the forced administration of antipsychotic drugs and the state's interest in providing treatment to reduce the danger that an inmate suffering from a serious mental disorder represents to himself or others. Id. at 236.

Riggins reaffirmed that an individual has a constitutionally protected liberty interest in avoiding involuntary administration of antipsychotic drugs. However, the Court suggested that forced medication in order to render a defendant competent to stand trial for murder was constitutionally permissible, if treatment with antipsychotic medication was medically appropriate and, considering less intrusive alternatives, essential for the sake of the defendant's own safety or the safety of others. Riggins, 504 U.S. at 135. The Court ultimately reversed Riggins' conviction and remanded for further proceedings based on possible prejudice where the trial court permitted Riggins forced medication without taking account of his liberty interest.

Sell concluded that both Harper and Riggins make it is constitutionally permissibly to involuntarily administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary to further important governmental trial-related interests. Sell, 123 S.Ct. at 2184.

Sell announced certain standards that must be met in order to permit the involuntary administration of drugs *solely for trial competence purposes*. Respondent argues that these standards must be met in this case. In particular, he argues that there must be a finding that administration of drugs is substantially unlikely to have side effects that will interfere with his ability to assist counsel

in conducting a defense. (Respondent's brief, pp. 24-27). Respondent's reliance on Sell is misplaced. In Sell, the Court expressly stated:

> We emphasize that the court applying these standards is seeking to determine whether involuntary administration of drugs is necessary significantly to further a particular governmental interest, namely, the interest in rendering the defendant competent to stand trial. A court need not consider whether to allow forced medication for that kind of purpose, if forced medication is warranted for a different purpose, such as the purposes set out in Harper related to the individual's dangerousness, or purposes related to the individual's own interests where refusal to take drugs puts his health gravely at risk. 494 U.S. at 225-226, 110 S.Ct. 1028. There are often strong reasons for a court to determine whether forced administration of drugs can be justified on these alternative grounds before turning to the trial competence question.

Sell, 123 S.Ct. at 2185-2186.

That is the case here. Despite respondent's repeated references to "non-dangerous" pre-trial detainees and fitness for trial, the question before this Court is whether respondent must be exempted from section 2-107.1, even though the medication is a medical necessity, based simply on his dual status of having been found unfit for trial and a pre trial detainee. Sell clearly answers that question in the negative.

Section 2-107.1(a)(1) is constitutionally applicable to the instant situation. The Code provides that the recommended mental health services may be administered against the wishes of the recipient or guardian when "such services are necessary to prevent the recipient from causing serious harm to himself or others." 405 ILCS 5/2-107 (West 2000). The Code provides the standards and procedures under which involuntary medication may be administered. *See* In re C.E., 161 Ill.2d 200, 205-206, 641 N.E.2d 345 (1994). In C.E., this Court recognized that a respondent has a federal due process right to refuse the administration of psychotropic medication under certain circumstances. C.E., 161 Ill.2d at 213. This Court recognized the substantially invasive nature of

psychotropic substances and their significant side effects, as well as the potential for misuse by medical personnel. C.E., 161 Ill.2d at 214-216.

However, this Court also recognized the State's legitimate *parens patriae* interest in furthering the treatment of those who are mentally ill by forcibly adminstering psychotropic medication when the patient is not capable of making a sound decision. Id. at 217. This Court found that section 2-701.1 embodies the State's significant *parens patriae* interest in providing for persons who, while suffering from a serious mental illness or developmental disability, lack the capacity to make reasoned decisions concerning their need for medication. Id. at 217-218. The Court found it especially significant that the provisions of section 2-107.1 are narrowly tailored to specifically address the State's concern for the well-being of those who are not able to make a rational choice regarding the administration of psychotropic medication. The statute addresses the precise clinical disabilities involved - mental illness or developmental disability resulting in the incapacity to make reasoned decisions concerning psychotropic medications - and provides a mechanism to determine, with specific reference to those disabilities, when such medications may be administered over the objection of the patient. Id. at 218.

C.E. found it significant that section 2-107.1 limits the involuntary administration of psychotropic medication to circumstances where the recipient, while incapacitated, is suffering from one of the specific conditions stated in the statute, *i.e.*, a deterioration of the ability to function, suffering, or threatening or disruptive behavior, and where the conditions have existed for a period marked by the continuing presence of the symptoms or the repeated episode occurrence of these symptoms. Further, it must be demonstrated that the benefits of the psychotropic substances will

outweigh the harm that may result from medication, and that other, less restrictive services have been considered and found ineffective. C.E., 161 Ill.2d at 219.

This Court also noted that the statute requires a hearing before a trial court judge as a precondition to the involuntary administration of the medication. This safeguard ensures that the medication will be used for therapeutic purposes and will not be misapplied as a means to discipline or "manage" the recipient. Importantly, the statute also limits psychotropic medication to 90-day periods of time. Therefore, section 2-107.1 ensures not only that only those persons who actually lack the capacity to make reasoned decisions concerning psychotropic medication will have that decision made for them by the court as surrogate, but also that such persons will be given such medication only for a discrete period of time as medically needed. Following 90 days on medication, a respondent may well have his faculties restored and no longer require treatment. Id.

The proceedings and findings in this case complied with the requirements under 2-107.1 and C.E. The trial judge found that the State proved by clear and convincing evidence that the respondent had deteriorated in his ability to function (C. 304-305, 306), was suffering (C. 303-304, 306), and had displayed threatening behavior. (C. 305-306). Additionally, the risks and benefits of medication were explained to respondent by Dr. Nazareno. (C. 76-77). The trial court found that less restrictive alternatives were tried and were inappropriate, and that the benefits of the involuntary medication outweighed the potential harm. (C. 306-307). In sum, the State showed both that respondent was dangerous and the medication was in the best interests of both respondent and the State since it advanced respondent's treatment and he was dangerous[3].

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[3]Respondent argues that it is never acceptable to force psychotropic medication on a defendant with capacity unless he is dangerous. (Respondent's brief, p. 27). In this case, respondent lacked the capacity to make an informed decision, and was in fact, shown to be dangerous. (C. 51-

Respondent's concerns that there was no finding of how potential side effects might affect his demeanor or his ability to participate and assist in his own defense at trial, and further that no finding that was made as to the seriousness of the crime, are premature.[4] However, respondent's concerns here are premature. Again, the medication in this case was sought and authorized because respondent's medical condition required it, not to render the respondent fit for trial. The focus of the petition in this case is not respondent's potential demeanor at some later trial. In the event the medication respondent was given renders him fit for trial, due process would require the court to make findings as to the need for and medical appropriateness of such medication during trial, as well as the other protections under Riggins and Sell. However, that is not the issue before this Court. Respondent offers no valid reason why 2-107.1 should not apply to pre trial detainees when involuntary medication is sought for some purpose other than to render respondent fit to stand trial. This Court should affirm the decision of the appellate court.

52, 56, 74-75, 84-85, 103, 134-135, 138-139, 140-141, 142, 144, 174-175, 177, 184, 185, 273).

[4]It should be noted that the trial court did not make a finding about the seriousness of the crime charged. When the People sought to call the respondent to testify, he objected, and the trial court sustained the objection. (C. 212).

II.

RESPONDENT WAS NOT DEPRIVED OF DUE PROCESS BY THE TRIAL COURT'S FAILURE TO APPOINT A PSYCHIATRIST AS AN INDEPENDENT EXAMINER PURSUANT TO SECTION 3-804 OF THE ACT, WHERE THE STATUTE DOES NOT REQUIRE THE INDEPENDENT THAT EXAMINATION BE PERFORMED BY A PSYCHIATRIST, AND WHERE THE INDEPENDENT EXAMINER WAS QUALIFIED AS AN EXPERT.

Section 3-804 of the Code, 405 ILCS 5/3-804 (West 2000) provides for an independent examination for a respondent in admission, transfer, and discharge proceedings. Section 3-804 states:

> The respondent is entitled to secure an independent examination by a physician, qualified examiner, clinical psychologist or other expert of his choice. If the respondent is unable to obtain an examination, he may request that the court order an examination to be made by an impartial medical expert pursuant to Supreme Court Rules or by a qualified examiner, clinical psychologist or other expert.

A respondent in a hearing for involuntary administration of medication may request that a court order an independent examination. Section 2-107.1 of the Code, which governs the administration of authorized involuntary treatment, incorporates section 3-804. 405 ILCS 5/2-107.1(a-5)(2),(3)(West 2000); In re R.C., 338 Ill.App.3d 103, 110, 788 N.E.2d 99 (1st Dist. 2003). In R.C., the court found that based on the clear language of sections 2-107.1 and 3-804, the respondent was entitled to an examination by an independent expert appointed by the court and paid for by the State. Id. While this requirement is not constitutional, it is statutorily mandated. Id. at at 111. The statute requires an "examination by an independent expert." Id. at 112.

However, despite the clear language in R.C., and the fact that respondent specifically recognizes that those named in petitions for involuntary treatment are entitled to an independent examination based on section 3-804 and R.C., (Respondent's brief, p. 41), respondent contends that

the application of Chapter III of the Code as written compels an absurd, inconvenient, or unjust result when applied to involuntary treatment with medication, and should be read to specifically require the appointment of an independent psychiatrist when applied to pretrial commitment cases. (Respondent's brief, pp. 44-46). Respondent argues that application of section 3-804 here does not comport with this Court's previous pronouncements of what due process requires and, further, that In re Branning, 285 Ill.App.3d 405, 674 N.E.2d 463 (4th Dist. 1996), entitles him to an independent examination by a *psychiatrist*.

Respondent's reading of Branning is wrong. In fact, Branning supports the People's position that the proceedings for involuntary medication comport with due process. In Branning, the court decided the constitutionality of section 2-110 of the Code. 405 ILCS 5/2-110 (West 1994). That section allowed for electro-convulsive therapy on a minor or one under guardianship, if the guardian consented. The court found that the second paragraph of that section, on its face, violated the due process clause of the United States and Illinois Constitutions because it permitted invasion of the liberty interests of wards in choosing whether to undergo the treatment provided, electro-convulsive therapy, without providing adequate safeguards. Branning, 285 Ill.App.3d at 407.

The Branning court first recognized that in deciding whether a statutory procedure affords due process, courts first must determine what, if any, factual circumstances exist to justify overcoming the individual's constitutionally protected interest in avoiding treatment. Id. 410. Three factors are to be taken into account in determining what procedures are required:

> "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail."

Id. *(citing* Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903 (1976)).

The Branning court found a significant liberty interest in refusing unwanted ECT, psycho surgery, and services of an "unusual, hazardous, or experimental" nature, as provided for in section 2-110 of the Mental Health and Developmental Disabilities Code. Branning, 285 Ill.App.3d at 410.

The court then went on to determine whether any State interest existed. The court found that, under In re C.E., 161 Ill.2d 200, 641 N.E.2d 345 (1994), the State had a "significant *parens patriea* interest in providing for persons who, while suffering from a serious mental illness or developmental disability, lack the capacity to make reasoned decisions concerning their need for medication," which was sufficient to overcome an individual's interest in refusing unwanted psychotropic medication. Branning, 285 Ill.App.3d at 411. However, the court found that for that interest to be served, the State must show that the individual is unable to make a rational decision for himself regarding treatment. Since such a showing was not needed under 2-110, it violated substantive due process. Id at 412.

In making its decision, the Branning court noted that when presented with a petition for the involuntary administration of psychotropic medication under section 2-107.1, even if the potential recipient is under guardianship, the court must find by clear and convincing evidence that he is unable to make a rational decision regarding treatment. Branning, 285 Ill.App.3d at 412 (*citing* 405 ILCS 5/2-107.1(a)(4)(E); 405 ILCS 5/2-107.1(b)). Since that requirement was not included in section 2-110, the section violated substantive due process.

The Branning court determined that section 2-110 also violated procedural due process. The court found that to survive a facial challenge, statutory procedures must at least be adequate to authorize the liberty deprivation with respect to some of the persons subject to it. Section 2-110 failed that test, since it provided only that the court must approve the guardian's consent. The Branning court then rejected the appellate court's decision in In re Estate of Austwick, 275 Ill.App.3d 769, 772, 656 N.E.2d 779 (1st Dist. 1995), which held that under the *pari materia* doctrine, some protections extended by 2-107.1 of the Code extended to section 2-110. Branning, 285 Ill.App.3d at 413. The Branning court found that the *pari materia* doctrine, on which the Austwick court relied, applied only when the statute being construed is ambiguous. Branning found that 2-110 was not ambiguous by its silence, and declined to read into 2-110 all of the procedures listed in section 2-107.1 of the Code. Id. at 414. The simple requirement of court "approval" of a guardian's informed consent was insufficient to satisfy due process. Id. at 416.

The Branning court concluded by enumerating the procedural safeguards which must be provided a ward protesting services under section 2-110 of the Code. The court found that all of the procedural safeguards granted by section 2-107.1 of the Code were not required. However, at a minimum, the ward should receive a hearing at which he can appear, present witnesses on his own behalf, and cross-examine witnesses against him. He must also receive competent assistance at the hearing, although not necessarily the assistance of a lawyer. Branning, 385 Ill.App.3d at 417. The court found that the ward must be found to be unable to make a reasoned decision for himself about the treatment, and that the treatment must be shown to be in the ward's best interest. The proof must be by at least clear and convincing evidence. Id.

Finally, the court stated:

> The ward is also entitled to an independent psychiatric examination in section 2-110 proceedings. The value of an independent examination is clear - it provides a check on the judgment of the treating psychiatrist. [citation]. This valuable safeguard would support, not hinder, the State's interest in providing only that treatment that would be in a patient's best interest. The fiscal and administrative burdens are not so great as to outweigh the important protections it would provide, as evidenced by the fact that Illinois already requires it in proceedings for involuntary committal (405 ILCS 5/3-8034 (West 1994)) and involuntary medication (405 ILCS 5/2-107.1(a)(3) (West Supp.1995)(incorporating section 3-804 of the Code (405 ILCS 5/3-804 (West 1994)))).

Id.

Thus, while at one point using the language "an independent psychiatric examination," the Branning court specifically found that it was section 3-804 which provided for the independent examination, and also noted that section 3-804 was incorporated into 2-107.1. Again, section 3-804 does not require a *psychiatric* examination, and the language suggesting otherwise in Branning was in error.

The R.C. court, citing Branning, found that section 2-107.1 requires an "independent examination." While the court did state that "[t]his court has found that Illinois requires an independent psychiatric examination in proceedings for involuntary treatment," R.C., 338 Ill.App.3d at 110 (*citing* Branning, 285 Ill.App.3d at 417), this language was erroneous as well. Branning referred to the protections afforded under 3-804 in making its determination that, while section 3-804 provides for an "independent examination," it does not require that this examination must be done by a psychiatrist. Indeed, the clear and unambiguous language of 3-804 specifically provides otherwise.

Respondent cites to In re Detention of Trevino, 317 Ill.App.3d 324, 330-31, 740 N.E.2d 810 (2nd Dist. 2000), and In re Detention of Kortte, 317 Ill.App.3d 111, 115-116, 738 N.E.2d 983 (2nd Dist. 2000), in support of his position that an involuntary medical treatment respondent is entitled

to an independent examination by a psychiatrist. He argues that Trevino and Kortte entitle respondents like him to defend themselves on a level playing field with the State, and preclude the State from maintaining a strategic advantage over such respondents when "that advantage casts a pall on the proceedings." (Respondent's brief, p. 45, *citing* Trevino, 317 Ill.App.3d at 330.)

In Kortte, the court evaluated section 30(c) of Sexually Violent Persons Commitment Act (725 ILCS 207/30(c) (West 1998), which the respondent contended unconstitutionally prevented him from calling an expert witness at his trial. Kortte, 317 Ill.App.3d at 113. Section 30(c) provided that if the respondent refused to speak or communicate with the Department of Mental Health expert evaluator, he could not call his own expert evaluator, with whom he presumably had cooperated. Id. at 115. The court found that the section theoretically guaranteed that both parties were able to present evidence substantially equal in character. Id. at 117. However, in a situation in which a respondent refuses to cooperate, but the State calls the expert anyway as a non-examining expert, section 30(c) prohibits respondent from calling any expert, even one who, like the State's witness, did not examine him personally. The court found that, as a result, respondent was virtually incapable of rebutting the State's evidence. The court found that, although section 30(c) was not unconstitutional on its face, it was unconstitutional as applied and urged the legislature to modify section 30(c) to expressly allow a respondent to counter the State's evidence with evidence of equal quality, so that where the State calls an examining expert, respondent may call an examining expert, and where the State calls only non-examining experts, the respondent is permitted to call them as well. Id. at 117.

In Trevino, the appellate court reiterated this position. The court found that the application of the statute did not accomplish the statute's intended goal that both parties have the opportunity

to present evidence substantially equal in character. Instead, the statute operated to deprive the respondent of the same opportunity as the State to present the testimony of an examining expert. Trevino, 317 Ill.App.3d at 331.

However, it has already been determined that section 3-804 comports with due process, and is applicable to proceedings under section 2-107.1. Respondent is entitled to an independent examination by an expert. He is not entitled to an independent examination by a psychiatrist. *See* In re Williams, 133 Ill.App.3d 232, 235, 478 N.E.2d 867 (3rd Dist. 1985) (under 3-804 the respondent is entitled to an examination by an independent expert appointed by the court). Respondent suggests that a determination under section 2-107.1 requires a showing that the benefits of treatment outweigh the harm, and that less restrictive alternatives have been explored and are inappropriate, and that therefore only a psychiatrist is qualified to aid a respondent in defending against the State's evidence. (Respondent's brief, pp. 37-38). It is on this basis that respondent believes the playing ground is "uneven."

However, one merely has to look at the procedures by which one is subject to involuntary admission under the Code to find that respondent's argument is misplaced. Under the Code, a person can be involuntarily admitted only if at least one psychiatrist, clinical social worker, or clinical psychologist who has examined the respondent testifies in person at the hearing. 405 ILCS 5/3-807. The respondent must be shown to be mentally ill and in need of treatment. Matter of Ingersoll, 188 Ill.App.3d 364, 544 N.E.2d 409 (3rd Dist. 1989). A medical opinion must have a sufficient factual basis; an expert who has examined a patient's complete psychiatric history to form an opinion as to the patient's then-current and future dangerousness is appropriate (In re Barnard, 247 Ill.App.3d 234, 616 N.E.2d 714 (5th Dist. 1993)), as is an expert who has directly observed the

patient on several occasions. In re Tuman, 268 Ill.App.3d 106, 644 N.E.2d 56 (2nd Dist. 1994). While respondent is entitled to an expert under section 804 in involuntary admission proceedings, there is no qualification of what *type* of expert he is entitled to based on whom the People call as their witnesses. This Court should not read section 804 to entitle respondent to a psychiatrist in a 2-107.1 hearing, especially since 2-107.1 does not require that testimony regarding the administration of psychotropic medication be given by a psychiatrist.

The appellate court found that respondent was not deprived of due process by the trial court's failure to appoint a psychiatrist as an independent examiner. The court noted that section 3-804 of the Code governs independent examinations in mental health proceedings, and states that the independent examination be made by an impartial medical expert or by a qualified examiner, clinical psychologist or other expert. Robert S., 341 Ill.App.3d at 255. The court found that whether the statute mandated the appointment of a psychiatrist was a question of statutory construction, which the court would review *de novo*. Id. (*citing* People v. Roake, 334 Ill.App.3d 504, 510, 778 N.E.2d 272 (2002)). The court acknowledged that the primary rule of statutory construction was to ascertain and give effect to the legislature's intent, and that the most reliable indicator of legislative intent is the plain language of the statute. Id. (*citing* Regency Savings Bank v. Chavis, 333 Ill.App.3d 865, 867, 776 N.E.2d 876 (2002); In re Kenneth F., 332 Ill.App.3d 674, 684, 773 N.E.2d 1259 (2002)). The plain language of section 3-804 does not require the trial court to appoint a psychiatrist as an independent examiner, but rather allows the court to appoint an impartial medical expert pursuant to supreme court rules or a qualified examiner, clinical psychologist, or other expert. Id.

The appellate court then addressed respondent's contention that the failure to appoint a psychologist effectively foreclosed any chance that respondent could obtain a judgment in his favor, thereby depriving him of due process.[5] Robert S., 341 Ill.App.3d at 255-256. The appellate court found that Kane was a credible, qualified individual, and that her appointment did not predispose the trial court to rule against respondent. The appellate court noted that Kane's examination consisted of interviewing respondent for 60 to 90 minutes, talking to respondent's case worker, and reviewing two to three years of respondent's records. Also, Kane conducted her examination of respondent just weeks before respondent's hearing, and her examination was performed under the supervision of a licensed psychologist. Finally, her credentials had never before been called into question. Id. At 256-257. This Court should not read into section 3-804 a requirement that, by the clear language of the statute, does not exist.

The appellate court further addressed respondent's arguments that the trial court should have refused to either qualify Ms. Kane as an expert, or should have limited Kane's testimony to "non-psychiatric subjects." The court found that:

> Whether an individual is an expert is a matter generally reserved to the sound discretion of the trial court. People v. Miller, 173 Ill.2d 167, 186, 219 Ill.Dec. 43, 670 N.E.2d 721 (1996). An individual will be allowed to testify as an expert where his or her experience and qualifications provide him or her experience or knowledge that is not common to laypersons and where the testimony will aid the trier of fact in reaching its conclusions. People v. Henney, 334 Ill.App.3d 175, 184, 267 Ill.Dec. 681, 777 N.E.2d 484 (2002). There is no precise requirement as to how the expert acquires specialized knowledge or experience. People v. Novak, 163 Ill.2d 93, 104, 205 Ill.Dec. 471, 643 N.E.2d 762 (1994). An expert may develop expertise through

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[5]Respondent contended before the appellate court that In re Ashley K., 212 Ill.App.3d 849, 571 N.E.2d 905 (1991), compelled the trial court to accept psychiatric testimony over psychological testimony. He does not appear to make that argument before this Court, but generally believes that only a psychiatrist would be qualified to challenge another psychiatrist's testimony. Therefore, petitioner will omit any specific discussion of Ashley K.

> research, education, scientific study, training, practical experience, or a combination of each. Miller, 173 Ill.2d at 186, 219 Ill.Dec. 43, 670 N.E.2d 721; Novak, 163 Ill.2d at 104, 205 Ill.Dec. 471, 643 N.E.2d 762. At least one court has concluded that an expert's education alone is sufficient to qualify him or her as an expert. In re J.J., 327 Ill.App.3d 70. 79, 260 Ill.Dec. 693, 761 N.E.2d 1249 (2001) (2001)(finding that trial court did not err in qualifying witness as an expert where witness had bachelor's degrees in psychology and was working on his doctorate in the same field). We will not reverse the trial court's determination absent an abuse of discretion. Henney, 334 Ill.App.3d at 184, 267 Ill.Dec. 681, 777 N.E.2d 484. In re Robert S., 341 Ill.App.3d 238, 792 N.E.2d 421, 433 (2nd Dist. 2003).

While the appellate court noted that Kane was not licensed to practice psychology, it also noted that she had performed the examination of respondent under the supervision of a licensed clinical psychologist. Moreover, Kane testified to her education and experience, and that she had a bachelor's degree in psychology and a master's degree in counseling psychology. At the time of the hearing, Kane was completing her eighth and final year in a doctorate program. While Kane was working towards her master's degree, she interned at a counseling agency where she worked with adolescents and their families. After completing her master's degree, Kane spent eight years at a community counseling center where she performed crisis intervention counseling for juvenile delinquents. Kane also worked as an extern at the Kane County Diagnostic Center and the Cook County jail. In September of 2001, Kane started an internship at the Kane County Diagnostic Center. Kane testified that she had extensive experience with psychiatric and psychological patients, and that she had previously testified in court as an expert. The appellate court noted that the trial court qualified Kane as an expert because she had previously testified in court as an expert witness. Robert S., 341 Ill.App.3d at 254.

The appellate court concluded that, although it did not necessarily agree with the trial court's decision to qualify Kane based on the fact that she had previously testified as an expert, it could

affirm the result below on any basis that was supported by the record. Robert S., 341 Ill.App.3d at 254 (*citing* Krilich v. American National Bank & Trust Co. of Chicago, 334 Ill.App.3d 563, 573, 778 N.E.2d 1153 (2002)). The court found that in the instant case, the combination of Kane's education, training, and experience provided a valid basis to qualify her as an expert. Robert S., 341 Ill.App.3d at 254. Aside from the bare statement that "[t]he unlicensed intern that performed the examination of [respondent] could in no way be considered to be an expert. Her 'credentials' are not even found in the Code" (Respondent's brief, p. 39), respondent offers no valid challenge to the court's decision to qualify Kane as an expert. This Court has recently held that where section 9 of the Sexually Dangerous Persons Act 725 ILCS 205/9 (West 2000) did not require that the sociopsychiatric report be performed by a "licensed" psychologist, the fact that the person preparing the report was not licensed was of no consequence. This Court found the person eminently qualified to render the opinion given in the case, based on his education and experience. People v. Burns, 2004 WL 804182 (April 15, 2004). The same holds true in the case.

The appellate court also addressed the argument that the trial court should have limited Kane's testimony to nonpsychiatric subjects. The court noted that the primary difference between a psychiatrist and a psychologist is that the former has the power to prescribe controlled substances while the latter does not. Robert S., 341 Ill.App.3d 254-255. Although Ms. Kane testified that she believed that the administration of psychotropic medications would benefit respondent, she would not be administering them herself. Therefore, the trial court did not abuse its discretion. Id. at 255.

III.

THE APPELLATE COURT CORRECTLY FOUND THAT DEFENSE COUNSEL IN RESPONDENT'S CRIMINAL CASE DID NOT HAVE A RIGHT TO NOTICE OF THE INVOLUNTARY TREATMENT HEARING UNDER SECTION 2-107.1 OF THE ACT.

Respondent argues that his due process rights were violated where his criminal defense attorney was not provided notice of the involuntary treatment hearing under section 2-107.1 of the Act. 405 ILCS 5/207.1. The underlying basis for respondent's claim is that his criminal attorney would know not only of the circumstances of his criminal case, but also any report or treatment plan that might have been filed in the criminal case. Respondent contends that United States v. Sell, 282 F.3d 560 (8th Cir. 2002), vacated and remanded, 539 U.S. 166, 123 S.Ct. 2174 (2003) and Riggins v. Nevada, 504 U.S. 127, 112 S.Ct. 1810 (1992) dictate that facts concerning the criminal case be presented, and analyzed, before involuntary treatment may occur. Respondent also opines that since his case might involve the death penalty, this Court should hold, if it finds that pretrial detainees are amenable to 2-107.1 petitions, that their criminal attorneys should receive notice of such actions.

Section 2-107.1(a)(1) provides that the People must deliver a copy of the petition, and notice of the time and place of the hearing, to the respondent, his or her attorney, and the guardian, if any, not later than 10 days prior to the date of the hearing. In re C.E., 161 Ill.2d 200, 225-226, 641 N.E.2d 345 (1994), reaffirmed that the trial court must ensure that notice of the date, time and place of the section 2-107.1 hearing is served upon the mental health recipient, his attorney, his guardian (if any), and any other interested party to the proceedings. The lack of formal notice may result in a denial of due process, if respondent suffers prejudice as a result of lack of formal notice. Id. at 226-227.

In this case, notice of the hearing on the petition was sent to the State's Attorneys office, to Doctor Romulo Nazareno, the Guardianship and Advocacy Commission, and respondent himself. (C. 6-9). The Guardianship and Advocacy Commission provided legal representation to respondent in the proceeding until respondent decided to represent himself. Therefore, there was compliance with the statute.

Respondent asserts that his criminal attorney should have been notified of the hearing on the petition for involuntary medication, since information regarding a client's regimen of psychotropic medication can be crucial to the criminal defense attorney at hearings on his client's fitness. The Criminal Code requires that the defendant's treatment supervisor submit to the defense a written progress report containing information regarding, *inter alia*, "the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor" prior to the date for any hearing on the issue of the defendant's unfitness or when the treatment supervisor believes that the defendant has attained fitness. 725 ILCS 5/104-18 (West 2000). Notwithstanding the fact that the notice comes after the decision to involuntarily administer psychotropic medication, that notice resolves respondent's concern that the criminal defense attorney be aware of a respondent's drug regimen prior to any fitness proceedings. In re Robert S., 341 Ill.App.3d 238, 259, 792 N.E.2d 421 (2nd Dist. 2003).

Respondent also suggests that his criminal attorney would have information about the criminal case, and that effectuation of the constitutional procedural safeguards set forth in Riggins and Sell require an understanding of the facts of the criminal case. As set forth in Issue I, effectuation of the constitutional procedural safeguards set forth in Riggins and Sell are not applicable to the instant case. And it was respondent who objected to testimony about the charge

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that this Honorable Court affirm the decision of the Illinois Appellate Court, Fourth Judicial District, affirm the denial of defendant's motion to dismiss, and remand the cause for further proceedings.

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