

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed February 17, 2010.
Not final until disposition of timely filed motion for rehearing.

No. 3D-08-487
Lower Tribunal Nos. 05-24078 CA 08, 87-3570, 87-3571

David Murray,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Peter Adrien,
Judge.

Carlos J. Martinez, Public Defender, and Marti Rothenberg, Assistant Public
Defender, for appellant.

Bill McCollum, Attorney General, and Rolando A. Soler, Assistant Attorney
General, for appellee.

Before COPE, GERSTEN and LAGOVA, JJ.

COPE, J.

This is an appeal of a judgment which adjudicated David Murray a sexually violent predator and committed him to the Florida Civil Commitment Center pursuant to the Jimmy Ryce Act. See §§ 394.910-.931, Fla. Stat. (2005). The question is whether the evidence was legally sufficient to support the adjudication.

First, the point was not properly preserved for appellate review. The defense made timely motions for a directed verdict. However, Florida Rule of Civil Procedure 1.480(b) has been interpreted as requiring a party to file, in addition, a post-verdict motion for entry of judgment in accordance with the motion for a directed verdict. Fulton County Adm'r v. Sullivan, 753 So. 2d 549, 553-54 (Fla. 1999); Brown v. State, 940 So. 2d 609, 610 (Fla. 4th DCA 2006); Industrial Affiliates, Ltd. v. Testa, 770 So. 2d 202, 203-04 (Fla. 3d DCA 2000). In this case no such post verdict motion was filed.

Second, assuming for purposes of discussion that the point was properly preserved, we conclude that the case was properly submitted to the jury to resolve the conflicting expert testimony regarding whether the defendant qualified under the Act. See State v. Shaw, 929 So. 2d 1145 (Fla. 5th DCA 2006); Galloway v. State, 900 So. 2d 652 (Fla. 5th DCA 2005). See generally Westerheide v. State, 831 So. 2d 93 (Fla. 2002).

Affirmed.