



to one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(ii) (West 2004)) and was sentenced to serve a three-year term of imprisonment in the Illinois Department of Corrections (DOC). In June 2005, the respondent was released from prison and placed on mandatory supervised release (MSR). In October 2005, DOC reassumed custody of the respondent after he violated the terms of his MSR. On June 1, 2006, the respondent was rereleased from prison and again placed on MSR. On June 21, 2006, the State filed its petition to have the respondent committed as "a sexually violent person as defined by the Act."

¶ 5 In May 2008, a trial commenced on the State's commitment petition, and a Madison County jury determined that the respondent was a sexually violent person. In May 2010, after denying the respondent's various posttrial motions, the trial court entered an order committing him to the custody of the Department of Human Services for control, care, and treatment. See 725 ILCS 207/40(a) (West 2006). The respondent subsequently filed a timely notice of appeal.

¶ 6 DISCUSSION

¶ 7 On appeal, the respondent argues that (1) the trial court erred in denying his motion to dismiss the State's commitment petition as untimely filed, (2) the Act's use of the phrase "substantially probable" renders the Act unconstitutional, and (3) the trial court erred in denying the jury's request for information during its deliberations. We will address each contention in turn.

¶ 8 Motion to Dismiss

¶ 9 Prior to trial, arguing that the State's commitment petition was untimely filed under the Act, the respondent moved to dismiss the petition for lack of jurisdiction. The respondent's first argument on appeal is that the trial court erred in denying his motion to dismiss.

¶ 10 The parties agree that the State was required to file its commitment petition "[n]o more than 90 days before [the respondent's] discharge or entry into [MSR] from a [DOC] correctional facility \*\*\* and no more than 30 days after [his] entry into parole or [MSR]." 725 ILCS 207/15(b-5)(1) (West 2004) (later amended by Pub. Act 94-992 (eff. Jan. 1, 2007)). Noting that the State failed to file a petition within 90 days before or 30 days after he was initially released from prison and placed on MSR in June 2005, the respondent maintains that the petition that the State filed in June 2006, after he was rereleased from prison and again placed on MSR, was filed "outside the statutory guidelines." By its plain language, however, the Act's 90-day filing requirement refers to the 90 days preceding "any discharge or entry into MSR from a DOC correctional facility," and its 30-day requirement refers to the first 30 days after "entry \*\*\* into any MSR or parole." (Emphasis in original.) *In re Detention of Allen*, 331 Ill. App. 3d 996, 1002 (2002).

¶ 11 Here, on June 1, 2006, the respondent was rereleased from prison and again placed on MSR in No. 04-CF-620. On June 21, 2006, the State filed its petition to have him committed. The State's petition was therefore filed no more than 30 days after the respondent's June 1, 2006, entry into MSR and was thus timely filed under the Act. Accordingly, we reject the respondent's claim that the trial court erred in denying his motion to dismiss the State's commitment petition for lack of jurisdiction.

¶ 12 Constitutionality of the Act

¶ 13 When seeking a determination that a respondent is a sexually violent person as defined by the Act, one of the allegations that the State must prove beyond a reasonable doubt is that "he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." 725 ILCS 207/5(f), 35(d)(1) (West 2006). "The Act does not define the term 'substantially probable' " (*In re Detention of Walker*, 314 Ill. App. 3d 282, 293 (2000)), but the term has been interpreted as meaning " 'much more likely than

not' " (*In re Commitment of Phillips*, 367 Ill. App. 3d 1036, 1043 (2006) (quoting *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1086 (2000))).

¶ 14 The respondent's second argument on appeal is that because the term "substantially probable" is "phrased in terms of probability or likelihood," the Act is unconstitutional. In response, the State maintains that the respondent's argument is "both forfeited and meritless." We agree with the State.

¶ 15 The respondent did not raise his claim that the Act's use of the term "substantially probable" renders the Act unconstitutional in any of his posttrial motions, and on appeal, he simply states, "This is plain error." Proceedings under the Act "are civil rather than criminal in nature" (*In re Detention of Samuelson*, 189 Ill. 2d 548, 559 (2000)), and "[u]nder Supreme Court Rule 366(b)(2)(iii) [citation], when a party appeals in a civil case that was heard by a jury, all points that it wishes to raise on appeal must be raised before the trial court in a posttrial motion" (*In re Detention of Lenczycki*, 405 Ill. App. 3d 1041, 1048 (2010)). Furthermore, "[t]he plain-error doctrine set forth in Supreme Court Rule 615(a) [citation] applies to appeals in criminal cases, not civil cases" (*In re Charles K.*, 405 Ill. App. 3d 1152, 1163 (2010)), and in any event, a party wishing to invoke the plain-error doctrine must present more than an undeveloped "single sentence" argument to that effect (*People v. Nieves*, 192 Ill. 2d 487, 503 (2000)). Under the circumstances, the respondent has therefore forfeited our consideration of his contention that the Act is unconstitutional. We also note that our courts have previously rejected the constitutional argument that the respondent advances on appeal. See *In re Detention of Varner*, 207 Ill. 2d 425, 427-33 (2003) (holding that the Act's language sufficiently supplied "the constitutionally required elements for civil commitment"); *People v. Swanson*, 335 Ill. App. 3d 117, 122-23 (2002) (holding that because the Act's language sufficiently defined the class of persons eligible for commitment, there was "no need" for "additional findings regarding a respondent's ability to control his or her

conduct"); *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1084-86 (2000) (specifically holding that the Act's use of the term "substantially probable" did not render the Act unconstitutional). Accordingly, forfeiture aside, the respondent's second argument on appeal is without merit.

¶ 16 Jury's Request for Information

¶ 17 At trial, two State experts who had previously diagnosed the respondent with paraphilia and a personality disorder with antisocial features opined that the respondent was predisposed to engage in acts of sexual violence. Both experts further opined that it was substantially probable that the respondent would engage in acts of sexual violence in the future. In response, the respondent presented an expert who testified that the respondent did not suffer from paraphilia and did not have a personality disorder. The respondent's expert indicated that the respondent's psychological problems stemmed from alcohol abuse.

¶ 18 When discussing their opinions, all three experts referenced the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR), "often referred to as the Diagnostic Bible." As People's Exhibit 24, the State also admitted into evidence excerpts from the DSM-IV-TR, including the manual's listed diagnostic features of paraphilia.

¶ 19 During its deliberations, the jury requested a copy of the DSM-IV-TR. In response, noting that "only limited excerpts" from the manual had been discussed and admitted into evidence and that the book itself had only been used for "demonstrative purposes," the State objected. The respondent, on the other hand, indicated that the jury's request should be honored. Stating that only a "very small portion" of the manual was relevant under the circumstances and reasoning that providing the jurors with the entire book risked exposing them to "extraneous information" that might prove "misleading" or "misguiding," the trial court denied the jury's request to see the DSM-IV-TR. The jury was thus advised that it

would not be provided with a copy.

¶ 20 Shortly thereafter, the jury requested a "clinical definition of paraphilia." In response to this request, the State suggested that the jury be given "the excerpted sections of the DSM-IV-TR which were referred to [at trial]," *i.e.*, People's Exhibit 24. Reversing his earlier position that the jury should have access to the DSM-IV-TR, the respondent maintained that the manual was "something the layperson cannot understand" and that providing the excerpts as the State suggested "would cause more harm than it would help." Specifically stating that the jury "should not get" the DSM-IV-TR, the respondent recommended that the court respond to the jury's request for a definition of paraphilia by directing the jurors to rely on their memory and understanding of what the experts' testimony had been. Indicating its reticence to give the jury "anything that would be focused on paraphilia" anyway, the trial court noted that because People's Exhibit 24 did not include a "clinical definition of paraphilia," the court would "have to be very cautious" if it elected to provide one. The respondent also noted that the term "paraphilia" would be difficult to define under the circumstances. By agreement, the court ultimately advised the jury that it would not be given any additional information and would have to decide the case on the evidence submitted. Notably, one of the respondent's posttrial claims of error was that the trial court should have granted the jury's request for the DSM-IV-TR because the jurors "needed" the book to determine whether the State had met its burden of proof.

¶ 21 The respondent's final argument on appeal is that the trial court mishandled the jury's requests for additional information. The respondent asserts that the court should have provided the jury with a copy of the entire DSM-IV-TR or at least the "specific excerpts" contained in People's Exhibit 24. As the State suggests, however, the respondent's complaints are barred by the doctrines of invited error, waiver, and judicial estoppel, each of which "prevents a party from taking one position at trial and a different position on

appeal." *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 800 (2009). Here, by arguing below that the jury should not receive the DSM-IV-TR or People's Exhibit 24 during its deliberations and by acquiescing in the trial court's ultimate response to the jury's inquiries, the respondent is precluded from challenging the trial court's judgment on appeal. *Id.* Moreover, even assuming otherwise, the respondent's argument is without merit.

¶ 22 "A trial court has great discretion in deciding which exhibits may be taken to the jury room." *Magna Trust Co. v. Illinois Central R.R. Co.*, 313 Ill. App. 3d 375, 394 (2000). Generally speaking, however, where an exhibit "requires expert interpretation and exposition, the court should generally refuse to permit the exhibit to go to the jury room." *People v. Palmer*, 181 Ill. App. 3d 504, 511-12 (1989) (quoting M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 403.4, at 156 (4th ed. 1984)). Withholding exhibits not intended for laypersons lessens the danger that the jury might misunderstand and misapply the information therein (*Downey v. Dunnington*, 384 Ill. App. 3d 350, 380 (2008)), and lessening that danger was the trial court's expressed reason for denying the jury's requests for additional information in the present case. A trial court abuses its discretion where its decision is arbitrary, fanciful, or unreasonable or "where no reasonable person would agree with the position adopted by the trial court." *People v. Becker*, 239 Ill. 2d 215, 234 (2010). Here, the trial court did not abuse its discretion.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the trial court's judgment is hereby affirmed.

¶ 25 Affirmed.