2017 IL App (5th) 150321-U

NO. 5-15-0321

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re COMMITMENT OF CHARLES DOOLEY	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 08-MR-507
	)	
Charles Dooley,	)	Honorable
	)	Clarence W. Harrison II,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Moore and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: Appointed appellate counsel for respondent is granted leave to withdraw, and the judgment finding respondent a sexually violent person and committing him to the Department of Human Services for institutional care in a secure facility is affirmed.

¶ 2 Respondent, Charles Dooley, appeals from a judgment finding him to be a sexually violent person and committing him to the Department of Human Services (DHS) for institutional care in a secure facility, all pursuant to the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 *et seq.* (West 2014)). The circuit court appointed counsel to represent respondent in this appeal. In this court, appointed

appellate counsel has filed a motion to withdraw, on the ground that this appeal is without merit. See *Anders v. California*, 386 U.S. 738 (1967); *In re McQueen*, 145 Ill. App. 3d 148, 149 (1986) (*Anders* procedure applicable in appeals from orders of involuntary commitment to mental institution). Respondent has filed a response to counsel's motion. Having considered counsel's motion, respondent's response, and the entire record on appeal, this court concludes that this appeal does not present any arguably meritorious issue. Accordingly, counsel's motion to withdraw is granted, and the judgment of the circuit court is affirmed.

¶ 3 BACKGROUND

¶ 4 Respondent was born in September 1961. In April 2005, in Madison County case number 03-CF-3590, respondent pleaded guilty to aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2002)) and was sentenced to imprisonment in the Department of Corrections (DOC) for 10 years. In September 2008, just a few days before respondent was scheduled to begin his term of mandatory supervised release (MSR) in that case, the State filed a petition alleging that respondent was a sexually violent person. See 725 ILCS 207/15(b), (b-5) (West 2006). The filing of the petition initiated the SVP Act proceedings that are the subject of the instant appeal.

¶ 5 The State's petition alleged that respondent had twice been convicted of aggravated criminal sexual abuse. The most recent conviction for that offense was in the case referenced above, Madison County case number 03-CF-3590. The first conviction for that offense was in Madison County case number 99-CF-495. (The two cases were unrelated.) The State's petition also alleged that respondent had two mental disorders,

specifically, (1) pedophilia, nonexclusive, and (2) personality disorder, not otherwise specified, with antisocial traits. The petition further alleged that respondent was a danger to others because his mental disorders created a substantial probability that he would engage in acts of sexual violence. See 725 ILCS 207/15(b) (West 2006). During the pendency of the SVP Act proceedings, respondent was properly detained and held in a facility approved by DHS. See 725 ILCS 207/30 (West 2006).

¶ 6 In March 2015, after numerous continuances, the case proceeded to a trial by jury on the issue of whether respondent was a sexually violent person. The State called two expert witnesses, Dr. Martha Bellew-Smith and Dr. Richard Travis. Both of them held Ph.D.'s, both were licensed clinical psychologists, and both were licensed sex offender evaluators under the Sex Offender Evaluation and Treatment Provider Act. See 225 ILCS 109/1 *et seq.* (West 2014). At the time of trial, Dr. Bellew-Smith was employed by Wexford Health Sources, Inc., a private firm, and Dr. Travis was employed by DHS. Each of these two experts, separately and independently, evaluated respondent in order to diagnose him and assess the risk that he would commit acts of sexual violence in the future. Toward that end, each expert examined the DOC's "master file" and medical file on respondent. The DOC's "master file" included court records and police reports pertaining to respondent and his criminal cases. Each expert also examined records from DHS's Treatment and Detention Facility (TDF), to which respondent had been transferred after his release from the DOC. The TDF's records included medical records, treatment plans, progress notes, and incident reports. In addition, Dr. Bellew-Smith interviewed

respondent for three hours in 2008. Dr. Travis attempted to interview respondent in 2012, but respondent declined.

¶ 7 Dr. Bellew-Smith testified, to a reasonable degree of psychological certainty, that respondent was a sexually violent person because he met the three statutory elements for that designation, *viz.*: (1) respondent had been convicted of a sexually violent offense, (2) respondent suffered from a mental disorder as defined by the SVP Act, and (3) respondent's mental disorder created a substantial probability that respondent would engage in future acts of sexual violence.

¶ 8 As to the first of the three statutory elements, *i.e.*, the conviction element, the State proffered certified copies of respondent's convictions on the charge of aggravated criminal sexual abuse in Madison County case numbers 03-CF-3590 and 99-CF-495, referenced *supra*. Respondent did not dispute the convictions.

¶ 9 As to the second of the three statutory elements, *i.e.*, the mental-disorder element, both Dr. Bellew-Smith and Dr. Travis diagnosed respondent with pedophilic disorder, nonexclusive. They explained that the specifier "nonexclusive" indicated merely that prepubescent children were not the only people whom respondent desired sexually. Dr. Bellew-Smith explicitly stated that pedophilic disorder, nonexclusive, was a mental disorder as defined by the SVP Act. Both Dr. Bellew-Smith and Dr. Travis explained that respondent met the three criteria for a diagnosis of pedophilic disorder, *viz.*: (1) respondent had recurrent and intense sexual fantasies, urges, or behaviors involving sexual activity with prepubescent children, over a period of at least six months; (2) respondent either acted on those fantasies, etc., or they created substantial distress for

respondent; and (3) respondent was at least 16 years old and at least five years older than the children with whom he had had sexual contact or about whom he fantasized. Dr. Travis testified that the diagnosis of pedophilic disorder was strengthened by respondent's lengthy history of sexually abusing children while in his 20s, 30s, and 40s, despite the availability of adult sex partners, and by research showing that an adult's longstanding sexual interest in children tends to remain with him for the balance of his lifetime.

¶ 10 Both Dr. Bellew-Smith and Dr. Travis described respondent's lengthy history of sexually abusing children. During a span of nearly two years in the mid-1980s, when respondent was in his early-to-mid-20s, he repeatedly had sexual contact, including cunnilingus and vaginal intercourse, with a girl who was 5 to 6 years old. In 1986, this conduct resulted in a Missouri conviction for sexual abuse in the first degree, with a sentence of probation for two years. During probation in Missouri, respondent received sex-offender treatment. In the late-1990s, when respondent was in his late 30s, he had, or attempted to have, sexual contact with four different prepubescent children. Respondent offered two boys, ages 9 and 11, money in exchange for their allowing him to rub their penises. Respondent's solicitation of the two boys did not result in a criminal conviction. Respondent inserted his penis into the anus of a 9-year-old boy and inserted his finger into the vagina of a 5-year-old girl. The boy and the girl were siblings, the children of a woman with whom respondent was residing at the time. Respondent's abuse of the siblings eventually resulted in the conviction for aggravated criminal sexual abuse in Madison County case number 99-CF-495 and a six-year prison sentence. Within 5 months after completing his sentence in that case, respondent, then 42 years old,

repeatedly fondled the buttocks of an 11-year-old boy, the son of the woman to whom he was married at that time. This conduct resulted in the conviction for aggravated criminal sexual abuse in Madison County case number 03-CF-3590 and a 10-year prison sentence. (Respondent was serving that sentence when the SVP Act petition was filed.)

¶ 11 As to the third of the three statutory elements for designation as a sexually violent person, *i.e.*, the probability-of-reoffending element, both Dr. Bellew-Smith and Dr. Travis testified, to a reasonable degree of psychological certainty, that respondent's commission of future acts of sexual violence was "substantially probable." In other words, they clarified, respondent was "much more likely" to reoffend than not to reoffend.

¶ 12 In evaluating the risk of respondent's reoffending, both Dr. Bellew-Smith and Dr. Travis relied on actuarial risk-assessment instruments that they testified were widely used in the field of sex-offender evaluation. These actuarial assessment instruments took into account various "static" (*i.e.*, historical or rarely changing) risk factors for reoffending, such as the number of prior sexual offenses. Dr. Bellew-Smith completed the MnSOST and the Static-99R, while Dr. Travis completed the Static-99R and the Static 2002R, relying on the data they found in DOC and DHS records.

¶ 13 Dr. Bellew-Smith testified only briefly and generally about the MnSOST, focusing on the results of the Static-99R. By her calculation, respondent scored a 4 on the Static-99R, indicating that he was 1.94 times (that is, nearly 2 times) more likely to reoffend than the typical sex offender. By Dr. Travis's calculation, respondent scored a 6 on the Static-99R, suggesting that respondent was 3.77 times more likely than the typical sex

offender to commit a future sexual offense, and placing respondent in the "high risk category." On the Static-2002R, Dr. Travis scored respondent an 8, suggesting that he was 5 times more likely than the typical sex offender to commit a future sexual offense, placing respondent in the "moderate high risk category." According to Dr. Travis, the Static-2002R differed from the Static-99R in that the former included factors relating to general criminality. Considering respondent's scores on those two actuarial tools, Dr. Travis concluded that respondent was "between four and five times" more likely than the typical sex offender to commit a future sexual offense. He categorized respondent as "high risk" for reoffending and "high needs" for sex-offender treatment.

¶ 14 Dr. Travis further testified that he suspected that respondent's risk of reoffending was actually "somewhat" higher than the actuarial tools indicated, because respondent exhibited various "dynamic" risk factors for sexual recidivism. "Dynamic" factors, Dr. Travis explained, are factors that are susceptible to change, especially with treatment. Respondent's dynamic risk factors included impulsivity, irresponsibility, hostility toward women, and a lack of "cooperation with supervision." These "dynamic" risk factors were not included in the actuarial tools, which focused solely on "static" risk factors, but they nevertheless had been shown, through psychological research, to be linked to sexual recidivism. In regard to respondent's lack of "cooperation with supervision," Dr. Travis noted that respondent had committed infractions, including fighting, while imprisoned in the DOC and had received "33 referrals to [the] behavior committee" at the TDF, mostly for rude or insulting remarks directed at staff members. Although Dr. Travis thought that these dynamic factors likely increased the risk of respondent's reoffending, he could not

quantify the degree to which they increased it, for research had not revealed how to quantify it.

¶ 15 Dr. Bellew-Smith also considered several "dynamic" risk factors for reoffending, in addition to the "static" risk factors considered in the actuarial instruments. These dynamic factors included respondent's "employment instability" and "lack of cooperation with supervision." Respondent had a history of employment instability, having quit or having been fired from many jobs, Dr. Bellew-Smith testified. His lack of cooperation with supervision was evidenced by, *inter alia*, his violation of an MSR provision in Madison County case number 99-CF-495, which had resulted in his being sent back to prison for completion of his sentence. These dynamic risk factors increased the likelihood that respondent would act on his urges to have sexual contact with children.

¶ 16 In Dr. Travis's opinion, treatment specifically for sex offenders could possibly reduce the risk of respondent's committing a future sexual offense. Dr. Travis considered sex-offender-specific treatment necessary for respondent to manage his pedophilic disorder and to control his sexual impulses. However, respondent had not participated in any sex-offender-specific treatment at the TDF, and he had declined to participate in the assessment process that was necessary to determine the specific focus of such treatment.

¶ 17 In addition to pedophilic disorder, Dr. Bellew-Smith identified in respondent certain indications of a personality disorder, such as "lack of respect for the law" and aggression. She stated that she would have diagnosed respondent with antisocial personality disorder but for the fact that she had not seen any documentation establishing that respondent met the criteria for conduct disorder prior to attaining the age of 15 years.

She explained that a person cannot properly be diagnosed with antisocial personality disorder unless he met the criteria for the diagnosis prior to age 15.

¶ 18 Dr. Travis did diagnose respondent with antisocial personality disorder. He testified that he had seen documents evidencing a conduct disorder prior to respondent's attaining the age of 15 years. Specifically, he had seen documents indicating that respondent engaged in fights and chronic truancy in elementary school, dropped out of school in the ninth grade, and was adjudicated a delinquent for theft at age 14. Dr. Travis testified that respondent met all seven of the criteria for a diagnosis of antisocial personality disorder, *i.e.*, he had a history of (1) violating laws and rules, (2) deception, (3) hostility or irritability, (4) irresponsibility, (5) impulsiveness, (6) lack of remose, and (7) putting himself or others in danger. According to Dr. Travis, a diagnosis of antisocial personality disorder can be made if a person meets any three of the seven criteria. Respondent's history of violating laws included "at least 11 convictions on record," including a conviction for burglary. Dr. Travis explained that respondent's antisocial personality disorder, like his pedophilic disorder, had "disinhibiting effects," *i.e.*, it contributed to respondent's impulsivity and his lack of control over his sexual urges.

¶ 19 After the State rested its case, the court allowed the State to amend its SPV Act petition so as to conform the claim to the evidence, by substituting the phrase "pedophilic disorder" for the word "pedophilia."

¶ 20 The sole witness for the respondent was Dr. Craig Rypma. He held a Ph.D. and was a licensed clinical psychologist and certified sex offender evaluator. As part of the evaluation process, Dr. Rypma examined thousands of pages of documents, including

court records, police reports, the DOC's master file on respondent, and DHS records on respondent's behavior, medical condition and treatments, and psychological condition and treatments, as well as reports authored by earlier sex offender evaluators. Dr. Rypma also conducted three face-to-face interviews with respondent, which lasted a total of approximately five hours. Dr. Rypma considered face-to-face interaction with a subject essential for an accurate psychological diagnosis; "a paper only review" limited an evaluator to historical data. (Dr. Travis had testified that the lack of an interview with respondent, while precluding him from "assessing [respondent's] mental status at that moment," did not impair his ability to diagnose respondent, since an examination of the historical information was sufficient to allow for diagnosis.)

¶ 21 Dr. Rypma conducted psychological testing of respondent. Results from the Abel Screening for Sexual Interests, which measures the extents to which a subject is attracted to males and females of various ages by gauging the amount of time, in microseconds, that the subject looks at photographs of people of different sexes and ages, suggested that respondent was no longer attracted to prepubescent children. Results of the Personality Assessment Inventory (PAI), a standard personality test, did not support earlier sex offender evaluators' opinions that respondent had a personality disorder. The Abel and PAI tests include ways of checking whether a subject is being dishonest in his answers, Rypma explained; respondent's results showed that he was not being dishonest. Rypma also administered "a well-recognized test" called the Barratt Impulsivity Scale, which measures a subject's impulsivity or his inclination to act without thinking, and he found that respondent was not especially impulsive. Respondent was on "the low end" of

cognitive ability, according to Rypma, further reducing the likelihood that he could successfully cheat on any of the psychological tests.

¶ 22 Rypma opined that respondent "could reasonably be diagnosed with pedophilia," in light of his three convictions for sexual contact with children. However, the results of the psychological testing caused Rypma not to make that diagnosis. Furthermore, respondent had been in the custody of DHS since 2008, and in all that time, respondent never had been disciplined for sexual contact, or attempted sexual contact, with any of the young-looking residents and never had been found in possession of photographs or writings indicating a continuing interest in children. Rypma diagnosed respondent with alcohol abuse, in remission, and bipolar disorder. Bipolar disorder, Dr. Rypma testified, is not a disorder that predisposes a person to sexual violence.

¶ 23 In regard to respondent's score of 6 on the Static-99R, Dr. Rypma testified that the latest research indicated that a 6 no longer places someone in the high-risk category.

¶ 24 Based upon his examination of documents, his interviews with respondent, and the results of psychological testing, Rypma opined, to a reasonable degree of psychological certainty, that respondent was no longer a pedophile, that respondent did not suffer from a mental disorder that would predispose him to sexual violence, that respondent was not a sexually violent person, and that there was no substantial probability that respondent in the future would commit acts of sexual violence. He also opined that respondent did not have antisocial personality disorder.

¶ 25 The jury returned a verdict finding that respondent was a sexually violent person, and the court entered judgment on that verdict. See 725 ILCS 207/35(f) (West 2014).

The court also ordered DHS to conduct a predisposition investigation, to assist the court in framing a commitment order. See 725 ILCS 207/40(b)(1) (West 2014).

¶ 26 Respondent filed a posttrial motion and an amended posttrial motion. At a hearing held in June 2015, the circuit court denied the amended motion. The court immediately proceeded to a dispositional hearing.

¶ 27 At the dispositional hearing, the State called, as its sole witness, Dr. Travis, who had testified for the State at trial. Dr. Travis testified that in April 2015, he wrote the predisposition investigation report on respondent. In preparation for writing that report, Dr. Travis examined DHS's records on respondent, including treatment records, and he spoke face-to-face with respondent. Dr. Travis found that respondent had participated in some "introductory" treatment programs at the TDF, including anger management, but respondent had not participated in any treatment specifically for sex offenders. According to Dr. Travis, respondent needed sex-offender-specific treatment, including "arousal management," but respondent had not even consented to being assessed for such treatment and had not shown any awareness of any need to change.

¶ 28 Dr. Travis opined that respondent was not a good candidate for conditional release in the community and that respondent needed a more intensive program of sex-offender treatment. He testified that respondent had received outpatient sex-offender treatment in 1986-88, while on probation in the Missouri sexual-offense case, and received it again in 2001-02, while on MSR in the first of the two Madison County sexual-offense cases. However, neither instance of outpatient sex-offender treatment had prevented respondent from committing additional sexual offenses. Dr. Travis testified that he was familiar with

the community-based sex offender treatment programs in Madison County. Those programs consisted of weekly group sessions and one hour of individual treatment per week; they were geared toward "people who are ready to sit down and do that kind of work," not people who are "still kind of fighting the whole treatment issue and fighting disclosure." Dr. Travis further opined that the TDF was "the least restrictive place" for respondent to receive effective treatment, and it was the place respondent needed to be for purposes of public safety, given the high probability of his committing another sexually violent act in the future.

¶ 29 Respondent did not present any live testimony at the dispositional hearing. He did present an updated written evaluation by Dr. Rypma, who had testified on his behalf at trial, and this written evaluation was admitted into evidence at the dispositional hearing. In the updated evaluation, Rypma described the tests he had administered to respondent and his opinions on respondent's condition, all of which he had discussed during his testimony at trial. The updated report also included Rypma's discussion of psychological research indicating that actuarial tests, including the Static-99R, significantly overestimate the risk of sex offenders' reoffending. The updated evaluation concluded with a recommendation that respondent "be released to the community" because he did not qualify as a sexually violent person under the SVP Act.

¶ 30 The parties presented brief closing arguments concerning the proper disposition of respondent, after which the court took the matter under advisement.

¶ 31 On July 29, 2015, the court entered a written order committing respondent to the custody of DHS for control, care, and treatment until such time as he was no longer a

sexually violent person. See 725 ILCS 207/40(a) (West 2014). The order specified that respondent's commitment should be for institutional care in a secure facility, and not for conditional release. See 725 ILCS 207/40(b)(2) (West 2014).

¶ 32 Respondent filed a notice of appeal from the judgment and dispositional order, thus perfecting the instant appeal. The circuit court appointed appellate counsel for respondent.

¶ 33 ANALYSIS

¶ 34 As previously noted, respondent's appointed appellate counsel has filed a motion to withdraw as counsel, on the ground that this appeal lacks merit. In a brief accompanying the motion to withdraw, counsel has presented this court with three potential arguments on appeal, *viz.*: (1) the jury's finding that respondent is a sexually violent person is contrary to the manifest weight of the evidence; (2) trial errors deprived respondent of a fair trial, necessitating a new trial; and (3) the circuit court abused its discretion in committing respondent for institutional care in a secure facility, instead of ordering his conditional release. This court has examined the entire record on appeal, given the important liberty interests involved in this case. See 725 ILCS 207/40(a) (West 2014) ("If a court or jury determines that the person *** is a sexually violent person, the court shall order the person to be committed *** until such time as the person is no longer a sexually violent person."). After due consideration, this court has concluded that this appeal lacks merit, appellate counsel should be allowed to withdraw, and the judgment of the circuit court must be affirmed.

¶ 35 *The Jury's Finding that Respondent is a Sexually Violent Person*

¶ 36 The first potential argument identified by appellate counsel is that the jury's finding that respondent is a sexually violent person is contrary to the manifest weight of the evidence.

¶ 37 Section 5(f) of the SVP Act defines a sexually violent person as "a person 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 substantially probable that the person will engage in acts of sexual violence." 725 ILCS 207/5(f) (West 2016). The phrase "substantially probable" is not defined in the SVP Act, but it has been defined as "much more likely than not." *In re Commitment of Curtner*, 2012 IL App (4th) 110820, ¶¶ 30-37. In proceedings under the SVP Act, the State has the burden of proving, beyond a reasonable doubt, all of the elements included in the statutory definition of a sexually violent person. See 725 ILCS 207/35(d)(1) (West 2016). In other words, to establish that a person is a sexually violent person, the State must prove these three elements beyond a reasonable doubt: (1) the person has been convicted of a sexually violent offense; (2) the person has a requisite mental disorder; and (3) the person is dangerous to others because the mental disorder creates a substantial probability that the person will engage in future acts of sexual violence. *In re Detention of Welsh*, 393 Ill. App. 3d 431, 454 (2009).

¶ 38 When the sufficiency of the evidence in an SVP Act proceeding is challenged, a reviewing court must view the evidence in a light most favorable to the State and must determine whether any rational trier of fact could have found the three elements proven beyond a reasonable doubt. *In re Detention of White*, 2016 IL App (1st) 151187, ¶ 56. A

reviewing court may reverse a determination that a person is sexually violent only if the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt as to that matter. *Id.* This standard of review respects the trier of fact's role in evaluating witness credibility, weighing the evidence, resolving any conflicts in the evidence, and drawing reasonable inferences from the evidence. See, *e.g.*, *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 11 (2001).

¶ 39 The State clearly proved the first of the three elements in the statutory definition of a sexually violent person. The State's certified copies of respondent's convictions in Madison County case numbers 03-CF-3590 and 99-CF-495 established that respondent had twice been convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2002)). The respondent did not dispute these convictions. Aggravated criminal sexual abuse is a "sexually violent offense" under the SVP Act. 725 ILCS 207/5(e)(1) (West 2006). Hence, the State clearly met its burden of proof as to the first element of the definition.

¶ 40 As for the second element of the definition of a sexually violent person, *i.e.*, the mental-disorder element, both of the State's expert witnesses, Dr. Bellew-Smith and Dr. Travis, diagnosed respondent with pedophilic disorder, nonexclusive, and explained in detail how respondent met the three criteria for that diagnosis. Dr. Bellew-Smith confirmed that this disorder qualified as a mental disorder under the SVP Act. See 725 ILCS 207/5(b) (West 2014) ("mental disorder" defined as "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence").

¶ 41 As for the third element of the definition, *i.e.*, the probability-of-reoffending element, Dr. Bellew-Smith and Dr. Travis testified that respondent's commission of future acts of sexual violence was substantially probable. They both arrived at this latter opinion, in large part, through the use of actuarial risk-assessment instruments, such as the Static-99R, which take into account various "static" risk factors for sexual recidivism. They both testified that such instruments are widely accepted in the community of mental health professionals who assess sexually violent offenders for risk of recidivism. See also *In re Commitment of Simons*, 213 Ill. 2d 523, 535 (2004) (actuarial risk-assessment instruments such as the Static-99 are generally accepted by professionals who assess sexually violent offenders for risk of recidivism). According to Dr. Bellew-Smith, the actuarial instruments indicated that respondent was nearly twice as likely to commit additional acts of sexual violence as the typical sex offender. According to Dr. Travis, respondent was four to five times more likely. Both Dr. Bellew-Smith and Dr. Travis also thought that various "dynamic" risk factors, such as respondent's impulsiveness and lack of cooperation with supervision, made respondent even more likely to engage in future sexual violence.

¶ 42 The respondent's expert witness, Dr. Rypma, certainly disagreed with Dr. Bellew-Smith and Dr. Travis on both the diagnosis and the probability of reoffending (though he did concede that respondent "could reasonably be diagnosed with pedophilia"). Differences of opinion among experts, even on big issues, are commonplace, and such differences are for the trier of fact to consider and to resolve. The trier of fact (in this case, the jury) was responsible for assessing witness credibility, weighing testimony, and

drawing reasonable inferences from the evidence. See *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 11 (2001). The jury implicitly found the testimonies of Dr. Bellew-Smith and Dr. Travis more credible than the testimony of Dr. Rypma. All witnesses were well-qualified and coherent; all were vigorously cross-examined, and none gave testimony that was inherently incredible. This court cannot reweigh the evidence or retry respondent. *Id.*

¶ 43 After considering the complete record of this case, including respondent's long history of sexually abusing children, this court must conclude that a rational trier of fact could have concluded beyond a reasonable doubt that respondent met the statutory criteria of a sexually violent person. This court has no cause to disturb the jury's finding.

¶ 44 *Trial Errors and Trial Fairness*

¶ 45 The second potential argument identified by appellate counsel is that trial errors deprived respondent of a fair trial, necessitating a new trial.

¶ 46 In the brief accompanying his motion to withdraw, appellate counsel references a posttrial claim that the circuit court erred in allowing the State's two experts to testify about actuarial risk-assessment instruments without first establishing the instruments' accuracy or reliability. Respondent did not object to this testimony during trial. Therefore, respondent has forfeited this issue. See, *e.g.*, *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶ 52. Even if the issue had not been forfeited, this court would have to conclude that the circuit court did not err in allowing testimony about the actuarial risk-assessment instruments. Our supreme court has stated that actuarial risk assessment, even if it were a novel scientific method subject to *Frye v. United States*, 293

F. 1013 (D.C. Cir. 1923), "is generally accepted by professionals who assess sexually violent offenders and therefore is perfectly admissible in a court of law." *Simons*, 213 Ill. 2d at 535. The State's witnesses' testimonies about the Static-99R and other such instruments were perfectly permissible.

¶ 47 In his brief, counsel also asserts that a potential issue involves "the State's arguments to the jury." Counsel does not cite to any particular argument or remark by the State. In his amended posttrial motion, respondent asserted that he had been "prejudiced" by the State's "opening remarks," "remarks made *** during the trial," and "closing remarks." However, the posttrial motion likewise did not offer even one example of improper remarks by the State.

¶ 48 This court's examination of the record reveals that the State, during opening statement and closing arguments, did make a few remarks that were improper or arguably improper. The worst of these remarks occurred during rebuttal argument, when the State said, in reference to respondent's trial counsel, "He's got a job, and that's to fight for that guy and say whatever it takes to help him. I have a job, too. My job's to protect society and to speak the truth." Respondent did not object to this particular remark. Indeed, respondent did not object to any of the improper or arguably improper remarks that this court has found. As previously mentioned, the amended posttrial motion did not include any description of any specific improper remark. Therefore, any improper-remark issue has been forfeited. See *People v. Jackson*, 391 Ill. App. 3d 11, 38 (2009) (to preserve for review an issue regarding closing argument, a defendant must contemporaneously object

to the offending comment and must include in his posttrial motion a specific reference to the comment).

¶ 49 The State should not improperly impugn the integrity of opposing counsel by suggesting that he sought to aid his client through trickery or deception. *People v. Kelley*, 2015 IL App (1st) 132782, ¶ 86. The State apparently made such a suggestion at respondent's trial, to its discredit. However, improper remarks during closing argument do not require reversal unless they resulted in substantial prejudice to respondent; this standard is met if it is impossible to discern whether the verdict was based on the evidence or on the improper remarks. *Gavin*, 2014 IL App (1st) 122918, ¶ 69. In assessing the prejudicial impact of challenged remarks, this court must consider the remarks in the context of the closing arguments as a whole. *Id.* The improper remarks at respondent's trial were isolated; they certainly did not dominate the State's argument, most of which was properly focused on the trial evidence. This court is confident that the jury's verdict was based entirely on the evidence and was not influenced by improper remarks. For this reason, any improper or arguably improper remarks by the State do not come close to warranting reversal of the judgment.

¶ 50 *Respondent's Commitment to a Secure Facility*

¶ 51 The third potential argument identified by appellate counsel is that the circuit court abused its discretion in committing respondent for institutional care in a secure facility, instead of ordering his conditional release.

¶ 52 After a person has been adjudicated a sexually violent person, the circuit court must order the person committed to the custody of the DHS, and this order must specify

either institutional care in a secure facility or conditional release. 725 ILCS 207/40(a), (b)(2) (West 2016). When deciding between a secure facility or conditional release, the court must consider: (1) the nature and circumstances of the criminal behavior that was the basis of the allegations in the State's petition to have the respondent adjudicated a sexually violent person; (2) the person's mental history and present mental condition; and (3) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2016). An order committing a respondent to a secure facility is reviewed for an abuse of discretion. *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374 (2003). An abuse of discretion will be found only if the commitment order is arbitrary, fanciful, or unreasonable. *Id.*

¶ 53 The circuit court did not abuse its discretion in finding that institutional care in a secure facility, rather than conditional release, was the appropriate placement for respondent. The court heard and considered evidence regarding the nature and circumstances of the behavior that was the basis of the State's petition to have respondent adjudicated a sexually violent person. That is, the court heard evidence about Madison County case numbers 03-CF-3590 and 99-CF-495, two unrelated cases in which respondent was convicted of the aggravated criminal sexual abuse of prepubescent children. The court heard extensive testimony about respondent's mental condition, past and present, especially his pedophilic disorder and antisocial personality disorder, and the concomitant high risk of recidivism. At the dispositional hearing, the court heard from Dr. Travis about treatment options. Dr. Travis testified that respondent needed intensive, sex-offender-specific treatment. He testified about respondent's failed past attempts at

outpatient sex-offender treatment and respondent's current unsuitability for community-based treatment.

¶ 54 The evidence strongly favored institutional care in a secure facility, rather than conditional release, as the appropriate placement for respondent. The circuit court's commitment order was certainly not an abuse of discretion.

¶ 55 CONCLUSION

¶ 56 For all of the foregoing reasons, this court grants appointed appellate counsel's motion to withdraw and affirms the circuit court's judgment finding respondent to be a sexually violent person and committing him to institutional care in a secure facility.

¶ 57 Motion granted; judgment affirmed.