2019 IL App (4th) 180427-U

NO. 4-18-0427

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 13, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. DONALD R. PRUETT, Respondent-Appellant.	)	Appeal from the Circuit Court of Adams County No. 15MR169 Honorable Scott D. Larson, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the jury's finding that respondent was a sexually violent person because (1) the State presented sufficient evidence to find respondent was substantially probable to engage in acts of sexual violence and (2) the State's improper closing argument did not rise to the level of plain error.

¶ 2 In December 2015, the State filed a petition to commit respondent, Donald R. Pruett, to the Illinois Department of Human Services pursuant to the Sexually Violent Persons Commitment Act (Act). 725 ILCS 207/15 (West 2014). In November 2017, a jury found respondent to be a sexually violent person. *Id.* § 5(f).

¶ 3 Respondent appeals, arguing (1) the State failed to present sufficient evidence to prove respondent was substantially probable to engage in acts of sexual violence, (2) the State committed prosecutorial misconduct in closing argument, and (3) the trial court erred by failing to grant respondent's motion for a new trial. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Respondent's Conviction

¶ 6 In September 2013, respondent pleaded guilty to aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). The trial court sentenced respondent to four years and six months in prison. In December 2015, as respondent's prison term was close to expiring, the State petitioned the trial court to detain respondent pursuant to the Act.

¶ 7 B. The Jury Trial

¶ 8 In November 2017, the trial court conducted a jury trial on the State's petition. Dr. Martha Bellew-Smith, a clinical psychologist who evaluated respondent, testified as an expert witness for the State. Bellew-Smith testified that respondent was a sexually violent person and diagnosed respondent with the mental disorder of "pedophilia, nonexclusive, *** attracted to *** both sexes." In her professional opinion, respondent was substantially probable to reoffend.

¶ 9 Bellew-Smith explained that she relied upon court records, police reports, medical records, and prison records for her evaluation. Initially, respondent refused to be interviewed; however, he later agreed, and Bellew-Smith issued a second report that included that additional information. Bellew-Smith particularly relied upon respondent's "20-some-odd year history of being interested in sex and acting on his interests in sex with very young people."

¶ 10 Bellew-Smith described the factual circumstances of the qualifying offense—aggravated criminal sexual abuse—as well as several other uncharged offenses described in police reports and records from the Adams County State's Attorney's Office. Specifically, in 2013 respondent pleaded guilty to aggravated criminal sexual abuse of a nine-year-old girl for grabbing her buttocks and pubic area. Respondent was arrested in 2002 for masturbating in front of and touching the penis of a four-year-old boy, but the State dismissed the charges, explaining that the evidence was insufficient. In 1999, respondent undressed and fondled a six-year-old girl.

In the 1980s, respondent fondled a 10-year-old girl and her 6-year-old sister on multiple occasions and on one occasion "placed [the older girl's] hand on his penis *** and then placed his hand over her hand and moved it until he ejaculated."

¶ 11 Bellew-Smith also testified that she used two actuarial risk assessment instruments to evaluate respondent: the Static-99R and Static-2002R. Respondent scored a three and a four respectively on those assessments, which placed him in the low to moderate risk category. Respondent was "about one and a half times more likely to reoffend than a [sex offender] who got an average score." However, Bellew-Smith explained that these actuarial scores underestimated respondent's risk of recidivism because they consider limited factors. She also noted that respondent's age resulted in a lower score (on the assumption that older persons offend less) but he committed the qualifying offense when he was 53 and had a "pattern of 24 years of offending." Bellew-Smith therefore believed respondent was substantially probable to reoffend.

¶ 12 Dr. Richard Travis, a clinical psychologist and sex offender evaluator for the Illinois Department of Human Services, testified that he diagnosed respondent with the mental disorders of pedophilia, nonexclusive, attracted to both sexes, and "persistent depressive disorder." In his opinion, respondent was a sexually violent person under the Act and was substantially probable to commit another sexually violent crime in the future. Regarding respondent's offense history, Travis testified consistently with Bellew-Smith and described the factual circumstances of respondent's charged and uncharged offenses dating back to 1989. Travis added that respondent was alleged to have touched a seven-year-old boy's penis in 1993.

¶ 13 Travis also stated that he scored respondent as a three on the Static-99R and a four on the Static-2002R. Travis explained that the actuarial assessments "establish a baseline level of risk," and he used various other factors to formulate his opinion. Travis believed these

tests "underestimated" respondent's risk of reoffending because (1) respondent's most recent offense was committed despite his advanced age, (2) his score was lower because the tests considered only charged conduct, which is subject to a local prosecutor's discretion (in terms of the number of charges to bring), and (3) respondent had not been in treatment, where he would disclose his entire offense history.

¶ 14 Travis also opined that certain factors exacerbated respondent's likelihood to reoffend. Specifically, Travis stated he identified six factors respondent possessed which are factors "associated with increased risk of offending[:]" (1) sexual interest in children, (2) "separation from parents," (3) poor problem solving skills, (4) employment instability, (5) substance abuse, and (6) attitudes tolerant of sex crimes. Based on the totality of the information he considered, Travis opined that respondent was substantially probable to commit a sexually violent crime in the future.

¶ 15 Prior to Bellew-Smith and Travis's testifying about respondent's past sexual misconduct, the trial court instructed the jury that the testimony was not evidence and was being offered for a limited purpose—namely, so the witnesses could tell the jurors what they relied on to form their opinions.

¶ 16 Respondent testified on his own behalf and recounted his employment history from his graduation from high school until June 2012. Between 1997 and 2012, respondent worked at a company that manufactured storage racks for warehouses, starting as a forklift driver and, after multiple promotions, ended as the "nightshift superintendent over the plant or plant manager." As superintendent, respondent oversaw other employees—including other supervisors—handled managerial tasks, and solved problems as they arose. Respondent indicated he had been unemployed since 2012 when his employer went out of business. When asked if he was de-

pressed about losing his job, respondent stated, "Probably I would say anybody would at that point, but I wasn't massively depressed[,] I don't guess." Respondent admitted to committing aggravated criminal sexual abuse in 2013. He did not offer any testimony regarding any other allegations of sexual misconduct.

¶ 17 C. Closing Argument

¶ 18 The State argued that it had proved that respondent met all three elements of a sexually violent person in that (1) respondent was convicted of a sexually violent crime, (2) respondent had a mental disorder, and (3) he was substantially probable to reoffend—beyond a reasonable doubt. The State began by explaining that "what the doctors all wanted you to really pay attention to was it was a pervasive pattern of behavior that dates all the way back to the '80s." The State then described the elements of the experts' medical diagnoses that respondent had pedophilic disorder and noted that Travis thought respondent's persistent depressive disorder "was important because, in times of stress, you see a disinhibition by the respondent."

¶ 19 Regarding respondent's likelihood to reoffend, the State argued that the actuarial assessments showed respondent was "one-and-a-half times more likely than the average sex offender to commit another sexually violent crime." The State then argued as follows:

> "Then there's the dynamic factors. You see a deviant sexual interest in children. That increases his risk even more. And remember, [the experts] said those instruments they used are very conservative. There's lots of reasons. As you've seen in this case, kids don't always report what happened. Moreover, sometimes when they do, the state's attorneys don't even prosecute the case because they're too hard to win. So that's why that's such a conservative number. It's a low number. Use your common sense. You see it all the time, too, in the

news lately. You know, everyone is coming out of the woodwork saying they were offended. This is exactly what happened here.

I put on those experts to help give you guys guidance, but you can use your own common sense, too, like I said, and you can determine—what's the best predictor of future behavior? Past behavior. 1989, 1993, 1999, 2003, 2013. It continues on and on. The same behavior."

¶ 20 Respondent argued that the experts' conclusions were flawed. Specifically, respondent challenged Travis's conclusion that he had poor problem-solving skills because he held managerial positions at two different companies and maintained that he had steady employment throughout his life. Respondent also noted that the Adams County State's Attorney did not prosecute any of the cases against respondent, aside from the 2013 qualifying offense, because of a lack of sufficient evidence. Respondent asserted that the experts' conclusions that the information about respondents offense history was therefore flawed.

¶ 21 D. The Jury's Verdict and Disposition

¶ 22 The jury found respondent was a sexually violent person, and the trial court committed respondent "to the custody of the Department of Human Services for control, care and treatment until such time as he is no longer a Sexually Violent Person."

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Respondent appeals, arguing (1) the State failed to present sufficient evidence to prove respondent was substantially probable to engage in acts of sexual violence, (2) the State committed prosecutorial misconduct in closing argument, and (3) the trial court erred by failing to grant respondent's motion for a new trial. We disagree and affirm.

¶ 26 A. Sufficiency of the Evidence

¶ 27 "To prove that an individual is a sexually violent person, the State must prove that (1) an individual was convicted of a sexually violent offense, (2) the individual has a mental disorder, and (3) the mental disorder makes it substantially probable that he will engage in acts of sexual violence." *In re Commitment of Lingle*, 2018 IL App (4th) 170404, ¶ 61, 103 N.E.3d 564 (citing 725 ILCS 207/5(f) (West 2016)). When reviewing a challenge to the sufficiency of the evidence, "a reviewing court considers whether any rational trier of fact, when viewing the evidence in the light most favorable to the State, could find the elements of the Act beyond a reasonable doubt." *Id.* ¶ 62. "We defer to the fact finder's assessment of the credibility of the witnesses, resolution of conflicts in the evidence, and reasonable inferences from the evidence." *Id.*

¶ 28 Respondent concedes that the State proved the first two elements beyond a reasonable doubt. Instead, he argues that the expert testimony was insufficient to prove he was substantially probable to engage in future acts of sexual violence. Specifically, respondent asserts that his scores on the actuarial assessments were significantly lower than other sexually-violent-persons cases and placed him in the low to moderate risk category. Further, respondent claims the only other basis for concluding he was substantially probable to reoffend was an improper one: his uncharged past conduct. We disagree.

¶ 29 Although both experts agreed respondent's actuarial scores placed him in the low to moderate risk category, the actuarial assessments are just one tool they used to evaluate respondent's likelihood of committing another act of sexual violence. Both experts explained that they concluded that the actuarial assessments *underestimated* respondent's risk and other factors demonstrated that respondent was substantially probable to reoffend. The fact that respondent's scores were only one point higher than the average score or that other cases in Illinois have up-

held convictions when a respondent has scored substantially higher has no bearing on this particular case.

¶ 30 The question before the jury was whether *this particular respondent* was substantially probable to commit acts of sexual violence in the future. Bellew-Smith testified that respondent was substantially probable to reoffend because he had a "20-some-odd year history of being interested in sex and acting on his interests in sex with very young people." Smith explained that respondent's score was low because of his age. However, respondent admitted to committing aggravated criminal sexual abuse against a nine year old at the age of 53, which demonstrated that respondent's age was *not* a mitigating factor as assumed by the actuarial instruments and instead increased his risk of reoffending. Travis agreed with these conclusions and further stated that respondent had other risk factors that increased his likelihood of reoffending. The jury believed the experts in this case and therefore answered the question affirmatively. The jury's conclusion was entirely proper, and we will not second guess it. See *In re Commitment of Haugen*, 2017 IL App (1st) 160649, ¶ 26, 87 N.E.3d 346 ("It was the jury's responsibility to determine whether the actuarial tests along with the other testimony demonstrated respondent had a substantial probability to reoffend[.]"); *In re Commitment of Fields*, 2014 IL 115542, ¶ 27, 10 N.E.3d 832 (evidence deemed sufficient where the State presented "uncontroverted testimony" from two experts who concluded that respondent was a sexually violent person).

¶ 31 B. Prosecutorial Misconduct

¶ 32 Respondent next argues that the State committed reversible error when it argued evidence admitted for the limited purpose of explaining the basis for the experts' opinions as substantive evidence of respondent's probability of reoffending. In particular, respondent notes that the State repeatedly referenced and described respondent's prior charged and uncharged of-

fenses without providing any context to the jury that such evidence was simply what the experts relied upon in forming their opinions. Respondent further notes that the State told the jury it could use its own "common sense" and asked rhetorically, "[W]hat's the best predictor of future behavior? Past behavior."

¶ 33 Respondent acknowledges that he forfeited this argument by failing to object during trial, but he asserts that it is reviewable under the plain-error doctrine because it denied him his fundamental right to a fair trial. The State responds that no error occurred because its closing arguments were properly framed as a discussion of the basis for the experts' opinions. Alternatively, the State contends respondent cannot demonstrate plain error because (1) the evidence was not closely balanced and (2) any error did not affect the fundamental fairness of the trial or the integrity of the judicial process. We conclude that the State committed an error, but it does not rise to the level of plain error.

¶ 34 1. *The Applicable Law*

¶ 35 Prosecutors are afforded wide latitude during closing argument and may properly comment on the evidence presented and reasonable inferences drawn from that evidence, respond to comments made by defense counsel that invite a response, and comment on the credibility of a witness. *People v. Burman*, 2013 IL App (2d) 110807, ¶ 25, 986 N.E.2d 1249. However, a prosecutor may not misstate the evidence or argue facts not in evidence. *People v. Green*, 2017 IL App (1st) 152513, ¶ 77, 100 N.E.3d 491. To determine whether a prosecutor's comment in closing argument was improper, a reviewing court must view such comment in its proper context. *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 47, 972 N.E.2d 1272.

¶ 36 Improper remarks during closing argument are reversible error only when they cause substantial prejudice to the defendant. *People v. Thompson*, 2013 IL App (1st) 113105,

¶ 79, 997 N.E.2d 681. Substantial prejudice occurs if the improper remarks were a material factor in the defendant's conviction. *Id.* Improper remarks are a material factor if (1) the jury could have reached a contrary verdict had the improper remarks not been made or (2) the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction. *People v. Wheeler*, 226 Ill. 2d 92, 123, 871 N.E.2d 728, 745 (2007). "The strength of the evidence offered against a defendant is often a decisive factor when determining whether the improper statements were a material factor in his conviction." *People v. Marzonie*, 2018 IL App (4th) 160107, ¶ 48, 115 N.E.3d 270.

¶ 37 2. *Plain Error and Standard of Review*

¶ 38 Although the Illinois Appellate Court is divided on which standard of review applies, this court has consistently held that claims of prosecutorial misconduct are reviewed *de novo*. *Id.* ¶ 50; *Wheeler*, 226 Ill. 2d at 121. When a defendant fails to object to improper argument either at trial or in a posttrial motion, any alleged error is forfeited. *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. "Under the plain-error doctrine, [a reviewing] court will review forfeited challenges when: (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431. "The defendant bears the burden of persuasion at all times under the plain-error doctrine. [Citation.] If the defendant fails to meet his burden, the issue is forfeited and the reviewing court will honor the procedural default." *Marzonie*, 2018 IL App (4th) 160107, ¶ 55.

¶ 39 3. *A Clear Error Occurred*

¶ 40 The State made a clear error when it argued facts outside the record and encouraged the jurors to use their "common sense" instead of relying on the experts' testimony. The State argued as follows:

> "Then there's the dynamic factors. You see a deviant sexual interest in children. That increases his risk even more. And remember, [the experts] said those instruments they used are very conservative. There's lots of reasons. As you've seen in this case, kids don't always report what happened. Moreover, sometimes when they do, the state's attorneys don't even prosecute the case because they're too hard to win. So that's why that's such a conservative number. It's a low number. Use your common sense. You see it all the time, too, in the news lately. You know, everyone is coming out of the woodwork saying they were offended. This is exactly what happened here.
>
> I put on those experts to help give you guys guidance, but you can use your own common sense, too, like I said, and you can determine—what's the best predictor of future behavior? Past behavior. 1989, 1993, 1999, 2003, 2013. It continues on and on. The same behavior."

¶ 41 a. Facts Outside the Record

¶ 42 Arguably, the State's referring to the State's Attorney's dismissing a charge was proper. Travis testified he disagreed with the State's Attorney that there was not enough evidence to bring respondent to trial in the 2002 case. And both experts agreed that the actuarial scores were low in part because they only count charged conduct and defendant had only been charged twice, despite many reports and allegations. However, the State did not present any evidence that "in the news lately" "everyone is coming out of the woodwork saying they were of-

fended" and that "[t]his is exactly what happened here." The State does not address this language in its brief, probably because there is no defense to its use. The strongest argument one could make would be that events in the news are part of jurors' "common experience," but in this instance, we believe the prosecutor's argument went too far. At best, the State was trying to use facts not in evidence to bolster the factual basis for its experts' opinions; at worst, the State was asking the jury to punish respondent on behalf of every other person who had come forward with an allegation of child sexual abuse.

¶ 43 b. Factual Basis Evidence

¶ 44 Additionally, the State clearly asked the jury to use the factual basis for its experts' opinions as substantive evidence. The State said it offered the expert testimony "to help give you guys guidance, but you can use your own common sense *** and you can determine—what's the best predictor of future behavior? Past behavior." This is exactly what the jury could *not* do. The State essentially asked the jury to disregard the trial court's instruction that the factual basis evidence of respondent's prior charged and uncharged conduct was being offered for the limited purpose of evaluating the experts' opinions and credibility. In fact, the State then immediately listed each year that an offense occurred and stated, "It continues on and on. The same behavior." Once untethered from the context of the experts' opinions, these statements cannot be interpreted as anything other than asking the jury to consider the prior behavior as propensity evidence. Yet, the State never offered any other evidence to show that respondent did in fact engage in the described deviant sexual conduct. Simply stated, the jury could not use its "common sense" to evaluate respondent's past behavior because substantive evidence of that behavior *was never presented*.

¶ 45 Many courts and scholars have recognized the difficult "mental gymnastics" ju-

rors are asked to perform when they are given a limiting instruction on factual basis testimony. See, *e.g.*, David H. Kaye *et al.*, The New Wigmore: A Treatise on Evidence: Expert Evidence § 4.7.2 (2d ed. 2010) (questioning the ability of juries to use factual basis evidence solely for the purpose of evaluating an expert's testimony when the expert's opinion can only be credible if the factual basis on which she relied is true); see also *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶ 78, 14 N.E.3d 1163 (quoting the same). Accordingly, "[t]he prosecution under the SVP Act treads a fine line, and must be prudent enough to know when its remarks regarding the respondent's past deviant sexual actions expose the jury to prejudicial matter." *Gavin*, 2014 IL App (1st) 122918, ¶ 79. The State crossed the line here.

¶ 46 We note that the remainder of the State's argument, comprising five pages of transcript, did properly discuss the underlying factual basis evidence in the context of how it supported the experts' opinions. We further note that that State's argument that the jury consider the factual basis evidence for the incorrect purpose is categorically different from its statements about facts not in evidence. That is, the State was flat out not allowed to speak to the jury about "the news lately." However, the State *was* permitted to discuss the factual basis evidence but only for a limited purpose—namely, as to how that evidence supported the experts' opinions. In other words, context was extremely important for the factual basis evidence.

¶ 47 If the State had framed the evidence properly, it would not have committed any error. See generally *In re Commitment of Butler*, 2013 IL App (1st) 113606, ¶¶ 28-39, 996 N.E.2d 273, for a good discussion on how the State may appropriately discuss factual basis evidence in the context of expert opinions. By contrast, no amount of context, framing, or word choice could have made it permissible for the State to argue facts not in evidence. See generally *Gavin*, 2014 IL App (1st) 122918, ¶¶ 67-79, for a good discussion of when the State argues fac-

tual basis evidence improperly.

¶ 48 Because the State must tread such a fine line, it is entirely foreseeable that problems may arise during closing arguments. A good practice for the trial court would be to speak with both counsel outside the presence of the jury and before closing argument, reminding them (1) of the limited nature of the factual basis evidence and the need to argue about it in the context of how it supports (or does not support) the experts' conclusions and (2) how it may not be argued as substantive evidence.

¶ 49 However, we emphasize that it is incumbent upon defense attorneys to object to any improper argument. When presented with a proper objection, the trial court can immediately strike the argument, give the limiting instruction again, and minimize any potential harm. Although a trial court is allowed to *sua sponte* interfere with improper closing arguments, most courts are understandably reluctant to do so. In fact, defense counsel may wish to let an errant comment pass rather than call attention to it by objecting. Given that the parties may argue factual basis evidence to the jury, but may do so only in a limited manner, defense counsel is in the best position to decide when he or she believes the State's case crossed the line.

¶ 50 4. *The Evidence Was Not Closely Balanced*

¶ 51 Respondent does not explicitly argue that the evidence was closely balanced, and we conclude it was not. The State's two experts concluded, based on the relevant information relied upon by other experts in the field, that respondent was a sexually violent person. The experts also explained the factual basis for their opinions and why those facts supported their conclusions. Respondent did not rebut the experts' testimony in any meaningful way or demonstrate any weaknesses in their reasoning. See *id.* ¶ 76 (noting that the prejudice caused by the prosecution's arguing factual basis of expert testimony as substantive evidence was "increase[d] expo-

nentially" because the respondent "gave the jury strong reasons to disregard the experts' opinions."). Because the State's evidence was essentially uncontradicted, the evidence was not closely balanced. See *Fields*, 2014 IL 115542, ¶ 27.

¶ 52 5. *The Error Was Not Structural*

¶ 53 Under the second prong of the plain-error doctrine, reversal is required only "where an error is deemed 'structural,' *i.e.*, a systemic error which serves to erode the integrity of the judicial process and undermine the fairness of the defendant's trial." (Internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d 598, 613-14, 939 N.E.2d 403, 413 (2010). Respondent claims the State's improper comments during closing argument denied him his "fundamental right to a fair trial," but he does not explain how. He simply concludes that the limiting instructions were not sufficient and the State's "inflammatory rhetoric" caused him prejudice.

¶ 54 Structural errors have been found "only in a very limited class of cases." *Id.* at 609. "Those cases include a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction." *Id*. Notably, Illinois courts have repeatedly declined to find structural error in cases where the State made improper closing arguments. See *People v. Adams*, 2012 IL 111168, ¶¶ 20, 24, 962 N.E.2d 410 (no structural error when State argued a police officer was more trustworthy than other witnesses and that the contents of police reports not introduced into evidence bolstered witness testimony); *Marzonie*, 2018 IL App (4th) 160107, ¶¶ 58-60 (no structural error where State told jury to "take that [witness's testimony] as the truth" (internal quotation marks omitted.)); *People v. Shaw*, 2016 IL App (4th) 150444, ¶¶ 68, 72, 52 N.E.3d 728 (no structural error when State argued defendant would not have run from police if he had not committed a serious offense).

¶ 55 In this case, the trial court instructed the jury that the factual basis testimony was not substantive evidence when each expert testified and again at the close of evidence. The court also instructed the jury that "[n]either opening statement nor closing arguments are evidence and any statement made by the attorneys which are not based on the evidence should be disregarded." Accordingly, we find the prosecutor's comments, even if improper, were not so serious that they affected the fairness of respondent's trial or challenged the integrity of the judicial process. *Shaw*, 2016 IL App (4th) 150444, ¶ 72. (In reaching this conclusion, "we emphasize that we do not condone the prosecutor's comments." *Adams*, 2012 IL 111168, ¶ 24.)

¶ 56 C. Respondent's Motion for a New Trial

¶ 57 Finally, respondent argues the trial court erred by denying his motion for a new trial. "When a party files a posttrial motion seeking a new trial, the trial court weighs the evidence and may set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence." (Internal quotation marks omitted.) *Hamilton v. Hastings*, 2014 IL App (4th) 131021, ¶ 26, 14 N.E.3d 1278; see also *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 608, 884 N.E.2d 160, 181-82 (2007). A reviewing court will reverse the trial court's denial of a motion for a new trial only if the trial court abuses its discretion. *Hastings*, 2014 IL App (4th) 131021, ¶ 26.

¶ 58 Respondent merely incorporates his arguments regarding the sufficiency of the evidence as support for his claim that his posttrial motion should have been granted. Though the standard is different, the reasoning we discussed earlier regarding the sufficiency of the evidence demonstrates that the jury's finding was not against the manifest weight of the evidence. Both experts testified that respondent was a sexually violent person, and therefore the opposite result was not clearly evident. Accordingly, the trial court properly denied respondent's posttrial motion.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment.

¶ 61 Affirmed.