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2011 IL App (3d) 100366-U

Order filed November 14, 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Petitioner-Appellee,)	
v.)	Appeal No. 3-10-0366
)	Circuit No. 2001-MR-3
)	
JOHN E. LOY,)	Honorable
Respondent-Appellant.)	Stephen C. Mathers,
)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove, beyond a reasonable doubt, respondent was a sexually violent person during a trial for civil commitment under the Sexually Violent Persons Commitment Act. The prosecutor’s closing arguments were supported by the evidence and were neither improper nor prejudicial.

¶ 2 Respondent filed a motion for a new trial after a jury found that he was a sexually violent person under the Sexually Violent Persons Commitment Act (Act). 725 ILCS 207/1 *et seq.* (West 1998). Respondent did not set that motion for a hearing, and several years later, filed a supplemental motion for new trial arguing that the State did not prove that he was a sexually violent person beyond a reasonable doubt. Respondent also claimed that statements made by the

prosecutor during closing arguments were highly prejudicial to defendant's trial, and the trial court erred in denying respondent's objections to the statements. Respondent filed a timely notice of appeal. We affirm.

¶ 3

BACKGROUND

¶ 4 On January 4, 2001, the State filed a Petition for Commitment Pursuant to the Sexually Violent Persons Commitment Act (Act). 725 ILCS 207/1 *et seq.* (West 1998). The petition asked the circuit court to declare respondent John E. Loy a sexually violent person alleging: respondent was previously convicted of the offense of rape, a Class X felony, Knox County case No. 82-CF-159, and sentenced to 30 years in the Illinois Department of Corrections (DOC); respondent was scheduled for discharge from mandatory supervised release in No. 82-CF-159, on January 5, 2001; respondent was diagnosed as having mental disorders including "Paraphilia Not Otherwise Specified," alcohol abuse, cannabis abuse, and antisocial personality disorder; respondent was dangerous to others because his mental disorders make it substantially probable that respondent will engage in future acts of sexual violence; respondent had a substantial criminal history dating back to 1962, including 5 felony convictions; respondent was paroled on the "offense which is the subject of this petition" and committed new offenses; respondent was a fugitive from justice for at least one year before being arrested in New Orleans; respondent did not cooperate with the rules during his incarceration in DOC; and respondent did not participate in any treatment during incarceration or while on parole. The State asked the court to continue the civil commitment of respondent as a result of this petition.

¶ 5 Jury selection began on August 10, 2005, and the jury trial lasted through August 12, 2005. The State first called Dr. Mark Levinson, a PhD in clinical psychology, as its witness. Dr.

Levinson testified to his qualifications and stated that he currently was the acting chief psychologist at Choate Mental Health Center, as well as one of the staff psychologists serving on a treatment team that evaluates patients and provides testimony for the courts, if necessary. Prior to his current position, from 1998 through 2003, Dr. Levinson said that he worked for DOC for six years as a member of DOC's special evaluation unit which conducted evaluations of convicted sex offenders prior to their release from DOC, and evaluated whether those sex offenders, who were believed to be at particularly high risk, met the criteria for civil commitment under the Act (725 ILCS 207/1 *et seq.* (West 1998)). The court found Dr. Levinson was an expert in the field of clinical psychology and able to render an expert opinion as to whether a person is subject to the Act, without objection from respondent's attorney.

¶ 6 Dr. Levinson said he evaluated respondent, in November 2000, to determine whether respondent met the criteria for commitment as a sexually violent person. Dr. Levinson testified that the 1982 forcible rape conviction against respondent qualified as a sexually violent offense under the Act.

¶ 7 He said he met with respondent for 2½ hours in November 2000. Before meeting with respondent, he first reviewed respondent's master file, which included documents relating to respondent's offense, court proceedings, the sentence respondent received for the conviction, mental health evaluations, disciplinary reports and credits earned while he was in custody, and his parole history. Additionally, the master file contained information of prior criminal offenses and police arrest records, investigation reports, and records of any interviews or statements taken from respondent.

¶ 8 Dr. Levinson said that at the time he conducted the November 2000 interview, respondent was serving a 30-year sentence in DOC for the 1982 rape conviction from Knox County, Illinois. Dr. Levinson told the jury that he reviewed the investigative police records for this conviction and learned that respondent entered a house in Galesburg, around 2 a.m., where he located a 17-year-old female sleeping in her bed, placed his hand over her mouth, held a knife to her neck, and attempted to penetrate her vagina with his penis, but respondent had difficulty achieving an erection at the time. According to the records, respondent then placed the victim on her back, removed her clothing, performed oral sex on the victim, and then placed his penis in her vagina until ejaculation. The doctor explained to the jury that records showed that respondent plead guilty to that charge.

¶ 9 Dr. Levinson said he asked respondent about this offense, and respondent said he entered the home in the late night or early morning hours after he had been drinking. He said he did not know who lived at the residence and denied entering the residence with a specific plan in mind. Respondent told the doctor that the victim was a complete stranger to him.

¶ 10 Dr. Levinson testified that the police reports revealed respondent entered another house on the same night, and located a 15-year-old girl who was asleep in the house. However, the reports stated that the 15-year-old-girl woke up, started screaming, and respondent ran away from this home prior to entering the house of the 17-year old victim.

¶ 11 Dr. Levinson testified that respondent was released from DOC on parole for the 1982 rape of the 17-year-old victim, in 1997, but was recommitted to DOC as a parole violator in 2000. The doctor explained that he also met with respondent at that time, May 2000, to conduct an evaluation for the parole board's consideration. According to the doctor, the parole violations

were based on the following circumstances: (1) the victim of respondent's 1982 rape reported to police that she saw respondent and believed he was following her; (2) the parents of another 14-year-old female reported that respondent had been repeatedly calling their daughter on the telephone and discussing sexual topics with her; and (3) respondent had been unsuccessfully discharged from his mandated sex offender treatment program for lack of cooperation and participation. Dr. Levinson explained to the jury that when respondent's parole officer told respondent the officer was going to file a violation report based on these allegations, respondent pushed his parole officer aside, "bolted" out of the room, and fled outside the State of Illinois for approximately a year, constituting an additional parole violation. According to the reports, police stopped respondent in Louisiana for a reckless driving violation, learned that respondent was wanted in Illinois for the parole violation, and returned respondent to Illinois in 2000.

¶ 12 During the May 2000 interview, Dr. Levinson said he discussed the parole violation allegations with respondent. Respondent told him that he had befriended a 14-year-old girl who was a troubled child. Respondent explained that he would drive her around and talk to her about her problems, and some people became upset about his efforts to "provide guidance and help" for this child.

¶ 13 Dr. Levinson explained defendant's previous criminal history to the jury. According to the doctor, respondent committed the 1982 rape charge three months after he was released on parole for a 1977 rape conviction. Thus, the doctor discussed the 1977 rape with respondent, who told the doctor that, in 1977, he entered a home by walking through an unlocked door where he found a 17-year-old girl, who was a stranger to him, and raped her in a fashion similar to the 1982 rape. Dr. Levinson testified that during an earlier interview, respondent provided a

different account of what happened in 1977 by describing how he had taken the victim from her home at knife point, drove her in his car to a rural location, sexually assaulted her, and then returned her to her home. Dr. Levinson said respondent was sentenced to serve 8 to 12 years in prison for the 1977 offense and was on parole for a previous armed robbery conviction from South Dakota when he committed the 1977 rape. Dr. Levinson testified that the South Dakota armed robbery convictions involved brandishing a knife at female clerks in two businesses and taking money from them. In addition, Dr. Levinson believed that respondent was on parole for burglary convictions out of Knox County, Illinois, when he committed those armed robberies in South Dakota.

¶ 14 Dr. Levinson said that respondent told him about committing another unreported sexual offense stating he met a young woman, began drinking with her, and went to a hotel room where she took her clothes off of her upper body. Respondent told Dr. Levinson that respondent “believed he forced her to take her pants off and that he forced sexual intercourse on her,” but it was never reported. Respondent also told Dr. Levinson, during the interviews, that he had fantasies about those rapes while he was incarcerated and masturbated to those fantasies.

¶ 15 Dr. Levinson said the fact that new offenses occurred while respondent was on parole, even if they were not sexual offenses, shows a long-standing pattern of criminal behavior, which is one criterion for antisocial personality disorder. He said prior offenses were also relevant to determine sexual offense recidivism because sexual offenders who have a history of other criminal behavior are at a greater risk of re-offending than a sexual offender who committed his first offense. Dr. Levinson stated that the combination of respondent’s antisocial personality

disorder and psychopathic traits, along with the other diagnoses, significantly increased his risk for committing further sexual offenses.

¶ 16 Dr. Levinson testified that one psychological tool for determining mental illness is the “Diagnostic and Statistical Manual of Mental Disorders,” the “DSM,” recognized as the official diagnostic manual and classification system for mental illnesses which establishes different criteria to make these diagnoses. Based upon his evaluations of respondent, Dr. Levinson said he diagnosed respondent with: paraphilia not otherwise specified, alcohol abuse, cannabis abuse, and antisocial personality disorder. Dr. Levinson explained that paraphilia is a sexual deviance, defined by the DSM as intense sexually arousing fantasies or behaviors involving a sexual interaction in inappropriate ways. In this case, Dr. Levinson said respondent’s paraphilia involved sexual interactions with nonconsenting females, and respondent told the doctor that the forcible rapes were “thrilling and exciting” and that “there was an adrenalin rush” when he committed a crime. The doctor further explained that the sexual behaviors or urges of a deviant sexual nature in some individuals, such as respondent, interfere with their social functioning or occupational functioning. Dr. Levinson also stated, in his opinion, respondent’s mental disorder predisposed him to commit future acts of sexually violent offenses.

¶ 17 In regard to respondent’s alcohol and cannabis use, those types of substance abuse further erode self-control and the ability to refrain from sexual deviant behavior. Additionally, since respondent displayed a long-standing pattern of antisocial behavior, violating the rights of others and the rules of society since before respondent was 15 years old and continuing into adulthood, the doctor stated that this behavior had become a deeply ingrained personality feature that repeatedly interferes with respondent’s environment. Dr. Levinson testified that, while

incarcerated for the 1982 offense, respondent had not participated in any treatment in DOC that would help respondent control his paraphilia.

¶ 18 As to respondent's behavior while incarcerated in DOC, Dr. Levinson said there was one report, in 1993, that respondent propositioned a nurse and told her he wanted to make love to her, and the nurse wrote up a disciplinary report on respondent. Respondent told Dr. Levinson that he was surprised that the nurse filed a complaint against him because "this nurse was somebody that he could talk to and enjoyed wearing low-cut blouses and he had – was surprised by her reaction that she would be offended by his requesting to become sexually involved with her." Additionally, the records showed that respondent frequently abused staff at DOC, made threats of harm to others, threw coffee and milk on staff members, and had been unable to manage his emotional reactions in a way that would allow him to participate in a social environment, even in the controlled DOC setting.

¶ 19 When paroled for the 1982 offense in 1997, the records showed that respondent was attending a treatment program at "Bridgeway," but told the counselor that he did not see any reason why he needed to participate in any sex offender treatment and was very resistant and argumentative with the therapist, especially when the therapist refused to write a letter for respondent saying he did not need treatment. Since his incarceration in the DOC treatment center in 2001, respondent refused treatment to address his sex offender issues and, therefore, had not done anything to reduce the risks of re-offending.

¶ 20 Dr. Levinson talked about a testing instrument called the psychopathy checklist revised, or PCL-R, which was designed to identify and assess individuals who would be characterized as a psychopath. Psychopath is defined as a person who has a deeply-engaged, long-standing

pattern of lack of attachment to people or to goals or principles, whose behavior manifests itself by deceit, violating rules and criminal laws, conning and manipulating others, lacking empathy and concern for fellow human beings, and having no moral compass. Respondent's test results showed he fell at the high range of being a psychopath, which factored into Dr. Levinson's opinion, and that respondent had a high risk of re-offending if released into the community. Dr. Levinson said the master file records show that respondent had arrests and adjudications dating back to when respondent was 13 years old and strongly indicate psychopathic features.

¶ 21 Other tests, used by Dr. Levinson, included actuarial instruments; such as the VRAG; SORAG, MnSOST-R, RRASOR and the Static 99; as well as a meta analysis which uses research-guided risk factors. All five of the actuarial instruments are deemed to be the most valid researched scales in his field to predict either violent or sexual recidivism, and respondent tested in the high to extremely high ranges of the risk to re-offend in each of these tests. Dr. Levinson said he then compared these results with recidivism research concerning known risk factors, referred to as the meta analysis.

¶ 22 Dr. Levinson said that he also used his own clinical judgment in reaching the conclusions in his report. Dr. Levinson testified that based upon his review of the records, interviews with respondent, use of actuarial instruments, the meta analysis, his clinical judgment, his training, education, and experience, it was his opinion that respondent was at a "very high risk" to re-offend sexually. The doctor said that his opinion was the same now as it was in 2000. Additionally, Dr. Levinson said that respondent's convictions qualified as sexually violent offenses set out in the Act, and that respondent had mental disorders as defined under the Act.

¶ 23 On cross-examination, Dr. Levinson clarified that respondent had been convicted of five felonies over the years, two of which were rape convictions. In discussing the diagnosis of paraphilia, defense counsel discussed that the DSM-IV (4th Edition) said the disorder tends to be chronic and lifelong, but then the same book went on to “qualify it” and stated “both the fantasies and the behaviors often diminish with advancing age in adults,” and the doctor responded that defense counsel probably read that correctly from the book. Also during cross-examination, Dr. Levinson testified that respondent said he continued to masturbate in prison while he fantasized about the rapes and admitted “he started replaying the first rape in [his] head a couple of years before he got out in 1997.” Dr. Levinson clarified that three of the actuarial tests performed on respondent, the MnSOST, the RRASOR, and the Static 99, are specifically designed to be predictive of sex offense recidivism and respondent consistently fell within a small minority of sex offenders who were at the “very upper end” showing a very high risk of recidivism.

¶ 24 Dr. Ray Quackenbush, a licensed clinical psychologist with Affiliated Psychologists, testified that he also evaluated respondent for purposes of this hearing. Quackenbush said he first reviewed respondent’s records from the Joliet Treatment and Detention Facility. These records showed respondent had a fairly high number of disciplinary “write-ups” from staff for throwing milk on employees, throwing four trays out of his room, and making threats against different people. According to these reports, when respondent’s therapist asked respondent if he was going to follow through with any of the threats or make additional threats, respondent told the therapist that he would continue to make threats as long as he was at the facility, and then respondent attempted to hit the therapist, but actually hit the door.

¶ 25 Dr. Quackenbush met with respondent and conducted a clinical interview in April 2005. Respondent told Dr. Quackenbush that he stayed in his room 23 hours a day, even though he was not confined to his room, and that he only left his room to shower. Respondent indicated he became angry with the staff one time when his shower time was altered for some reason.

¶ 26 Dr. Quackenbush testified that his predecessor, Dr. Heaton, conducted the MMPI and Milan Clinical Inventory tests on respondent. These tests indicated that respondent attempted to present himself in an overly favorable way, had low self-confidence, had difficulty with anger and frustration, and was not a well-adjusted person. Based upon the results of these tests, Dr. Quackenbush concluded that respondent was at a high risk to re-offend.

¶ 27 Based upon the records reviewed, respondent's test scores, the clinical interview with respondent, and the doctor's own training and experience, Dr. Quackenbush diagnosed respondent with paraphilia not otherwise specified but sexually attracted to non-consenting females, alcohol abuse, and anti-social personality disorder. Additionally, Dr. Quackenbush stated that respondent met the criteria to be found a sexually violent person under the Act since he was convicted of two qualifying sexually violent offenses, both being rapes of victims.

¶ 28 In discussing the diagnosis of parahilia not otherwise specified, Dr. Quackenbush said that mental disorder is characterized by a preoccupation or behavior with unacceptable sexual behavior that has lasted for at least six months in a person's life. Dr. Quackenbush stated that paraphilia is presumed to be a "chronic and lifelong mental illness."

¶ 29 Dr. Quackenbush considered other factors to determine whether respondent was predisposed to commit future acts of sexual violence. The doctor stated that he not only looks at a person's history of violence, but also determines whether there is an escalating pattern of

violence. In this case, Dr. Quackenbush testified that respondent's criminal history revealed a clear escalating pattern of violence, and all of respondent's crimes were notably committed against women. Without objections from respondent, the doctor stated that, in the reports, it was documented that respondent told two people, a police officer and a treatment provider, that "the next time he wouldn't be caught or the next time he wouldn't leave a witness, he would kill them." The doctor said that type of statement was one of the things a psychologist takes very seriously in determining the likelihood of future sexual violence.

¶ 30 During cross-examination, the defense asked Dr. Quackenbush if he considered respondent's age when determining the risk of recidivism. Dr. Quackenbush stated that there was no magic age when the sex drive disappears in a male which makes it difficult to use as a factor. The doctor noted that, in respondent's case, there was an escalating pattern of violent behavior toward women even as he aged. Dr. Quackenbush testified, in his expert opinion, respondent had a substantial likelihood of committing future violent sexual offenses.

¶ 31 Respondent next testified in his own defense. Respondent agreed that he had been convicted of five felonies. Respondent said he plead guilty to all five felonies: the first two felonies were a burglary in 1968 and a burglary charge when he was 23 years old; the third felony was an armed robbery charge in South Dakota; the fourth felony was a rape charge in Galesburg, Illinois, in 1977; and the fifth felony was the rape that occurred in 1982. Respondent told the jury the doctors' descriptions of the details of the rapes were "fairly accurate." Respondent stated that he served approximately 16 years of a 30-year sentence in prison for the last rape, but was released on parole because he received credit for "meritorious good time."

¶ 32 Respondent then discussed the various jobs that he held while he was incarcerated in DOC, and some of his disciplinary infractions while in custody. He said he did not understand why he was disciplined for asking the staff member to make love with him. Respondent said that he never initiated any fights while he was in prison, nor he did not have trouble controlling his temper.

¶ 33 Respondent testified he was released, after serving 15 years in prison on his last rape charge, to live at his sister's house and was ordered to comply with several conditions. One condition included attending psychological therapy and sex offender counseling. A little over a year after his release, respondent said his parole officer showed up one day and told respondent that he was being written up for violating the conditions of his release, but the officer refused to tell respondent what he did to violate his parole. According to respondent, the parole officer then told respondent, "Let's go," without telling respondent where they were going or what respondent did wrong, so respondent pushed the parole officer, ran out the door, and drove to Florida. After respondent could not find a job in Florida, he said he relocated to New Orleans. Respondent said he had been working in New Orleans for a year, when he received a traffic ticket for reckless driving for driving over a curb. During that stop, the police officers checked his name in the computer and discovered there was an outstanding Illinois arrest warrant for respondent for his parole violation for escape and failure to attend counseling.

¶ 34 Respondent testified that he first learned of the report about stalking the victim of his last rape at that time, but he claimed he did not stalk, or even see, the victim of the rape. Respondent said he also first learned about the complaint regarding the 14-year-old girl at that time. Respondent said that neither his parole officer nor the police ever told him that there was a

problem with his relationship with this 14-year-old girl or that he should discontinue that relationship. He said he met this girl because she was part of a group of kids that hung out at his sister's residence with his sister's children. Respondent claimed that he never discussed sex with this girl, but sex topics sometimes came up in his presence when his niece was with her friends. Respondent said he overheard a conversation where the 14-year-old girl said she was taking birth control pills and wanted to have sex with her boyfriend, and respondent told her to wait and "maybe try masturbation for a while first." Respondent testified that he was never alone with the girl or had any other conversations of a sexual nature with her. Respondent admitted that he sometimes called her on the telephone, but only when other people at the house were waiting for her to go out, and respondent was going to drive his niece and her friends somewhere.

¶ 35 Regarding the sex offender counseling, respondent said that he was upset with the counselor at Bridgeway because that counselor seemed to want to talk about his own abilities as a counselor rather than address respondent's issues. Respondent said he was given a list of other counselors to choose from, and he chose Patricia Wedger in Canton, Illinois. Respondent stated that counseling ended when he left the area to go to Florida.

¶ 36 During cross-examination, respondent stated that he committed the first rape because he was under a lot of pressure in his marriage and could not cope. Respondent said the pressure he was under was as "a newlywed raising a family." Respondent agreed the second rape occurred approximately three months into his parole for the first rape, and he could not find a job at that time. Respondent also said he had been drinking at the tavern prior to the second rape.

¶ 37 Respondent agreed he did not engage in any treatment while in DOC by his own choice, either for the sex offenses or for anger management. Respondent explained that he told Dr.

Quackenbush that he did not need treatment because he could take care of his problems himself. Respondent said his “attitude with society” prompted him to break the law. Respondent admitted telling Dr. Quackenbush that the rapes which respondent committed were an “act of rebellion against society.” Respondent also admitted that, when he committed these rapes, he “felt charged,” his adrenaline was flowing, and he became sexually aroused.

¶ 38 During closing arguments, the State reminded the jury that Dr. Quackenbush testified that respondent told a counselor that respondent did not need treatment because “the next time the situation comes up again, I’m going to kill the victim. I’m not going to leave any witnesses.” The court overruled respondent’s objection to this argument because the court said it recalled evidence to that effect by one of the doctors. Shortly thereafter, during its argument, the State said respondent said he would not be arrested in the future because he is not leaving a witness. The court again denied respondent’s objection to this statement.

¶ 39 On August 12, 2005, the jury returned a finding that respondent was a sexually violent person, and the court committed respondent to the Department of Human Services (DHS) for institutional care and treatment in a secure facility, as a sexually violent person. On September 14, 2005, respondent filed a motion for new trial without obtaining a hearing date. Respondent filed a subsequent motion for new trial and obtained a hearing date for December 23, 2009.

¶ 40 On April 30, 2010, the trial court held a hearing on both of respondent’s motions for a new trial. The court found the State’s closing argument was reasonably related to testimony presented during the trial and was proper argument. The court also found that the jury’s sexually violent person finding did not violate the *Samuelson* case (*In re Detention of David C. Samuelson*, 189 Ill. 2d 548 (2000)) because it was based on evidence beyond respondent’s past

actions alone. The court denied both of respondent's motions for new trial. Respondent filed a timely notice of appeal challenging the denial of his motions for a new trial.

¶ 41

ANALYSIS

¶ 42 On appeal, respondent claims that the evidence presented to the jury was insufficient to prove that respondent suffered from a mental disorder that created a substantial probability that he would engage in future acts of sexual violence. Additionally, respondent argues that the trial court erred in overruling respondent's objection when the State made an improper statement during closing arguments, specifically that respondent said he would avoid conviction in the future by killing the victim, that was so "highly inflammatory" and "so highly prejudicial" that it denied him a fair trial.

¶ 43 The State argues that the evidence proved beyond a reasonable doubt that respondent was a sexually violent person. Additionally, the court correctly overruled respondent's objection during closing arguments because the prosecutor's statement was proper argument based upon the evidence.

¶ 44

Sufficiency of the Evidence

¶ 45 Respondent argues that the State failed to prove the required elements for a finding that respondent is a sexually violent person beyond a reasonable doubt. 725 ILCS 207/35(d)(1) (West 2004)). The 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 2004)). Under the Act, to prove respondent is a sexually violent person, the State is required to prove that he (1) has been convicted of a sexually violent

offense, and (2) suffers from a mental disorder that creates a substantial probability that he will engage in future acts of sexual violence. 725 ILCS 207/5(f); 15(b); 35(d)(1) (West 2004). On review, after viewing all the evidence in the light most favorable to the State, this court must determine whether any rational trier of fact could find that the elements of the offense have been proved beyond a reasonable doubt. *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 11 (2001) (citing *People v. Collins*, 106 Ill. 2d 237, 261 (1985)); *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 589 (2007).

¶ 46 Respondent does not contest that he was convicted of a sexually violent offense, only that the State failed to prove that respondent suffered from a mental disorder that created a substantial probability that he would engage in future acts of sexual violence. The Act defines a mental disorder as a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence. 725 ILCS 207/5(b) (West 2004). Several Illinois cases have held that the expert opinions of two psychologists, concluding that a respondent has mental disorders which create a substantial probability that the respondent will commit future acts of sexual violence, is sufficient to prove those propositions beyond a reasonable doubt. *In re Detention of Welsh*, 393 Ill. App. 3d 431, 455 (2009); *Lieberman*, 379 Ill. App. 3d at 601-02; *Tittlebach*, 324 Ill. App. 3d at 11-12. In those cases, viewing the evidence in a light most favorable to the State, the courts held that a rational trier of fact could have concluded beyond a reasonable doubt that respondent possessed a mental disorder that created a substantial probability that respondent would commit future acts of sexual violence. *Welsh*, 393 Ill. App. 3d at 454-55; *Tittlebach*, 324 Ill. App. 3d at 11; *Lieberman*, 379 Ill. App. 3d at 598.

¶ 47 As in *Welsh* and *Tittlebach*, both Dr. Levinson and Dr. Quackenbush relied on actuarial psychological testing, the case record, police reports, mental health evaluations, and interviews with respondent when making their diagnoses and forming their opinions. *Welsh*, 393 Ill. App. 3d at 455; *Tittlebach*, 324 Ill.App. 3d at 11-12. Here, both doctor's separately diagnosed defendant with the same three mental disorders: paraphilia not otherwise specified sexually attracted to non-consenting females; alcohol abuse, and anti-social personality disorder. Dr. Levinson also diagnosed defendant with cannabis abuse, which Dr. Quackenbush did not find was supported in the records.

¶ 48 Respondent challenges the doctors' findings based upon their methods and the failure to consider respondent's age as indicative of a reduced risk of recidivism. The record reveals that respondent's attorney rigorously cross-examined each doctor regarding the basis for their expert opinions. It was within the province of the jury, in the instant case, to evaluate the witness' credibility and draw reasonable inferences from the testimony presented, and it is not our function to retry respondent when reviewing a challenge to the sufficiency of the evidence. *Tittlebach*, 324 Ill.App. 3d at 11; *Lieberman*, 379 Ill. App. 3d at 602-03.

¶ 49 Finally, respondent argues that the jury's finding was based solely on his prior crimes and conduct, in violation of the holding in *In re Detention of Samuelson*, 189 Ill. 2d 548 (2000), rather than respondent currently suffering from a mental disorder that creates a substantial probability that he will commit future acts of sexual violence. This argument is without merit. Each doctor conducted a recent interview with respondent, and both doctors clearly testified that they relied on several factors, in addition to respondent's prior criminal history, when reaching their opinions. Both doctors testified they also evaluated defendant's conduct and attitude while

incarcerated, his view of the necessity for treatment, and his lack of treatment for paraphilia which their profession deemed a “chronic and lifelong mental illness,” psychological test scores, on-going personality characteristics, escalating violent behavior, and on-going violent acts while incarcerated. Moreover, Dr. Quackenbush clearly factored in respondent’s statements that respondent would not be apprehended in the future because he would not leave living witnesses next time. The doctor stated he viewed this statement very seriously when determining respondent’s likelihood of future sexual violence. Thus, the doctors clearly did not rely only on respondent’s past crimes and previous conduct to form their opinions.

¶ 50 Viewing the evidence in a light most favorable to the State, a rational trier of fact could find evidence to prove, beyond a reasonable doubt, all required elements for a sexually violent person adjudication.

¶ 51 Closing Arguments

¶ 52 Respondent argues that the trial court erred by overruling his objection to the State’s comment during closing arguments, where the State claimed respondent told his counselor that respondent did not need treatment because “the next time the situation comes up again, I’m going to kill the victim. I’m not going to leave any witnesses.” Respondent claims that this statement was taken out of context, and as a result of this error, this argument was highly inflammatory and prejudicial to respondent which denied respondent a fair trial.

¶ 53 Illinois courts have long held that a prosecutor has great latitude in presenting a closing argument, and a reviewing court will set aside a verdict based on remarks during closing arguments only where the remarks are “clearly prejudicial to the [respondent].” *People v. Macri*, 185 Ill. 2d 1, 51 (1998); *People v. Peeples*, 155 Ill. 2d 422, 482 (1993). To determine whether

the prosecutor's remarks are clearly prejudicial to a respondent, "a court must refer to the content of the language used, its relation to the evidence, and its effect on the rights of the accused to a fair and impartial trial," and the trial court is in a better position than the reviewing court to determine the prejudicial effect of a remark during closing arguments. *Peeples*, 155 Ill. 2d at 482-83. Thus, absent a clear abuse of discretion, the trial court's ruling should be upheld. *Peeples*, 155 Ill. 2d at 483; *Macri*, 185 Ill. 2d at 51.

¶ 54 Without objections from respondent's counsel, Dr. Quackenbush testified that respondent's statement regarding his future conduct toward a potential witness was documented in respondent's master file. Dr. Quackenbush testified that, according to the master file, respondent told a police officer and a treatment provider that "the next time he wouldn't be caught or the next time he wouldn't leave a witness, he would kill them." Thus, the prosecutor's argument was founded on the evidence presented to the jury without objection. We conclude the trial judge did not abuse his discretion by overruling respondent's objection to these closing arguments, which were based on the evidence presented during Dr. Quackenbush's testimony.

¶ 55 **CONCLUSION**

¶ 56 We conclude the evidence was sufficient to prove respondent was a sexually violent person according to the Act. Additionally, the court properly denied respondent's objections to the prosecutor's closing arguments. Accordingly, we affirm the judgment of the circuit court.

¶ 57 Affirmed.