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2012 IL App (3d) 100712-UB

Order filed April 4, 2012
Modified Upon Denial of Rehearing May 29, 2012

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re</i> COMMITMENT OF JERRY A. J.)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
(The People of the State of Illinois,)	Tazewell County, Illinois
)	
Petitioner-Appellee,)	Appeal No. 3-10-0712
)	Circuit No. 06-MR-15
v.)	
)	
Jerry A. J.)	
)	Honorable Michael E. Brandt,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The trial court did not err in denying respondent's motion *in limine*. Therefore, there could be no plain error with respect to the challenged testimony. Likewise, respondent's counsel could not be constitutionally

ineffective for failing to preserve the alleged error at trial.

¶ 2 Following a trial, a Tazewell County jury found respondent, Jerry J., to be a sexually violent person. The circuit court of Tazewell County ordered respondent committed for institutional care in a secure facility. Respondent contends, on appeal, that the trial court abused its discretion in denying his motion *in limine*, which sought to bar the introduction of evidence pertaining to sexual conduct for which he was charged, tried and found not delinquent while a juvenile. We affirm.

¶ 3 **FACTS**

¶ 4 The respondent's date of birth is June 12, 1974. In December of 2002, while 28 years old, respondent asked two girls, one 12 years old and the other 17 years old, whether they wanted to join his club. He led the girls into the woods, where he put his hands up the 12-year-old's shirt and down her pants. Approximately two weeks later, he solicited sex acts from a 14-year-old girl in exchange for membership in his club. Based upon these acts, the State charged defendant with attempted predatory sexual assault of a child (720 ILCS 5/12-14-1(a)(1) (West 2002); 720 ILCS 5/8-4(a) (West 2002)), two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(I) (West 2002), and two counts of indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2002).

¶ 5 On February 24, 2003, defendant pled guilty to predatory criminal sexual assault of a child, a Class 1 felony, and indecent solicitation of a child, a Class 3 felony. The trial court

sentenced respondent to terms of six years' incarceration and two years' incarceration, respectively. Shortly before the respondent was to be released from the Department of Corrections, the State filed a petition on February 16, 2006, alleging respondent to be a sexually violent person. The trial court ordered custody of respondent transferred from the Department of Corrections to the Department of Human Services for control, care and treatment.

¶ 6 The matter proceeded to a probable cause hearing after which the trial court found probable cause existed to believe that respondent is subject to commitment under section 40 of the Sexually Violent Persons Commitment Act (the Act). 725 ILCS 207/40 (West 2004). The trial court set the matter for jury trial.

¶ 7 Prior to trial, respondent filed a motion *in limine* seeking to bar the introduction of evidence relating to allegations made against the respondent when he was 15 years old. Specifically, the motion *in limine* identified Tazewell County juvenile case No. 91-J-222 in which the State alleged defendant committed the offenses of aggravated battery and aggravated criminal sexual abuse for acts occurring in February of 1990. The motion notes that the juvenile case proceeded to "trial," which resulted in respondent being "found not guilty." The motion further notes that the State's experts, in the case at bar, based their opinions, in part, on facts associated with case No. 91-J-222. Finally, the motion stated that respondents in proceedings under the Act must be afforded the essential protections available to criminal defendants and that the double jeopardy clause of the fifth amendment "prohibits the introduction into evidence or any representation to the trial jury herein regarding any evidence including any facts relative to

the offense or offenses that allegedly occurred on or about February 12, 1990."

¶ 8 Respondent's motion further sought to bar the introduction of evidence concerning activity allegedly engaged in during his incarceration. Specifically, respondent sought to bar the introduction of evidence showing he engaged in oral sex with his cell mate and that the two were seen walking hand-in-hand while at the Rushville Detention Facility. Respondent claimed that these incidents were "unrelated and irrelevant with respect to the" State's petition seeking commitment under the Act. Respondent further claimed that the prejudicial nature of these events would outweigh any probative value.

¶ 9 The trial court denied the motion *in limine* as it related to case No. 91-J-222, reserved ruling on introduction of evidence related to respondent performing oral sex on his cell mate, and granted the motion as it related to walking hand-in-hand while incarcerated. Before trial, respondent made an oral motion to reconsider the ruling pertaining to the acts involved in case No. 91-J-222, which the trial court denied. The trial court ultimately denied respondent's motion *in limine* as it pertained to the alleged acts of oral sex between respondent and his cell mate.

¶ 10 During trial, the State called two psychologists to testify: Dr. Robert Brucker, Jr., and Dr. Phil Reidda. Each discussed case No. 91-J-222. During Brucker's and Reidda's testimony, respondent did not object to questions or statements regarding the juvenile case. On July 20, 2010, following a two-day trial, the jury found respondent to be a sexually violent person.

¶ 11 On August 18, 2010, respondent filed a posttrial motion, arguing that the trial court erred in denying his motion *in limine* both as it pertained to case No. 91-J-222 and to the oral sex he

engaged in while incarcerated. The trial court denied respondent's posttrial motion on August 26, 2010. Respondent filed a subsequent posttrial motion, again arguing that the trial court erred in denying his motions *in limine*. The trial court denied the second posttrial motion on September 14, 2010. Respondent filed his timely notice of appeal on September 16, 2010.

¶ 12

ANALYSIS

¶ 13 While respondent makes a number of arguments as to why the introduction of certain testimony equates to reversible error, the sole issue raised on appeal as defined by respondent is whether the trial court erred "when it denied respondent's motion *in limine* and allowed the State's expert witnesses to testify regarding alleged sexual conduct of which he was charged, tried and found not guilty." The State correctly notes that respondent has forfeited the issue. Respondent makes no argument to this court pertaining to the evidence concerning oral sex with his cell mate.

¶ 14 "It is well settled that the failure to make a timely objection at trial and renew that objection in a written posttrial motion results in the waiver of the right to raise the issue on appeal." *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 604 (2007) (citing *People v. Herrett*, 137 Ill. 2d 195, 209 (1990)). Respondent acknowledges that he failed to make a timely objection at trial to the introduction of the testimony regarding case No. 91-J-222. Respondent, however, requests that we review the matter for plain error or, in the alternative, find his counsel constitutionally ineffective for failing to level the proper objections.

¶ 15 Proceedings under the Act are civil in nature (*In re Detention of Samuelson*, 189 Ill. 2d

548 (2000); 725 ILCS 207/20 (West 2008)) and, as such, do not trigger respondent's criminal constitutional rights unless the Act provides for them. *People v. Rainey*, 325 Ill. App. 3d 573, 582 (2001); *In re Detention of Tiney-Bey*, 302 Ill. App. 3d 396, 399-400 (1999). The State argues that if plain-error review is appropriate, we employ the civil plain-error rule. Respondent argues that because he is being deprived of his liberty, the criminal plain-error rule is appropriate.

¶ 16 Our supreme court has made clear "that the first step in plain-error review is to determine whether an error occurred" at all. *In re M.W.*, 232 Ill. 2d 408, 431 (2009). If "the trial court did not err," then "we need not consider respondents' argument under a plain-error analysis." *In re Jay H.*, 395 Ill. App. 3d 1063, 1068 (2009). For reasons set forth below, we find the trial court did not err in admitting the disputed evidence and, as such, respondent's plain-error claims and ineffective assistance of counsel claims are without merit. Likewise, a finding of no error obviates our need to address the issue of which plain-error rule is appropriate.

¶ 17 Respondent makes numerous allegations as to why the trial court erred in allowing the State's experts to testify about case No. 91-J-222. Respondent's arguments can be classified into three categories: (1) otherwise inadmissible hearsay; (2) legislative intent; and (3) procedural due process. We address them in that order.

¶ 18 **A. Otherwise Inadmissible Hearsay**

¶ 19 Respondent notes that the information gathered by the experts in this matter regarding case No. 91-J-222 includes the police reports from the event as well as the juvenile petition filed against him. As such, respondent characterizes the information as unreliable and untrustworthy

hearsay that is unfairly prejudicial and confusing. While acknowledging that it was not admitted to prove the truth of the matter asserted, he claims the mere fact that experts discussed the juvenile case to explain the basis of their opinions should not render this otherwise inadmissible hearsay admissible.

¶ 20 Respondent acknowledges, however, that is well settled in Illinois "that an expert may give his opinion based upon facts that are not in evidence if those facts are of a type reasonably relied upon by experts in the particular field." *People v. Nieves*, 193 Ill. 2d 513, 527-28 (2000) (citing *Wilson v. Clark*, 84 Ill. 2d 186, 193 (1981)); see also *In re Detention of Isbell*, 333 Ill. App. 3d 906 (2002). "While the contents of reports relied upon by experts would be inadmissible as hearsay if offered for the truth of the matter asserted, an expert may disclose the underlying facts and conclusions for the limited purpose of explaining the basis for his opinion." *Nieves*, 193 Ill. 2d at 528. Evidentiary motions, such as motions *in limine*, are directed to the trial court's discretion, and reviewing courts will not disturb a trial court's evidentiary ruling absent an abuse of that discretion. *In re Commitment of Doherty*, 403 Ill. App. 3d 615, 621 (2010). Courts of review have consistently held that in formulating an opinion, an expert may rely on reports created by others, as long as other experts in the field reasonably rely on such materials. *Id.* (citing *People v. Anderson*, 113 Ill. 2d 1 (1986)). Although reports made by others are not substantively admissible, an expert witness is nonetheless allowed to reveal the contents of the materials upon which the expert has reasonably relied to explain the basis of his or her opinion. *People v. Anderson*, 113 at 9. The trial court's function is to weigh the probative value

and potential prejudicial effect of the evidence, and that decision will not be reversed absent an abuse of discretion. *In re Commitment of Doherty*, 403 Ill. App. 3d at 621 (citing *People v. Hoble*, 159 Ill. 2d 272, 317 (1994)).

¶ 21 Three experts testified in this matter; psychologists Brucker and Reidda on behalf of the State and psychiatrist Chapman on behalf of respondent. A review of the record indicates that all three acknowledged they reviewed reports associated with case No. 91-J-222 in their efforts to determine whether respondent is a sexually violent person under the Act.

¶ 22 During his testimony, respondent's expert, Dr. Chapman, identified respondent's exhibit No. 3 as a copy of a report he prepared to detail all the material he "reviewed" and "evaluated" when diagnosing respondent as suffering from anti-social personality disorder with obsessive, compulsive and borderline features. Dr. Chapman testified that the materials detailed in respondent's exhibit No. 3 include "any police reports about the indexed offense for which he was committed to the Department of Corrections" as well as "criminal history." A review of the exhibit indicates that Dr. Chapman reviewed a "Copy of Tazewell County Circuit Court Petition Case No. 91 J 222" as well as numerous documents pertaining to Dr. Brucker's and Dr. Reidda's diagnosis. The fact that Dr. Chapman might have given the documents associated with case No. 91-J-222 little weight, and Drs. Brucker and Reidda found them significant, does not change the uncontroverted evidence that the documents associated with the juvenile case are the type of reports reviewed and relied upon by experts in the field to evaluate and diagnose a potentially sexually violent person.

¶ 23 While Dr. Chapman did not specifically reference these documents during his testimony, he acknowledged "reviewing" and "evaluating" all documents identified in respondent's exhibit in an effort to diagnose respondent. Both Dr. Brucker and Dr. Reidda testified they reviewed and relied upon documents associated with case No. 91-J-222 and that others in the field also rely upon similar reports when diagnosing people under the Act. Section 1-7(A)(9) of the Juvenile Court Act of 1987 specifically allows disclosure of otherwise sealed juvenile records to mental health professionals for the purpose of evaluating a petition brought under the Sexually Violent Persons Commitment Act. 705 ILCS 401/1-7(A)(9) (West 2008). Once identified as the type of reports reasonably relied upon by experts in the field, it became incumbent on the trial court to determine whether the probative value of testimony referencing the reports outweighed any prejudicial effect before allowing Dr. Brucker and Dr. Reidda to testify to the contents thereof. *In re Commitment of Doherty*, 403 Ill. App. 3d at 621. Should the probative value outweigh any prejudicial affect, then Drs. Brucker and Reidda could properly reveal the contents of the materials upon which they relied to explain the basis of his or her opinion. *Anderson*, 113 Ill. 2d at 9. Our review of the record indicates that the trial court and parties ensured that any prejudicial affect of the testimony regarding case No. 91-J-222 was outweighed by its probative value as the parties routinely stressed that respondent was acquitted in the case and sufficiently limited testimony concerning the case.

¶ 24 Dr. Brucker was the first to mention at the trial that in February of 1990, respondent was accused of approaching a 7-year-old boy and an 8-year-old girl in a park and request that they

"hump each other and engage in other sexual acts with each other." He provided no further details of the accusations contained within case No. 91-J-222. He then immediately noted that "there was a finding of not guilty on that charge -- in those charges." When asked why he found accusations relevant which were made in a case ending with respondent's acquittal, he responded:

"It would be relevant in terms of the risk assessment portion mostly. Some of the items, one of the items on one of the instruments I use looks at prior charges and/or convictions. And so, because -- just because someone was not convicted of an offense, does not make that instance irrelevant in terms of risk, prediction or risk assessment. The fact that he was charged with sexual offenses during that instance is relevant to the risk assessment."

¶ 25 On cross-examination, respondent's attorney emphasized the acquittal and quizzed Dr. Brucker as to how any allegation could be relevant if made in a case in which a person was acquitted. Without ever again discussing the facts forming the basis of the juvenile petition, Dr. Brucker discussed diagnostic instruments that allowed researchers "to see how often people only charged with sex offenses committed future sex offenses. *** And when looking at individuals from that data who committed future sex offenses, they were able to say it's significant they were charged with sex offenses even if they weren't found guilty of those."

¶ 26 The first time Dr. Reidda discussed the juvenile case, he noted that "in 1990

***[respondent] was charged, not convicted, but charged with some sexual activity with 2 8-year old children, a boy and a girl, in which [respondent] was accused of having touched these children, which he did not. But there was an orchestration, an attempt to engage them in sexual activity with each other while he choreographed or orchestrated that and watched them." Dr. Reidda stated he "considered that as part of [respondent's] history." Again, on cross-examination, respondent's counsel emphasized the fact that a jury acquitted respondent of any criminal wrongdoing associated with case No. 91-J-222.

¶ 27 Respondent identifies three offending statements concerning the juvenile: the two quoted above and another made Reidda on redirect in which he stated it is "against the rules *** to get 2 8-year-old children and choreograph sexual activities for them and encourage these while you watch." The record on appeal is clear to us that these three statements were made by experts explaining the basis of their opinions and offered for that very limited purpose. The documents from which the facts were gleaned by the experts are those typically reviewed and relied upon by experts in the field. Respondent's own expert acknowledged examining these documents. As such, we find the trial court did not abuse its discretion in denying respondent's motion *in limine* or allowing Drs. Reidda and Brucker to briefly mention the facts forming the allegations in case No. 91-J-222. As the trial court committed no error in allowing the statements into evidence, there can be no plain error. *In re Jay. H.*, 395 Ill. App. 3d at 1068. Similarly, "where evidence is admissible at trial, defense counsel is not required to perform the useless act of objecting to this evidence, and his conduct cannot be faulted for such failure." *People v. Jackson*, 357 Ill. App.

313, 323 (2005). We find respondent's counsel was not constitutionally ineffective for failing to object to this admissible evidence.

¶ 28 Finally, while acknowledging the authorities cited above, respondent urges this court to find that his case is similar to *Lovelace v. Four Lakes Development Co.*, 170 Ill. App. 3d 378 (1988). The *Lovelace* court found that the party which put forth expert testimony failed to demonstrate that the expert's "reliance on the disputed evidence was customary in his field or reasonable." *Id.* at 384. We find the State did both in this instance.

¶ 29 Respondent acknowledges in his opening brief that "[t]he State produced evidence to establish the experts in Brucker and Reidda's field generally rely on reports related to uncharged conduct in forming their opinions." He claims that reliance on materials from case No. 91-J-222 was "unreasonable" in this case given respondent's acquittal and the age of the documents. We note our supreme court has consistently maintained that "an acquittal is not necessarily conclusive evidence that the defendant did not commit the acts alleged. It merely means that the government was unable to prove beyond a reasonable doubt that the defendant committed them." *People v. Jackson*, 149 Ill. 2d 540, 550 (1992); see also *In re Nau*, 153 Ill. 2d 406 (1992). Moreover, Dr. Brucker testified to the diagnostic value of considering conduct for which a person "was not convicted" and how it played a part in "risk assessment." The issue of reliance on such charged but acquitted conduct was vetted through cross-examination. We cannot say, as the *Lovelace* court did, that the party which offered the evidence failed to show reasonable reliance by experts in the field on such evidence.

¶ 30

B. Legislative Intent

¶ 31 Respondent next argues that "evidence of alleged conduct for which a person is found not guilty falls outside the scope of what is admissible under section 35(b)" of the Act. 725 ILCS 207/35(b) (West 2008). He acknowledges that section 35(b) states, that at "the trial on the petition it shall be competent to introduce evidence of the commission by the respondent of any number of crimes together with whatever punishments, if any, were imposed." 725 ILCS 207/35(b) (West 2008). He urges us to find that this language evinces our legislature's intent to bar any and all evidence of acts associated with charges of which a respondent was acquitted. We find our legislature expressed no such intent.

¶ 32 The best evidence of our legislature's intent is the language of the statute itself. *People v. Spurlock*, 388 Ill. App. 3d 365 (2009). The legislature provided for the admission of evidence related to "the commission" of crimes by a respondent as well as "punishments, if any" that are imposed. The use of the term "if any," referring to punishments, signifies the legislature's intent that evidence be admitted pertaining to actions taken in the commission of a crime even when no punishment was imposed for those actions. Charges of which one is acquitted certainly falls into this category. Again, "an acquittal is not necessarily conclusive evidence that the defendant did not commit the acts alleged. It merely means that the government was unable to prove beyond a reasonable doubt that the defendant committed them." *Jackson*, 149 Ill. 2d at 550.

¶ 33 We find nothing in the language of section 35(b) of the Act that bars the introduction of evidence relating to the commission of a crime by defendant due to his acquittal from charges

associated with that crime at least where, as here, it is offered as the basis of expert opinions. Conversely, we note the language chosen by the legislature specifically allows admission of evidence related to the commission of a crime for which a person was never punished: such as in the case of an acquittal. We are confident that had the legislature intended to bar such evidence in cases of acquittal, they would have said so. We hold section 35(b) does not bar the introduction of evidence of commission of a crime based upon an acquittal of charges associated with that crime, at least where, as here, it is offered, not for its truth, but, rather, as a basis for an expert opinion. We are deciding only the issue before us.

¶ 34 C. Procedural Due Process

¶ 35 Respondent's last argument is that "permitting facts to be heard, as a basis of expert opinion testimony, about prior conduct of which respondent was tried and found not guilty is so offensive to the guarantee of due process of law that it must be prohibited ***." We review *de novo* the question of whether respondent's constitutional rights have been violated. *People v. Burns*, 209 Ill. 2d 551, 560 (2004).

¶ 36 The State, citing to *Burns*, acknowledges that civil commitment pursuant to the Act constitutes a deprivation of liberty and, as such, respondents are entitled to procedural due process protections. The State argues, however, that respondent fails to show a risk of erroneous committal under the procedure of allowing experts to testify to facts from criminal cases ending in acquittal.

¶ 37 The right to due process of law is the right to a fundamentally fair trial. *Chambers v.*

Mississippi, 410 U.S. 284, 294 (1973). Procedural due process issues require a three-part analysis that considers: first, whether there exists a liberty or property interest that has been interfered with by the State; second, the risk of an erroneous deprivation of such an interest through the procedures already in place, while considering the value of additional safeguards; and third, the effect the administration and monetary burdens would have on the State's interest. *In re Detention of Allen*, 331 Ill. App. 3d 996, 1003 (2002). "Procedural due process guarantees that a defendant has the right to present relevant, competent evidence in his defense and that the State must take steps to ensure that the indigent defendant has a fair opportunity to present his defense." *Id.*

¶ 38 There is no doubt, and the State concedes, that respondent's liberty is jeopardized. We must, therefore, determine the risk of an erroneous deprivation of that liberty based upon admission of the evidence with which respondent now takes issue: that being, the facts of case No. 91-J-222.

¶ 39 In *People v. Pasch*, 152 Ill. 2d 133 (1992), our supreme court found that a person's "sixth amendment and fourteenth amendment right to confront adverse witnesses [is] not violated" when an expert testifies to "the contents of reports relied upon by experts" which "would clearly be inadmissible as hearsay if offered for the truth of the matter asserted." *Id.* at 176-177. The court reaffirmed this finding from *Pasch* in *People v. Lovejoy*, 235 Ill. 2d 97 (2009). The *Pasch* and *Lovejoy* courts noted that by "allowing an expert to reveal the information for this purpose alone, it will undoubtedly aid the jury in assessing the value of the opinion." *Pasch*, 152 Ill. 2d at

176; *Lovejoy*, 235 Ill. 2d at 143. While admittedly not addressing the exact fact scenario presented in the case at bar, neither court found due process violations occur when experts are allowed to testify to otherwise inadmissible hearsay in attempts to explain their opinions. Each followed the reasoning of the court announced in *Wilson v. Clark*, 84 Ill. 2d 186 (1981), which stated that "allowing expert opinions based on facts not in evidence dispenses with 'the expenditure of substantial time in producing and examining various authenticating witnesses. *** [The expert's] validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes.'" *Id.* at 194 (quoting Fed. R. Evid. 703, Advisory Committee Note).

¶ 40 We find the risk of an erroneous deprivation of respondent's liberty based upon Dr. Reidda's and Dr. Brucker's discussion of case No. 91-J-222 is negligible as is the value of the additional safeguard proposed by respondent: that being, a blanket rule that the underlying facts of a criminal case of which a respondent is acquitted may never be discussed during civil commitment proceedings under the Act. The record makes clear that their testimony was offered for the very limited purpose of explaining their opinions. The reports upon which they relied were of the nature and type routinely reviewed and relied upon by experts in the field, including respondent's expert. They were subject to cross-examination during which respondent's attorney competently emphasized the fact that respondent was found not delinquent in case No. 91-J-222. In the words of our supreme court, these safeguards "ought to suffice for judicial purposes". *Wilson*, 84 Ill. 2d at 194. As such, we hold respondent's right to procedural due process was not

violated by Reidda's and Brucker's testimony.

¶ 41

CONCLUSION

¶ 42 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 43 Affirmed.

¶ 44 JUSTICE McDADE, dissenting:

¶ 45 Here, the majority affirms the trial court's finding that the State proved that the respondent was a sexually violent person. In doing so, the majority has concluded that the trial court properly denied the respondent's motion in *limine* and permitted the State to introduce evidence of the respondent's prior Tazewell County juvenile case No. 91-J-222. I do not believe that the trial court should have permitted the State to present this evidence and therefore, I respectfully dissent.

¶ 46 At the outset, I acknowledge that Drs. Brucker and Reidda properly accessed the respondent's juvenile records pursuant to section 1-7(A)(9) of the Juvenile Court Act of 1987 (705 ILCS 401/1-7(A)(9) (West 2006)), as this section permits a mental health professional to inspect an individual's juvenile records if the professional is doing so to evaluate the individual for purposes of a SVP petition. It is not the access to the records that forms the basis of my dissent. Rather, I do not believe that the court should have permitted the State to present evidence pertaining to case No. 91-J-222 for two reasons.

¶ 47 First, it was not reasonable for Brucker and Reidda to rely on a case in which the respondent was acquitted of any wrongdoing in forming their opinion of whether the respondent was a sexually violent person. I simply cannot understand how a professional may reasonably rely on a criminal case that did not result in a conviction to form an opinion of the individual's likelihood to reoffend in the future. Furthermore, nothing in section 1-7(A)(9) requires a mental health professional to use all of an individual's prior juvenile records to perform a reasonable evaluation of the individual.

¶ 48 Second, because of the respondent's acquittal on the charges levied in case No. 91-J-222, evidence pertaining to these charges has no probative value as to whether the respondent was a sexually violent person. Thus, this evidence is irrelevant and cannot possibly have aided in Brucker's or Reidda's evaluation of the respondent, nor could it have aided the jury in reaching its verdict. By contrast, because the respondent's prior juvenile case involves allegations of sexual misconduct, and because the respondent's conviction history was glaringly short on such wrongdoing, its prejudicial impact would have been enormous.

¶ 49 Specifically, here, the respondent was convicted of the predicate sexual crimes in 2003, but his prior convictions were not sexual in nature, although they did evidence some violent predilections. There were also complaints of violent incidents and some, although not all, included sexual allegations but none resulted in convictions. Given this record, I cannot see how the prejudicial impact of the challenged information did not overwhelm its probative value.

¶ 50 I acknowledge that the respondent has forfeited this issue by failing to object to the testimony at trial and include the issue in a posttrial motion. The majority has declined to determine whether civil or criminal plain error is applicable in this case. Because of the more limited applicability of the doctrine in civil cases, I will support my argument as though the civil format applied. The plain error doctrine is applied in civil cases only where the act complained of was prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process. *In re Marriage of Saheb & Khazal*, 377 Ill. App. 3d 615, 627 (2007); *Gillespie v. Chrysler Motor Corp.*, 135 Ill. 2d 363, 375 (1990).

¶ 51 For the reasons stated in ¶¶ 48 and 49, *supra*, I would find that the admission of evidence pertaining to case No. 91-J-222 was not only error but was "so prejudicial *** that [the respondent] [did] not receive a fair trial" and it would be proper for this court to invoke the plain error exception – civil or criminal – to the general rule of forfeiture. I would also find that the admission of this highly prejudicial testimony, especially in light of the respondent's scant history of prior sexual convictions, substantially impaired the integrity of the judicial process. Therefore, I would entertain the merits of the respondent's argument and conclude that the court erred by permitting testimony and evidence regarding case No. 91-J-222. As a result, I would reverse the jury finding and remand the cause for a new hearing.