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2012 IL App (3d) 110775-U

Order filed June 19, 2012

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re COMMITMENT OF KEVIN ARNOLD POULSON	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	Appeal No. 3-11-0775 Circuit No. 10-MR-109
v.	)	
Kevin Arnold Poulson,	)	Honorable James B. Stewart and Scott Shipplett,
Respondent-Appellant).	)	Judges, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: On appeal in a sexually violent person proceeding, the appellate court held that: (1) the evidence was sufficient to prove beyond a reasonable doubt that respondent was a sexually violent person; (2) the trial court did not commit an abuse of discretion in committing respondent to institutional care in a secure facility; (3) the trial court's failure to give a limiting instruction regarding evidence of respondent's prior sex offenses was not plain error; and (4) respondent was not denied effective assistance of trial counsel. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 After a jury trial, respondent, Kevin Arnold Poulson, was found to be a sexually violent person (SVP) under the Sexually Violent Persons Commitment Act (Act or SVP Act) (725 ILCS 207/1 to 99 (West 2010)) and was committed for institutional care in a secure facility. Respondent appeals, raising numerous issues. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 In August 2010, while respondent was serving a prison sentence, the State filed a petition under the Act to have respondent committed to institutional care as a SVP. A jury trial was held on the petition in August 2011. Prior to trial, the State filed a motion *in limine* seeking, among other things, to allow the victims from some of respondent's prior sex offenses to testify in rebuttal. The State argued that such evidence was relevant and necessary because one of respondent's expert witnesses was going to testify regarding respondent's prior statements that his contact with the victims was accidental or unintentional. Respondent's attorney opposed the motion and argued that there were other, less prejudicial methods of introducing the evidence. The trial court reserved its ruling on that portion of the motion *in limine* and stated that it was going to wait until it heard all of the evidence before it ruled.

¶ 5 The only testimony presented at the trial was the testimony of three expert witnesses, one for the State and two for respondent. Dr. Vasiliki Tsoflias testified for the State that she worked for Wexford Health Services, which had a contract with the Department of Corrections (DOC) to provide SVP evaluations. Tsoflias described her background and experience for the jury. Among other things, Tsoflias stated that she had been a licensed psychologist since 2009 and had completed about 20 to 25 SVP evaluations in her career up to the time of respondent's evaluation. Tsoflias had testified as an expert witness about 15 times in the past, 2 of which were for respondents. After

testifying about her background and experience, Tsoflias was qualified by the trial court as an expert in clinical psychology.[1]

¶ 6 Tsoflias testified that she completed a SVP evaluation of respondent in or around August 2010. As part of the evaluation, Tsoflias reviewed respondent's records, including respondent's DOC master file, police reports, court records, criminal history, mental health records, and treatment records. During her testimony, Tsoflias described respondent's criminal history at length. Tsoflias noted that respondent was born in 1957 and had been convicted of three sex offenses during his lifetime. Respondent had also been accused of other sex offenses, for which he was not convicted, and had been convicted of certain offenses that were not sex offenses.

¶ 7 With the regard to respondent's sex offense convictions, Tsoflias testified that respondent had been convicted of aggravated criminal sexual abuse in a 1993 case, predatory criminal sexual assault in a 2005 case, and aggravated criminal sexual abuse in a second 2005 case. In the 1993 case, respondent was accused of inserting his finger into the vagina of his 11-year-old niece while in a tree house in his grandmother's yard. The incident occurred in the summer of 1990. The victim told her family about the incident in 1990 after it occurred, but the family did not formally press charges. The family was upset, however, and respondent went to counseling. The incident was charged in 1993, when the police learned of it while investigating other sexual allegations against respondent.

¶ 8 In the first 2005 case, respondent was accused of sticking his finger into the vagina of his eight-year-old daughter. The incident occurred between May and July 2005 and came to light when it was reported by one of the daughter's friends (referenced below in the second 2005 case), who was

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[1] Pursuant to the trial court's request, the experts in this case were tendered by counsel and qualified by the trial court in a sidebar conference outside of the hearing of the jurors.

also being molested. Police talked to the daughter, and she confirmed that respondent had been molesting her and her friend. Respondent initially denied that he committed the offense against his daughter but after further questioning, admitted that he had inappropriately touched his daughter and had inserted his finger into her vagina. Respondent told police that the last time it occurred was about one to two months prior to his being questioned by police, that he knew he had a problem, and that he did not like being in situations in which there was a possibility of him doing something to a child.

¶ 9 In the second 2005 case, respondent was accused of touching the vaginal area of the ten-year-old female friend of respondent's daughter. The incident occurred in July 2005. The victim told police that respondent had been inappropriately touching her whenever she went to his house for almost two years and that respondent had threatened to kill her if she told anyone. All of the touching was done over the victim's clothing. The victim also told police that she had seen respondent inappropriately touching his eight-year-old daughter (referenced above in the first 2005 case) on several occasions. Respondent denied that he had molested his daughter's friend and told police that the girl had probably made up the accusation because she was mad at him for kicking her off the computer at his house for being on an inappropriate website.

¶ 10 As for the sex offenses for which respondent was accused but not convicted, Tsoflias testified that respondent was accused of molesting his 12-year-old son, a female friend of his son, and his stepson. With regard to his son, in 1993, respondent's ex-wife reported to police that she had recently learned that respondent had forced anal sex on their 12 year-old son when their son was spending the night at respondent's house in 1991. Respondent allegedly brought a gun with him into his son's bedroom when the incident occurred and told his son not to tell anyone about the incident.

Respondent was arrested for the incident with his son but was never formally charged. During the course of the investigation into that incident, the police became aware of respondent's incident in the tree house with his niece.

¶ 11 As for the female friend, during an interview, respondent's son told police that a female friend of his was forced to undress in front of respondent. Police interviewed the girl and she denied that the incident occurred. Respondent, however, told police that he was in a room alone with the girl and that she voluntarily took her shirt off in front of him.

¶ 12 With regard to the stepson, during an interview, respondent's son told police that he believed that the stepson was also being molested and that when he stayed at the house, he heard the stepson at night yelling words, such as "don't," "help," and "stop" at times when respondent was in the room alone with the stepson. When interviewed by police, however, the stepson denied that he was molested.

¶ 13 Finally, as noted above, respondent was also convicted of some offenses that were not sexual in nature. Tsoflias noted that respondent had been convicted of two batteries and a theft.

¶ 14 In addition to respondent's criminal history, Tsoflias discussed respondent's treatment history. The reports indicated that respondent had not successfully completed any sex offender counseling, although he did go to counseling for a brief period after the 1990 incident in the tree house with his niece and before the 2005 offenses occurred. Respondent did not participate in a sex offender treatment program in the Department of Corrections (DOC). Respondent asked for such treatment on numerous occasions and a referral was made, but respondent was never transferred by DOC to the treatment facility.

¶ 15 In August 2010, as part of the evaluation process, Tsoflias personally interviewed respondent.

During the interview, respondent denied touching his niece inappropriately and told Tsoflias that he was lifting his niece into the tree house and that his finger may have accidently slipped and touched her vagina. Respondent stated that he attended a year of counseling after he found out that his family was upset about the incident. According to Tsoflias, the reports did not agree with that and showed that respondent had dropped out of counseling in less than a year due to financial difficulties. Respondent also denied inappropriately touching the girl who was a friend of his daughter and stated that the girl might have misinterpreted some incidental contact between the two of them. Respondent admitted that he had inappropriately touched his daughter and stated that he believed that his daughter enjoyed those acts and the time she spent with him because it was alone time between the two of them where they could build a relationship without the other children being around. Respondent told Tsoflias that the inappropriate touching was motivated from anger because he had been sexually abused by a female when he was younger. Tsoflias commented that during the interview, respondent denied responsibility and often took a victim stance. Respondent stated that his daughter and the other children were sexually provocative towards him.

¶ 16 Based upon her evaluation, Tsoflias diagnosed respondent as having the mental condition of pedophilia, sexually attracted to females, nonexclusive type. Tsoflias explained that diagnosis to the jury and also explained the factors that led her to reach that diagnosis. Tsoflias testified that pedophilia, sexually attracted to females, nonexclusive type was a congenital or acquired condition affecting the emotional or volitional capacity that predisposed a person to engage in acts of sexual violence.

¶ 17 Tsoflias used an adjusted-actuarial approach to determine whether respondent was likely to reoffend. According to Tsoflias, in an adjusted-actuarial approach, a clinician took different

components and put them together to form his or her opinion. Using that approach relative to respondent, Tsoflias considered the results of two standardized risk assessments (actuarials); a personality test; and dynamic, protective, and case-specific risk factors to help her determine respondent's level of risk to reoffend. The two actuarials that Tsoflias used were the Static-99R and the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R). Tsoflias explained those actuarials to the jury and told the jury how they were used. On the Static-99R, respondent scored in a range that place him at a moderate high risk to reoffend, and on the MnSOST-R, respondent scored in a range that placed him at a low risk to reoffend.

¶ 18 The personality test that Tsoflias conducted relative to respondent was the Hare Psychopathy Checklist-Revised (PCL-R), which measured respondent's degree of psychopathic traits. Respondent's score on the PCL-R was indicative of low psychopathic traits.

¶ 19 As for the dynamic, protective, and case-specific risk factors, Tsoflias explained that those factors were not taken into account in the actuarials and that they could tend either to increase or decrease a person's risk level. Tsoflias described those factors to the jury and told the jury how she weighed those factors in respondent's case.

¶ 20 Based upon her evaluation, Tsoflias opined that respondent was substantially probable to engage in future acts of sexual violence. Tsoflias opined further that respondent met the criteria for being a SVP as defined in the SVP Act. Tsoflias's prepared a written report, which was admitted into evidence as an exhibit at trial.

¶ 21 The first expert witness to testify for respondent was Dr. Stephen Gaskell. Gaskell testified that he was a clinical psychologist who, under a contract with the Department of Human Services, conducted SVP evaluations. Gaskell described his background and experience for the jury. Among

other things, Gaskell stated that he had been a forensic psychologist since 1999, that he was licensed as a clinical psychologist in Illinois in 2005, and that he specialized in doing psychological evaluations for the courts. After testifying about his background and experience, Gaskell was qualified by the trial court as an expert in clinical psychology.

¶ 22 Gaskell conducted a SVP evaluation of respondent in September 2010. As part of the evaluation, Gaskell reviewed respondent's records (DOC master file, police records, court records, treatment records, etc.) and conducted a clinical interview of respondent. Gaskell also conducted a psychological test called the Multiphasic Sex Inventory II (MSI II) on respondent. According to Gaskell, respondent was defensive on the MSI II, which would have caused all of respondent's sexual deviant scale scores to be suppressed.

¶ 23 Based upon his evaluation, Gaskell diagnosed respondent as having the following mental conditions: (1) pedophilia, sexually attracted to both, nonexclusive type; and (2) personality disorder, not otherwise specified, with antisocial traits. Gaskell explained those diagnoses to the jury and also explained the factors that led him to reach those diagnoses.

¶ 24 Gaskell made a determination of respondent's risk to reoffend by considering actuarials and by considering dynamic and protective risk factors relative to respondent. The two actuarials that Gaskell considered were the Static-99R and the MnSOST-R. Gaskell stated that respondent's score was in the moderate high risk category on the Static-99R and did not specify what respondent's score was on the MnSOST-R but did acknowledge that respondent was at an elevated risk to reoffend sexually. Based upon his evaluation, Gaskell opined that respondent did not meet the criteria to be classified as a SVP. Gaskell prepared a written report, which was admitted into evidence as an exhibit at trial.

¶ 25 Respondent' second expert witness to testify at trial was Dr. Kirk Witherspoon. Witherspoon testified that he was a clinical psychologist and was licensed to practice in both Illinois and Iowa. As part of his job responsibilities, Witherspoon conducted various types of court-ordered evaluations, including SVP evaluations. Witherspoon described his background and experience for the jury and stated that over the last 13 years, he had completed hundreds of SVP evaluations. After testifying about his background and experience, Witherspoon was qualified by the trial court as an expert witness in clinical psychology.

¶ 26 Before he met with respondent, Witherspoon looked at the discovery in this case, which included respondent's criminal history, mental health records, and medical information. Witherspoon interviewed respondent with regard to such things as personal history, criminal history, mental status, previous relationships, and sexual attitudes and interests. Based upon his evaluation, Witherspoon diagnosed respondent as having the mental condition of pedophilia, sexually attracted to females, nonexclusive type. Witherspoon explained that diagnosis to the jury, the factors that led him to reach that diagnosis, and the reasons why he did not diagnose respondent with other mental conditions. Witherspoon stated that he believed that respondent's pedophilia was in remission or resolved because the desire or propensity involved with the condition did not seem to be ongoing. Witherspoon did not give an opinion as to whether respondent's mental condition was a congenital or acquired condition affecting the emotional or volitional capacity that predisposed respondent to engage in acts of sexual violence and stated that the volitional-capacity component was something for the jury to decide.

¶ 27 After determining a diagnosis, Witherspoon went on to determine whether respondent was substantially likely to reoffend. To do that, Witherspoon used a combination of actuarial measures

and a structured professional judgment, which considered dynamic and protective risk factors. The actuarials that Witherspoon used were the Static-2002R, the Sexual Violence Risk-20 (SVR-20), and the Structured Risk Assessment (SRA). Witherspoon explained those actuarials to the jury and told the jury why he used those particular actuarials as compared to others that were available. According to Witherspoon, respondent's scores on the actuarials placed him in the low to low-moderate range to reoffend. Witherspoon opined that he did not believe that it was substantially probable that respondent was going to commit future acts of sexual violence. Witherspoon acknowledged, however, that it was possible that his opinion could be different if respondent was not being truthful or up front with him during the interview since some of the information that he considered was based upon the information provided by respondent. Based upon his evaluation, Witherspoon opined further that respondent did not meet the criteria to be classified as a SVP. Witherspoon prepared a written report, which was admitted into evidence as an exhibit at trial.

¶ 28 When respondent finished presenting evidence, the State renewed its motion to call to testify some of the victims from respondent's previous sexual offenses. Respondent's attorney again opposed the motion, arguing that the evidence was too prejudicial. The trial court agreed, stating that it did not want this case to turn into a retrial of respondent's prior offenses.

¶ 29 At the conclusion of the trial, the jury found that respondent was a SVP. The trial court proceeded directly to a dispositional hearing and committed respondent to institutional care in a secure facility. In so doing, the trial court stated:

¶ 30 "Okay. I think that that's probably the best procedure then. The Court, I mean, there's been three evaluations. We've had days of very good testimony from a number of professionals, not to mention the written reports and evaluations by all

three of those professionals too.

Based upon the recommendations and what I've read and based upon the findings of the trier of fact in this case, I'm going to remand you, Mr. Poulson, to the treatment and detention facility for further treatment as a sexually violent person and, of course, after a period of time and after you've been through that, you can request that this Court make a determination that the treatment is – is finished. You'll have to check with your attorney as to how long that has to be before you can do that and you're entitled to another hearing or trial on that issue. But at this point in time, I do not believe that conditional release is the correct disposition as I do not believe that we have – that there is any kind of an adequate violent sexual offender treatment program that is out there, whether it's Bridgeway, whether it's [an] outpatient kind of facility, I don't trust that and given the history, given your past on this, the risk of not having that kind of treatment means that there's a high risk [that] other individuals would be hurt and I don't want to see that, coupled with the fact that while I know that the experts have testified and the literature suggests that as we get older there is less of a risk and the jury certainly considered that, nonetheless, you were of an older age when some of the offenses took place which seems to discount in your case at least the fact that your age as being a limiting factor so I believe that remand in a treatment detention facility is necessary for your best interest and necessary for the protection of the public and it will be – I'll ask the State to prepare an order reflecting that."

¶ 31 Respondent filed a motion for new trial and a motion to reconsider sentence, which the trial

court denied. This appeal followed.

¶ 32 ANALYSIS

¶ 33 As his first point of contention on appeal, respondent argues that the State failed to prove beyond a reasonable doubt that he was a SVP. Respondent asserts that the jury's verdict in that regard cannot be supported because it was contrary to the testimony of respondent's two expert witnesses, one of whom conducted the same or similar assessments on respondent as the State's expert witness, but yet, reached a different conclusion. The State argues that the evidence was sufficient to support the jury's finding that respondent was a SVP.

¶ 34 When faced with a challenge to the sufficiency of the evidence in a SVP proceeding, the reviewing court must view the evidence in a light most favorable to the State and determine whether any rational trier of fact could have found the required elements proven beyond a reasonable doubt. *In re Detention of Welsh*, 393 Ill. App. 3d 431, 454 (2009); see also *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (sets forth the standard of review for a sufficiency-of-the-evidence claim in a criminal case). The reviewing court will not retry a SVP case on appeal. *In re Tittlebach*, 324 Ill. App. 3d 6, 11 (2001). Rather, it is the responsibility of the trier of fact to evaluate the credibility of the witnesses, to weigh and resolve conflicts in the evidence, and to determine the reasonable inferences to be drawn from the evidence. *Tittlebach*, 324 Ill. App. 3d at 11. A reviewing court will not reverse a determination that a person is a SVP unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt as to that matter. See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (sets forth the standard that applies to a sufficiency-of-the-evidence claim in a criminal case).

¶ 35 To establish that a person is a SVP, the State must prove the following three elements beyond

a reasonable doubt: (1) that the person has been convicted of a sexually violent offense; (2) that the person has a requisite mental disorder; and (3) that the person is dangerous to others because the mental disorder creates a substantial probability that the person will engage in future acts of sexual violence. See 725 ILCS 207/5(f), 15(b), 35(d)(1) (West 2010); *Welsh*, 393 Ill. App. 3d at 454. Respondent here challenges only the third element, the substantial-probability element. Substantial probability has been defined by the courts as meaning "much more likely than not." See, *e.g.*, *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001).

¶ 36 Having reviewed the record in the instant case, we find that the evidence, considered in the light most favorable to the State, was sufficient to prove beyond a reasonable doubt the substantial-probability element. See *Welsh*, 393 Ill. App. 3d at 454; *Collins*, 106 Ill. 2d at 281. The State's expert witness testified that she reviewed extensive records regarding respondent, conducted evaluations and assessments on respondent, and opined based upon all of that information that respondent's mental disorder created a substantial probability that respondent would engage in future acts of sexual violence. The State's expert explained the bases for her opinion and was subject to thorough cross-examination on the matter. Although the opinion of the State's expert witness was contradicted by the opinions of respondent's two expert witnesses, it was for the jury to weigh the credibility of the evidence and to resolve any conflicts therein. See *Tittlebach*, 324 Ill. App. 3d at 11. This court will not retry respondent on appeal or substitute its judgment for that of the jury on this matter. See *Tittlebach*, 324 Ill. App. 3d at 11. Most of respondent's assertions to the contrary are matters that pertain to the weight to be given to the expert testimony and do not undermine the sufficiency of the evidence. See *Welsh*, 393 Ill. App. 3d at 455; *Tittlebach*, 324 Ill. App. 3d at 11. Furthermore, we do not agree with respondent's claim that the validity of Dr. Tsoflias's opinion was

called into question because Dr. Gaskell used the same or similar methodology and reached a different conclusion. There is no requirement that two expert witnesses, who use the same methodology, must form the same opinion, especially when one of the components of that opinion is the expert's own individual professional judgment.

¶ 37 As his second contention on appeal, respondent argues that the trial court erred in committing him to institutional care in a secure facility, rather than placing him on conditional release. Respondent asserts that in reaching its decision, the trial court improperly considered matters not included in the statute and not a made a part of the facts in evidence. Specifically, respondent complains that the trial court improperly considered the availability of treatment for respondent in the community and respondent's best interests. Respondent asks that we reverse the trial court's commitment order. The State argues that the trial court's commitment order was proper and should be affirmed.

¶ 38 Pursuant to section 40 of the Act, when a person is found to be a SVP, he shall be committed to the Department of Human Services. See 725 ILCS 207/40(a) (West 2010). The commitment order shall specify either institutional care in a secure facility or conditional release. 725 ILCS 207/40(b)(2) (West 2010). In determining the appropriate placement for a SVP, the court may consider such factors as: (1) the nature and circumstances of the person's behavior that was the basis of the allegation in the SVP petition; (2) the person's mental history and present mental condition; and (3) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West Supp. 2011). A trial court's decision to commit a SVP to institutional care in a secure facility is reviewed on appeal for an abuse of discretion. *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374 (2003). An abuse of discretion occurs

only where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Erbe*, 344 Ill. App. 3d at 374.

¶ 39 In the present case, the trial court did not consider improper evidence or improper factors in determining that the appropriate disposition was to commit respondent to institutional care in a secure facility. Contrary to respondent's assertion on appeal, the SVP Act requires the trial court to consider the availability of treatment in determining the appropriate placement. See 725 ILCS 207/40(b)(2) (West 2010); *Erbe*, 344 Ill. App. 3d at 374. Thus, it was proper for the trial court to consider the treatment available to respondent in making its decision. It was also proper for the trial court to consider the statutory factors in the context of respondent's best interests in determining an appropriate placement. The trial court's placement determination was not arbitrary, fanciful, or unreasonable, and did not constitute an abuse of discretion. See *Erbe*, 344 Ill. App. 3d at 374.

¶ 40 As his third contention on appeal, respondent argues that he is entitled to a new trial because the trial court erred in failing to give the jury a limiting instruction regarding the evidence of respondent's prior sex offenses. Respondent asserts that such an instruction was necessary to ensure that the jury did not punish respondent for his prior bad acts, which were brought out in extensive detail through the testimony of Dr. Tsoflias. Respondent acknowledges that he did not properly preserve this issue for appellate review but asks that we review the merits of this issue, nevertheless, as a matter of first-prong plain error under the criminal plain-error rule. The State asserts that: (1) the civil plain-error rule applies in this case; (2) no error occurred; and (3) even if an error occurred, respondent's argument has been forfeited under either the civil or the criminal plain-error rule. Thus, the State argues that respondent's position should be rejected.

¶ 41 It is well settled that a respondent in a SVP proceeding cannot be involuntarily committed

based upon past conduct. *In re Detention of Samuelson*, 189 Ill. 2d 548, 559 (2000). Rather, involuntary commitment is permitted only where the respondent presently suffers from a mental disorder and the disorder creates a substantial probability that he or she will engage in future acts of sexual violence. *In re Detention of Samuelson*, 189 Ill. 2d at 559. That being said, the details of the previous sexual offenses committed by respondent are relevant and probative in an SVP proceeding to establish the bases for the opinion of an expert witness. See *In re Detention of Allen*, 331 Ill. App. 3d 996, 1004-05 (2002); *In re Detention of Hardin*, 391 Ill. App. 3d 211, 219-20 (2009); *In re Detention of Isbell*, 333 Ill. App. 3d 906, 913-14 (2002); see also 725 ILCS 207/35(b) (West 2010) (at trial in a SVP proceeding, "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"). Although evidence of the respondent's prior bad acts may be relevant in a SVP proceeding, it may still be excluded, in the trial court's discretion, if its probative value is substantially outweighed by the danger of unfair prejudice. *In re Detention of Allen*, 331 Ill. App. 3d at 1005; Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 42 In the present case, there is no question that the details of respondent's prior sexual offenses were relevant and probative as to the bases of the experts' opinions. See *In re Detention of Allen*, 331 Ill. App. 3d at 1004-05; *In re Detention of Hardin*, 391 Ill. App. 3d at 219-20; *In re Detention of Isbell*, 333 Ill. App. 3d at 913-14. In presenting the testimony of Dr. Tsoflias, the State made it clear that the information regarding the prior offenses was relied upon by Dr. Tsoflias in forming her opinions and that it was the type of information that was reasonably relied upon by experts in her field. Indeed, it appears that all of the experts in this case relied on that information to some extent in forming their opinions. Although it may have been preferable for the trial court to give a limiting

instruction in this case, we cannot say that it was erroneous for the trial court to fail to do so, especially in light of the possible strategic reasons of respondent's attorney in not requesting such an instruction. See *In re Detention of Isbell*, 333 Ill. App. 3d at 913-14. Since we agree with the State that no error occurred, we need not determine whether the civil or criminal plain-error rule would apply in an appeal in a SVP proceeding.

¶ 43 As his fourth contention on appeal, respondent argues that he was denied a fair trial due to ineffective assistance of trial counsel. Respondent asserts that trial counsel was ineffective when he failed to request that the jury be given a limiting instruction regarding the evidence of respondent's prior sexual offenses. Respondent asserts further that there was no possible strategic reason behind counsel's failure to request a limiting instruction, that such an instruction was necessary for the jury to understand how to consider the expert testimony, and that he was prejudiced by counsel's failure to request an instruction because the evidence was closely balanced and such an instruction could very well have changed the result of the trial. The State argues that respondent cannot show either deficient performance or prejudice and that his claim of ineffective assistance of counsel should be rejected.

¶ 44 A claim of ineffective assistance of counsel is analyzed under the two-pronged, performance-prejudice test established in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Patterson*, 217 Ill. 2d 407, 438 (2005); *In re Commitment of Bushong*, 351 Ill. App. 3d 807, 817 (2004) (applying *Strickland* standard in a SVP proceeding). To prevail on a claim of ineffective assistance of counsel, a respondent must show that: (1) trial counsel's performance was deficient, and (2) the deficient performance prejudiced the respondent to the extent that he was deprived of a fair proceeding. *Patterson*, 217 Ill. 2d at 438; *In re Commitment of Bushong*, 351 Ill. App. 3d at 817.

A respondent's failure to satisfy either prong of the *Strickland* test prevents a finding of ineffective assistance of counsel. *Patterson*, 217 Ill. 2d at 438; *In re Commitment of Bushong*, 351 Ill. App. 3d at 817. In reviewing a claim of ineffective assistance of counsel, a court must consider trial counsel's performance as a whole and not merely focus upon isolated incidents of conduct. *People v. Cloyd*, 152 Ill. App. 3d 50, 57 (1987). A strong presumption exists that trial counsel's conduct was within the wide range of reasonable professional assistance and that all decisions were made in the exercise of reasonable professional judgment. *Cloyd*, 152 Ill. App. 3d at 56-57; *People v. Martin*, 236 Ill. App. 3d 112, 121 (1992); *In re Commitment of Bushong*, 351 Ill. App. 3d at 817. In addition, matters of trial strategy will generally not support a claim of ineffective assistance unless counsel failed to conduct any meaningful adversarial testing. *Patterson*, 217 Ill. 2d at 441; *People v. Pecoraro*, 144 Ill. 2d 1, 13 (1991).

¶ 45 In the present case, trial counsel's decision of whether to request a limiting instruction was a matter of trial strategy. See *Pecoraro*, 144 Ill. 2d at 13; *People v. Logan*, 2011 IL App (1st) 093582, ¶ 51 (trial counsel was not ineffective for failing to tender a limiting instruction where trial counsel made a strategic decision not to do so to avoid having the jury focus its attention on certain polygraph evidence); *People v. Perez*, 2012 IL App (2d) 100865, ¶ 66 (trial counsel's decision of whether to request a limiting instruction may be viewed as strategic). Such a decision will generally not support a claim of ineffective assistance of counsel. See *Patterson*, 217 Ill. 2d at 441; *People v. Pecoraro*, 144 Ill. 2d at 13; *Logan*, 2011 IL App (1st) 093582, ¶ 51. Moreover, we do not agree with respondent's assertion that there was no strategic reason for trial counsel to fail to request a limiting instruction. Trial counsel may have done so for any number of reasons, such as not wanting to put further emphasis upon respondent's prior bad conduct and not wanting to subject respondent

to the possible testimony of the prior victims. Respondent has failed to establish that trial counsel's performance was deficient, and his argument of ineffective assistance of counsel must be rejected on that basis. *Patterson*, 217 Ill. 2d at 438; *In re Commitment of Bushong*, 351 Ill. App. 3d at 817. We need not determine, therefore, whether respondent was prejudiced by the alleged deficient performance of trial counsel.

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Knox County.

¶ 47 Affirmed.