

NOTICE

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2012 IL App (5th) 100229-U
NO. 5-10-0229
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> DETENTION OF KYLE HYDRON)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 07-MR-289
)	
Kyle Hydron,)	Honorable
)	James Hackett,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Spomer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was sufficient to prove that respondent was a sexually violent person where overwhelming evidence showed he was likely to commit future sexually violent offenses. Any error in admitting testimony about two handwritten letters was harmless and did not constitute plain error. Statutory language allowing commitment upon a showing that it is "substantially probable" that a respondent will reoffend is constitutional.
- ¶ 2 The respondent, Kyle Hydron, appeals orders of the trial court finding him to be a sexually violent person and committing him to a secure facility for treatment pursuant to the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 to 99 (West 2006)). He argues that (1) the evidence was insufficient, (2) the court erred in admitting testimony through a witness who was not a handwriting expert that a letter appeared to be written by the respondent, and (3) the language allowing a respondent to be committed upon a finding that future acts of sexual violence are "substantially probable" is unconstitutional. We

affirm.

¶ 3 In 1999, the respondent was adjudicated delinquent for aggravated criminal sexual assault (720 ILCS 5/11-1.30 (West 1998)). The adjudication was based on the sexual assault of his six-year-old sister, Candace. We note that the State initially filed a juvenile petition based on the sexual assault of the respondent's 11-year-old cousin, Ashley. That petition alleged that the respondent brandished a knife and threatened Ashley. However, the State later amended the petition. The amended petition alleged that the respondent sexually assaulted Candace and committed disorderly conduct by exposing himself to a group of people. The amended petition did not include the allegations related to the sexual assault of Ashley. The respondent was adjudicated delinquent on the basis of the allegations in the amended petition. The respondent was 13 years old at the time these offenses occurred.

¶ 4 The respondent was put on probation for these offenses. However, he violated the terms of his probation and was therefore committed to the Juvenile Division of the Illinois Department of Corrections. While in custody, he kicked a guard. He pled guilty to a charge of aggravated battery based on this incident and was sentenced to four years in prison. The respondent was released in 2006 and began serving a term of mandatory supervised release. However, he violated the terms of his mandatory supervised release. As a result, the respondent was returned to the custody of the Department of Corrections.

¶ 5 In May 2007, just before the respondent was scheduled to be released from prison, the State filed the instant petition for commitment under the SVP Act. The petition alleged that the respondent had been adjudicated delinquent based on a sexually violent offense and that he suffered from paraphilia, a mental disorder that made it substantially probable that he would commit future acts of sexual violence. See 725 ILCS 207/15(b) (West 2006).

¶ 6 At a jury trial on the petition, two psychologists testified as expert witnesses for the State—Dr. Ray Quackenbush and Dr. Steven Gaskell.

¶ 7 Dr. Quackenbush testified that he conducted two different evaluations of the respondent's risk of reoffending. The first time Dr. Quackenbush evaluated the respondent was in 2006, prior to his release from prison on the aggravated battery charge. Dr. Quackenbush acknowledged that in this first evaluation, he concluded that the respondent was not at risk of reoffending. He explained that he changed his opinion on the basis of records that were not available to him when he made the first evaluation. None of the respondent's juvenile records were available to him in making the 2006 evaluation. In addition, the respondent was interviewed by a Department of Corrections evaluator. In the interview, the respondent admitted to sexually molesting several young cousins multiple times. This new information led Dr. Quackenbush to change his opinion.

¶ 8 In evaluating the respondent, Dr. Quackenbush considered his juvenile and prison records as well as the prerelease evaluation report prepared by a Department of Corrections evaluator. In that evaluation report, the respondent boasted about his offenses. Dr. Quackenbush testified that the respondent started sex offender treatment three times but failed to successfully complete treatment all three times. He was removed from one program due to behavioral issues. In all three programs, the respondent bragged about his actions with his young victims and indicated that he saw them as consensual partners.

¶ 9 Over the respondent's objections, Dr. Quackenbush also testified about the contents of two handwritten letters. The first was a letter found inside a magazine that was confiscated from the respondent by a prison guard in 2005. The second was a letter mailed to the respondent's cousin Ashley, one of his victims. Dr. Quackenbush testified that he considered both letters in forming his opinion. Asked who wrote the letters, Dr. Quackenbush replied: "They appear to be written by the same person. The hand-writing is—is almost identical."

¶ 10 The respondent objected on the grounds that Dr. Quackenbush was not qualified to

testify as a handwriting expert. The court sustained the objection, but ruled that Dr. Quackenbush could testify as to whether he believed that the letters were written by the respondent when he considered them in making his evaluation. The court noted that the respondent could undermine the reasonableness of this assumption on cross-examination. Dr. Quackenbush then testified that he believed that both letters were written by the respondent.

¶ 11 Both letters were admitted into evidence over the respondent's objection. The letter found in the magazine was addressed to another inmate. In it, the respondent admitted that "it's true" about him and Ashley, and said that he would have sex with her again. He went on to say that he would have sex with any girl who is at least 13 years old because he believed that once a girl "is menstruating and has titties" she is old enough to have sex with an adult man. The letter to Ashley was accompanied by the envelope it was sent in, which bore the respondent's return address. In the letter, the respondent asked Ashley to keep his letters to her between the two of them. He told her that he was "honestly still in love" with her and that he hoped she was "okay with *** talking dirty." The respondent asked Ashley to send him nude pictures of her. He told her that he would come visit her and that he would show her how much more "advanced at sex" he had become.

¶ 12 Dr. Quackenbush testified about the contents of both letters, but did not read them in their entirety. He explained that the letters were significant because they indicated what the respondent intended to do. He testified that a sex offender's own statement as to what he will do is one of the most powerful indications that he is likely to reoffend.

¶ 13 Dr. Quackenbush diagnosed the respondent as having paraphilia, a mental disorder involving recurring sexual fantasies and behaviors focused on adolescent or nonconsenting individuals. He further testified that based on the Hare Psychopathy Checklist, Revised, a diagnostic tool designed to assess the likelihood of reoffending, the respondent was at high

risk for offending again. Dr. Quackenbush stated that the impulsive nature of the respondent's actions and the large number of incidents were additional factors that made it substantially probable that he would reoffend.

¶ 14 Dr. Gaskell likewise based his evaluation of the respondent on his records as well as his own interview with the respondent. In addition, he considered the respondent's school records and mental health records.

¶ 15 Dr. Gaskell testified that the respondent failed to successfully complete sex offender treatment multiple times and that he admitted to having sex with many young family members. In addition, he testified that the respondent admitted to having a preference for adolescent sex partners and having fantasies that involved rape, torture, cutting his partners, and sex with corpses. He further testified that the respondent had been physically abused as a child. School records indicated that the respondent had been in trouble numerous times for sexually inappropriate behavior, physically assaulting both teachers and other children, and getting into fights. Dr. Gaskell further testified that the respondent had been admitted to psychiatric facilities due to physical aggression, homicidal threats, arson, cruelty to animals, and sexually inappropriate behavior with family members.

¶ 16 Dr. Gaskell diagnosed the respondent with paraphilia focusing on both nonconsenting individuals and adolescents. He also diagnosed the respondent as having a personality disorder with antisocial and narcissistic traits. Dr. Gaskell opined that the respondent was at high risk of reoffending based on diagnostic tools (the Static-99 and the Minnesota Sex Offender Screening Tool). He also explained that factors such as the early onset of the respondent's behavior, his lack of remorse, and his antisocial personality disorders increased the likelihood that the respondent would commit future offenses.

¶ 17 Dr. Kirk Witherspoon testified on behalf of the respondent. He found that the respondent had a low risk of reoffending, and testified that his behavior could be explained

as a reaction to being in custody.

¶ 18 The jury found the respondent to be a sexually violent person, and the court ordered him committed to a secure facility for treatment. The respondent filed a posttrial motion, which the court denied. This appeal followed.

¶ 19 The respondent first argues that the evidence was not sufficient to prove him to be a sexually violent person beyond a reasonable doubt. More specifically, he contends that while the evidence showed that he was sexually *deviant*, it did not prove that he was *violent*. In support of this argument, the respondent argues that the evidence was insufficient to show that he had ever inflicted serious physical harm on any of his victims. We are not persuaded.

¶ 20 On appeal, we consider the evidence in the light most favorable to the State and determine whether "any rational trier of fact could find the elements proved beyond a reasonable doubt." *In re Detention of Sveda*, 354 Ill. App. 3d 373, 380, 820 N.E.2d 987, 993 (2004); *In re Commitment of Stevens*, 345 Ill. App. 3d 1050, 1062, 803 N.E.2d 1036, 1046 (2004). As we will explain, however, the respondent's argument here fails primarily because he misconstrues what the SVP Act requires the State to prove. Statutory construction is an issue of law which we review *de novo*. *People v. Alcozer*, 241 Ill. 2d 248, 254, 948 N.E.2d 70, 74 (2011).

¶ 21 The SVP Act defines a sexually violent person as a person who has been convicted or adjudicated delinquent for 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 2006). In accordance with this definition, the SVP Act requires the State to prove three elements beyond a reasonable doubt. The State must prove that the respondent (1) has been convicted of or adjudicated delinquent for a sexually violent offense, (2) suffers from a mental disorder, and (3) is dangerous because the mental disorder makes it substantially probable that the respondent will engage

in future acts of sexual violence if not committed. *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 11, 754 N.E.2d 484, 489-90 (2001). The respondent's argument focuses on the last of these three elements—the sufficiency of the evidence to show that it is substantially probable that he will engage in future acts of sexual violence.

¶ 22 The SVP Act defines a "sexually violent offense" as any of several specified offenses, including aggravated criminal sexual assault, the offense for which the respondent was adjudicated delinquent. See 725 ILCS 207/5(e) (West 2006) (citing 720 ILCS 5/11-1.30 (West 2006)). Although the statute does not define "acts of sexual violence," we believe it is clear that this term includes acts constituting sexually violent offenses. See *In re Detention of Varner*, 207 Ill. 2d 425, 432, 800 N.E.2d 794, 798 (2003) (discussing the constitutional requirement that statutes such as the SVP Act mandate a "defined burden" of proving "the likelihood of future offenses"); *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 598, 884 N.E.2d 160, 173 (2007) (stating that the respondent there argued that the evidence was insufficient to prove he presented "any risk to reoffend"); *In re Detention of Sveda*, 354 Ill. App. 3d at 380, 820 N.E.2d at 993 (finding the evidence sufficient where experts opined that it was "substantially probable" that the respondent "would reoffend").

¶ 23 Here, the evidence that it was substantially probable that the respondent would reoffend was overwhelming. Two experts opined that he was at high risk of reoffending. Both based their testimony on diagnostic tests designed to predict the risk of future offenses as well as voluminous evidence that the respondent had repeatedly molested and sexually assaulted several of his very young female relatives. The respondent admitted to these incidents and even boasted about them. Furthermore, the respondent failed to complete sex offender treatment and stated that he believed his victims were consensual partners.

¶ 24 The respondent argues, however, that there was no evidence that he had ever engaged in acts of "serious violence" or caused physical harm to any of his victims and that there was

no evidence that he was likely to do so in the future. He points out that the juvenile petition involving allegations that he used a knife while sexually assaulting his young cousin, Ashley, was dropped, and he notes that he only threatened to harm her but did not do so. We do not agree with this characterization of the evidence. As previously discussed, there was evidence that the respondent admitted to having sexual fantasies that involved torture and sex with dead bodies. In addition, there was evidence that he had been committed to mental institutions on more than one occasion due to violence or threats of violence. Nevertheless, because the State only needed to prove that it was substantially probable that the respondent would commit sexually violent offenses, we need not discuss the merits of this contention further. We find that the evidence was sufficient to allow a reasonable trier of fact to find that it was reasonably probable that the respondent would engage in acts of sexual violence as defined under the SVP Act.

¶ 25 The respondent next argues that the court erred by permitting the State to "improperly use hearsay evidence introduced by the experts as proven facts." Specifically, he points to the letter the respondent mailed to Ashley. We note, however, that his argument actually appears to focus on both of the handwritten letters discussed by Dr. Quackenbush and entered into evidence.

¶ 26 The respondent concedes that Dr. Quackenbush's testimony about the contents of the two letters was proper. See *In re Detention of Isbell*, 333 Ill. App. 3d 906, 913, 777 N.E.2d 994, 999 (2002) (quoting *People v. Nieves*, 193 Ill. 2d 513, 528, 739 N.E.2d 1277, 1284 (2000)); see also *In re Brazelton*, 245 Ill. App. 3d 1028, 1033, 615 N.E.2d 406, 409 (1993) (explaining that an expert may rely on hearsay information in testifying about a psychological diagnosis if the expert's reliance on that information is reasonable). He argues, however, that (1) the State failed to demonstrate that the letters were " 'sufficiently trustworthy' " to be admitted (*In re Detention of Isbell*, 333 Ill. App. 3d at 914, 777 N.E.2d at 1000 (quoting

Lovelace v. Four Lakes Development Co., 170 Ill. App. 3d 378, 384, 523 N.E.2d 1335, 1339 (1988))), (2) the court erred in allowing Dr. Quackenbush to testify that the letters appeared to be in the same handwriting because he was not a handwriting expert, and (3) this "obvious error" was compounded by allowing the State to read a significant portion of one of the letters to the jury during closing arguments.

¶ 27 The State argues that the respondent forfeited these arguments by failing to raise them in his posttrial motion. The State notes that the respondent has not asked us to consider his claims under the plain error rule, and further argues that, assuming the court erred, it does not rise to the level of plain error. We agree.

¶ 28 The State correctly points out that proceedings under the SVP Act are civil in nature (*In re Detention of Samuelson*, 189 Ill. 2d 548, 560, 727 N.E.2d 228, 235 (2000); 725 ILCS 207/20 (West 2006)) and asks us to apply the plain error rule that is generally applicable to civil cases rather than the plain error rule applicable in criminal matters. We note, however, that courts of this state have applied the criminal plain error rule in SVP Act cases. See, e.g., *In re Detention of Sveda*, 354 Ill. App. 3d at 377, 820 N.E.2d at 991. Under that rule, we will consider the respondent's claims if the evidence was closely balanced or if the error is so fundamental that it deprived the respondent of a fair trial. *In re Detention of Sveda*, 354 Ill. App. 3d at 377, 820 N.E.2d at 991.

¶ 29 Here, as previously discussed, the evidence that the respondent was substantially probable to commit future sexually violent offenses was overwhelming. This is so even if the letters were excluded. In addition, the respondent cross-examined Dr. Quackenbush about his belief that both letters were written by the respondent. The jury also heard additional evidence to support his belief. The letter to Ashley was sent to her in an envelope bearing the respondent's return address, while the letter to the other inmate was found inside a magazine confiscated from the respondent. The jury had before it all the evidence it needed

to determine whether it was reasonable for Dr. Quackenbush to conclude that the letters were written by the respondent. We find that any error was harmless and certainly did not rise to the level of plain error.

¶ 30 Finally, the respondent argues that the statutory language requiring the State to prove a "substantial probability" of future offenses is not constitutional. He argues that a "substantial probability" is not a certainty, and he contends that the statutory scheme thus impermissibly increases the punishment he faces without requiring the State to prove anything more than that he "might" reoffend. See *Apprendi v. New Jersey*, 530 U.S. 466 (2000). We are not persuaded. The SVP Act is not intended to be punitive in nature, and commitment lasts only as long as necessary to address a respondent's mental disorder. *In re Detention of Cain*, 341 Ill. App. 3d 480, 484, 792 N.E.2d 800, 804 (2003). Moreover, our supreme court has specifically held that the "substantial probability" language comports with the requirements of due process. See *In re Detention of Varner*, 207 Ill. 2d at 432-33, 800 N.E.2d at 798-99; *People v. Masterson*, 207 Ill. 2d 305, 320, 798 N.E.2d 735, 744 (2003) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 357-58 (1997)). We thus reject the respondent's claim that the statute is unconstitutional.

¶ 31 For the foregoing reasons, we affirm the orders of the trial court.

¶ 32 Affirmed.