2015 IL App (1st) 131012-U

FIFTH DIVISION
June 12, 2015

No. 1-13-1012



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* THE COMMITMENT OF RONALD LEVI, | ) | Appeal from the |
| (THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| | ) | Cook County. |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 06 CR 80014 |
| | ) | |
| RONALD LEVI, | ) | Honorable |
| | ) | Timothy Joseph Joyce, |
| Respondent-Appellant). | ) | Judge Presiding. |

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PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

**O R D E R**

¶ 1 *Held*: Respondent's adjudication as a sexually violent person (SVP) was affirmed where two of the many documents on which the State experts' opinions were based were of the type reasonably relied on by experts in their field and, even assuming the documents were unreliable, testimony of their content was harmless where other evidence amply supported the experts' opinions that respondent was a SVP.

¶ 2 Following a bench trial in 2012, respondent, Ronald Levi, was found to be a sexually violent person (SVP) pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2012)). The circuit court committed respondent to the care and custody

of the Department of Human Services (DHS). On appeal, respondent contends the trial court erred in allowing the disclosure of two allegedly unreliable and inaccurate hearsay documents constituting inadmissible evidence not reasonably relied upon by experts in the field of sexually violent person civil commitment evaluations. We affirm.

¶ 3 In 2003, respondent was charged in case number 03 CR 14308 with one count of aggravated criminal sexual abuse with a dangerous weapon, one count of aggravated criminal sexual assault while armed with a firearm, and two counts of criminal sexual assault. On June 15, 2005, following a bench trial before Judge Bowie, respondent was found guilty of aggravated criminal sexual abuse. He was sentenced to seven years in prison. Respondent has not appealed from the 2005 conviction.

¶ 4 On August 18, 2006, shortly before respondent's mandatory supervised release from prison, the State petitioned for respondent's involuntary commitment as a SVP pursuant to the Act. On June 16, 2008, a probable cause hearing was held and the circuit court found probable cause to believe respondent was a SVP. The court entered an order detaining respondent and he was transferred from the Department of Corrections (DOC) to the Rushville Treatment and Detention Facility, a DHS facility designed to house sex offenders.[1]

¶ 5 Prior to trial, respondent filed numerous motions *in limine*. One motion sought to exclude all hearsay. The court denied the motion, though promising to take steps if the State sought to

[1] Respondent filed petitions for writ of *mandamus* and writ of *habeas corpus*, challenging his incarceration as a sexually violent person in the "more punitive facility" at Rushville even before the trial on the State's SVP petition. The court denied respondent's petitions and he appealed. We allowed respondent's appointed appellate counsel to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirmed the judgment. *People v. Levi*, No. 1-12-0362 (2013) (unpublished order under Supreme Court Rule 23).

utilize inadmissible hearsay for the truth of the matter asserted rather than as a basis for an expert witness's testimony. Another motion requested that the court limit testimony about respondent's prior convictions by the State's experts only to facts contained in court transcripts. The court ruled that "expert witnesses will be permitted to testify to the substance of the documents, reports, transcripts, even police reports" which "are of a type to be reasonably relied upon by experts in the field " that otherwise would be inadmissible hearsay. In another motion, respondent requested that the court bar the State from referring to "any witness facts and/or information regarding uncharged, acquitted and/or dismissed criminal cases" as "things that should not be brought out to the jury." The court ruled that the State could not introduce evidence of mere arrests not resulting in convictions but could elicit testimony concerning any prior convictions regardless of their nature or when they were committed.

¶ 6 The parties waived their rights to a jury trial, and a bench trial ensued in 2012. The State introduced certified copies of respondent's three prior convictions for sexually violent offenses. Two of the convictions, case numbers 93 CR 319 and 92 CR 24336, were for aggravated criminal sexual assault. Although the cases were unrelated, on July 29, 1994, respondent pled guilty simultaneously to both offenses and was sentenced to two concurrent terms of eight years in prison. The third conviction, following a bench trial in 2005, was for aggravated criminal sexual abuse in case number 03 CR 14308. The certified copy of that conviction stated that the original charges were one count of aggravated criminal sexual abuse/weapon, one count of aggravated sexual assault/firearm, and two counts of criminal sexual assault/force.

¶ 7 The State also presented the testimony of two psychologists, Dr. Barry Leavitt and Dr. Steven Gaskell, who were qualified as expert witnesses. Both experts opined that respondent

suffered from the mental disorders of paraphilia and antisocial personality disorder that made it substantially probable respondent would commit acts of sexual violence in the future.

¶ 8 Dr. Leavitt testified that in the past he had been qualified "a couple of hundred times" as an expert in clinical and forensic psychology in the field of sex offender evaluations, including diagnosis and risk assessment. His evaluation of respondent, begun in June 2006, was based on his extensive review of respondent's overall record, including materials from his DOC master file. The materials, consisting of respondent's "offense history, his criminal history, any police reports, victim statements, any disciplinary history, relevant medical and/or psychological records," were records reasonably relied upon for sex offender evaluations by other psychologists in his field. Dr. Leavitt relied upon those DOC records in evaluating respondent and also reviewed respondent's records from the DHS. The reports of the sexual offenses in respondent's criminal history were materials reasonably relied upon in the psychological community. Dr. Leavitt found that the facts and circumstances of respondent's criminal history were relevant in forming his opinion. The criminal history revealed a long-standing pattern going back at least 20 years in which respondent sought out females, initiating either acts of intimidation, threats, attempting to restrain or use a weapon to sexually assault the women through a variety of sexually deviant behaviors. Respondent relied on very significant cognitive distortions to either justify, minimize, or deny responsibility for his offenses by claiming the victims were simply vulnerable drug-involved women who had consented to sexual acts with him. Following Dr. Leavitt's review of respondent's overall record, he prepared an evaluation report dated July 31, 2006. Since preparing the report, Dr. Leavitt had affirmed the accuracy of his opinion by reviewing respondent's DHS records from 2006 to September 2012.

¶ 9 Dr. Leavitt testified to the facts underlying defendant's convictions for violent sexual offenses. In case number 93 CR 319, on May 25, 1992, respondent threatened a woman in his car with a screwdriver, forced her to remove her clothing and perform oral sex on him, and performed an act of vaginal intercourse on her. In 1994, respondent pled guilty to one count of aggravated criminal sexual assault in that case and was sentenced to eight years in prison. Respondent's counsel's objection to the State eliciting from Dr. Leavitt the facts of that case, based on "hearsay and insufficient basis for offering an opinion," was overruled.

¶ 10 Case number 92 CR 24336 involved an incident occurring on March 17, 1992, while respondent and the victim, an acquaintance of his, were walking together. Respondent displayed a knife and forced the victim into an abandoned building, beat her with his fists, restrained her with his belt and shoe laces, placed the belt around her neck, and forced her to submit to vaginal intercourse. After this testimony by Dr. Leavitt, respondent's counsel objected "to the hearsay." The court again overruled the objection but noted that counsel did not "have to continue to object to preserve that issue in this context." Respondent pled guilty to one count of aggravated criminal sexual assault and one count of aggravated kidnapping in case number 92 CR 24336; he was sentenced to eight years in prison to be served concurrently with case number 93 CR 319.

¶ 11 Dr. Leavitt also testified about respondent's 2005 conviction for aggravated criminal sexual abuse in case number 03 CR 14308. Dr. Leavitt believed the original charges in that case were aggravated criminal sexual assault and public indecency/lewd exposure. When the offense occurred in 2003, respondent was 49 years old and was on parole; the victim was 44. Respondent and the victim were at the victim's boyfriend's house, playing cards and/or using drugs. At some point respondent offered to give the victim a ride to purchase cigarettes. In the process of doing

that he pulled out a gun and forced the victim to submit to both vaginal and anal intercourse. In a bench trial, respondent was found guilty of one count of aggravated criminal sexual abuse with a weapon and was sentenced to seven years in prison. In testifying about respondent's 2005 conviction, Dr. Leavitt made no reference to having seen a complaint for preliminary hearing or an Official Statement of Facts (pen letter) in that case.

¶ 12 Dr. Leavitt testified that respondent's three sex offense convictions in 10 years not only met the criterion with respect to recurrent sexually violent behavior towards non-consenting persons, but also his sexual assault behavior consisted of the use of coercive force to satisfy his sexually deviant interests. Dr. Leavitt's diagnostic impressions were also reinforced by respondent's admission during his DHS detention to having past rape fantasies or fantasies of forcing partners to engage in acts of violence and the use of bondage.

¶ 13 Dr. Leavitt also considered respondent's nonsexually related criminal history in his evaluation, including a conviction for possession of a controlled substance in 2002 resulting in a two-year prison sentence, a conviction for violation of sex offender registration in 2001, and convictions going back to 1975 for possession of cannabis, resisting a peace officer, criminal damage to property, and possession of stolen mail. In addition, Dr. Leavitt considered respondent's disciplinary history in the DOC and in the DHS, where there was an increase in his antisocial and behavioral problems and his aggressiveness between 2008 and 2011.

¶ 14 Dr. Leavitt also referenced respondent's long-standing history of problems related to substance abuse. Respondent reportedly had spent much of his adult life selling drugs and had used marijuana and other drugs to involve himself in many sexual relationships. There were no records of his participating in any formal alcohol or substance abuse treatment either in the DOC

or as a resident of the DHS detention facility. In 2006, respondent attended an orientation group for sex offender treatment for about a month and a half and has not participated since then.

¶ 15 Dr. Leavitt relied upon the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Text Revised (DSM-IV-TR), an authoritative manual in his field, in completing his evaluation of respondent. He formed an opinion, within a reasonable degree of psychological certainty, that respondent suffered from paraphilia, not otherwise specified (NOS), sexually attracted to non-consenting females, nonexclusive type, through the involvement of coercive acts of sexual violence. Dr. Leavitt acknowledged on cross-examination that some members of the psychiatric community do not agree that paraphilia NOS was a valid diagnosis.

¶ 16 Dr. Leavitt's opinion included a secondary diagnosis of an Axis II personality disorder not otherwise specified with antisocial personality features, dating back to respondent's young adulthood and persisting through incarceration and during the last six years while in the custody of the DHS. Evidence of his personality disorder included his antisociality, irritability, impulsivity, poor judgment, callousness, and disregard for the safety and welfare of others.

¶ 17 Dr. Leavitt's evaluation also included a risk assessment of the likelihood respondent would commit future acts of sexual violence. He conducted an adjusted actuarial risk assessment, scoring respondent on a couple of actuarial risk instruments: the Static-99 and the Minnesota Sex Offender Screening Tool Revised. Respondent's Static-99 score was seven, a high risk category. Dr. Leavitt also administered the Minnesota Sex Offender Screening Tool-revised, and respondent's score of 11 also placed him in the category of high risk. Dr. Leavitt saw evidence of several dynamic risk factors, in particular, evidence of deviant sexual interest with respect to

sexualized violence. He also observed indications of chronic general self-regulation deficiencies with respect to overall impulse control and impulsivity, and difficulty in controlling anger.

¶ 18 In Dr. Leavitt's opinion within a reasonable degree of psychological certainty, respondent had been convicted for a sexually violent offense, he had a mental disorder as defined by the Act, there was a substantial probability of respondent committing future acts of sexual violence because of his mental disorders, and he was a SVP as defined in the Act.

¶ 19 Dr. Steven Gaskell testified he was certified by the Illinois Sex Offender Management Board, was a clinical member of the Association for the Treatment of Sexual Abusers, and had performed 433 evaluations of sex offenders for the DHS. In June and July 2008, Dr. Gaskell evaluated respondent to determine whether or not he met the criteria for being a sexually violent person. Dr. Gaskell began the evaluation by looking at the DOC master file, "which contains criminal history information, police reports, Department of Corrections information, including mental health records, medical records, disciplinary records," as well as DHS facility records. When performing the evaluation, Dr. Gaskell relied on those records, which he testified were documents reasonably relied upon by other experts in his field. He read everything that was in the master file but did not do an investigation above and beyond that. Dr. Gaskell also spoke with respondent in a videotaped interview on July 17, 2008, at the Rushville Treatment and Detention Facility. Dr. Gaskell prepared a written report as a result of his evaluation of respondent. Between completion of his evaluation and the trial, Dr. Gaskell reviewed updated records from the treatment and detention facility.

¶ 20 In reaching his opinion, Dr. Gaskell considered respondent's criminal history. This included respondent's plea of guilty to aggravated criminal sexual assault and aggravated

kidnapping in case number 92 CR 24336. Aggravated criminal sexual assault was categorized as a sexually violent offense. Over respondent's objection, Dr. Gaskell testified to the facts of respondent's conviction in that case in which an excessive amount of force was used, including respondent placing shoe laces or a belt around the victim's neck resulting in contusions, abrasions and lacerations. In his interview with Dr. Gaskell, respondent gave his own version of the offense, denying that any sexual assault occurred. Dr. Gaskell also considered respondent's plea of guilty to aggravated criminal sexual assault in case number 93 CR 319 and respondent's version of the incident in which he claimed the victim consented to have sex with him in exchange for crack cocaine.

¶ 21 Dr. Gaskell also considered respondent's 2005 conviction following a bench trial in case number 03 CR 14308. Dr. Gaskell believed respondent had been charged with aggravated criminal sexual assault and criminal sexual assault in that case and was convicted of aggravated criminal sexual abuse. Dr. Gaskell testified to the facts of the case as shown by the records he reviewed, but he did not identify the specific records relating the facts of that conviction. His summary of the facts underlying that conviction were substantially the same as Dr. Leavitt's testimony. When interviewed by Dr. Gaskell, respondent stated that he and the victim had been having sex for six months and that when they were driving around "they messed around sexually," but he denied that there had been a sexual assault.

¶ 22 During the course of the evaluation, Dr. Gaskell also considered respondent's behavior in prison, namely, that he had both major and minor rule infractions and that on four occasions respondent had been placed in segregation for 30 days. Respondent also had two mental health

evaluations while in the DOC. During one of them he admitted to forcing a 40-year-old victim to have sex, and in the other he admitted forcing a 43-year-old victim to have sex.

¶ 23 Dr. Gaskell also considered respondent's behavior while he was in the custody of the DHS. During that period respondent had six major and seven minor rule violations, most significantly the major violations consisted of physical aggression, lying, staff manipulation, fighting, attempted fighting, and dangerous disturbance. The minor violations were anger and threatening staff. Since being at the DHS, respondent had had no sex offender treatment; he completed only an orientation group introduction to what treatment would be like but made several excuses not to be treated. Dr. Gaskell's evaluation also considered respondent's convictions for nonsexual offenses. In 2002 respondent was convicted of possession of a controlled substance and was sentenced to two years in the DOC.

¶ 24 Dr. Gaskell's evaluation included administering to respondent a psychosexual test called the Multiphase Sex Inventory (MSI) Two. Comparing it with other known groups of individuals also tested, respondent's test showed a commonality of thinking and behavior highly similar to the child molester group and the rapist group. With respect to the allegations against him, respondent's test showed he blamed the victims, alleging they were inviting or enjoying the sex play and blaming them because they were "loose" or "easy." Respondent told Dr. Gaskell that all the victims in his cases were addicts who thought they were owed something.

¶ 25 As part of his evaluation, Dr. Gaskell relied upon the DSM-IV-TR in diagnosing respondent with paraphilia not otherwise specified, sexually attracted to non-consenting females, cannabis abuse in a controlled environment, and personality disorder not otherwise specified with antisocial and narcissistic traits. Both the paraphilia and the personality disorder were

mental disorders under the Act; both were acquired or congenital mental conditions affecting the emotional or volitional capacity that predispose a person to engage in acts of sexual violence; and both seriously affected respondent's ability to control his sexually violent behavior. Respondent had a tendency to physically assault others as part of the antisocial traits of his personality disorder.

¶ 26 Dr. Gaskell evaluated respondent for risk of sexually reoffending by using different actuarial instruments: the Static-99, Static-99R, and MnSOST-R. Respondent scored a seven on the Static-99, a six on the Static-99R, and an eight on the MnSOST-R; all three were in the high-risk range for reoffending. In Dr. Gaskell's opinion within a reasonable degree of certainty, respondent was substantially probable to engage in future acts of sexual violence and met the criterion of a sexually violent person under the Act.

¶ 27 Prior to resting its case in chief, the State moved the court to admit in evidence Dr. Leavitt's written evaluation report of July 31, 2006, and Dr. Gaskell's written evaluation report. Respondent's counsel objected to their introduction and the court denied the State's motion.

¶ 28 The defense presented the testimony of Dr. Romita Sillitti, a doctor of psychology and a licensed clinical psychologist. Dr. Sillitti conducted two face-to-face interviews with respondent totaling seven hours. In formulating her opinion based on her sex offender evaluation of respondent, Dr. Sillitti reviewed "extensive documentation" regarding respondent's history: "his master IDOC file, paperwork from police reports, documentation from his medical file[,] *** transcripts of court proceedings, depositions," and "previous evaluations from Dr. Leavitt, Dr. Gaskell, and Dr. Kurt Witherspoon"; "whatever documents the State had or I was provided

with." Those were materials customarily relied upon by clinical psychologists to form opinions in SVP and sex offender cases.

¶ 29 Dr. Sillitti learned from those materials about respondent's convictions in 1994 in two separate cases of aggravated criminal sexual assault and his conviction in 2005 for aggravated criminal sexual abuse. Dr. Sillitti discussed the facts of the 2005 case with respondent, who admitted having vaginal sexual intercourse and other forms of sex with the victim but denied that any sexual offense occurred. Respondent told her he had attended a party at the victim's boyfriend's house where the victim was present. They were playing cards. Then he decided he was going to go to buy cigarettes and the victim wanted to ride with him, in his opinion because he possessed drugs that she wanted. They drove to the victim's girlfriend's house where the girlfriend showed some sexual interest in him. "During the drive back with the victim, respondent indicated they did have sexual intercourse, but that afterwards the victim got angry because he wanted to go back to the girlfriend's house. They had an altercation during which he became very angry, kicked her out of the car and kicked her repeatedly in between the legs, which led to his conviction for criminal sexual abuse."

¶ 30 On cross-examination, Dr. Sillitti was questioned about the facts of the 2005 aggravated criminal sexual abuse conviction. The reports Dr. Sillitti received indicated that respondent forced the victim to disrobe at gunpoint and raped her, he had both vaginal and anal sex with her, and he also forced her to perform oral sex on him. When interviewed by the police, he told the police that the victim "liked it rough." Dr. Sillitti did not identify the reports from which she gleaned those facts. When Dr. Sillitti spoke with respondent, he did not admit to forcing the victim to have sex. In each of the three violent sexual offenses of which he was convicted,

respondent denied to Dr. Sillitti that any sexual offense had occurred. However, Dr. Sillitti testified that "in terms of believing whether these women were raped, yes, I believe they were raped."

¶ 31 Dr. Sillitti also testified without objection on cross-examination to the facts of respondent's other two sex offense convictions that she learned from the materials she had received. When she interviewed respondent about case number 92 CR 24336, he told her no sexual assault had occurred. In case number 93 CR 319, even though respondent had pled guilty, he told Dr. Sillitti that he did not force the victim in that case to have sex. Dr. Sillitti testified: "I wasn't there so I can't say what happened, but I believe that these women were hit, beaten and hurt in all three of these situations."

¶ 32 In Dr. Sillitti's opinion, based on respondent's history and information, he did not meet the criteria for paraphilia NOS, non-consent. In reaching that opinion, she relied on "the facts of the convictions for his three offenses, also his sexual history and based on that, there was no evidence of the recurring fantasies or evidence that rape was a necessary and specific stimulus for him to become sexually aroused, or that it was a major form of his sexual activity." A significant portion of Dr. Sillitti's testimony was spent noting the criticism leveled by others in the field of using paraphilia NOS, non-consent as a diagnosis in SVP cases. She testified that paraphilia NOS, non-consent was not a diagnosis widely accepted by the general psychiatric community.

¶ 33 Respondent told Dr. Sillitti he identified himself as having no risk of re-offending. In Dr. Sillitti's opinion, there was no significant chance for respondent re-offending. Respondent scored a seven on the Static and six on the Static 99R. Both scores fell into the high-risk category for re-

offending. She also scored respondent on the Static 2002R; given his age (58 years old), his score of six placed him in the moderate range. She predicted there would be a decrease in that score when respondent turned 60.

¶ 34 Following her review of everything, Dr. Sillitti made a diagnosis as to conditions under the DSM-IV-TR that respondent suffered from cannabis abuse in a controlled environment, *i.e.*, given his history, he had a propensity to use marijuana. She also diagnosed respondent with antisocial personality disorder, which is a pervasive pattern of violation of and disregard for the rights of others, usually from the age of 15. A person with that disorder repeatedly fails to conform his behavior as indicated by arrest, exhibits impulsive failure to plan ahead, has irritability and aggressiveness, lacks remorse, and exhibits problematic behavior. Dr. Sillitti opined that a personality disorder did not qualify respondent for commitment under the Act. In her opinion within a reasonable degree of psychological certainty, cannabis abuse in a controlled environment does "not at all" qualify him for commitment under the Act. She did not diagnose respondent with paraphilia. Dr. Sillitti did diagnose him with narcissistic personality disorder which was the pattern of grandiose, self-esteem need for admiration and lack of empathy. That condition did not qualify respondent for commitment under the Act. A personality disorder in and of itself could not be the basis for commitment under the Act.

¶ 35 Dr. Sillitti's opinion within a reasonable degree of psychological certainty was that respondent did not meet criteria for commitment under the Act.

¶ 36 Respondent testified in his own behalf. He was 58 years old. He detailed his various physical conditions and medical diagnoses, and asserted that he suffered erectile dysfunction which made his commitment as a sexually violent person unnecessary. After his arrest for the

2003 offense resulting in his 2005 conviction, he had a religious conversion while in jail. He admitted he had declined participation in treatment at DHS; he went to "a 90-day thing [which was] the beginning of treatment." He was the only one there who had an adult victim and everyone else had a child or baby they had molested. However, he would not object to treatment that did not offend his religious beliefs. He also testified he has a GED and many useful skills.

¶ 37 In the case resulting in respondent's 2005 conviction, he testified before Judge Bowie that he had known the complainant for seven or eight months before the 2003 incident in question and had had sexual intercourse with her about 20 to 30 times. On the night in question he had consensual intercourse with her three different times. He then learned after viewing a Board of Health card in her possession that she may have exposed him to HIV. He got out of the car, went around to her side of the car, and "snatched" her out of the car. He kicked her in the crotch between her legs.

¶ 38 Following closing arguments, the trial court found the State proved beyond a reasonable doubt that respondent previously had been convicted of a sexually violent offense, that he had a mental disorder, namely, paraphilia not otherwise specified (NOS), non-consent, and that because of his mental disorder it was substantially probable that he was likely to engage in future acts of sexual violence.

¶ 39 Respondent filed a posttrial motion which argued, *inter alia*, that hearsay evidence was improperly admitted at respondent's trial, including the following contention:

> "F. The Court improperly allowed as "Official Statements" other hearsay and double hearsay evidence regarding the facts involving Respondent's prior convictions. These self-serving documents, police reports and other materials

were prepared by the State and were inherently unreliable, and did not provide the State's witnesses with fair or reasonable information from which to support their conclusions regarding Respondent."

¶ 40 Respondent's posttrial motion was denied. The trial court ordered respondent committed to the custody of the DHS.

¶ 41 On appeal, respondent contends that the trial court erred in allowing the disclosure of facts or data about his 2003 offense which resulted in his conviction of aggravated criminal sexual abuse. Specifically, respondent challenges any facts or data taken from two "unreliable hearsay" sources: (1) a complaint for preliminary examination (725 ILCS 5/111-3 (West 2002)) prepared for the 2003 case, and (2) the required post-sentencing statement from the State's Attorney to the DOC, including, among other things, "the facts and circumstances of the offense for which the person was committed" (commonly referred to as a pen letter) (730 ILCS 5/5-4-1(d) (West 2005)).

¶ 42 The State contends that no error occurred but if any possible error was committed, there is no reasonable probability that the trial court would have reached a different outcome even without the alleged information from the two subject documents regarding the 2003 offense. For the reasons that follow, we agree with the State that no error occurred but that any possible error was harmless.

¶ 43 To establish that respondent was a SVP, the State was required to prove beyond a reasonable doubt that (1) he was convicted of a sexually violent offense, (2) he had a mental disorder, and (3) the mental disorder made it substantially probable that he will engage in acts of sexual violence. 725 ILCS 207/5(f), 35(d) (West 2012); *In re Commitment of Fields*, 2014 IL

115542, ¶ 20. When reviewing a claim challenging the sufficiency of the evidence, we consider whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements proven beyond a reasonable doubt. *Id.*

¶ 44 Expert testimony is generally governed by Illinois Rule of Evidence 703 (eff. Jan. 1, 2011), which provides as follows:

> "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by the experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."

¶ 45 Respondent argues that the information in the complaint for preliminary examination and the pen letter are "unreliable" and "not reasonably relied upon" under Rule 703 and they were not independently admissible because they constituted unreliable hearsay. Notably, neither document is in the record on appeal for our review and neither document was admitted at trial. However, the parties do not dispute that the two subject documents were included in the materials reviewed by all three experts and the experts agreed at trial that the materials they reviewed were customarily relied upon in this field.

¶ 46 We find there was no error in disclosing or relying on the alleged information in the subject two documents and, thus, the court did not abuse its discretion in accepting expert opinion based on those documents. Even assuming the documents misrepresented the nature of respondent's 2003 criminal sexual offense or the resulting 2005 conviction, we agree with the State that experts in non-legal fields reasonably may rely on facts that have not been proven true

beyond a reasonable doubt. "Under settled evidence law, an expert may express an opinion that is based on facts that the expert assumes, but does not know, to be true." *Williams v. Illinois*, __ U.S __, __, 132 S. Ct. 2221, 2228 (2012). Trial courts have been found not to have abused their discretion in permitting the State to elicit from the experts facts arising from a crime victim's version of an alleged criminal offense not resulting in a conviction. Thus, in another SVP adjudication case, *In re Commitment of Hooker*, 2012 IL App (2d) 101007, ¶ 78, the reviewing court concluded that "though respondent's niece ultimately decided not to press charges for respondent's alleged assault of her, there was no error in the court permitting the State to elicit from the experts that she claimed an assault occurred." See also *In re Detention of Isbell*, 333 Ill. App. 3d 906, 910 (2002); *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 34.

¶ 47 Respondent contends that the content of the complaint for preliminary examination was unreliable because it was far from objective and contained allegations which, he surmises, were "grounded in statements made by the complaining witness." As noted above, however, the experts reasonably could consider and rely on a complainant's allegations. Moreover, this was also probably true of many other documents in the materials each expert reviewed, including police reports, victim statement, and transcripts about which respondent does not complain. An experienced expert witness such as Dr. Leavitt and Dr. Gaskell would understand that a complaint for preliminary examination was a pretrial document setting out the State's version of the offense (725 ILCS 5/102-8, 102-17 (West 2002)) and, as respondent notes, was most likely and obviously based on the victim's account. As to the pen letter, presumably it too was based on the victim's version of events which also would have been found in police reports and victim statements. Respondent complains that the pen letter was inherently unreliable because it was a

posttrial document which stated incorrectly that respondent had been convicted of raping the victim when in fact he had been acquitted of that charge. However, all of the experts testified to a clear understanding of the nature of respondent's 2005 conviction, namely, that respondent had been charged, *inter alia*, with aggravated criminal sexual assault but was found guilty only of aggravated criminal sexual abuse.

¶ 48 We disagree with respondent's contention that the State's experts "relied heavily upon the alleged facts which they gleaned from the pen letter and complaint" to form their opinions that he suffered from paraphilia NOS, non-consent. There was no mention of those two documents in the experts' trial testimony, let alone testimony that those documents were the sole source of their facts about respondent's 2005 conviction. The subject documents were but two sources in a very large amount of materials reviewed by all of the experts. The records which a SVP expert reviews may include a respondent's "DOC master file, police records, court records, probation and parole reports, criminal history, mental health records, and treatment records." *In re Commitment of Trulock*, 2012 IL App (3d)110550, ¶ 13. A DOC "master file includes items such as disciplinary reports and medical and psychiatric evaluations, and may include criminal history reports as well as details regarding the crime for which the individual is currently incarcerated." *Fields*, 2014 IL 115542, ¶ 6 n.2. Here, all three experts testified that the materials they reviewed included the DOC master file and police reports. Dr. Leavitt testified that the information he obtained about respondent's felony violent offense convictions came from "the police report or arrest report." He did not look at the information therein as being true or false, but he considered the information to be valid and credible. Dr. Leavitt also testified that respondent's DOC master file included victim statements. Dr. Gaskell and Dr. Sillitti did not specify the sources of their

information about the 2005 conviction, but it is possible if not probable that they included sources other than the two subject documents. Dr. Sillitti testified that the "extensive documentation" she reviewed also included transcripts of court proceedings.

¶ 49 Even if there were any error in the experts' reliance on the two documents in question, respondent's objection to only two of many documents containing the victim's version of events does not establish harmful error. In challenging only the data from the two documents, respondent has not assigned error to the trial court's pretrial ruling that police reports or other materials would be admissible to show the basis for the opinions of expert witnesses. Consequently, even if the two documents relating to the 2005 conviction were among the many documents and records relied on by the experts, it cannot be said that the experts relied heavily on those two documents in forming their opinions. Respondent has not shown that it was error for the State experts to base their opinions that he was a SVP in part on the facts of his 2005 conviction.

¶ 50 Counterbalancing the sources containing the victim's version of the 2003 sexual encounter was respondent's testimony giving his version of the incident. Respondent's trial counsel argued that in 2005 when Judge Bowie found respondent guilty only of aggravated criminal sexual abuse, the judge must have concluded that no sexual penetration had occurred. However, respondent testified at the commitment trial that in fact he had sexual intercourse with the victim, though he stated the sex was consensual. Dr. Sillitti testified that respondent also told her that he had sexual intercourse with the victim. Despite respondent's claim that the victim had consented to the sex, Dr. Sillitti testified she believed that in all three of respondent's

convictions, the victims had been raped and "were hit, beaten and hurt." The circuit court also did not believe respondent's exculpatory testimony about the 2003 offense.

¶ 51 Respondent's assignment of error is based on his claim that the two subject documents "provided the necessary facts to support the State's opinion testimony that [respondent] suffered from a mental disorder." However, any error resulting from the two documents was harmless beyond a reasonable doubt where other evidence supported the opinions of the State's experts. *In re Commitment of Field*, 349 Ill. App. 3d 830, 838-39 (2004). Significantly, the court heard testimony from all three experts about the facts underlying respondent's convictions for two other sexually violent offenses; he had pleaded guilty in 1994 to two unrelated 1992 aggravated criminal sexual assaults. We conclude that the allegedly inadmissible details of respondent's 2005 conviction found in the two challenged documents were not necessary to establish that respondent suffered from a mental disorder under the Act.

¶ 52 Respondent acknowledges Dr. Leavitt's testimony that it was important to consider the details of any underlying sexual offense in order to reach the diagnosis of paraphilia. Significantly, respondent does not contend that the experts' testimony concerning the facts of the 1994 convictions for aggravated criminal sexual assault constituted inadmissible hearsay. However, respondent argues that striking the impermissible hearsay and unreliable details of his 2005 conviction contained in the two subject documents would be fatal to the State experts' diagnosis of paraphilia NOS, non-consent, nonexclusive type, because both State experts testified that that specific diagnosis required a history of recurrent sexual arousing, fantasies, urges or behavior involving sexual activity with a non-consenting person over a period of at least six months. Respondent reasons that his only other sexually violent offense convictions, in 1994,

arose from rapes he committed two months apart in 1992 and, thus, the diagnosis failed to meet the six-month requirement. Respondent's argument is refuted by Dr. Leavitt's testimony that respondent's criminal history revealed "a long-standing pattern going back now at least 20 years" in which respondent sought out females, either acquaintances or strangers, and initiated acts of intimidation, threats, attempts to restrain, or use of a weapon to sexually assault the women through a variety of sexually deviant behaviors including attempts to force his victims to perform oral sex, as well as acts of anal and/or vaginal intercourse.

¶ 53 The opinions of the State's experts were also based on respondent's self-reported rape fantasies and fantasies of forcing partners to engage in acts of violence, nonsexually related criminal record, his history of substance abuse, his behavior while in the custody of the DOC and the DHS, and his failure to participate in sex offender treatment. Dr. Gaskell also interviewed respondent. Both State experts opined that respondent also suffered from antisocial personality disorder and that it was substantially probable respondent would engage in future acts of sexual violence. We conclude the evidence established beyond a reasonable doubt that respondent suffered from paraphilia which made it substantially probable he would engage in future acts of sexual violence and that any error in admitting testimony of facts or data derived from the two challenged documents was harmless.

¶ 54 Respondent contends that even if the evidence that he suffered from paraphilia was sufficient, he was prejudiced nonetheless by the improper admission of the contents of the two challenged documents. In support of his contention, he relies on *In re Jovan A.*, 2014 IL App (1st) 103835. There, the circuit court found the juvenile respondent to be delinquent based on his alleged theft of a bicycle. The circuit court's judgment was reversed on appeal on the basis that

the court had improperly relied on hearsay evidence for the truth of the matter asserted to establish the ownership of the bicycle. *Id.* at ¶¶ 41-43.

¶ 55 In contrast, here the contents of the challenged documents were not hearsay because they were not admitted to prove the truth of the matter asserted. During pretrial litigation on respondent's motions *in limine,* one motion sought to exclude all hearsay. Ruling that "expert witnesses will be permitted to testify to the substance of the documents, reports, transcripts, even police reports" which "are of a type to be reasonably relied upon by experts in the field" that otherwise would be inadmissible hearsay, the circuit court promised to take steps at trial if the State sought to utilize inadmissible hearsay for the truth of the matter asserted rather than as a basis for an expert witness's testimony. The court consistently made the same ruling throughout the trial. For example, with respect to the reports and documents that Dr. Sillitti said were of the type reasonably relied upon by experts in her field, the court ruled she could be examined or cross-examined on their content. The court stated: "They will not be as they haven't been throughout this trial, received for the truth of the matter asserted, but received for gauging the weight to be given to any witness' opinion testimony."

¶ 56 At the close of the commitment trial, the court found that respondent previously had been convicted of a sexually violent offense and that paraphilia NOS, non-consent, was a legitimate diagnosis notwithstanding opinions of some experts in the field as noted by Dr. Sillitti.
The court found that the State had proven beyond a reasonable doubt respondent suffered from paraphilia, that as a result of that mental disorder it was substantially probable respondent would be likely to engage in acts of sexual violence in the future, and as a consequence the State had proven beyond a reasonable doubt that respondent was a sexually violent person. Respondent

concludes that in finding him to suffer from one mental disorder, paraphilia, the court found, *sub silentio*, that the State had failed to prove beyond a reasonable doubt that respondent suffered from any other mental disorder, such as the personality disorder or substance abuse disorder about which both State experts testified. We disagree. To establish that a person who has been adjudicated as having committed a sexually violent offense is a SVP, the Act requires only that such person suffers from "*a* mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." (Emphasis added.) 725 ILCS 207/5(f) (West 2012). Consequently, the court was not required to make a finding about any additional mental disorder.

¶ 57 Respondent also contends that, absent paraphilia, there was insufficient evidence that either his personality disorder or his substance abuse was a mental disorder as required by the Act. After the parties filed their briefs, respondent filed and we granted his motion to cite as additional authority four New York State cases holding that a diagnosis of antisocial personality disorder, plus evidence of sexual crimes, was insufficient to support civil commitment in the absence of a qualifying mental disorder (*e.g.*, paraphilia). The cases were based on and interpreted New York's Mental Hygiene Law article 10 (N.Y. Mental Hyg. Law § 10.03 (McKinney)), a statute allowing for civil commitment of sex offenders that is only similar to our Illinois SVP Act. We note that court decisions from sister state courts are not binding on Illinois and are not persuasive because they do not reflect Illinois law. *In re Scarlett Z.-D.*, 2015 IL 117904, ¶ 55. We do not find helpful any of the cited cases, and accordingly we decline to discuss them because in the instant case the evidence established that respondent suffered from paraphilia NOS, non-consent, a qualifying mental disorder.

¶ 58 We conclude respondent has failed to demonstrate that the circuit court erred in admitting unreliable testimony about respondent's 2005 conviction based on the two challenged documents or, if error occurred, that the evidence was insufficient to sustain the judgment below. Accordingly, we affirm the judgment of the circuit court.

¶ 59 Affirmed.