

NOTICE

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FILED

January 27, 2015
Carla Bender
4th District Appellate
Court, IL

2015 IL App (4th) 140110-U

NOS. 4-14-0110, 4-14-0111, 4-14-0112, 4-14-0113 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
MARK D. SMITH,	)	Nos. 09CF1121
Defendant-Appellant.	)	10CM301
	)	11CM1711
	)	11CF1048
)	
	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the State proved defendant to be a sexually dangerous person beyond a reasonable doubt.

¶ 2 Following an October 2013 jury trial, defendant, Mark D. Smith, was found to be a sexually dangerous person under the Sexually Dangerous Persons Act (Act) (725 ILCS 205/0.01 to 12 (West 2012)) and was civilly committed to the Illinois Department of Corrections for treatment. Following a February 2014 hearing, defendant's amended motion for a new trial was denied.

¶ 3 Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that he was a sexually dangerous person. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On March 11, 2010, the State charged defendant by complaint in Sangamon County case No. 10-CM-301 with resisting a peace officer (720 ILCS 5/31-1 (West 2010)) for his act of resisting arrest on January 31, 2010. On March 18, 2010, the State charged defendant by indictment in Sangamon County case No. 09-CF-1121 with aggravated domestic battery (720 ILCS 5/12-3.3 (West 2008)) (count I), domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2008)) (count II), and unlawful restraint (720 ILCS 5/10-3 (West 2010)) (count III). (The indictments superseded the December 31, 2009, complaints charging the same offenses.) These charges stemmed from a December 30, 2009, incident between defendant and a household member.

¶ 6 On December 20, 2011, the State charged defendant by complaint in Sangamon County case No. 11-CM-1711 with resisting a peace officer (720 ILCS 5/31-1 (West 2010)) for his act of resisting arrest on December 14, 2011. On December 29, 2011, the State charged defendant by a seven-count information in Sangamon County case No. 11-CF-1048 with two counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2008)) (counts I, III), three counts of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2010)) (counts II, IV, V), and two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.60(c)(1)(i) (West 2010)) (counts VI, VII). These charges stemmed from alleged incidents between defendant and four minor victims which occurred on several occasions between October 1, 2009, and November 15, 2011.

¶ 7 Specifically, in Sangamon County case No. 11-CF-1048, count I alleged defendant committed the offense of predatory criminal sexual assault between October 1, 2009, and December 31, 2009, by placing his finger in the vagina of S.B., who was under 13 years of age. Count II alleged defendant committed the offense of criminal sexual assault between

September 1, 2011, and November 1, 2011, by placing his penis in the vagina of S.B., who was at least 13 years of age but under 17 years of age. Count III alleged defendant committed the offense of predatory criminal sexual assault between May 1, 2009, and December 31, 2010, by placing his finger in the vagina of A.B., who was at least 13 years of age. Count IV alleged defendant committed the offense of criminal sexual assault between March 25, 2010, and June 30, 2011, by placing his finger in the vagina of S.B., who was at least 13 years of age but under 17 years of age. Count V alleged defendant committed the offense of criminal sexual assault between July 1, 2011, and November 15, 2011, by placing his finger in the vagina of S.B., who was at least 13 years of age but under 17 years of age. Count VI alleged defendant committed the offense of aggravated criminal sexual abuse between July 1, 2011, and September 2011, by touching the body of A.C., who was under 13 years of age, for the purpose of his sexual arousal or gratification. Count VII alleged defendant committed the offense of aggravated criminal sexual abuse between December 26, 2010, and March 17, 2011, by rubbing the genitals of T.W., who was at least 13 years of age but under 17 years of age, for the purpose of his sexual arousal and he was at least five years older than T.W.

¶ 8 On August 15, 2012, the State filed an "Amended Petition To Proceed Under The Sexually Dangerous Persons Act" in the above cases. The petition noted, in part, that the seven-count information in Sangamon County case No. 11-CF-1048 was based on alleged incidents of "sexual penetration and/or sexual conduct with four different minor girls on different occasions." The petition further noted that the victim in Sangamon County case No. 09-CF-1121 was "a young adult female who was one of the juvenile victims [defendant] pled guilty to sexually abusing in Sangamon County case [No.] 03-CF-1283." The petition alleged defendant had previously been convicted of three counts of aggravated criminal sexual abuse involving three

minor girls in Sangamon County case No. 03-CF-1283, for which he served concurrent six-year prison terms. Additionally, the petition alleged defendant suffered from a mental disorder that had existed for more than one year. In accordance with section 4 of the Act (725 ILCS 205/4 (West 2012)), the trial court appointed psychiatrists, Dr. Terry Killian and Dr. Lawrence Jeckel, to conduct sexually-dangerous-person evaluations of defendant.

¶ 9 On October 7, 2013, defendant's civil commitment jury trial commenced. The State presented the testimony of Dr. Killian and Dr. Jeckel, both of whom testified as experts in the evaluation of sexually dangerous persons.

¶ 10 Dr. Killian testified that he conducted a two-hour interview of defendant on October 18, 2012. In addition to the interview, Dr. Killian received more than 250 pages of documents from the assistant State's Attorney, which included police reports and court documents concerning crimes of a sexual nature allegedly committed by defendant. Dr. Killian testified that his assistant reviewed these documents and provided him with a "thorough summary," which he considered in his evaluation of defendant. Dr. Killian stated this was his usual practice when he received a lot of documents. Dr. Killian explained that during his interviews, he obtains information from a defendant regarding his criminal history, periods of incarceration, substance-abuse history, social history, psychiatric history, and general medical history. He then determines their level of intellectual functioning and talks to them about the current allegations against them.

¶ 11 Dr. Killian testified that defendant had three convictions in 2003 for aggravated criminal sexual abuse. At the time of these offenses, defendant was 21 years old and the victims were 13, 14, and 15 years old. According to Dr. Killian, during his interview, defendant described his relationship with the three victims in 2003 as a "dating relationship"; stated he had

"ongoing sexual intercourse with all three"; and admitted to being involved with other women and girls at the same time.

¶ 12 Regarding the current allegations, Dr. Killian testified that the alleged incident between defendant and T.W. occurred when T.W. was 14 years old. T.W. reported that she was sleeping when defendant "reached under the cover and put his hand over her private over her pajamas and began to rub her for a few minutes." According to Dr. Killian, the alleged incident between defendant and A.B. occurred when A.B. was 13 years old. Dr. Killian stated that A.B. reported she was sleeping when defendant "unbuttoned her pants, put his hand in her pants, and reached down towards her vagina and worked his fingers eventually into her vagina." Dr. Killian further testified that the alleged incidents between defendant and S.B. occurred over a period of two years, when S.B. was 12, 13, and 14 years old. Dr. Killian stated that S.B. estimated she had sexual contact with defendant approximately 14 different times, which consisted primarily of defendant "with his fingers in her vagina." Dr. Killian further noted that S.B. reported defendant "asked her repeatedly for full intercourse, for anal sex, and oral sex, but she turned him down on those things. There was some fondling as well." According to Dr. Killian, the alleged incident between defendant and A.C. occurred when A.C. was 12 years old. A.C. reported that she was sleeping when defendant "lifted the corner of her shorts and put his hands inside of her shorts and underwear and rubbed her buttocks and then asked her if it felt good." Dr. Killian testified that defendant denied the current allegations during his interview, stating, "these four girls were conspiring together to have him sent away."

¶ 13 Dr. Killian noted defendant had a lengthy criminal history, including violent crimes and four orders of protection. Dr. Killian considered defendant's criminal history important because it could be indicative of an antisocial personality.

¶ 14 Dr. Killian testified that defendant admitted to having had approximately 50 sexual partners. He found this significant because "that was a lot of sexual partners given the relatively short period of time as an adult that he had been out on the streets and not incarcerated." He explained that "men who engage in *** high frequency sexual behavior are at a somewhat higher risk for re-offending than those who don't." Dr. Killian further testified that defendant told him he underwent a sex-offender evaluation in 2011 at the request of the Department of Children and Family Services. Dr. Killian reviewed that evaluation, which was conducted by Terry Campbell, a licensed clinical professional counselor. Dr. Killian stated that "Campbell's reports was based on [sic] apparently just on information he got from [defendant], and there were a number of things that [defendant] presented to Terry Campbell that were not quite accurate." According to Dr. Killian, defendant "pretty directly lied to Mr. Campbell" when he told him that he "had never been convicted of a sexually related offense," since defendant had been convicted of three sexually related offenses in 2003.

¶ 15 During the evaluation process, Dr. Killian used three actuarial instruments to assist him in determining the likelihood that defendant would sexually reoffend, including the Static-99, the Minnesota Sex Offenders Screening Tool (MnSOST) and the Rapid Risk Assessment for Screening Sex Offender Recidivism (RRASSOR). According to Dr. Killian, defendant's scores placed him in the moderate- to low-risk category on the Static-99; the moderate-risk category on the RRASSOR; and the high-risk category on the MnSOST. Dr. Killian testified that actuarial test scores, by themselves, are not sufficient for a sexually-dangerous-person determination and that such a finding should not be based exclusively on these scores.

¶ 16 Dr. Killian diagnosed defendant with pedophilia. He defined pedophilia as the sexual attraction to prepubescent children, generally age 13 and younger. Dr. Killian testified that pedophilia is a mental disorder that affects one's emotional and volitional capacity and predisposes a person to engage in the commission of sex offenses. Dr. Killian noted that defendant had "engaged in a lot of inappropriate sexual behavior over the years with pretty young girls, early, early teenage girls." According to Dr. Killian, defendant suffered from pedophilia for more than one year preceding the August 2012 sexually-dangerous-person petition.

¶ 17 Dr. Killian further opined that defendant "likely" suffered from antisocial personality disorder. He explained that antisocial personality disorder is "defined by widespread behavior in which the rights of others are violated without remorse" and is not specific to sexual disorders, although it may result in having difficulty controlling sexual behavior. Dr. Killian declined to make a formal diagnosis of antisocial personality disorder because he did not have information regarding whether defendant exhibited antisocial behavior prior to the age of 15—which is one of the requirements for making a diagnosis.

¶ 18 Dr. Killian opined to a reasonable degree of psychiatric certainty that defendant had a mental disorder, pedophilia, which existed for at least one year prior to the filing of the petition and that it was substantially probable defendant would engage in the commission of sex offenses in the future if he was not confined.

¶ 19 On cross-examination, Dr. Killian agreed with defense counsel that he did not personally review audio recordings of the victims' statements, videos of their interviews, or the police reports containing their allegations. Dr. Killian further agreed that "it's generally accepted in [his] field of practice with regard to these allegations that some children make up allegations

of abuse" or "can be led by adults to make false claims." Upon being shown a copy of Terry Campbell's assessment, Dr. Killian acknowledged that it referenced defendant's 2003 conviction for sexual conduct with a 14-year-old female, and thus, agreed his earlier testimony that defendant had lied to Campbell was incorrect. Dr. Killian further acknowledged that Campbell used the Static-99 in his 2011 evaluation of defendant and, according to Campbell's report, defendant scored in the low-risk category.

¶ 20 Dr. Jeckel testified that he interviewed defendant on October 5, 2012, for 2 hours and 15 minutes. In addition to the interview, Dr. Jeckel reviewed 60 to 80 pages of police reports and Terry Campbell's report. Regarding the 2003 sex offenses, Dr. Jeckel found it important that the victims were of a similar age (13, 14, and 15) and that they "were vulnerable girls who were not being cared for necessarily in their families." Dr. Jeckel explained that defendant's *modus operandi* is to "exploit[] weakness in others to get his needs met, and that he exploited young post pubescent girls and has done that repeatedly." Regarding the 2011 incidents, Dr. Jeckel summarized the incidents as stated above. Dr. Jeckel further testified that S.B. initially denied any sexual contact with defendant and he found it significant that some family and friends considered defendant and S.B. "a couple." When asked how the victims' ages factored into his evaluation, Dr. Jeckel stated, "given [defendant's] prior history of sexual relations with girls of the same age group, it appears to be a continuation of a pattern."

¶ 21 Dr. Jeckel testified that he utilized the Static-99 and the MnSOST actuarial instruments to assist him in determining defendant's likelihood to sexually reoffend. Based on the results, defendant scored in the moderate-risk category on one test and the moderate- to high-risk category on the other. Dr. Jeckel explained that, in his opinion, the actuarial instruments "are imperfect. I don't think they outweigh clinical judgment ***. I think clinical judgment is

still important, but I think [the actuarial instruments] are helpful in pointing out important indicators, historic indicators in these sorts of cases."

¶ 22 Dr. Jeckel also considered nonsexual crimes committed by defendant to determine whether defendant exhibited behavior consistent with antisocial personality disorder. Dr. Jeckel was most concerned with the 2009 assault against a victim whom he had been convicted of sexually abusing in 2003. He also found it significant that defendant had a history of domestic violence with his first wife. Dr. Jeckel opined that defendant was "a very aggressive fellow." Dr. Jeckel further noted that defendant had a history of resisting arrest, which indicated to him he is capable of violating the norms of society.

¶ 23 Dr. Jeckel diagnosed defendant with antisocial personality disorder and possible alcohol abuse. He explained that antisocial personality disorder is "a pattern of abnormal thinking and behavior that is enduring. It goes through the life cycle usually of people. It is shown [through] aggressiveness, fighting, manipulation, violation of social norms, lack of empathy, and lack of guilt." Dr. Jeckel testified that antisocial personality disorder is a mental disorder that affects the emotional or volitional capacity of a person. He continued, "[i]t is a distortion of one's thinking and feeling that causes one to act inappropriately and aggressively with others, not be able to work or love, to exploit weaknesses, to even assault others when frustrated." Dr. Jeckel further testified that antisocial personality disorder is a mental disorder which results in serious difficulty controlling sexual behavior. He noted that defendant "has very poor impulse control. He doesn't restrain himself from making sexual advances toward girls and not respecting their privacy." According to Dr. Jeckel, defendant "fulfills all of the criteria of [a]ntisocial [p]ersonality [d]isorder" and has exhibited antisocial personality behavior "going all the way back to school where he was expelled for fighting."

¶ 24 Dr. Jeckel opined to a reasonable degree of psychiatric certainty that defendant was substantially likely to engage in future sex offenses if not confined.

¶ 25 On cross-examination, Dr. Jeckel testified that defendant's 13-, 14-, and 15-year-old victims were postpubescent rather than prepubescent. He declined to make a pedophilia diagnosis based on his opinion that defendant's preference was toward postpubescent girls.

¶ 26 Dr. Jeckel agreed that one requirement for making a diagnosis of antisocial personality disorder is that there must be an onset of symptoms prior to the age of 15. He acknowledged defendant did not have a juvenile arrest record. On redirect-examination, Dr. Jeckel testified that antisocial personality disorder is a "conduct disorder," and it is not a requirement for a person to have a juvenile or criminal conviction to be diagnosed with antisocial personality disorder. According to Dr. Jeckel, defendant's history of fighting and getting expelled from school in eighth grade for fighting was "a violation of norms." He agreed with the State that based on defendant's behavior, antisocial personality disorder was a proper diagnosis. On re-cross-examination, Dr. Jeckel acknowledged he did not know whether defendant got in fights or was expelled prior to the age of 15.

¶ 27 After hearing all of the evidence, the jury was instructed as to five propositions that the State was required to prove in order to find defendant was a sexually dangerous person beyond a reasonable doubt. Those propositions included, in relevant part, that (1) defendant suffered from a mental disorder that affected his emotional or volitional capacity and predisposed him to engage in the commission of sex offenses and (2) it was substantially probable defendant would engage in the commission of sex offenses in the future if not confined. Following deliberations, the jury found defendant was a sexually dangerous person. On October 9, 2013, the trial court entered its commitment order. On November 8, 2013, defendant filed a

motion for a new trial. On February 10, 2014, defendant filed an amended motion for a new trial, which the trial court denied following a hearing that same day.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, defendant asserts that the State failed to prove beyond a reasonable doubt he is a sexually dangerous person. Specifically, defendant argues the State failed to prove that (1) he suffered from a mental disorder that affected his emotional or volitional capacity for more than one year preceding the sexually-dangerous-person petition and (2) it is substantially probable he will engage in the commission of sex offenses in the future if not confined.

¶ 31 Under section 1.01 of the Act (725 ILCS 205/1.01 (West 2012)), the State must prove defendant has (1) a mental disorder that existed for more than one year prior to the filing of the sexually-dangerous-person petition; (2) exhibited criminal propensities to commit sex offenses; and (3) demonstrated propensities toward acts of sexual assault or molestation of children. In addition, our supreme court has held that the elements of section 1.01 of the Act must "be accompanied by an explicit finding that it is 'substantially probable' the person subject to the commitment proceeding will engage in the commission of sex offenses in the future if not confined." *People v. Masterson*, 207 Ill. 2d 305, 330, 798 N.E.2d 735, 749 (2003). A showing of substantial probability does not require proof a defendant will actually reoffend. *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 48, 982 N.E.2d 953. Although sexually-dangerous-person proceedings are civil in nature, the State's burden of proof is beyond a reasonable doubt. 725 ILCS 205/3.01 (West 2012).

¶ 32 On review, we will affirm a finding that a defendant is a sexually dangerous person if, after considering all the evidence, any rational trier of fact could have concluded the

State proved the essential elements beyond a reasonable doubt. *Hunter*, 2013 IL App (4th) 120299, ¶ 44, 982 N.E.2d 953. We " 'will not substitute [our] judgment for that of the trial court or jury on the factual issues that have been raised in the petition, unless the evidence is so improbable as to raise a reasonable doubt that the defendant is a sexually dangerous person.' " *Id.* (quoting *People v. Bailey*, 405 Ill. App. 3d 154, 171, 937 N.E.2d 731, 745 (2010)).

¶ 33 A. Mental Disorder

¶ 34 Defendant first asserts that the State failed to prove he had a mental disorder for more than one year prior to the August 15, 2012, sexually-dangerous-person petition.

¶ 35 Initially, we note that defendant argues reasonable doubt exists due to the fact Dr. Killian diagnosed pedophilia but not antisocial personality disorder, while Dr. Jeckel diagnosed antisocial personality disorder but not pedophilia. According to defendant, this conflict in the opinions of Dr. Killian and Dr. Jeckel creates a reasonable doubt as to whether he suffers from either pedophilia or antisocial personality disorder.

¶ 36 This court addressed a similar issue in *People v. Antoine*, 286 Ill. App. 3d 920, 676 N.E.2d 1374 (1997). In *Antoine*, the two psychiatrists appointed to conduct a sexually-dangerous-person examination of the defendant disagreed as to whether he was a sexually dangerous person. *Id.* at 921-22, 676 N.E.2d at 1375. One psychiatrist concluded that the defendant suffered from sexual paraphilia, a mental disorder that met the statutory criteria for a sexually dangerous person. *Id.* at 921, 676 N.E.2d at 1375. The other psychiatrist concluded that the defendant suffered from a "character disorder," rather than a mental disorder, and thus, did not meet the statutory criteria for a sexually dangerous person. *Id.* at 921-22, 676 N.E.2d at 1375. Based on the conflicting psychiatric opinions, the trial court granted the defendant's motion for involuntary dismissal of the sexually-dangerous-person petition. *Id.* at 922, 676

N.E.2d at 1375. On appeal, this court noted, "[n]othing in [section 4 of the Act] indicates that the court-appointed psychiatrists must agree in their court-ordered assessments that defendant is a sexually dangerous person. Furthermore, no language in any other section of the Act explicitly states or even implies that a trial court must dismiss a petition if the psychiatrists do not so agree." (Emphasis omitted.) *Id.* at 923, 676 N.E.2d at 1376. We further stated, "[n]ot only may the trial court choose to believe one psychiatrist over another, but the court may do so and find in favor of the State's petition even when, as here, the State's burden is proof beyond a reasonable doubt." *Id.* at 926, 676 N.E.2d at 1378; see also *People v. Eckhardt*, 156 Ill. App. 3d 1077, 1090, 509 N.E.2d 1361, 1371 (1987) ("The resolution of contradictory testimony by experts in the determination of whether the defendant was legally sane at the time of the crime and the determination of its weight and credibility are for the trier of fact.").

¶ 37 Based on this court's reasoning in *Antoine*, we determine the mere fact that the experts in this case arrived at different mental-health diagnoses does not require us to conclude the State failed in its duty to prove beyond a reasonable doubt that defendant suffered from a mental disorder. The trier of fact in this case was certainly free to accept the opinion of one expert over the other in terms of the specific diagnosis, assuming a sufficient basis for the diagnosis existed.

¶ 38 Next, defendant argues that Dr. Killian's pedophilia diagnosis is not credible based on Dr. Killian's (1) definition of pedophilia and (2) lack of knowledge concerning the "sexual development of the victims."

¶ 39 At trial, Dr. Killian testified that "[p]edophilia is defined as attraction—sexual attraction to children who are prepubescent, that means prior to puberty, and generally age 12 or younger—or I'm sorry. In the diagnostic manual, it says age 13 or younger." Defendant points

out that the victims involved in his 2003 convictions were 13, 14, and 15 years of age and the victims involved in the current allegations against him were 12, 13, and 14 years of age.

Defendant notes that Dr. Killian did not have any personal knowledge regarding the appearance of the victims, nor did Dr. Killian ask him questions during the interview regarding the victims' appearances at the time the offenses were allegedly committed. Defendant contends Dr. Killian's determination that the 12- and 13-year-old victims were prepubescent, based solely on their ages and not their physical appearances, was nothing more than a guess.

¶ 40 The evidence in this case reveals that at least three of defendant's victims were 13 years old or younger at the time of the alleged offenses. One of defendant's 2003 victims was 13 years old at the time of that offense. Regarding the more recent 2011 allegations, the evidence showed that A.B. was 13 years old at the time of the alleged incident. S.B. was 12 years old when defendant began engaging in sexual contact with her, which continued over the course of approximately two years. A.C. was 12 years old at the time defendant allegedly sexually abused her. Here, the State proved that several of the victims were 12 and 13 years of age at the time of defendant's alleged conduct. According to Dr. Killian, the diagnosis of pedophilia is based on an individual's attraction to children who are prepubescent, which according to the diagnostic manual (DSM-IV) means children 13 years and younger. Dr. Killian did not testify that an *additional* finding of a child's prepubescent physical appearance is necessary for the diagnosis of pedophilia. Therefore, the evidence was sufficient to support Dr. Killian's diagnosis that defendant suffers from pedophilia, a mental disorder under the Act.

¶ 41 Because we find the evidence in this case was sufficient to support a finding of pedophilia existing for at least one year prior to the filing of the August 2012 sexually-

dangerous-person petition, we need not determine whether the evidence also supported Dr. Jeckel's diagnosis of antisocial personality disorder.

¶ 42 B. Substantial Probability of Reoffending

¶ 43 Defendant next asserts that the State failed to prove beyond a reasonable doubt that it is substantially probable he will commit future sex offenses if he is not confined. In support, he argues that the actuarial instruments used to assess his risk level indicate he should not be civilly committed.

¶ 44 In this case, both Dr. Killian and Dr. Jeckel testified, in their expert opinions, it was substantially likely defendant would sexually reoffend if not confined. They further testified that the scores from the actuarial instruments used during their evaluations of defendant were not the sole bases for their determinations, but were used in conjunction with a number of other factors. Specifically, Dr. Killian stated, "the scores by themselves are not sufficient although they are—most researchers will say that they are necessary; in other words, that an evaluation should include those [actuarial instruments] but not be based exclusively on the scores." Dr. Killian considered several factors before concluding that defendant was substantially likely to sexually reoffend if not confined. Dr. Killian testified his opinion was based on the actuarial scores—which, depending on the instrument used, placed defendant in the moderate- to low-risk, moderate-risk, and high-risk categories—as well as dynamic factors he discussed earlier in his testimony. Specifically, Dr. Killian noted defendant's "antisocial orientation combined with the deviant [sexual] interest is a significant indicator of recidivism or re-offense."

¶ 45 Dr. Jeckel testified that he uses actuarial instruments "out of completeness, but I'm not—I'm not an avid believer that they are the only—that they are an overriding source of evidence. I consider them one piece of evidence in this whole data collection that I've described

to you." He stated that actuarial instruments "are helpful in pointing out important indicators," but clinical judgment was still important. He testified that "past behavior, this chain of women that he both was convicted for and then he's alleged to have abused is a pattern, and I believe that the past pattern indicates a substantial probability for a future pattern."

¶ 46 Based on the above, sufficient evidence existed from which the jury could find beyond a reasonable doubt it was substantially probable defendant would sexually reoffend if not confined.

¶ 47

III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment.

¶ 49 Affirmed.