2017 IL App (1st) 160330-U

No. 1-16-0330

Order filed December 8, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE COMMITMENT OF RONALD WALKER	)	Appeal from the
	)	Circuit Court of
(PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 03 CR 80001
	)	
v.	)	Honorable
	)	Joseph G. Kazmierski, Jr.
RONALD WALKER,	)	Judge, presiding.
	)	
Respondent-Appellant.	)	

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's 2014 diagnosis of "Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type" was not subject to *Frye* testing. Trial court's finding of no probable cause that respondent's condition had so changed that he was no longer a sexually violent person affirmed.

¶ 2 Respondent Ronald Walker has been involuntarily civilly committed under the Sexually

Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 *et seq. (*West 2014)) since 2009, when a jury found that he was a sexually violent person under the SVP Act. After respondent received periodic reexaminations pursuant to section 55 of the SVP Act (725 ILCS 207/55 (West 2014)) in 2014 and 2015, the trial court found no probable cause that respondent's condition had so changed that he was no longer a sexually violent person under the SVP Act. Respondent appeals, contending that: 1) his case should be remanded for an evidentiary hearing where his 2014 diagnosis is subject to the *Frye* standard; and 2) alternately, probable causes exists that he is no longer a sexually violent person. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 We previously considered the propriety of respondent's commitment under the SVP Act in *In re Commitment of Walker*, 2012 IL App (1st) 11-343-U, and to the extent that the facts are relevant to the instant appeal, we provide them herein.

¶ 5 Respondent was scheduled to be released from the Department of Corrections (DOC) on March 5, 2003. On March 4, 2003, the State filed a petition to commit respondent as a sexually violent person pursuant to the SVP Act. Following a hearing, the circuit court found probable cause to believe that respondent was a sexually violent person and ordered him detained in a facility approved by the Department of Human Services (DHS), pending evaluation by DHS.

¶ 6 Prior to the hearing, the State filed an amended petition, which alleged that respondent was convicted of two counts of aggravated criminal sexual assault[1] and sentenced to consecutive terms of nine years on each count. The amended petition further alleged that, following an

[1] Respondent was convicted of aggravated criminal sexual assault of an 11-year old girl in 1987 at the age of 24, and of a 14-year old girl in 1994 when he was 33.

evaluation, Dr. Jacqueline Buck, a clinical psychologist, diagnosed respondent as suffering from the following mental disorder: "Paraphilia, Not Otherwise Specified, sexually attracted to non-consenting persons, non-exclusive type." This disorder affected respondent's "emotional or volitional capacity, which predisposes the respondent to commit acts of sexual violence." Additionally, the amended petition alleged that respondent's mental disorder made it "substantially probable that he will engage in acts of sexual violence."

¶ 7 After a jury trial, the jury found respondent to be a sexually violent person and the trial court entered judgment on the verdict and ordered respondent detained at a treatment and detention facility (TDF) in December 2009. Respondent appealed his commitment, and we affirmed. *Walker*, 2012 IL App (1st) 11-0343-U, ¶ 60.

¶ 8 Since his commitment, respondent has received annual examinations as required under the Act. In 2014 and 2015, his examinations were conducted by Dr. Joseph Proctor, Psy.D. Each of the reports prepared by Dr. Proctor as a result of his evaluation was filed with the trial court by the State, along with a motion requesting that the court find no probable cause to warrant an evidentiary hearing on the issue of whether respondent remained a sexually violent person. The State's 2014 and 2015 motions are at issue in the instant appeal.

¶ 9 On October 24, 2014, the State moved to continue respondent's commitment based on an evaluation by Dr. Proctor, who diagnosed respondent with "Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type," among other things. Dr. Proctor's evaluation included a review of respondent's records from the Illinois Department of Corrections (IDOC), DHS, and previous examinations of respondent done by other evaluators under the SVP Act.

¶ 10 Dr. Proctor's full diagnosis of respondent under the DSM-5 was as follows: 1) Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type; 2) Alcohol Use Disorder, in Sustained Remission, in a Controlled Environment (Rule Out); 3) Cannabis Use Disorder, in Sustained Remission, in a Controlled Environment (Rule Out); 4) Stimulant Use Disorder, In Sustained Remission, in a Controlled Environment (Rule Out); and 5) Other Specified Personality Disorder, with Mixed Narcissistic and Antisocial Features. The "rule out" qualifier indicated insufficient information to make a firm diagnosis. Respondent's treating psychiatrist had previously diagnosed him with paraphilia not otherwise specified (NOS), sexually attracted to non-consenting adolescent females, non-exclusive type; and polysubstance abuse in a controlled environment, under the DSM-IV-TR. Dr. Proctor contended that all of respondent's diagnoses were mental disorders under the SVP Act.

¶ 11 Additionally, as part of his evaluation, Dr. Proctor assessed respondent's risk of sexual reoffending by scoring four actuarial instruments and considering additional risk factors. On the Static-99, Dr. Proctor assessed respondent as a 4 or 5, depending on whether he had a live-in relationship with a lover for at least two years, which Dr. Proctor was unable to answer with certainty based on the record. Both scores were associated with a moderate-high risk of reoffending.

¶ 12 On the revised Static-99, the Static-99R, which incorporated revised coding for the age of offender at release, respondent scored either a 3 (low-moderate risk) or 5 (moderate-high risk); dependent on whether he had a live-in relationship with a lover for at least two years. A score of 3 indicates a probability of sexually reoffending at a rate of 15.8% in five years, and 24.3% in 10 years; and a score of 4 indicates a rate of 20.1% in five years and 29.6% in 10 years.

¶ 13 The third instrument, the Static-2002R, scored respondent at 4, which was the low-moderate risk category. The rate of sexually reoffending with a score of 4 was 12.7% to 18.9% in five years, and 18.7% to 29.1% in 10 years. Respondent's score on the fourth instrument, the Minnesota Sex Offending Screening Tool-Revised (MnSOST-R) was not reported, although Dr. Proctor did indicate that it placed him in the high risk category.

¶ 14 Based on respondent's mental disorders and risk assessment scores, Dr. Proctor opined that respondent was substantially probable to engage in future acts of sexual violence, and that his condition had not changed since his most recent periodic reexamination such that he was no longer a sexually violent person (SVP).

¶ 15 On November 24, 2014, Respondent filed an objection to the State's motion on the basis that Dr. Proctor's diagnosis was not generally accepted under the *Frye* standard pursuant to the Illinois Supreme Court's ruling in *In re Detention of New,* 2014 IL 116306, and thus could not be used as to justify his continued commitment under the Act absent a *Frye* hearing and a subsequent finding of general acceptance.

¶ 16 Because a large number of respondents similarly situated to respondent's status as a sexually violent person (SVP) sought *Frye* hearings after the decision in the *Detention of New* case, Judge Paul Biebel, then presiding judge of the Criminal Division, ordered that all of the motions be heard collectively by Judge Michael McHale. Respondent's objection to the transfer of his motion to Judge McHale was denied.

¶ 17 On June 24, 2015, Judge McHale denied 10 respondents' motions, including respondent Walker's, without making any individual rulings. In his ruling, Judge McHale noted that each of the respondents had received a diagnosis that included "the core element of non-consent" and

none had been diagnosed with "hebephilia."[2] Judge McHale then ordered that the respondents present their non-*Frye* objections to the State's motions for no probable cause with the trial judges to whom their cases were assigned.

¶ 18 While the 2014 motion for finding of no probable cause was pending, respondent's counsel filed petitions for rule to show cause before Judge Alfredo Maldonado against DHS, Liberty Health Care Corporation (the contractor providing sex offender treatment at the TDF), and various individuals based on alleged violations of the court's order for commitment on behalf of respondent and other SVP respondents. In them, counsel alleged that the SVP respondents received unlicensed treatment at the TDF in violation of the Illinois Sex Offender Evaluation and Treatment Provider Act (SOETP Act) (225 ILCS 109/1 *et al*. (West 2013)) and that Liberty continued to solicit unlicensed individuals to practice at the TDF. Specifically in relation to respondent Walker, his counsel alleged that he had received treatment at the TDF from Darren Matusen, Harmony Goorley, Deb Talley, and Robin Hyman, all Liberty employees who were unlicensed under the SOETP Act, and that the DHS doctors relied on these treatments to evaluate respondent's progress to move to conditional release.

¶ 19 Subsequently, on October 28, 2015, the State filed its motion for Finding of No Probable Cause based on respondent's 2015 annual re-examination report. Attached were two reports by Dr. Proctor, one dated September 11, 2015 and an amended report dated October 9, 2015. In the September report, Dr. Proctor diagnosed respondent with the same five diagnoses as in his 2014

[2] "Hebephilia" is defined as the strong and persistent adult sexual interest in pubescent (early adolescent) individuals, typically ages 11-14 (see the Tanner stage). It differs from ephebophilia, which is the strong and persistent sexual interest in those in later adolescence, approximately 15-19 years old, and from pedophilia, which is the primary or exclusive sexual attraction to prepubescent children. https://en.wikipedia.org/wiki/Hebephilia.

report, except that he eliminated the "rule out" qualifier for the alcohol and cannabis use disorders. In the amended October report, Dr. Proctor diagnosed respondent with "Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Females, Non-Exclusive Type." In both of the 2015 evaluations, Dr. Proctor used two actuarial instruments to assess respondent's risk of sexual reoffending. On the Static-99R, Dr. Proctor assigned respondent either a score of 3 (low-moderate risk) or 4 (moderate-high risk), depending on whether he had a live-in relationship with a lover for at least two years. Based on updates to the absolute recidivism rate estimates for the Static-99R and Static-2002R in January 2015, Dr. Proctor reported that a score of 3 on the Static-99R is associated with an absolute recidivism risk of 11.3% to 17.2% over five years and 22.5% to 32.6% over ten years; for a score of 4, 14.5% to 20.5% over five years and 22.5% to 32.6% over ten years. On the Static-2002R, Dr. Proctor gave respondent a score of 4 (low-moderate risk). For this assessment, a score of 4 is associated with an absolute recidivism risk of 12.6% to 20% in five years.

¶ 20 Additionally, in both 2015 reports, Dr. Proctor noted that respondent's treating psychiatrist diagnosed him with paraphilia NOS, sexually attracted to non-consenting females, non-exclusive type; and polysubstance abuse, in a controlled environment, contrary to the 2014 report, which diagnosed respondent with "Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type." Based on the mental disorders and risk assessment, Dr. Proctor ultimately concluded that respondent was substantially probable to engage in future acts of sexual violence, and that his condition had not changed since his 2014 reexamination such that he was no longer an SVP.

¶ 21 On December 9, 2015, the parties appeared before the trial court for a hearing on both the 2014 and 2015 motions for finding of no probable cause. Respondent renewed his *Frye* objection, which the trial court declined to review, noting that it had already been decided by another judge. The probable cause hearing was held the following day, at which time, there was a review of the reexamination reports and the parties' arguments. Respondent again renewed his *Frye* objection, arguing that a discharge hearing was necessary.

¶ 22 In support of his request for a discharge hearing, respondent argued that: 1) the recidivism rates for scores of 3 or 4 as reported by Dr. Proctor did not amount to "substantially probable to reoffend" as required by law and there was no explanation given as to how those scores amounted as such; 2) the MnSOST-R used by Dr. Proctor in his 2014 report is no longer reliable or in use, through an offer of proof; 3) Dr. Proctor's 2015 opinion relied heavily on respondent's treatment evaluation conducted by individuals in the TDF, one of which was not licensed to conduct such evaluation under the SOETP Act; and 4) Dr. Proctor's deletion of the word "adolescent" from his diagnosis of paraphilic disorder in his October 2015 report came well after respondent's *Frye* challenge. The trial court granted the State's motions of no probable cause. This appeal followed.

¶ 23 ANALYSIS

¶ 24 Respondent first contends that the trial court's judgment below should be reversed and remanded for an evidentiary hearing at which his diagnosis is subjected to the *Frye* standard. The specific diagnosis that respondent complains of is "Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type," which was in

both his 2014 and 2015 examinations before Dr. Proctor amended the 2015 examination to remove the word "adolescent."

¶ 25 According to respondent, this specific diagnosis is known as "hebephilia," the sexual attraction to adolescent individuals in the age range of 11 to 14, which is the subject of debate in the psychological community. In concluding that our Supreme Court's decision in *Detention of New* ultimately governs this issue, respondent notes that it found that the diagnosis of hebephilia as a mental condition is sufficiently novel for purposes of *Frye* and further noted that the court declined to take judicial notice of the general acceptance of hebephilia due to conflicting literature on its validity and the rejection of the proposal to include it in the DSM-5. Ultimately, the court remanded the matter for a *Frye* hearing. Respondent further argues that the supreme court specifically recognized that the diagnosis of sexual attraction to adolescents is hebephilia in *Detention of New*, even though the witnesses never applied that label.

¶ 26 Conversely, the State responds that the trial court properly denied respondent's request for a *Frye* hearing, contending that at respondent's trial and every reexamination report that followed, the evaluators have all diagnosed him with either PNOS, nonconsent under the DSM-IV-TR or OSPD, nonconsent following publication of DSM-5, even though the precise wording has varied. Because respondent has not been diagnosed with any mental disorder that is based on sexual attraction to adolescents, the State concludes that this case is distinguishable from *Detention of New*.

¶ 27 A. *Frye* Testing

¶ 28 In Illinois, the admission of scientific evidence is governed by the *Frye* standard (*In re Commission of Simons*, 213 Ill. 2d 523, 529 (2004) (citing *Frye v. United States*, 293 F. 1013

(D.C.Cir. 1923))), which has now been codified by the Illinois Rules of Evidence: "Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the principle has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs." Ill. R. Evid. 702 (eff. Jan. 1, 2011).

¶ 29 "The purpose of the *Frye* test is to exclude new or novel scientific evidence that undeservedly creates 'a perception of certainty when the basis for the evidence or opinion is actually invalid.' " *In re Detention of New*, 2014 IL 116306 (2014), ¶ 27 (quoting *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 78 (2002), *abrogated on other grounds by Simons*, 213 Ill. 2d at 530). The *Frye* test serves to prevent the jury from adopting the judgment of an expert because of its natural inclination to equate science with truth and, therefore, place undue significance on any evidence deemed scientific. *Detention of New*, 2014 IL 116306 at ¶ 27. The standard of review is *de novo* for examining a trial court's determination of whether a *Frye* hearing is necessary and whether there is general acceptance in the relevant scientific community. *Detention of New*, 2014 IL 116306 at ¶ 27.

¶ 30 Our Supreme Court has already decided the question of whether expert testimony involving a diagnosis of paraphilia NOS, sexual attraction to early adolescent males, otherwise known as hebephilia, is a diagnosable mental condition based upon legitimate scientific principles and methods, holding that such diagnosis is subject to *Frye*. *Detention of New*, 2014 IL 116306 at ¶ 53. Thus, the question before us is whether respondent's diagnosis is hebephilia, which would, in turn, make it subject to *Frye*.

¶ 31 In the case at bar, respondent was diagnosed by Dr. Proctor in 2014 with Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type. In 2015, Dr. Proctor made the same diagnosis of respondent initially, but later amended his report to delete "adolescent" from the diagnosis.

¶ 32 Respondent urges this court to conclude that his 2014 and 2015 diagnoses amount to hebephilia, focusing on the "sexual attraction to early adolescents" portion of the diagnosis. Hebephilia, as noted above, is defined as the "strong and persistent adult sexual interest in pubescent (early adolescent) individuals, typically ages11-14." https://en.wikipedia/Hebephilia. We decline to do so. As Judge McHale noted at the hearing on respondent's initial motion for *Frye* testing, respondent's primary diagnosis was based on "non-consent." This court has previously found that the diagnosis of paraphilia NOS, nonconsent, is generally accepted. See *In re Detention of Melcher*, 2013 IL App (1st) 123085, ¶¶58-61; *In re Detention of Hayes*, 2014 IL App (1st) 120364, ¶35. Indeed, respondent's 2014 diagnosis was sexual attraction to non-consenting adolescent females. Similarly, in 2015, Dr. Proctor's final report indicated that respondent was diagnosed with sexual attraction to non-consenting females. In fact, according to the record, each of respondent's diagnosis since 2009 has included "non-consent." Respondent's reliance on *Detention of New* is therefore misplaced, as the diagnosis at issue there did not concern "non-consenting" individuals, but hebephilia, the sexual attraction to early adolescents. Respondent's diagnosis contains "non-consent," which is not included in the definition of hebephilia. Because respondent was not diagnosed with hebephilia, no *Frye* hearing was necessary. As such, we find that the trial court did not err in denying respondent's motion for a *Frye* hearing.

¶ 33 B. Probable Cause

¶ 34 Alternately, respondent contends that probable causes exists that he is no longer a sexually violent person. Respondent makes five arguments in support of his contention:

1) Dr. Proctor changed his 2015 diagnosis without explanation; 2) his risk to reoffend is much less than the legal standard of "much more likely than not;" 3) his risk to reoffend continues to decline as his age increases; 4) he is no longer aroused by deviant sexual fantasies; and 5) Dr. Proctor relied on an evaluation and treatment by unlicensed individuals. Respondent contends that the judgment of the trial court should be reversed and the matter remanded for a discharge hearing.

¶ 35 1. Standard of Review

¶ 36 Courts in Illinois have disagreed regarding the standard of review to establish probable cause to warrant an evidentiary hearing. This court has stated that we review the ultimate question of whether respondent established probable cause to warrant an evidentiary hearing *de novo*. *In re Detention of Lieberman*, 2011 IL App (1st) 090796, ¶ 40, *aff'd*, *In re Detention of Stanbridge*, 2012 IL 112337. The Second and Third Districts also review probable cause hearings under a *de novo* standard. See *In re Commitment of Wilcoxen*, 2016 IL App (3rd) 140359, ¶ 28; *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 49. Additionally, where the evidence before the trial court consists of documentary evidence, we may review the record *de novo*. *Detention of Hayes*, 2015 IL App (1st) 142424, ¶ 15. Conversely, the Fourth and Fifth Districts traditionally review the trial courts' probable cause decision for an abuse of discretion. See *In re Detention of Cain*, 341 Ill. App. 3d 480, 482 (2003); *In re Ottinger*, 333 Ill. App. 3d

114, 120 (2002). Consistent with this court's prior determination, we will review respondent's claim using *de novo* review.

¶ 37 2. Probable Cause

¶ 38 The SVP Act mandates the procedures for the State to petition to commit a person who previously has been convicted of a sexually violent offense. 725 ILCS 207/15 (West 2014). After trial and initial commitment as an SVP, section 55 of the SVP Act requires periodic reexaminations to determine whether the respondent has made sufficient progress to be conditionally released or discharged. *Detention of Hayes*, 2015 IL App (1st) 142424, ¶ 17. This ensures that a respondent remains confined only so long as he or she continues to satisfy the SVP commitment criteria. Under section 65(b)(1) of the SVP Act, following each reexamination, the respondent received written notice of the right to petition for discharge. 725 ILCS 207/65(b)(1) (West 2014). Under section 65(b)(1), the respondent has three options following periodic reexamination: 1) petition for discharge and receive a full probable cause hearing; 2) waive the right to a hearing, essentially assenting to further commitment; or 3) do nothing. 725 ILCS 207/65(b)(1) (West 2014). If the respondent does nothing, the court must hold a probable cause hearing consisting only of a review of the reexamination reports and arguments of the parties so as to determine whether facts exist that warrant a hearing on respondent's current status as a sexually violent person. *Detention of Hayes*, 2015 IL App (1st) 142424, ¶ 17. Here, respondent did nothing. Accordingly, under section 65(b)(1), we review the documentary evidence and arguments of counsel in reviewing the probable cause determination of the trial court.

¶ 39 A probable cause hearing is "intended to be preliminary in nature, a 'summary proceeding to determine essential or basic facts as to probability.' " *In re Detention of Hardin*, 238 Ill. 2d 33,

52 (2010) (quoting *State v. Watson,* 227 Wis.2d 167, 204 (1989)). A probable cause determination requires a " 'relatively low' " quantum of evidence as support. *Detention of Hayes,* 2015 IL App (1st) 142424, ¶ 18 (quoting *Detention of Hardin,* 238 Ill. 2d at 52). All that is required is a plausible account on each of the required elements. *Detention of Hardin,* 238 Ill. 2d at 52 (quoting *Watson,* 227 Wis.2d at 205).

¶ 40 An SVP is one who: 1) has been convicted of a sexually violent offense as defined in the Act; and 2) is dangerous to others because he suffers from a mental disorder that makes it substantially probable that he will engage in acts of sexual violence. 725 ILCS 207/5(f) (West 2014). Therefore, a respondent is entitled to an evidentiary hearing only if there is probable cause to believe that he: 1) no longer suffers from a mental disorder; or) is no longer dangerous to others, because his mental disorder no longer creates a substantial probability that he will engage in acts of sexual violence. *Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 54; 725 ILCS 207/5(f) (West 2014).

¶ 41 Here, respondent makes several arguments in support of his contention that the trial court's decision of no probable cause was error and that he is entitled to a discharge hearing, [3] and we shall examine each of respondent's arguments in turn.

¶ 42 First, respondent contends that he was entitled to an evidentiary hearing because Dr. Proctor changed his 2015 diagnosis to remove the word "adolescent" without explanation, which results in a "blatant credibility issue" for Dr. Proctor. This argument is merely a conclusion by respondent and respondent cites no case law in support of such conclusion. We have already

[3] Respondent is apparently using the term "discharge hearing" as the equivalent of "evidentiary hearing." We will use the term "evidentiary hearing" as consistent with the established case law.

concluded that the inclusion or deletion of the word "adolescent" did not change respondent's diagnosis, namely that his mental disorder was based on non-consent. The amendment of Dr. Proctor's report did not result in a change of respondent's diagnosis. To the contrary, Dr. Proctor's reports (both 2014 and 2015) indicate that respondent still suffers from a mental disorder, which is not disputed by respondent. Thus respondent has failed to show that there was probable cause that he no longer suffers from a mental disorder.

¶ 43 Respondent's next three arguments can be grouped together as contending that there is probable cause to believe that he is no longer dangerous to others because his mental disorder no longer creates a substantial probability that he will engage in acts of sexual violence. Specifically, as stated previously, he contends that: his risk to reoffend is much less than the legal standard of "much more likely than not;" his risk to reoffend continues to decline as his age increases; and he is no longer aroused by deviant sexual fantasies.

¶ 44 Respondent supports his contention that his risk to reoffend is much less than the legal standard of "much more likely than not" on the fact that Dr. Proctor did not explain how respondent's risk scores show that he is much more likely than not to reoffend sexually, thereby proving probable cause exists. He cites *Commitment of Wilcoxen*, 2016 IL App (3rd) 140359 as support of his conclusion, which we find to be distinguishable.

¶ 45 In *Commitment of Wilcoxen*, 2016 IL App (3rd) 140359, the respondent underwent a periodic examination, and did not affirmatively waive the right to petition the court for discharge, just as respondent did in the present case. However, the respondent in *Commitment of Wilcoxen*, through counsel, procured an independent evaluation of his condition prior to the probable cause hearing, which was favorable. As such, during the probable cause hearing, the

trial court had benefit of not only respondent's periodic evaluation but also a second, independent evaluation of the respondent's condition. The respondent there argued not that he no longer suffered from the mental disorder, but that the circumstances that led to the original findings of sexual violence had changed based on information contained in the independent evaluation. *Commitment of Wilcoxen*, 2016 IL App (3rd) 140359, ¶ 37. The appellate court ultimately found that the additional evidence satisfied the low threshold of probable cause for an evidentiary hearing as it documented a change in respondent's behavior and professional knowledge and set forth a plausible account that there is no longer a substantial probability that respondent will reoffend and that he is an SVP. *Commitment of Wilcoxen*, 2016 IL App (3rd) 140359, ¶ 49.

¶ 46 In the case at bar, respondent has presented no such evidence to dispute the conclusions reached by Dr. Proctor's reports. Respondent instead seems to rely on what he contends is a lack of explanation in the reports as the equivalent of evidence supporting probable cause. Respondent does not cite, nor have we found, any authority for such a conclusion, and find respondent's argument is meritless.

¶ 47 Next, respondent contends that his risk to reoffend continues to decline as his age increases, which was indicated by Dr. Proctor's reports, which state "older sex offenders are less likely to recidivate than younger sex offenders," and "a decline in sexual offenders' recidivism rate is consistent with the overall pattern of reduced recidivism with increasing age found for all criminal offenders." While we agree with respondent's contention, such evidence alone does not conclude that he is no longer a sexually violent person.

¶ 48 Finally, respondent contends that he is no longer aroused by deviant sexual fantasies as detailed by Dr. Proctor's reports, which indicated that he "did not demonstrate 12 significant

arousal to any of the 22 segments" containing deviant and non-deviant sexual scenarios. Respondent does not indicate his response to the individual scenarios presented, but instead, in a conclusory manner, argues that the inference that must be drawn at this stage is that he is no longer aroused by deviant sexual fantasies, that he is no longer mentally ill and no longer dangerous. The evidence does not support such a conclusion, when Dr. Proctor's report clearly diagnosed respondent as having "Other Specified Paraphilic Disorder, Sexually Attracted to Non-Consenting Adolescent Females, Non-Exclusive Type." Additionally, Dr. Proctor concluded that respondent was substantially probable to engage in future acts of sexual violence, and that his condition had not changed since his prior diagnosis such that he was no longer a sexually violent person. We note that respondent's most recent diagnoses (2014 and 2015) remain consistent with his initial 2009 diagnosis of "Paraphilia, Not Otherwise Specified, sexually attracted to non-consenting persons, non-exclusive type."

¶ 49 It was respondent's burden in a probable cause discharge hearing to present evidence that establishes a plausible account that he is no longer an SVP. *In re Commitment of Rendon*, 2017 IL App (1st) 153201, ¶¶34-35 (there is no distinction between a discharge petition filed by operation of law and one filed affirmatively by a respondent). We find that respondent's arguments do not establish that the trial court erred in finding no probable cause exists to believe that he: 1) no longer suffers from a mental disorder; or) is no longer dangerous to others, because his mental disorder no longer creates a substantial probability that he will engage in acts of sexual violence.

¶ 50 Finally, respondent concludes that Dr. Proctor relied on an evaluation and treatment by unlicensed individuals in forming his professional opinion. However, respondent concedes that

the probable cause hearing is not the forum at which to consider conflicting facts and inferences. See *Detention of Stanbridge*, 2012 IL 112337, ¶ 64 (the probable cause hearing is not a substitute for a full evidentiary hearing where disputed questions of fact can be resolved by the trier of fact, and where the basis for the opinions and credibility determinations can be fully explored). Thus such argument cannot be the basis for finding probable cause.

¶ 51 We conclude that the trial court did not err in finding that no probable cause existed to warrant an evidentiary hearing on the issue of whether respondent was still an SVP.

¶ 52 CONCLUSION

¶ 53 For the foregoing reasons, we find that the trial court properly concluded that respondent had not presented a plausible account that he was "no longer a sexually violent person." 725 ILCS 207/65(b)(2) (West 2012). Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 54 Affirmed.