2019 IL App (5th) 170463-U

NO. 5-17-0463

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Jefferson County.
	)	
v.	)	No. 15-CM-404
	)	
DOMINIQUE D. PEOPLES,	)	Honorable
	)	Barry L. Vaughan,
Respondent-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Where the State proved beyond a reasonable doubt that the respondent, Dominique D. Peoples, had a criminal propensity to commit sex offenses, the trial court's finding that he is a sexually dangerous person is affirmed. Where the respondent did not allege that one or both court-appointed evaluators were biased or prejudiced, the trial court's order denying the respondent's motion *in limine* seeking to appoint a third evaluator or review the testimony of three evaluators from a 2014 commitment hearing is affirmed.

¶ 2 The respondent appeals from the trial court's order finding that he is a sexually dangerous person as defined in the Sexually Dangerous Persons Act (725 ILCS 205/1.01 *et seq.* (West 2016)). He argues that the State failed to prove that he has criminal propensities to commit sex offenses beyond a reasonable doubt. He also alleges that the

trial court erred in denying his request to use other experts' evaluations in addition to the two appointed by the court. For the reasons explained in this order, we affirm.

¶ 3 BACKGROUND

¶ 4 This case originated with a misdemeanor charge filed in Jefferson County on October 1, 2015. The State charged the respondent with disorderly conduct for a lewd and unlawful purpose. The Attorney General entered its appearance in this case on December 4, 2015, and filed a petition to proceed under the Sexually Dangerous Persons Act (SDPA). A bench trial was held on June 27 and 28, 2017.

¶ 5 Meagan Carnine testified that in September 2015 she lived in a Mt. Vernon home with her twin children—a boy and a girl who were then six years old. She was then employed by the Marion County State's Attorney's Office as an assistant state's attorney.

¶ 6 For approximately two weeks prior to September 24, 2015, upon arriving home, Carnine would notice a foul odor in her bedroom that would dissipate over time. On September 24, 2015, she arrived home and found a pair of her shoes in a "posed" position on the path from the carport to the back door. The doormat on the back porch was askew. She lifted the doormat to check on the key that she had left for carpet installers. While the key was there, the key had been moved from its original location. The back door was locked, but the front door, which was always locked, was open. Carnine became frightened; called a friend who came over; and the two walked through her home checking each room to ensure all windows were closed and locked, and checking all closets. Carnine's friend went down to check the finished basement. He came back

upstairs and asked Carnine if she had left a light on in the basement. She had not left the light on.

¶ 7 The next day, Carnine called the Mt. Vernon Police Department to report what had been happening at her home. She believed that someone had been using her back door to gain access to her home. She removed the house key from under the doormat and changed the locks. Detective Kevin Jackson was sent to Carnine's home to install a motion-detector camera at the back of her home. The camera was installed midday on September 25, 2015.

¶ 8 On September 28, 2015, Carnine came home from work with her twins at about 6:30 p.m. The Carnine family went through its typical evening routine with the twins in bed at 8 p.m. Carnine then changed into pajamas, got into her own bed, and began watching television at about 8:30 p.m. While watching television, someone rang her doorbell. She ignored it. Then the doorbell began continuously ringing. Carnine got out of bed and took her cell phone with her. She looked out the window in the door and saw the respondent, whom she recognized from her former employment history as a Jefferson County assistant state's attorney. Through the closed door, Carnine repeatedly told the respondent to leave her property. The respondent continued to ask Carnine to let him into her home, stating that he needed to use the telephone. Carnine then called 911. Upon hearing the dispatcher pick up on Carnine's call, the respondent ran off. Mount Vernon Police Department officers quickly arrived at her home. Two officers searched the area and ultimately located the respondent close to Carnine's home.

¶ 9 The next day, Carnine met with Officer Jackson and another officer to review surveillance video captured by the motion sensor camera from the previous night. The series of videos depicted a person standing on the porch of Carnine's back door and looking into various windows of her home. The video was recorded from 7:30 p.m. to 8:15 p.m. The time of the last video approximately corresponded to the time when the respondent began ringing her front doorbell. Carnine identified the respondent as the person in the videos. This respondent was depicted masturbating outside of her daughter's bedroom window and trying to take photos of Carnine's bedroom with a cell phone.

¶ 10 Officer Jackson testified to his involvement in setting up the video camera at Carnine's home; his identification of the respondent in the videos captured by that camera on September 28, 2015; and his interview of the respondent. He explained how the videos are triggered by motion, the duration of each video, and how they can be downloaded to a computer. Officer Jackson was familiar with the respondent from his past involvement with the Mt. Vernon Police Department. He and a Mt. Vernon detective interviewed the respondent on September 29, 2015. Initially, the respondent requested an attorney, but then asked to speak with the officers. He was provided and waived his *Miranda* warnings. The interview was recorded.

¶ 11 In the respondent's interview, he acknowledged that he was outside Carnine's home on September 28, 2015. Initially, he would not say why he was at Carnine's home, but later stated that he was there to locate something he could steal. He also admitted that he found Carnine to be attractive. When asked whether he was masturbating on the video

clips the officers showed him, the respondent did not deny doing so but insinuated that they would have a difficult time in proving that. The respondent acknowledged that he looked through Carnine's windows and doors. He denied that he intended to sexually assault Carnine that evening.

¶ 12 Respondent was evaluated by two mental health professionals. Dr. Angeline Stanislaus is a forensic psychiatrist from St. Louis and is a licensed sex offender evaluator. She is board certified in general psychiatry and forensic psychiatry. Dr. David Suire is a licensed clinical psychologist employed by the Illinois Department of Human Services and is also a licensed sex offender evaluator. Dr. Stanislaus and Dr. Suire were both accepted as expert witnesses in the field of sex offender evaluations. Both evaluators conducted their evaluations pursuant to the Illinois SDPA. In order to be found to be sexually dangerous, it must be shown that the person has a mental disorder that has existed for at least one year; that the mental disorder is coupled with criminal propensities that result in the commission of sex offenses; and that the person has demonstrated those criminal propensities by sexual assaults or acts of sexual molestation of children. 725 ILCS 205/1.01 (West 2016). Both evaluators interviewed the respondent; reviewed police reports, court records, and prior evaluations, provided by the Attorney General's office; administered the STATIC-99 Revised test—an accepted tool to evaluate the probability of sex offenders committing future acts of sexual violence; gave opinions and diagnoses on what mental disorders the respondent has; and prepared evaluative reports. Dr. Suire also administered an additional test—the STATIC-2002 Revised test. In addition to the other documents provided by the AG's office, Dr. Stanislaus also reviewed all sex

offender treatment records and mental health treatment records obtained from the Illinois Department of Corrections.

¶ 13 Dr. Stanislaus testified that a person's criminal history is important as a factor to determine if that person is sexually dangerous. The respondent had a series of arrests when he was 15 years old for retail theft, disorderly conduct, violation of supervision, and delivery of cannabis. Any juvenile offenses are significant because the risk of future sexual offenses is increased. Furthermore, the fact that the respondent continued to offend while under supervision is another behavior related to future risk of sexual offenses.

¶ 14 Dr. Stanislaus also felt that some of the respondent's sexual behaviors while a juvenile were "significant." At some point during his minority, the respondent was placed in the Franklin County Detention Center. While housed at the detention center, the respondent had a pattern of calling over female staff members, exposing his genitalia, and masturbating in front of them. In addition, the respondent was placed in a foster home at the age of 15. His foster mother found that he had been masturbating and had left his ejaculate on a bed and on a lamp. Foster care placement was thereafter discontinued. Dr. Stanislaus characterized these behaviors as deviant and hypersexual.

¶ 15 Dr. Stanislaus also testified about the various crimes with which the respondent had been charged as an adult. In 2008, the respondent was charged and convicted of sexual exploitation of a child in Madison County involving two girls aged 12 and 13. Respondent knocked on a door of a home in which the two girls were studying. He asked if someone named Stacy lived there. They told him that no one named Stacy lived there. When one of the girls left to go home, the respondent followed her. That girl told her

mother that she had been followed, and her mother went to talk to the respondent who again insisted that he was looking for someone named Stacy. Then respondent returned to the first girl's home, knocked on the back door, and tried to prevent her from closing the back door. He then exposed his penis to this girl. The respondent was also arrested in 2008 two or three times for misdemeanor battery. In two charges, he followed, attempted to interact with women, and ultimately grabbed them. In the third charge, the respondent was caught in a women's bathroom looking into an occupant's stall. These three charges had similar traits in that the respondent continued to pursue the women after they refused his attention. Dr. Stanislaus found that the fact that the respondent cannot stop his behavior indicates that the behavior drives him. An additional significant factor about these misdemeanor arrests is that the respondent committed these offenses while on probation. Again, the respondent could not control his actions despite his probationary status.

¶ 16 In 2010, while on probation for the Madison County charges, the respondent moved to Jefferson County and was charged and convicted of aggravated criminal sexual abuse. He was charged with two counts, but in a plea deal, the second charge was dropped. In that case, the respondent went to a home of a woman he knew, who had two young girls. He asked if he could spend the night and was given permission to do so. During the night, the respondent fondled the chest and genital area of one girl who was 12 or 13 years old. The girl reported that she had not consented. Both girls told the respondent to leave their bedroom. Then, he approached the 14-year-old girl in her bedroom, but was rebuffed. Later that evening, the 14-year-old girl awoke to find the

respondent putting his penis in her hand. The respondent pled guilty to one count of aggravated criminal sexual abuse and was sentenced to the Department of Corrections for five years. Dr. Stanislaus testified that how the respondent committed these crimes is significant because the behavior is similar to what happened at Carnine's home. The respondent exhibits persistent behavior beyond just exposing himself and leaving.

¶ 17 While respondent was in the Department of Corrections, he asked a female employee to look at a picture he had of a dog. When she approached him, the respondent was fondling himself and masturbating. In addition, Dr. Stanislaus reviewed a video of the respondent while he was housed in a treatment detention facility, during which the respondent was "masturbating in view of a female staff member."

¶ 18 Dr. Stanislaus believed the respondent suffered from three SDPA-qualified mental disorders: other specified paraphilic disorder with features of multiple paraphilia, pedophilic disorder, and antisocial personality disorder. She explained that paraphilic disorder is a disorder in which the person exhibits a deviant sexual interest for six months or longer that is not with a consenting person. She supported her opinion with examples of the respondent's deviant sexual behaviors that have persisted since he was 15 years of age consisting of arrests, convictions, and repeated compulsive incidents of exposing himself and masturbating near nonconsenting girls and women. Dr. Stanislaus explained that pedophilic disorder is a deviant sexual disorder in which the person exhibits recurring sexual fantasies, urges, or sexual behaviors involving children 13 years of age or younger when the person is at least five years older than the child. She testified that the respondent has suffered from this disorder from as early as 2008 and stated that the

respondent's 2008 and 2010 arrests and convictions support this opinion. She also believed that the respondent suffered from antisocial personality disorder which she described as "a persistent pattern of behaviors where the rights of others are violated, and the individual cannot follow social norms." Here, she found that the respondent had antisocial personality disorder because of his extensive history of criminal behaviors other than the sexual behaviors.

¶ 19 To determine if it was substantially probable that the respondent would commit additional sex offenses if not confined, Dr. Stanislaus performed the actuarial risk assessment test, the STATIC-99 Revised. She testified that a score of 6 out of 12 would be considered a high risk and the respondent scored a 9. When Dr. Stanislaus compared the respondent's risk to other sex offenders, he was in the 99.7th percentile with a 7.32 times higher risk than a typical sex offender.

¶ 20 Dr. Stanislaus additionally looked at dynamic risk factors, the analysis of which is acceptable in this field. In this context, dynamic risk factors are factors that may increase the risk that a person would reoffend. Here, the following risk factors were found to be present in the respondent: multiple deviant sexual interests, offense-supportive attitudes (meaning that the person does not believe he has done anything wrong); sexual preoccupation; lack of stability in his life; and noncompliance with supervision and violation of probation. Factors that could support a decrease in a person's risk of reoffending were totally absent in the respondent's case: extremely poor health; advanced age; and completion of a sex offender treatment program.

¶ 21 In conclusion, Dr. Stanislaus testified that she believed that the respondent was substantially probable to engage in continued commission of sex offenses if not confined because he had a mental disorder defined by the SDPA for more than one year and had demonstrated propensities to acts of sexual assault or molestation of children.

¶ 22 Dr. Suire testified that he also found that the respondent's criminal history—especially his juvenile history—to be clinically significant because he demonstrated behavioral difficulties and criminal propensities from an early age. He also felt that it was significant that the respondent had been charged with both sexual and nonsexual offenses as an adult in that he was breaking the law as well as being sexually inappropriate.

¶ 23 Dr. Suire diagnosed the respondent with five SDPA qualifying mental disorders: other specified paraphilic disorder (with the specifiers being sexually attracted to nonconsenting persons, hypersexuality, and sexually attracted to underage females); pedophilic disorder; exhibitionistic disorder; voyeuristic disorder; and antisocial personality disorder. Dr. Suire's assessments of the respondent with respect to other specified paraphilic disorder, pedophilic disorder, and antisocial personality disorder were substantially similar to the assessments reached by Dr. Stanislaus. Dr. Suire explained that exhibitionistic disorder requires that a person have recurrent urges, fantasies, or behaviors that involve exposing the genitalia to nonconsenting persons for the purpose of sexual gratification. Given the respondent's longstanding history of exposing his genitalia and masturbating in view of nonconsenting girls and women, he qualifies as having this disorder. In a somewhat connected disorder, Dr. Suire diagnosed the respondent with voyeuristic disorder, which he defined as when a person has

recurrent fantasies, urges, or behaviors that involve viewing other people for sexual arousal when those other people are not aware that they are being viewed and/or did not consent to being viewed. To be diagnosed with this disorder, the person must have been exhibiting this behavior for over six months. Here, the respondent has a history of viewing other people while he masturbated—not only in the public arena as he did in the underlying disorderly conduct charge in this case, but also in institutionalized settings. Committing these acts in an institutionalized setting was significant because typically a structured setting is designed to help persons control their inappropriate behaviors. The fact that the respondent was unable to control these urges despite the security of the environment was indicative of the strength of his urges as well as his difficulty in managing those urges.

¶ 24 Dr. Suire tested the respondent for his probability to continue to engage in the commission of sexual offenses by way of the STATIC-99 Revised test and the STATIC-2002 Revised test. The respondent's results to the STATIC-99 Revised test administered by Dr. Suire were like the results from Dr. Stanislaus's test in that he scored a very high score of eight or nine, and was 7.32 times as high as a typical sex offender to commit a future offense. The STATIC-2002 Revised test is somewhat similar but has some different aspects or behaviors assessed. On that test, the respondent received either a 10 or an 11, which placed him at the highest risk and at 6.9 times higher than a typical sex offender to reoffend. Dr. Suire explained that the respondent's risk factor scores were the highest possible on these two tests—that there is no higher factor than 7.32 on the STATIC-99 Revised test and no higher factor than the 6.9 on the STATIC-2002 Revised

test. Dr. Suire testified that he had conducted at least 2000 of these STATIC tests and with all of those individuals he tested he had "never worked with anyone or done an assessment with anyone who is less able to control their sexual urges than Mr. Peoples."

¶ 25 Dr. Suire's assessment of aggravating risk factors mirrored Dr. Stanislaus's assessment. In aggravation, he found that the respondent suffered from deviant sexual arousal and multiple paraphilias, he violated terms of conditional release, and he was nonresponsive to supervision. Dr. Suire also found no factors decreasing the respondent's risk, noting that he did not suffer from a serious illness, was still very young, and had never been in sex offender treatment.

¶ 26 In conclusion, Dr. Suire stated that it was his opinion that the respondent was substantially probable to commit sex offenses if he was not confined. He based his opinion on his propensities toward acts of sexual assault or sexual molestation of children and noted that he had suffered from a mental disorder present for more than one year.

¶ 27 The respondent did not testify at the hearing. The trial court heard closing arguments and entered its order finding that the State had established its case beyond a reasonable doubt and that the respondent is a sexually dangerous person. The court found that the respondent suffered from a mental disorder that had existed for a period of more than one year, that the mental disorder was coupled with criminal propensities for the commission of sex offenses, that the respondent had demonstrated propensities for the acts of sexual assault or sexual molestation of children, and that the respondent was substantially probable to commit more sex offenses if not confined.

¶ 28 The respondent filed a motion for retrial on July 26, 2017. The trial court held a hearing on the respondent's motion and denied the motion on November 17, 2017. The respondent filed his timely notice of appeal to this court on November 27, 2017.

¶ 29 ANALYSIS

¶ 30 On appeal, the respondent raises two issues. He claims that the State failed to prove beyond a reasonable doubt that he had criminal propensities to the commission of sex offenses as required by the SDPA, and therefore the State failed to prove that he is a sexually dangerous person. He also claims that the trial court erred in denying his motion *in limine* requesting the admission of testimony of three doctors who had evaluated him for a 2014 jury trial. For the following reasons detailed in this order, we affirm.

¶ 31 Criminal Propensities to the Commission of Sex Offenses

¶ 32 The statutory foundation for a determination that a person is a sexually dangerous person is found in section 1.01 of the SDPA, which provides:

> "All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons." 725 ILCS 205/1.01 (West 2016).

In addition, the trial court must make an explicit finding that it is substantially probable that the person subject to being found to be sexually dangerous "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); *People v. Bingham*, 2014 IL 115964, ¶ 37, 10 N.E.3d 881. Although the proceedings under the SDPA are civil in nature, "the burden of

proof required to commit a defendant to confinement as a sexually dangerous person shall be the standard of proof required in a criminal proceeding[ ] of proof beyond a reasonable doubt." 725 ILCS 205/3.01 (West 2016). After the petition is filed, the court shall appoint two evaluators to examine the individual charged to determine if the person meets the criteria of section 1.01 of the SDPA. *Id.* § 4. The SDPA defines the term "mental disorder" as: "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." *Id.* § 4.03. Evidence of the respondent's commission of "any number of crimes together with whatever punishments, if any, were inflicted" may be introduced at the hearing on the State's petition. *Id.* § 5.

¶ 33 On appeal from a trial court's finding that a person is a sexually dangerous person, we must consider all of the evidence introduced at trial in the light most favorable to the State to determine if any rational trier could have found the essential elements to be proven beyond a reasonable doubt. *Bingham*, 2014 IL 115964, ¶ 37.

¶ 34 The respondent does not dispute that the State proved two of the three elements beyond a reasonable doubt: that he has suffered from a mental disorder for more than one year before the State filed its petition and that he had demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children. 725 ILCS 205/1.01 (West 2016). The respondent takes issue only with the second element: that he has criminal propensities to the commission of sex offenses. *Id.*

¶ 35 The phrase "criminal propensities to the commission of sex offenses" is defined in the SDPA to mean "that it is substantially probable that the person subject to the

commitment proceeding will engage in the commission of sex offenses in the future if not confined." *Id.* § 4.05. In support of this requirement, the State introduced the reports and testimony of the two court-appointed evaluators at trial. Evaluators may rely on relevant and reliable information so long as that type of information is utilized in their industry. *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 33, 982 N.E.2d 953 (citing *In re Commitment of Hooker*, 2012 IL App (2d) 101007, ¶ 51, 968 N.E.2d 1087). The type of information that evaluators may rely upon includes interviews, actuarial tests, police reports, and other documents detailing misconduct. See *In re Commitment of Simons*, 213 Ill. 2d 523, 535, 821 N.E.2d 1184, 1192 (2004); see also *Commitment of Hooker*, 2012 IL App (2d) 101007, ¶¶ 68, 78, 81. The bases of the evaluators' opinions are not admitted as substantive evidence. *Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 32. But the facts and reasoning underlying the evaluators' expert opinions determine the weight to be given the opinions. *Id*.

¶ 36 In this case, both evaluators were licensed as sex offender evaluators. Both evaluators reviewed the respondent's criminal history and records, his past write-ups during periods of incarceration and/or institutionalization, interviewed and tested the respondent, and diagnosed the respondent with various mental disorders which had been present for well over one year. The results from the tests conducted by the evaluators all revealed that the respondent was in the highest possible category for committing future sex offenses if not confined. Both evaluators concluded that the respondent was substantially probable to engage in continued commission of sex offenses because he had demonstrated propensities to acts of sexual assault or molestation of children. Of

significance to both experts was the respondent's juvenile and criminal history that included both sexual and nonsexual actions and crimes. Respondent had numerous nonsexual juvenile infractions, was convicted of a felony for sexual exploitation of a child in 2008, convicted of misdemeanors involving following and then grabbing women who thwarted his advances in 2008, convicted of a criminal misdemeanor for peeping into a woman's bathroom stall in 2008, and convicted of a felony for aggravated criminal sexual abuse of a minor in 2010. Both experts considered the nature of the current misdemeanor disorderly conduct charge that involved his presence for approximately 45 minutes outside Carnine's home, looking into the windows of her children and masturbating, and taking photographs of Carnine's bedroom. Dr. Stanislaus commented upon the similarities between this disorderly conduct charge with the sexual exploitation of a child charge as both involved exhibitionism and both occurred over a lengthy period, showing that the respondent was not easily dissuaded to leave a person or area until his sexual needs were met. The State contends that the opinions of the evaluators were comprehensive and more than sufficient to establish the respondent's criminal propensity to commit sex offenses.

¶ 37 In opposition, the respondent argues that the evidence was insufficient to establish the required propensity to commit sex offenses and cites to *People v. Bingham* in support.

¶ 38 In *Bingham*, the supreme court affirmed the appellate court's holding that Julianna Bingham was not a sexually dangerous person. *Bingham*, 2014 IL 115964, ¶ 1. The most recent sexual incident occurred at school when Julianna was engaged in a one-on-one session with a female teacher. *Id.* ¶ 23. The teacher praised Julianna for reading well.

Julianna asked what prize she would receive for reading well, and the teacher jokingly suggested a cookie. Julianna then grabbed the teacher around the neck and pushed her onto her chair, and then proceeded to try to kiss the teacher and put her hand down the teacher's shirt. The teacher testified that Julianna was not able to get her hand underneath her bra, although that seemed to be her intent. After the situation was deescalated, and the teacher began to exit the classroom, Julianna slapped the teacher on her buttocks. Two evaluators were appointed and testified at the trial that Julianna met the criteria for being a sexually dangerous person. *Id.* ¶¶ 12, 18.

¶ 39 At issue in *Bingham* was whether Julianna both had criminal propensities to the commission of sex offenses as well as demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children. *Id.* ¶ 27. The parties agreed that Julianna had suffered from a qualifying mental disorder for in excess of one year before the petition was filed. *Id.* The appellate court concluded that the State failed to establish that Julianna had criminal propensities to the commission of sex offenses. *Id.* ¶ 37.

¶ 40 The supreme court first commented upon the fact that the SDPA and the Criminal Code of 1961 (Criminal Code) do not define the term "sex offenses." *Id.* ¶ 38. The appellate court instead used the definition of "sexual conduct" from the Criminal Code: " 'any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused *** for the purpose of sexual gratification or arousal of the victim or the accused.' " *Id.* (quoting 720 ILCS 5/12-12(e) (West 2010)). Under this Criminal Code definition, the "conduct" must include the touching of a sex organ, anus, or breast. *Id.* The appellate

court concluded that the only evidence that Julianna engaged in this type of conduct was in the attempted touching of the teacher's breast. *Id.* The appellate court concluded that this one incident was insufficient to show a propensity to commit future acts. *Id.*

¶ 41 The supreme court then confirmed that the underlying criminal offense that results in the State filing a petition to have a person declared sexually dangerous does not need to be a sexual offense. ¶¶ 40-41. Although the underlying offense does not need to be a sexual offense, the State must still be able to establish that the person sought to be labeled as sexually dangerous has shown a criminal propensity to the commission of sex offenses. *Id.* ¶ 41. The court explained that the SDPA is not only concerned about persons with a mental disorder, but specifically concerned about persons with a mental disorder that are likely to commit future crimes. *Id.* ¶ 43. The court concluded that the Criminal Code and the SDPA are both governed by the policy designed to prevent future criminal acts, and therefore the appellate court's usage of the Criminal Code's definition of "sexual conduct" to define "sexual offense" under the SDPA was proper. *Id.*

¶ 42 In *Bingham*, the supreme court concurred that the only sexual incident involving the touching of a sex organ, anus, or breast was Julianna's attempted touching of the teacher's breast. *Id.* ¶ 44. The State argued that only one sexual offense was required to meet the criteria that she has a criminal propensity to commit sexual offenses. The State cited to the opinions of the two evaluators who had diagnosed Julianna with mental disorders that predispose her to commit improper sexual activity. *Id.* ¶¶ 46-47. Citing to the *People v. Masterson* requirement that the trial court make a "finding that it is 'substantially probable' defendant 'will engage in the commission of sex offenses in the

future if not confined,' " the supreme court found that the conclusions of the two evaluators were not supported with evidence of specific incidents. *Id.* ¶ 48 (quoting *Masterson*, 207 Ill. 2d at 330). While one of the evaluators referred to 12 separate incidents of sexual conduct involving 9 different victims, there was no detailed evidence about the 12 incidents and the evaluator relied upon reports about the 12 incidents from Julianna's parents. *Id.* The evaluator did not discuss the 12 incidents with Julianna, and there was no evidence that criminal charges were filed from any of the incidents. *Id.* "The court cannot determine from this limited evidence whether these offenses constituted 'sex offenses.' " *Id.* The opinions of the two evaluators "that [Julianna] was likely to commit future sex offenses if not confined, without evidence of additional sex offenses, are insufficient to establish that it was substantially probable that [Julianna] would commit future sex offenses as required by *Masterson*." *Id.* The court held that the one incident with Julianna touching the teacher's breast through her clothing was insufficient to establish a substantial probability that Julianna would engage in the commission of sex offenses in the future if not confined.

¶ 43 Citing to *Bingham*, the respondent claims that because he was only charged with one crime in which he touched a sexual organ, anus, or breast of a victim (the 2010 felony conviction for aggravated criminal sexual abuse), and because the supreme court found that one sexual incident was insufficient proof, the State here cannot prove that he has criminal propensities to commit sexual offenses if not confined. We disagree.

¶ 44 The supreme court's holding in *Bingham* does not stand for the proposition that the State must produce substantive evidence of multiple sex offenses. Factually, there

was only one incident of sexual conduct in that case and the supreme court was concerned that there were no sexual offense criminal charges and no other reliable evidence that Julianna had sexually touched another person's sexual organs, anus, or breast. In that specific factual setting, one proven sexual offense was insufficient to establish criminal propensities to commit sexual offenses.

¶ 45 Nevertheless, in contrast to the facts of *Bingham*, the evaluators' opinions in this case were based on numerous documented and reliable sources. Dr. Stanislaus reviewed numerous reports of sexually-related events created by the victims contemporaneously with the events, including reports from the respondent's foster parent, as well as institutional reports of the respondent's subjecting guards and other professionals to unwanted views of his genitalia and his masturbation. These reports meet the standard of reliability referenced by the court as lacking in *Bingham*.

¶ 46 Moreover, while Julianna was never charged with any sexual offense crime in *Bingham*, in this case, the respondent was convicted of exposing himself to a young girl in 2008 and convicted of touching the breasts and sexual organs of a different young girl in 2010. Although in the 2010 plea, one charge was dropped, in addition to sexually touching one of the young girls, he forced the other young girl to touch his penis. Although we acknowledge that only one of the respondent's convictions involved the respondent touching a victim's sexual organs, anus, or breasts and thus clearly meets the definition of "sexual conduct," we find that the other felony conviction revealing his penis to the young girl clearly involved a sexual offense and constituted "sexual conduct" as defined.

¶ 47 The Criminal Code definition of "sexual conduct," approved by the supreme court for use in determining what constitutes an SDPA "sex offense," further supports the trial court's conclusion that the respondent has criminal propensities to the commission of sex offenses. As detailed earlier in this order, "sexual conduct" includes "any intentional or knowing touching or fondling by *** the accused *** of the sex organs *** of *** the accused *** for the purpose of sexual gratification or arousal of *** the accused." 720 ILCS 5/12-12(e) (West 2010). Sexual conduct, by definition, includes situations where the accused sexually touches himself for the purpose of sexual gratification—not just situations where the accused sexually touches a victim. The respondent's documented history of hypersexual behavior involves exposing his sexual organs and/or masturbating in view of unsuspecting young girls and women. Without question, the respondent's sexual conduct is conceived and acted upon for his own personal sexual gratification or arousal.

¶ 48 After consideration of all evidence introduced at trial in the light most favorable to the State, we affirm the trial court's finding that the State proved beyond a reasonable doubt that the respondent is a sexually dangerous person. The State effectively proved that the respondent has suffered from a mental disorder for more than one year before the State filed its petition, that the mental disorder is coupled with criminal propensities for the commission of sex offenses, that the respondent has demonstrated propensities for the acts of sexual assault or sexual molestation of children, and that the respondent is substantially probable to commit more sex offenses if not confined. *Bingham*, 2014 IL 115964, ¶ 37; *Masterson*, 207 Ill. 2d at 330.

¶ 49 Motion *in Limine*

¶ 50 The respondent also takes issue with the trial court's refusal to allow the introduction of reports prepared by three evaluators at his trial in 2014 pursuant to the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2012)). The denial of a motion *in limine* is reviewed on appeal for an abuse of the trial court's discretion. *People v. Grant*, 2016 IL App (5th) 130416-B, ¶ 10, 61 N.E.3d 226.

¶ 51 At the respondent's 2014 sexually violent person commitment proceeding, three evaluators testified. Before trial in this case, the respondent filed his motion *in limine* asking the trial court to either consider the testimony of the three 2014 evaluators or to appoint the same evaluators to examine him in this sexually dangerous person proceeding. The State responded that the SDPA expressly provides for the appointment of only two evaluators. *People v. Grant*, 2016 IL 119162, 52 N.E.3d 308. The trial court noted that case law holds that the respondent would be entitled to the appointment of an additional evaluator only if he could establish that the court-appointed evaluators are biased or prejudiced. The respondent did not make any allegation that the two court-appointed evaluators were biased or prejudiced. Since the respondent did not raise bias or prejudice, and because the testimony was "three to four years old," the trial court denied the respondent's motion.

¶ 52 The SDPA does "not give the parties a right to independent psychiatric evidence at an initial commitment proceeding." *Grant*, 2016 IL 119162, ¶ 27. Instead section 4 of the SDPA directs the trial court to appoint two qualified evaluators. 725 ILCS 205/4 (West 2016). If the respondent alleges and can demonstrate that at least one of the evaluators is

biased or prejudiced, the trial court may appoint an additional independent evaluator. *People v. Craig*, 403 Ill. App. 3d 762, 770, 934 N.E.2d 657, 665 (2010).

¶ 53 Here because the respondent did not meet the criteria for the appointment of an additional evaluator, we find that the trial court did not abuse its discretion in denying the respondent's motion *in limine.*

¶ 54 Alternatively, the respondent argues that the trial court should have at least reviewed the testimony provided by these three evaluators in 2014 because their testimony was relevant. Whether the evidence would have been relevant is an inquiry that would be determined only after the trial court determined that the evidence is statutorily allowed. See *People v. Donoho*, 204 Ill. 2d 159, 176, 788 N.E.2d 707, 718 (2003) (holding that relevant other crimes evidence in sexual offense cases is admissible only if the evidence is otherwise admissible under the rules of evidence). As the statute only authorizes two evaluators in a sexually dangerous person case, a third evaluator cannot be appointed or considered absent bias or prejudice, and thus any potential relevance of the proffered testimony is not considered.

¶ 55 CONCLUSION

¶ 56 For the reasons stated in this order, we affirm the judgment of the Jefferson County circuit court.

¶ 57 Affirmed.