

NOTICE
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2013 IL App (4th) 130097-U
NO. 4-13-0097
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 17, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
CARL W. GINGER,	)	No. 12CF198
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence was sufficient to prove defendant was a sexually dangerous person beyond a reasonable doubt.

(2) The trial court did not err in admitting the child victim's out-of-court statement, where defendant's claim of surprise and inadequate preparation were without merit.

¶ 2 In May 2012, the State filed a petition to have defendant, Carl Ginger (born October 11, 1981), declared a sexually dangerous person under the Sexually Dangerous Persons Act (SDPA) (725 ILCS 205/1.01 to 12 (West 2010)). After a bench trial, the trial court found defendant to be a sexually dangerous person beyond a reasonable doubt and appointed the Director of the Illinois Department of Corrections (Department) as his guardian. The court ordered defendant to remain committed to the Department “until or unless he is recovered and released.”

¶ 3 Defendant appeals, arguing the State did not prove he is a sexually dangerous person

beyond a reasonable doubt. He also claims the State failed to comply with statutory notice requirements before it introduced the victim's out-of-court recorded interview as substantive evidence. The trial court admitted the interview, which defendant claims constitutes reversible error. We disagree with defendant's claims and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5 On February 14, 2012, the State charged defendant with four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60 (West 2010)) against Ae.W., a minor born in 2002, for conduct that began in November 2011. On February 4, 2012, Ae.W.'s mother, Jennifer, contacted the police after Ae.W. told her that defendant, Jennifer's live-in boyfriend, had touched her inappropriately and had done so on previous occasions as well. On February 6, 2012, police conducted a recorded interview of Ae.W. and her two sisters at the Macon County Child Advocacy Center.

¶ 6

On May 3, 2012, the State filed a petition to have defendant declared a sexually dangerous person pursuant to section 1.01 of the SDPA (725 ILCS 205/1.01 (West 2010)). As the bases for its petition, the State alleged defendant engaged in the following sex acts: (1) between November 2011 and February 4, 2012, defendant caused Ae.W. to fondle his sex organ; (2) on February 4, 2012, defendant caused Ae.W. to fondle his sex organ; (3) on February 4, 2012, defendant fondled Ae.W.'s breasts; (4) on February 4, 2012, defendant fondled Ae.W.'s sex organ; (5) "on a number of occasions," defendant laid next to Al.W. in her bed "spooning" her and pressing his erect "sex organ against her backside;" and (6) between 1989 and 1998, defendant sexually abused his younger sister, Casey B., when she was between 5 years old and 14 years old. Defendant underwent two mandatory court-ordered psychiatric examinations, which were performed by Dr.

Lawrence Jeckel and Dr. Terry Killian.

¶ 7 On January 14 and 15, 2013, the trial court conducted a bench trial on the State's petition. Ae.W.'s mother, Jennifer, testified that, in February 2012, she lived with defendant, her three daughters (Ar.W., age 7; Ae.W., age 9; and Al.W., age 12), and her infant son. Defendant had a nine-year-old son, Dakota, from a previous relationship who periodically visited. On the evening of February 4, 2012, Jennifer was at home upstairs preparing her son for bed, while Ae.W. and defendant were making brownies in the kitchen, Dakota was in his bedroom upstairs, and Ar.W. and Al.W. were watching a movie in the living room. Ae.W. came upstairs and reported that defendant had just touched her inappropriately. Jennifer immediately went downstairs, asked the children to go upstairs, and ordered defendant to leave the house. He started crying and said he was "just tickling" Ae.W. Nevertheless, he left the home. Jennifer contacted the police. An officer arrived and took Jennifer's statement. The officer advised Jennifer that a juvenile detective would contact her at a later time. The next day, on February 5, 2012, Detective Janette Carlton interviewed Jennifer's three daughters at the Macon County Child Advocacy Center. Jennifer said that, soon after defendant's arrest, she visited him in jail to find out "why he did what he did." Defendant told her "he was sick and he had no recollection of anything."

¶ 8 Al.W. testified that "a few times," defendant would wake her up by getting into bed with her, putting his arms around her, and pressing his penis against her back. Or, he would sometimes rub his penis against her backside. She said defendant stopped once she told her mother about the incidents and that it made her uncomfortable. She said she did not tell her sisters. On cross-examination, Al.W. admitted she had been abused by her grandfather.

¶ 9 Ae.W. testified that she did not recall baking brownies with defendant or the day her

mother had asked defendant to leave the house. Nor did she recall playing any kind of guessing game with defendant. However, she did remember playing the "dollar game" with him. In this game, they each would place a dollar in their pocket and the other person would reach into the other person's pocket to find the dollar. She did not recall defendant putting anything that she described as "wet and slimy" in her hand, and she did not recall being interviewed by a police detective.

¶ 10 Ae.W. recalled telling her mother that defendant had touched her more than once in a way she did not like, but she did not remember when. She said he touched her "private" over her clothing. She said she told her mother because "it was uncomfortable and it wasn't right" and she wanted her mother to tell defendant "to quit." She said defendant left the house because her mother "didn't want him" there, as she was "pretty sure" her mother was upset when Ae.W. told her about defendant. She said she was having difficulty remembering because "it was a while ago" and she was "kind of nervous."

¶ 11 The recorded interview of Ae.W., conducted at the Macon County Child Advocacy Center, was admitted as part of the State's substantive evidence. Prior to the court's decision to allow the admission, defendant objected on the basis of lack of notice. He claimed the State failed to notify him of its intent to introduce the recorded interview in its case in chief. The trial court overruled defendant's objection and admitted the evidence.

¶ 12 Our review of the video recording indicated the following. During the interview, Ae.W. recalled the events that occurred on the evening of February 4, 2012. She said she and defendant were in the kitchen baking brownies. As she stood by the stove, defendant approached her from behind, picked her up, and placed her on the time-out stool, which stood approximately 12 inches from the floor. He kissed her neck, and "squeezed and grabbed" her "privates." Ae.W. told

defendant to stop touching her. He did, but he asked her to play the "guessing game." She did not want to play because the last time they played, defendant made her touch his "private." When she told him she did not want to play, he made a "puppy-dog face," which "made her feel bad," so she agreed. She said defendant took his "private" out of his pants, grabbed her hand, as she was pulling it back, and moved her hand in circles on top of his "private." She said she got something wet and sticky on her hands. She wiped it on her pajama pants and ran upstairs and told her mother.

¶ 13 Also during the interview, Ae.W. said she and defendant had played the "guessing game" approximately 10 times before. The game, as explained to her by defendant, started with her blindfolding him and him holding out his hand. She would then tap his hand with one of her fingers and he would have to guess which finger she was using. He would then blindfold her and it would be her turn to guess. However, she knew he was not using one of his fingers; she knew it was his "private." Ae.W. also said that "several times" before the night she made brownies, defendant had touched her "privates." She also described the "vampire game" where she would pretend to bite defendant's neck. However, when it was defendant's turn to "bite," he kissed her neck instead.

¶ 14 Casey B., defendant's younger sister, testified she was an unwilling participant in a sexual relationship with defendant when she was between the ages of 5 and 14 years. This relationship started when defendant, who was three years older than her, began inappropriately touching her. When she was approximately eight years old, defendant rubbed her vaginal area underneath her pants and underwear. When she was nine years old, defendant told her it was normal for a brother and sister to have a sexual relationship. When she was 10 years old, defendant would hold her down and rub his genitalia on her genitalia or on her back until he would ejaculate. When she was 12 years old, her family moved into a trailer, which was smaller than the home they had

lived in, so it was more difficult for defendant to "find time when he would corner [her]." However, she recalled the day, when she was 12 years old, when the family bought a new home. She and defendant had to wait in the garage of the new home while her mother retrieved the keys. Defendant "forcibly raped [her] with vaginal penetration" while they waited in the garage. He raped her numerous times until she was 14 years old, when he was removed from the home by authorities from the Illinois Department of Children and Family Services (DCFS) based on these allegations.

¶ 15 Casey said she never witnessed defendant sexually abuse her younger brother, Tony, and defendant never said anything to Casey about abusing Tony. Casey testified she had told a friend of hers about defendant's conduct. Her friend told her mother, who contacted DCFS. Casey spoke with police and gave them a written statement. She was asked if her family was supportive of her when they discovered what had occurred. She responded as follows:

"We only had one court case. Before we could go any further, before I actually went to the first court case, my mother had taken me to a physician who is also a counselor and they both advised me that if I were to tell the court that these things, what happened, he would be put in prison and he would be victimized, the rest of his life would be ruined because his name would be on a list and it wouldn't be fair to him, but if I said it didn't happen, then he would be able to be rehabilitated and get counseling. And as a 14-year-old girl, I just, I did what I was told and so when we went to court, I told them that what I had said previously was not true."

Casey clarified that defendant *had* abused her, and what she said in court when she was 14 years old

was not true, so as to protect defendant.

¶ 16 Dr. Lawrence Jeckel, one of the court-appointed psychiatrists, testified as the State's expert witness regarding his 90-minute interview with defendant on June 6, 2012. According to Dr. Jeckel, defendant denied sexually abusing Ae.W. and denied any inappropriate conduct with Al.W. Defendant told Dr. Jeckel that, once he was advised that Al.W. was uncomfortable about the manner in which he woke her, he stopped. Defendant acknowledged having a sexual relationship with his sister, but he denied it included intercourse. Defendant told Dr. Jeckel that his brother Tony also had sexual relationship with Casey. Dr. Jeckel said defendant denied a sexual interest in children. However, according to the doctor, defendant was a pedophile, nonexclusive type, meaning defendant not only had a sexual interest in children, but in adult women as well.

¶ 17 According to Dr. Jeckel, defendant also suffered from (1) cannabis dependence, in remission, (2) cocaine abuse, and (3) a personality disorder with antisocial features. Defendant scored in the low to moderate range for recidivism on the Static 99 test and in the low range on the Minnesota Sex Offender Screening Tool (MnSOST) test. These test results, coupled with "the overall picture" of defendant's history, indicated to Dr. Jeckel, based on his skill, training, and experience, that, to a reasonable degree of psychiatric certainty, defendant has suffered from a mental disorder for at least one year prior to May 3, 2012, the filing date of the State's petition. In Dr. Jeckel's opinion, defendant exhibits criminal propensities toward the commission of sexual offenses in general, and, in particular, the commission of sexual offenses against children. Treatment is needed to prevent defendant's anticipated sexually dangerous behavior toward children. Dr. Jeckel opined that the necessity for treatment is more urgent than the statistical test results show based on defendant's "broad based psychopathology." Based on defendant's personality disorder, criminal

behavior, sexual behavior, and substance abuse, he is "much more impulsive and less likely to contain [himself] in the long term."

¶ 18 Dr. Terry Killian, the other court-appointed psychiatrist, testified on behalf of defendant regarding his two-hour interview with defendant conducted on July 19, 2012. According to Dr. Killian, defendant acknowledged he had sexual contact with his sister over a long period of time, but denied having intercourse with her. He also "adamantly denied" all allegations made by Ae.W. and Al.W. He admitted he had sexual intercourse with Casey's friend when she was 12 and he was 15, but claimed it was consensual.

¶ 19 Further, defendant told Dr. Killian he had no interest in sexual contact with children. Dr. Killian testified that he could not make a diagnosis of pedophilia because the only incidents which could qualify him for the diagnosis had not been proved to be true—they were merely allegations. He noted though, that if Ae.W.'s and Al.W.'s allegations were true, defendant *would* qualify for the diagnosis of pedophilia. Dr. Killian found defendant suffered from post-traumatic stress disorder related to "pretty serious[]" incidents of abuse as a child, possible bipolar mood disorder, and a history of alcohol and drug abuse.

¶ 20 Like Dr. Jeckel, Dr. Killian evaluated defendant using the Static 99 and the MnSOST tests. Defendant scored a three (in the "mild to moderate" category) on the Static 99 and a zero (not the lowest score possible, but considered a "low risk" of recidivism) on the MnSOST. Based on Dr. Killian's clinical judgment, which he describes as a nonactuarial risk assessment, coupled with his actuarial risk assessment, defendant's risk of recidivism is "still relatively low." In Dr. Killian's opinion, the current evidence does not support the conclusion that it is substantially probable that defendant would engage in the commission of sex offenses if not confined. Further, the evidence

does not suggest defendant suffers from a mental disorder that predisposes him to the commission of sex offenses. Dr. Killian cannot conclude "with confidence" to any degree of certainty that defendant is unable to control his sexual impulses.

¶ 21 Dr. Killian explained that Dr. Jeckel's opinion of defendant differed from his own because Dr. Jeckel placed more emphasis on his clinical judgment (the nonactuarial results). Dr. Killian, on the other hand, relied more on the actuarial risk assessment because, according to him, "that's where the evidence, the best evidence we have lies." Dr. Killian explained that "the research, the head to head research actuarial versus unaided clinical judgment suggests that actuarial assessment is much better." However, Dr. Killian clarified his opinion as follows:

"I want to make that, I want to emphasize the difference between unaided clinical judgment where the person just looks at the facts and says they are or they are not at high risk as opposed to clinical judgment as a supplement to actuarials, because unaided clinical judgment isn't very good. Clinical judgment supplementing actuarials I think is necessary. So I want to make sure that distinction is clear. So unaided clinical judgment is actually pretty poor predicting recidivism and has been demonstrated to be poor. *** There is no research that says that the—that proves that clinical judgment, as a supplement, helps in risk assessment although that doesn't mean it—that it doesn't. *** So the fact that there is not research proving that clinical judgment as a supplement helps, that doesn't mean that it can't be useful as well, but it has a place, meaning the actuarials are

the primary guide because we have good research on that. And the clinical judgment can—can sway us a little bit one way or the other, depending on what the other factors are."

¶ 22 Dr. Killian said he and Dr. Jeckel disagree on whether defendant possess a substantial probability to commit future sex offenses. Dr. Killian disagrees with "how [Dr. Jeckel] views these actuarials." Dr. Jeckel "pretty much dismisses the actuarials as not being very important." On cross-examination, Dr. Killian clarified that the actuarials are not based on a diagnosis, but on the number of previous arrests, convictions, charges, and "some other historical factors."

¶ 23 After the close of the evidence presented, defendant made a motion to reconsider the trial court's decision on the admissibility of Ae.W.'s recorded statement. Standing by its original decision, the court denied defendant's motion. After considering closing arguments, the court announced its decision in open court, first noting that Ae.W.'s out-of-court statement was "much more credible" than her testimony on the witness stand. The court determined defendant had sexually abused Ae.W. in the kitchen in February 2012. Second, the court found "inappropriate sexual conduct" between defendant and Ae.W. on numerous occasions in the form of the "dollar game," as corroborated by the testimony of defendant's "own biological son, Dakota." Third, the court found Al.W.'s testimony credible regarding defendant's manner of waking her. Finally, with regard to the experts' opinions, the court stated as follows:

"We then have the experts' opinions and quite frankly the court is more than a little surprised that neither psychiatrist, both of whom are extremely qualified, was given the opportunity to view the statement, out-of-court statement of at least [Ae.W.] if not the other

children who, at one point at least, were involved in the investigation.

The difficulty the court sees with the testimony of Dr. Killian rests in the fact that he did not assume [Ae.W.] to be truthful. He didn't assume her to be untruthful either. Whereas Dr. Jeckel, as the court understood his expert testimony, did assume the allegations of [Ae.W.] were truthful. It's the court's finding today that what [Ae.W.] told the police was, in fact, truthful. This undermines, in the court's view, a basis, a substantial basis for the testimony of Dr. Killian. The court is not saying that Dr. Killian is somehow less qualified or less of a forensic psychiatrist than Dr. Jeckel, but the fact is, it's the court's belief, that if one doesn't know for a fact that [Ae.W.] was telling the truth, then one's opinion about whether or not defendant suffers from pedophilia holds little or no water. So, for that reason and other reasons, the court finds that Dr. Jeckel's testimony is more credible in this particular circumstances based mostly upon that finding of credibility as to [Ae.W.]."

¶ 24 The trial court further found "the incestual history" did happen between defendant and Casey, and rejects Dr. Killian's opinion that this conduct had no bearing on the issues before the court. Coupling the incest with defendant's "substance-abuse problem, a self diagnosis as being bipolar, [and] prior criminal activity," negatively affected or "warped" defendant's personality. The court followed Dr. Jeckel's opinion, finding the State proved beyond a reasonable doubt that (1) defendant suffers from a mental disorder which has existed for a period of not less than one year

prior to the filing of the petition, (2) defendant has criminal propensities toward the commission of sex offenses and has demonstrated propensities toward acts of sexual assault or molestation of children, and (3) there is a substantial probability that defendant will engage in the commission of sex offenses if not confined. The court adjudicated defendant a sexually dangerous person. This appeal followed.

¶ 25

II. ANALYSIS

¶ 26 On appeal, defendant raises two claims of error: (1) the State's evidence was insufficient to find, beyond a reasonable doubt, that he is a sexually dangerous person within the meaning of the SDPA; and (2) the trial court erred in allowing the State to introduce Ae.W.'s out-of-court recorded interview as substantive evidence. We disagree with both of defendant's claims of error and affirm.

¶ 27

A. Sufficiency Of The Evidence

¶ 28 The State has the burden of proving beyond a reasonable doubt that a defendant is a "sexually dangerous person." 725 ILCS 205/3.01 (West 2010). On appeal from a ruling on a sexually-dangerous-person petition, the reviewing court will affirm the judgment, after considering all of the evidence introduced at trial, in the light most favorable to the State, if it determines that any rational trier of fact could have found the essential elements to be proved beyond a reasonable doubt. *People v. Bailey*, 405 Ill. App. 3d 154, 171 (2010). A reviewing court will not disturb a trial court's finding unless the evidence is so improbable as to raise a reasonable doubt. *People v. Allen*, 107 Ill. 2d 91, 106 (1985).

¶ 29

A "sexually dangerous person" is defined as follows:

"All persons [1] 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 [2] criminal propensities to the commission of sex offenses, and [3] who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children[.]" 725 ILCS 205/1.01 (West 2010).

"In other words, the State must show defendant's mental disorder 'is associated with criminal propensities to the commission of sex offenses' and defendant has actually demonstrated such propensity." *People v. Bingham*, 2013 IL App (4th) 120414, ¶ 30 (quoting *People v. Masterson*, 207 Ill. 2d 305, 318-19 (2003)). Defendant claims the State failed to present sufficient evidence on each of the above elements.

¶ 30 First, defendant argues the State failed to prove he suffers from a mental disorder. Dr. Jeckel testified he diagnosed defendant with pedophilia, nonexclusive type, and opined that defendant has suffered with this disorder for approximately 17 years, since he was 14 years old. Dr. Killian, on the other hand, did not diagnose defendant with pedophilia because Ae.W.'s and Al.W.'s allegations had not been proved and he could not assume they were true. However, Dr. Killian noted, if those allegations were indeed true, defendant *would* qualify for the diagnosis.

¶ 31 The trial court made credibility findings, as well as findings of fact, related to the allegations at issue and determined they were indeed true. We accept these findings because the court was in the best position to observe the demeanor of the witnesses, assess their credibility, and draw inferences from their testimony. *Stapp v. Jansen*, 2013 IL App (4th) 120513, ¶ 17. With the court's findings, it necessarily follows that defendant suffers from pedophilia. That is, both qualified

experts testified that, *if the allegations were found to be true*, defendant suffered from the psychiatric diagnosis of pedophilia. Thus, the first element of the definition was sufficiently proved.

¶ 32 Next, the State was required to prove defendant has a propensity to commit sex offenses and has "demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children." 725 ILCS 205/1.01 (West 2010). The primary purpose of the definition in the statute is for the trier of fact to predict defendant's future conduct. *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 45. As our supreme court noted, this statutory language "can only mean that the State must prove at least one act of or attempt at sexual assault or sexual molestation." *Allen*, 107 Ill. 2d at 105. This way, the determination of whether defendant is a sexually dangerous person is based on something more than "psychological speculation." *Allen*, 107 Ill. 2d at 105.

¶ 33 With the acts, as testified to by Al.W. and Ae.W., the State sufficiently proved that defendant had the propensity to commit sex offenses against children *and* that he actually demonstrated that propensity. Al.W. testified she was awakened on multiple occasions with defendant in her bed, holding her from behind, and pressing his erect penis into her backside. She also said he would rub his penis against her. Ae.W. testified on the witness stand that defendant touched her "private" area more than once, which made her uncomfortable. She told her mother so that defendant would stop. She also recalled playing the "dollar game" with defendant where she would reach into his pocket and feel around until she found the hidden dollar. He would do the same to her. Dakota testified he watched Ae.W. and defendant play the dollar game, but defendant never asked him to play.

¶ 34 On the recorded interview, Ae.W. recalled the "guessing game" she played with defendant where he sometimes blindfolded her and had her touch his "private." He had her move

her hand in circles to rub his "private." She said she got something wet and sticky on her hand. Ae.W. also told of the vampire game where defendant would kiss her neck. She also recalled the night she made brownies with defendant. Defendant lifted her up on the time-out stool. He kissed her neck, touched and squeezed her "private" part, and touched her breasts. Ae.W. went upstairs and told her mother what defendant had just done to her.

¶ 35 Based on this testimony, we find the State also sufficiently proved the second and third elements of the definition—that defendant had committed at least one act of sexual assault or sexual molestation sufficient to, not only prove "mere 'propensity,' " but to prove defendant had " 'demonstrated' this propensity." *Allen*, 107 Ill. 2d at 105 (quoting *People v. Pembrock*, 62 Ill.2d 317, 321-22 (1976)). Thus, the State sufficiently proved that defendant's mental disorder of pedophilia was coupled with criminal propensities to the commission of sex offenses; and that defendant demonstrated those propensities by committing acts of the sexual molestation of children. Contrary to defendant's argument, the testimony of Al.W. and Ae.W. was not speculative. The trial court made a credibility determination and found defendant had performed the acts, as testified to by each child.

¶ 36 Finally, defendant claims the State failed to prove the final element—that there is a substantial probability defendant will engage in sex offenses in the future if not confined. Though not included in the definition of a "sexually dangerous person," our supreme court found that, in order to satisfy due process, the trier of fact in an SDPA proceeding must make an express finding that it is substantially probable the respondent would "engage in the commission of sex offenses in the future if not confined." *Masterson*, 207 Ill. 2d at 330. The trial court here made that finding, but defendant claims it was error since both experts testified defendant's risk of recidivism was rated

low.

¶ 37 Addressing the issue of whether experts can reasonably predict a defendant's behavior in terms of the future commission of sex offenses, this court has stated:

"While 'the statute is primarily concerned with prediction of the defendant's future conduct' (*Allen*, 107 Ill. 2d at 105), the statute does not require proof that anything 'will' happen in the future. As respondent pointed out at trial, it is impossible to prove what 'will' happen in the future. The State need only prove the respondent has demonstrated his propensity to commit acts. Having a propensity to commit acts necessarily implies that the propensity will be acted upon in the future." *People v. Hancock*, 329 Ill. App. 3d 367, 377 (2002).

In this case, both experts testified the results of the actuarial tests performed rated defendant on the lower end of the scale in terms of his risk of recidivism. However, Dr. Jeckel, giving less weight to the actuarial results and more weight to his clinical observations, determined defendant was likely to engage in sexually dangerous behavior with children if not confined. He based his decision on the "broad based psychopathology" in terms of defendant's criminal history, personality disorder, sexual behavior, and substance abuse. The combination of these factors, in Dr. Jeckel's opinion, makes defendant "much more impulsive and less likely to contain [himself] in the long term" than what the actuarial results reveal. Whereas, Dr. Killian placed more emphasis on the actuarial results in forming his opinion that defendant's risk of engaging in sex offenses in the future was "relatively low."

¶ 38 The trial court specifically found Dr. Jeckel's opinion "more credible in this particular

circumstance based mostly upon that finding of credibility as to Ae.W." and because Dr. Jeckel placed some emphasis on defendant's incestual conduct during his youth. Dr. Killian believed defendant's incestual history had no bearing on the issues before the court. The court specifically found Dr. Jeckel's opinions persuasive and decided to "follow those opinions." Given our deferential standard of review, we find no cause to substitute our judgment for that of the trial court in terms of his credibility determinations and findings of fact. We affirm the court's finding that defendant is a sexually dangerous person within the meaning of the SDPA.

¶ 39

B. Admissibility of Victim's Out-of-Court Statement

¶ 40

Defendant also claims the trial court erred in allowing the State to admit, as substantive evidence, the recorded interview of Ae.W. at the Macon County Child Advocacy Center, which took place two days after the incident at issue. Defendant objected at trial to the introduction of the recording, claiming surprise and hearsay. The court overruled defendant's objection. In this appeal, defendant claims the court's erroneous ruling was aggravated by the fact the court "relied heavily on the contents" of the recording in determining defendant was a sexually dangerous person. Defendant acknowledges he received a copy of the recorded interview before trial as part of the State's discovery. He also acknowledges reviewing the recording before trial, but he claims the State's production of the recording was insufficient to notify him it intended to introduce the interview as substantive evidence.

¶ 41

Defendant relies on section 115-10(d) of the Code of Criminal Procedure of 1963 (Code), which provides: "The proponent of the statement shall give the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement." 725 ILCS 5/115-10(d) (West 2010). The purpose of this notice is to protect a defendant against surprise, unfairness,

and inadequate preparation. *People v. Hubbard*, 264 Ill. App. 3d 188, 192 (1994). According to defendant, we should follow the First District's interpretation of this section and reverse the trial court's judgment for lack of proper notice. See *People v. Carter*, 244 Ill. App. 3d 792, 801 (1993). In *Carter*, the State introduced statements made by the child victim to her sister and her cousin, which were overheard by her mother, by way of the sister's and the mother's testimony. The defendant argued the admissibility of these statements, claiming they lacked sufficient reliability. *Carter*, 244 Ill. App. 3d at 799. The appellate court agreed with the defendant and remanded for a separate reliability hearing, specifically requesting the trial court set forth its reasoning on the record. *Carter*, 244 Ill. App. 3d at 801.

¶ 42 The reviewing court also agreed with the defendant's contention the State had failed to comply with the statutory notice requirements before introducing those out-of-court statements. The appellate court stated:

"Although the trial court found that the furnishing of police reports and lists of potential witnesses satisfied the demand for notice, we do not agree. If only police reports, summaries, and lists of witnesses were required, these would be covered by general discovery, and no particular statutory provisions would be necessary. We read the statute as requiring more specific notice to defendant than that which would be forthcoming in response to an ordinary demand for discovery. The statutory provisions under consideration require that defendant be provided with the specific hearsay testimony of the child victim which will be presented at trial in order to protect him against

surprise, unfairness, and inadequate preparation." *Carter*, 244 Ill.

App. 3d at 801.

¶ 43 Defendant relies on *Carter* for his similar claim in this appeal that the State's presentation of the recorded interview as part of discovery was insufficient to satisfy the notice requirement set forth in section 115-10(d) of the Code (725 ILCS 5/155-10(d) (West 2010)). We find *Carter* inapposite to the case before us. In *Carter*, the defendant had received the police reports and summaries of the witnesses' statements, which purportedly included the hearsay statements the State intended to introduce at trial. The court found that was insufficient to satisfy notice requirements so as to protect the defendant from "surprise, unfairness, and inadequate preparation." See *Carter*, 244 Ill. App. 3d at 801.

¶ 44 Surprise, unfairness, and inadequate preparation were not at issue here. Defendant acknowledged receiving a copy of the recorded interview and reviewing the same. In fact, the trial court specifically said defendant "anticipated perhaps using some of this DVD or CD for purposes of impeachment, so there is no surprise here." We agree. Because defendant received, reviewed, and intended to use the recorded interview at trial, he cannot reasonably claim surprise, lack of notice, or prejudice from the State's use of this evidence. We conclude the trial court did not err in allowing the State to introduce the recorded interview as substantive evidence.

¶ 45 In sum, we conclude, based on the evidence presented at trial, any reasonable trier of fact could have found the elements sufficiently proved to determine defendant was a sexually dangerous person. We find no error in the admission of evidence and we find the evidence was not so improbable as to raise a reasonable doubt (see *Allen*, 107 Ill. 2d at 106).

¶ 46

III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 48 Affirmed.