2026 IL App (2d) 250490-U
No. 2-25-0490
Order filed November 18, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re COMMITMENT OF KENNETH BROWN

(The People of the State of Illinois, Petitioner-Appellee, v. Kenneth E. Brown, Respondent-Appellant).

Appeal from the Circuit Court of Lake County.
Honorable Ari P. Fisz, Judge, Presiding.
No. 21-MR-057

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to establish that respondent (1) was convicted of a sexually violent offense, (2) had a mental disorder, and (3) his mental disorder makes it substantially probable that he will engage in future acts of sexual violence. We affirm.

¶ 2 After a jury trial, respondent, Kenneth Brown, was found to be a sexually violent person (SVP) under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1, *et seq.* (West 2024)) and was committed for institutional care in a secure facility. To commit someone under the Act, the State must prove three elements beyond a reasonable doubt: (1) a person must have been convicted of a sexually violent offense, (2) he or she must have a mental disorder, and (3) the person is dangerous because his or her mental disorder creates a "substantial probability" of engaging in sexual violence. *Id.* § 207/15(b)(1)(A), (b)(4), (b)(5). A "sexually violent offense"

includes, *inter alia*, any offense listed in section 11-20.1 (child pornography) and 11-1.60 (aggravated criminal sexual abuse) of the Criminal Code of 1961 or the Criminal Code of 2012 (720 ILCS 5/11-20.1, 11-1.60 (West 2024)). See *id.* § 207/5(e)(1). Respondent appeals, arguing that the evidence was insufficient to prove beyond a reasonable doubt that he is an SVP. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 28, 2012, respondent was convicted of child pornography (720 ILCS 5/11-20.1(a)(1) (West 2010)) and aggravated criminal sexual abuse (*id.* § 5/11-1.60(d)), stemming from a videotaped sexual encounter respondent had with a 15-year-old victim and another adult male. He was sentenced to concurrent terms of 18 years' and 5 years' imprisonment, respectively.

¶ 5 In December of 2020, Mark Kuzia interviewed respondent and completed a report pursuant to the Act to determine whether respondent was an SVP. In addition to respondent's interview, Kuzia examined respondent's prerelease evaluation; an SVP checklist and screening form; FBI, Wisconsin, and Illinois criminal records; his Illinois Department of Corrections (IDOC) master file; his IDOC medical file; various court, law enforcement, and prosecution files; prison correspondence; a special education evaluation; and his sex offender evaluation and assessment. Kuzia reported that a qualifying disorder—pedophilic disorder—was not supported by the index offense, as "there [was] not sufficient information available to indicate that [respondent's] sexual interests are fixated upon pre-pubescent children." Thus, Kuzia opined he was not an SVP.

¶ 6 Following this evaluation, the State sought further evaluation from Barry Leavitt. He completed his report on January 28, 2021. He did not interview respondent, but he reviewed much of the same documentary evidence as Kuzia and found, "to a reasonable degree of psychological certainty," that respondent met the diagnostic criteria for pedophilic disorder and antisocial personality disorder. Leavitt reasoned that respondent's "Well-Above Average Risk" of

reoffending coupled with his diagnoses, which predisposed respondent to commit sexually violent offenses, established that he met the criteria of an SVP. Moreover, respondent's index offense was a qualifying conviction under the Act.

¶ 7 Based on Leavitt's report, the State petitioned to commit respondent as an SVP on January 29, 2021. A probable cause hearing was conducted, and probable cause was found on February 8, 2021.

¶ 8 A. Trial

¶ 9 1. State's Case-in-Chief

¶ 10 On May 13, 14, and 15, 2025, a jury trial was conducted. Leavitt testified and was qualified as an expert in the field of clinical psychology, specifically regarding the evaluation, diagnosis, and risk assessment of sex offenders. He described conducting a secondary evaluation of respondent at the end of 2020 to determine whether he met the criteria for an SVP. Specifically, Leavitt considered:

> "[d]oes an individual possess a specific mental disorder or disorders[,] which predispose them to commit future acts of sexually-violent behavior? And then[,] to the extent that one is able to identify a potential predisposing mental disorder, then the question becomes to determine whether there is a substantial probability that because of that mental disorder or mental disorders, the individual will commit future acts of sexually[-]violent behavior."

He initially determined there was a sexually-violent, index offense.

¶ 11 In conducting his examination, Leavitt reviewed respondent's "master file," which included documents covering his past criminal behavior; IDOC file; prior treatment history; and past evaluations relating to emotional, psychological, sexual functioning, disciplinary history,

progress notes, and medical history. Leavitt did not interview respondent, as he was operating under a time constraint in completing his report, and "[he] did not feel that a personal interview, although potentially beneficial, was necessary for [him] to form the opinion that [he] did in this case."

¶ 12 Leavitt also examined respondent's charged and uncharged allegations of sexually violent conduct because "the details of the offense are particularly useful in terms of understanding the nature of [his] sexual offending, the type of victim, the circumstance, the history, [and] what took place." All this information aided Leavitt in determining a potential diagnosis. He examined two uncharged allegations of sexual violence: (1) respondent self-reported sexually abusing a six- and eight-year-old child when he was either 13 or 14 years old; and (2) at either 14 or 15 years old, respondent fondled a 10-year-old child's buttocks and penis. Leavitt also remarked that respondent was a victim of sexual abuse himself, which "may have contributed to his early sexualization."

¶ 13 As to charged sexually violent conduct, respondent, aged 17 (in 1993), was convicted of criminal sexual abuse after he was seen leaving the restroom with a four- or five-year-old child. While in the restroom, respondent allegedly exposed himself to the child and asked the child to touch his penis. While respondent initially minimized his actions in the case, he eventually admitted that he had the child touch his penis, he did get erect, and he acted for the purpose of sexual gratification. Respondent was sentenced to 24 months' probation, which terminated unsatisfactorily.

¶ 14 Five years later, respondent was charged in Wisconsin with first degree sexual assault of a child and incest with a child. He pleaded guilty to first degree sexual assault, and he was sentenced to seven years' imprisonment. Here, while changing his son's diaper, respondent allegedly fondled and "placed his mouth over his son's penis." Leavitt remarked that this offense was notable because

respondent reported, "he had never been stirred up to that extent as he had been in the past, that he found it particularly stimulating and arousing, and that's what led him to not be able to control his better judgment or his impulses and to commit the act ***." After respondent's prison sentence, he was civilly committed to secure care in Wisconsin in 2005, then released in 2009.

¶ 15 Leavitt noted that respondent had a history of antisocial behavior and "general criminal behavior." For example, he had engaged in the "destruction of property, [] vandalism, school suspensions, fighting, battery," sexual harassment of some female students, and had a conviction for residential burglary, wherein his term of probation was revoked. Leavitt described that, as a child, respondent was "kind of troubled, confused, impulsive, [and an] angry youth coming out of a very disruptive background."

¶ 16 In August 2011, respondent was charged in Lake County with the index offenses—child pornography and aggravated criminal sexual abuse. Leavitt remarked that both offenses are considered sexually violent under the Act. In this case, respondent videotaped himself and another adult male performing mutual oral sex, fondling, and digital penetration of a 15-year-old boy. Respondent admitted to police that he engaged in two sexual incidents with the victim. Leavitt found significant that respondent reported that he could not stop during the instant offenses because "the situation was too arousing for him" and he was "too caught up in the fantasy life." Also of import, Leavitt considered respondent's description of escalating deviant sexual behavior, starting after his release from custody in Wisconsin until the index offenses. For example, respondent failed to enroll in additional sex offender treatment after his release, and, shortly thereafter, he began downloading child pornography. However, during respondent's time in IDOC, he was "fairly cooperative," not breaking any rules, or getting into a lot of trouble. The only concerning instance

involved respondent's intercepted mail; respondent sought out "extensive pornographic material," involving "a couple" of stories with prepubescent males, which constituted an IDOC rule violation.

¶ 17 After respondent was released from IDOC, he was sent to Rushville, a Department of Human Services Treatment and Detention Facility. Leavitt noted respondent had been housed there about four years. This facility was specifically for individuals detained or committed under the Act. Overall, respondent was cooperative, "except for the fact that he had been unwilling to complete the entire entry to treatment evaluation," which was the first step in the facility's sex offender treatment program. Respondent was also unwilling to complete the psychosexual testing, but he did participate in some ancillary treatment groups and facility jobs.

¶ 18 Leavitt, relying on the Diagnostic and Statistical Manual of Mental Disorders-V (DSM-V), diagnosed respondent with pedophilic disorder (nonexclusive type, prepubescent males) and antisocial personality disorder. Leavitt explained the qualifiers he used for pedophilic disorder, noting that respondent's attraction was "pretty much exclusive to male children," but the "nonexclusive type" indicated that respondent's sexual interests include and go beyond prepubescent children. Leavitt explained the diagnostic criteria for pedophilic disorder as: (1) a "history of recurrent sexual interest, urges or actual sexual behaviors involving prepubescent-aged children***" that lasts for at least six months; (2) the interviewee experiences this interest after he or she is 16 years old or older; and (3) he or she fantasizes, experiences urges, or is "thinking about the thought process" and this leads to behaviors that are sexual in nature, creates interpersonal difficulties, or leads to his or her incarceration. As to these factors, the age of the targeted child is not controlling; rather, the child's puberty status controls for diagnosis. For example, when someone was attracted to children who are "baby-looking, [with] fine, smooth skin," that attraction

was "more associated" with an interest in prepubescent aged children, despite the child's actual age, as a "15-year-old could look like a 12- or 11-year old."

¶ 19 Leavitt detailed that respondent met the pedophilic disorder criteria, as he had offended against his own prepubescent child and other acquaintance prepubescent children; he has a history of sexually-violent behavior; and, despite his index offense involving an adolescent male, he had a continued preoccupation with prepubescent children.

> "He has a long[-]standing history of not only being previously diagnosed and treated with pedophilia, while in the State of Wisconsin and during his period of either precommitment as well as civil commitment he was consistently diagnosed by each evaluator with a diagnosis of pedophilic disorder. And while there may have been issues at some point related to additional diagnosis and/or additional risk considerations, he has consistently been diagnosed with a pedophilia disorder going back at least 15 years, if not longer."

Leavitt also remarked on respondent's statements that he not only fanaticized about the sexual encounter with the victim in his index offense, but also about the victim's statement to respondent that the victim had "groomed a 13-year-old boy for sex." Leavitt concluded, based on the foregoing and respondent's failure to seek treatment, that he continued to suffer from pedophilic disorder, as this was not a curable condition. Leavitt reported that respondent needed to focus on "coping skills, [] emotional and behavioral functioning, [and] ways to kind of think about himself and others that would lower that risk" to reoffending. Thus, despite respondent's presence in the Department of Human Services Treatment and Detention Facility for more than four years, Leavitt opined, respondent remained an SVP.

¶ 20 Respondent was also diagnosed with antisocial personality disorder. Leavitt summarized the diagnostic criteria as, "antisocial behavior predating 15 let's say, the age of 15, and you have to see evidence of behavior that reflects a general disdain for societal rules and regulations for the safety and welfare of others." He remarked that respondent exhibited qualifying antisocial behaviors like "the fighting, the battery, the school suspensions, the sexually intrusive behavior, [and] the willingness to exploit others to meet his own sexual needs ***." Furthermore, Leavitt reported this behavior persisted into adulthood, and he believed that respondent continued to suffer from antisocial personality disorder because "there have been no concrete steps to address that particular disorder."

¶ 21 Leavitt remarked that respondent's diagnoses affected his volitional capacity because it evinced an inability to control himself—"He's someone who really struggles to control his sexual impulses when certain stimuli, certain sexual stimuli are present." Respondent repeatedly discussed, over many years, that "he would get aroused by the sight of a child, and that [] would lead to him offending because he wasn't able to control his sexual impulses." The confluence of respondent's disorders created a "more significant problem," Leavitt testified, because pedophilic disorder encompassed an internal sexual urge towards children, while antisocial personality disorder engendered beliefs disregarding rules, these factors guided his opinion that both of respondent's diagnoses were mental disorders that predisposed him to commit future acts of sexual violence.

¶ 22 In determining whether a substantial probability existed that respondent would reoffend, Leavitt conducted a Static-99R risk assessment. Clinicians utilize this instrument to assess an individual's baseline risk of sexual reoffending, as it is "the most well-replicated, well-validated instrument in the sex offender risk assessment field." Even still, Leavitt reported that Static-99R

underestimated the risk of reoffending because the assessment was not sufficiently comprehensive, in that the assessment considered only charges and convictions of sex offenses, and the timeframe for predicting future offenses was overly broad (likelihood of reoffending "at any time in the future"). Respondent scored a six, which equated to the highest risk category of "4B." Leavitt remarked, "people who score a 6 are approximately nearly 4 times more likely, 3.7 times more likely to sexually reoffend than the typical [sex] offenders that are normed on these types of instruments."

¶ 23 Leavitt also considered non-assessed empirical risk factors and protective factors to generate a more comprehensive risk profile. In considering risk factors, he utilized a 2010 study, Psychological Vulnerabilities, Nature's Psychological Vulnerabilities Related to Sexual Reoffense Risk. He found respondent exhibited four empirical risk factors: (1) sexual interest in prepubescent children, (2) intimacy deficits, (3) sexual regulation deficits, and (4) dysfunctional or sexualized coping. Leavitt reported that respondent's lack of long-term, age-appropriate, intimate relationships; his struggles to control his sexual impulses and urges; and coping with loneliness by becoming more sexualized, all supported his findings. Regarding protective factors, Leavitt considered respondent's age (49), health, and completion of sex offender specific treatment. As to respondent's age, Leavitt concluded this factor was "fully accounted for on the Static-99R." He found that health was not a significantly mitigating factor, as respondent did not suffer from "any kind of health condition *** that might either restrict his access or ability to engage in future sexually deviant behavior." Finally, Leavitt found that respondent had not successfully *completed* any sex offender treatment program, thus, his participation in any program was not a mitigating factor. However, Leavitt credited respondent's participation in sex offender treatment programs, therapy appointments, church groups, employment opportunities, and ancillary therapeutic

programming. Based on the foregoing, Leavitt believed that it was substantially probable that respondent would sexually reoffend.

¶ 24 On the second day of trial, May 14, 2025, Edward Smith testified that he was a licensed sex offender evaluator with the Illinois Department of Human Services (DHS). Smith conducted SVP evaluations in his role at DHS, and he conducted an evaluation of respondent in 2021. Smith detailed the requirements for finding someone qualified as an SVP under the Act. Smith opined that, after reviewing respondent's master file, conducting an interview of respondent, and examining risk assessment tools, respondent met the criteria of an SVP. Smith completed a report, dated May 20, 2021, detailing such. He concluded respondent had been convicted of a qualifying offense—aggravated criminal sexual abuse, had a mental disorder under the Act—pedophilic disorder and antisocial personality disorder, and there was a substantial probability that respondent would reoffend.

¶ 25 Considering respondent's diagnoses, Smith defined pedophilic disorder as,

> "[O]ver the course of an least a six-month period, an individual has recurrent and intense sexual arousal that involves sexual activity with prepubescent children. The individual's arousal or sexual interest can be expressed either through having sexual urges, having sexual fantasies[,] or acting out on those urges."

Smith stated that a prepubescent child was, generally, under the age of 13; however, age was not the operative factor, rather, the child's actual stage of puberty controlled. He opined that pedophilic disorder was typically a chronic condition, and pedophilia becomes a disorder after a person either "experiences significant distress or impairment *** or when those sexual interests are expressed either with the risk of harm or harm to another individual." Smith believed respondent still had pedophilic disorder, finding he has "an extensive history of sexual interest in children," engaged

in sexual fantasies, had committed offenses against children and had been sanctioned, and continuously experienced sexual attraction to children.

¶ 26 As to the diagnosis of antisocial personality disorder, Smith opined that respondent exhibited criteria for this disorder beginning in childhood. He defined the disorder as, "essentially a kind of a pervasive pattern of the violation of and disregard for the rights of other people. Typically[,] it manifests itself by the age of 15 ***." Antisocial personality disorder, Smith testified, was characterized by behavior that, "put[s] you in a situation [such as] breaking the law or grounds for arrest, impulsivity, lack of concern for other people, irresponsibility, those kinds of things." Smith reported that respondent showed problematic behavior early in childhood—he was "involved in fights, he would steal things, acknowledge lying," he was involved with the criminal legal system, and even hit a teacher.

¶ 27 Based on the confluence of respondent's diagnoses, Smith opined that respondent exhibited diminished emotional and volitional control that predisposed him to engage in sexual violence. Smith stated that respondent's diagnoses "set the foundation" for him to act out on his sexual urges. Antisocial personality disorder provides the mindset that "it's okay to violate the rights of others, it's okay to do what I want in the moment; and so those two things kind of work together, and that's kind of how that process works."

¶ 28 Smith interviewed respondent in March 2021. In the interview, respondent told Smith about several instances of unreported sexual misconduct he committed before the age of 16. Smith found these events relevant, as it showed respondent's sexual interest in young children from an early age (especially where there was a significant age differential between respondent and his victims). Respondent described that, in 1988, when he was 13 years old, he offended (involving fellatio) against a 6- and 8-year-old child. Thereafter, in 1989, when respondent was 14 years old, he

offended on two occasions against his 4-year-old cousin. These encounters also involved fellatio and were never reported to law enforcement. In 1990, when respondent was 15 years old, he was sleeping over at a pastor's house when he began having sexual thoughts about the pastor's 10-year-old son, and he proceeded to fondle the boy's penis. Respondent also indicated to Smith that, from the age of 13, he had had sexual fantasies involving children and continued to be attracted to children. Respondent described having fantasies involving performing fellatio on male children between the ages of 13 and 14.

¶ 29 Respondent also described his instances of sexual misconduct for which he was convicted. In 1993, respondent recounted touching a four-year-old child's penis while they were in the bathroom. Smith reported that respondent provided conflicting accounts of this incident; respondent stated that he asked the child to touch his penis, then later reported that he had touched the child's penis. Smith opined that respondent acted in furtherance of sexual gratification. Then, in 1998, respondent offended against his three-year-old son. Smith reported that respondent described changing his son's diaper when he proceeded to perform fellatio on the child. Respondent indicated, in that moment, "he recognized that he needed help." In 2011, after respondent participated in sex offender treatment at Sand Ridge Secure Treatment Center (Sand Ridge) in Wisconsin, respondent described increased usage of child pornography and involvement with a 15-year-old boy. Respondent and another adult acquaintance engaged in fellatio and anal sex with the minor, and they videotaped the acts. Respondent also fondled the minor as he drove him home. Months later, respondent engaged in additional sexual activity with the minor. Although the minor was not under the age of 13, Smith found respondent's behavior relevant to his diagnosis because the record did not show how old the minor actually looked, and respondent described, "digressing into *** that idea of younger males" and stated, "age didn't matter."

¶ 30 Respondent also described his previous treatment to Smith. Respondent participated in treatment, first, for four months in Wisconsin before dropping out. Then, respondent participated in treatment at Sand Ridge from 2006 to 2009 but did not successfully complete treatment because he was discharged from the facility. Respondent described the treatment at Sand Ridge as "phenomenal," as it assisted him in challenging his distorted thinking and deviant sexual attraction. Smith reported respondent's beliefs that "if he had stayed in treatment longer that he might possibly not be in the situation that he's in currently." However, Smith opined that respondent did not appear to understand treatment concepts, relaying only vague recollections of the sexual offense cycle and relapse prevention plan. Smith found this particularly concerning, as the sexual offense cycle aided an individual in identifying factors that are involved in committing an offense and the relapse prevention plan identified patterns of relapse and supplied tools to individuals to intervene and stop the progression of relapse. Smith noted that, in Rushville, respondent had not participated in sex offender specific treatment groups, but he had participated in ancillary treatment. However, that treatment would not directly assist respondent in understanding the sexual offense cycle or help complete a relapse prevention plan.

¶ 31 Smith also conducted a risk assessment of respondent, which examined respondent's risk based on actuarial instruments (here, Static-99R and Static-2002R), extraneous aggravating risk factors, and protective factors. Respondent scored a five on the Static-99R, which is categorized as "above-average risk"; however, the assessment only provides reoffending group estimates based on individuals who were recharged or reconvicted, meaning, respondent's uncharged conduct was not accounted for in the Static-99R. In the Static-2002R, respondent scored a seven, which is described as "well-above-average risk." Smith opined that these tools underestimate the risk of reoffending, and practitioners are encouraged to examine dynamic factors to develop a complete

risk-assessment profile. Practitioners must use clinical judgment to determine the weight to give dynamic factors. Smith found the following dynamic factors present for respondent: deviant sexual interest and antisocial personality disorder, but he noted that, with appropriate treatment, respondent's risk factors may change. As for protective factors, Smith examined the three most common factors—age, health or medical status, and completion of sex offender treatment. Smith reported that none of the protective factors were applicable to respondent. Of note, *participation* in sex offender treatment was not a protective factor; individuals need to report successful *completion* of treatment to qualify.

¶ 32 A stipulation was read into the record that respondent had past convictions for child pornography and aggravated criminal sexual abuse in Lake County case No. 12-CF-248. The State rested.

¶ 33 2. Respondent's Case-in-Chief

¶ 34 Respondent called Mark Kuzia, a sexually-violent-persons evaluator from Wexford Health, and qualified him as an expert in the field of clinical psychology and sexually-violent-person evaluations. Kuzia stated that, after being assigned a case, he receives an individual's file, reviews the record, and conducts an interview. A patient does not need to complete an interview. In this case, Kuzia reviewed respondent's master file, court documents, treatment records, police reports, and conducted a video interview with respondent. Kuzia evaluated respondent and completed a report dated December 19, 2020.

¶ 35 First, Kuzia evaluated respondent for a mental disorder. Kuzia found that respondent did not meet the diagnostic criteria for a mental disorder that would qualify him as an SVP. Kuzia examined the diagnostic criteria for antisocial personality disorder and concluded respondent did not qualify. He also examined the criteria for pedophilic disorder. He differentiated the disorder

from pedophilia or pedophilic interest in that the patient has "thoughts or the attraction to that population without actually acting or having the fantasies or urges that would cause that interpersonal distress." Kuzia distinguished that pedophilia is not a mental disorder under the Act, and individuals who manage their pedophilic disorder, by not acting out, would not have the disorder but could still have pedophilia. The diagnosis of pedophilic disorder can fluctuate over time but is generally considered chronic. Moreover, the diagnosis can include qualifiers like "nonexclusive," which describes someone's sexual interests as inclusive of prepubescent children and others (may include minors that are not prepubescent).

¶ 36 Kuzia opined that respondent did not meet the diagnostic criteria for pedophilic disorder currently, although he thought "it's fair to say that [respondent] did have it, especially around the time that the last two offenses had occurred at 17 and 22." In coming to this conclusion, Kuzia examined respondent's reported and unreported criminal history and his treatment history. He found significant respondent's index offense, involving a 15-year-old minor. Kuzia found that this incident did not fall within a pattern of behavior that would instill confidence in a pedophilic disorder diagnosis because respondent's victim was 15 years old (an age generally not considered prepubescent). However, Kuzia acknowledged the actual age of the victim and how old they appeared are both important factors to consider.

¶ 37 Kuzia stated that respondent's answers in the interview reflected that he had received treatment, especially his answers relating to relapse prevention. However, he did not know respondent's personal relapse prevention plan. Respondent's treatment would have been extensive while at Sand Ridge. He believed, and respondent agreed, that regardless of respondent's diagnosis, he would benefit from continued sex offender treatment, especially considering respondent's statements that he "needs help so he doesn't reoffend in the future" and his reported

deviant thoughts about children aged 13 to 14—including, "his most exciting fantasy" that the 15-year-old victim in the index offense was grooming a 13-year-old child. Kuzia also reported that, in the past, respondent admitted he was not fully applying the tools he learned in treatment, as his actions " 'chiseled away what he learned at Sand Ridge.' " Nonetheless, Kuzia was impressed that respondent and his son, the victim of a prior offense, had reconnected in recent years after respondent apologized for his behavior. Kuzia opined that respondent's behavior showed a measure of accountability. He did not believe that respondent apologized to any of his other victims.

¶ 38 Based on respondent's prior sexual conduct, treatment history, and the fact that he has not offended against a prepubescent child in 27 years, Kuzia found that "it didn't really make sense to me to attempt to try and diagnose him as having pedophilic disorder." Rather, he believed that respondent's treatment and incarceration may have contributed to managing his condition and downgrading his pedophilic disorder to pedophilia. However, Kuzia conceded that the significant lapse in offending may be due to respondent's housing in a detention facility. Kuzia recognized respondent's deviant behavior captured by the index offense; however, he noted that "to think that he automatically need to be civilly committed under a pedophilic diagnosis just didn't feel right to me as far as that goes, especially since that offense that brought him here didn't have anything to do with pedophilia." Kuzia opined that respondent's treatment helped manage his condition and, coupled with his 27-year lapse in pedophilic behavior, respondent did not presently suffer from pedophilic disorder.

¶ 39 Kuzia opined, instead, that respondent may have committed the index offense due to bad decision-making, attraction, or confused sexual identity. He believed that respondent's early sexualization may have contributed to the normalization of his deviant behavior. Further, he opined

that respondent "still had some feelings or thoughts or behaviors linked to potentially [*sic*] sexuality involving males," especially where respondent had indicated he was heterosexual but had sex with his co-defendant, an adult male, in the index offense. Kuzia believed that respondent had difficulty finding an appropriate partner and that "this attempt to act out with this 15[]year old is evidence of that."

¶ 40 Kuzia described that he reviewed, during respondent's evaluation, sexually explicit pictures and writings that were sent to respondent while incarcerated. He believed the pictures were of adults and noted that the stories prefaced that the characters were all adults but recounted incidents that occurred when the characters were much younger. However, in one story, a character was described as a college intern that "didn't look a day over 14." No evidence suggested that respondent requested sexually explicit material; however, the material was addressed to him. Apart from this material, respondent did not exhibit a substantial history of inmate disciplinary infractions (three disciplinary reports and one behavior infraction all since 1999).

¶ 41 After finding that respondent did not suffer from pedophilic disorder, a qualifying mental disorder that predisposed him to act out sexual violence, Kuzia concluded that respondent did not meet the legal standard of an SVP. As such, he did not complete a risk assessment. This was standard protocol in his department.

¶ 42 Respondent then called Tetyana Kostyshyna, a clinical psychologist at Specialized Forensic Unit, P.C., as an expert witness in the field of clinical psychology and sex offender evaluations. Kostyshyna conducted an evaluation of respondent to determine if he qualified as an SVP. She evaluated whether: (1) he committed an SVP-qualifying conviction, (2) he had an SVP qualifying mental disorder, and (3) his sexual risk of reoffending was substantially probable. She,

ultimately, concluded that respondent did not have a qualifying mental disorder under the Act; thus, she did not perform further testing or risk assessment analysis.

¶ 43 Kostyshyna stated that, after being assigned a case, she drafts an initial report, and, thereafter, offers the patient an interview. He or she does not need to complete the interview, but this process helps fill in the "gaps in data, clarities [*sic*] in data and gather[s] the person's description of every sexual case in their history to understand are they minimizing, are they denying, where they're at in treatment, are they open, have they processed everything that's happened, [or] have they not." This information helps Kostyshyna assess the individual's credibility. She interviewed defendant on October 31, 2022.

¶ 44 In November 2022, Kostyshyna evaluated respondent and completed a report. In drafting her report, she reviews an individual's master file, criminal history, treatment records and notes, police reports, and any kind of completed testing. First, she considered respondent's sexual history. She opined that respondent did not exhibit cognitive distortions—*i.e.*, beliefs justifying his deviant sexual acts. However, she found that, while respondent was living in the community between 2009 and 2011, he reoffended, although not with a prepubescent child, and admitted to using both legal and child pornography (involving males ages 12 to 16) at least once a month. In fact, respondent reported to Smith that, in 2011, he was "gripped" by pornography involving males ages 13 to 17.

¶ 45 As to respondent's sexual offense history, she found the following offenses significant: an uncharged offense when respondent was 14 years old, a charged offense when respondent was 17 years old, a conviction when respondent (22 years old) offended against his son, and a conviction when respondent was 35 years old (in 2012). Kostyshyna noted that respondent's initial, uncharged offense at 14 years old could not be considered for a pedophilic diagnosis, as an individual must be at least aged 16 before he or she can be diagnosed with pedophilia. She found respondent's next

two offenses, at 17 and 22 years old, applicable to diagnosis, as both respondent and the victims fell within the applicable age ranges. However, she found that respondent's 2012 conviction was "quite different and unusual" compared to his other offenses because the victim was an adolescent, not a prepubescent child. She opined that respondent's victim profile changed—"what changed is he did not persist further with sexual behaviors against prepubescent individuals, somebody under the age of 13." Based on this information, Kostyshyna concluded that respondent did not diagnostically qualify as having pedophilia.

¶ 46 Kostyshyna also reviewed respondent's treatment history, including his treatment at Sand Ridge, which was an "inpatient intensive sex offender program [that] averages five hours of sex offender treatment per week," for a total of 840 hours. She evaluated the efficacy of his treatment as a part of her examination of whether respondent had a mental disorder—namely, pedophilia. When asked if respondent progressed far enough in sex offender treatment to identify his needs or show changed behavior, Kostyshyna stated that, in 2009, respondent did not meet that standard (or need to meet that standard) because he was released from Sand Ridge after the Wisconsin SVP program changed to correspond with the less-stringent, Illinois program, and, under that new system, respondent's case was too weak to qualify for continued services in Wisconsin. That is, his dynamic risk factors were too insignificant for him to continue with services.

¶ 47 Kostyshyna next considered the DSM-V diagnostic criteria for pedophilic disorder and whether respondent suffered from this qualifying mental disorder. She discussed all the relevant criteria but stressed that there needed to be an "intense kind of presentation of the disorder." Although "intense" is not defined in the DSM, Kostyshyna stated that there was an informal agreement between practitioners that it meant "three-plus incidents of sexually deviant acts or victims of sexually deviant acts, again, under the age [of] 13." However, she noted that other

practitioners defined "intense" as "extremely impairing, [or] very frequent." She opined that pedophilic disorder was capable of change; with treatment, individuals could manage and control sexually deviant fantasies or thoughts. Once the deviant thoughts were managed, an individual "would be able to live a safe life in the community."

¶ 48 Kostyshyna ultimately diagnosed respondent with "pedophilic disorder sexually attracted to males nonexclusive type in remission." She agreed that pedophilic disorder was a lifelong condition, and the DSM-V did not contain a specifier that the diagnosis could be in remission. She believed that the DSM diagnosis did not "fit exactly to [the] SVP mental disorder criteria," so she created a solution to "communicate to the decision-makers of this courtroom that the disorder is not intense and active." Explaining her diagnosis, she determined that respondent "has a very mild form, if any, of pedophilic disorder, and here is why: because he had only two cases in his history of clearly prepubescent victims." Significantly, respondent had a four-year-old and a toddler victim and both incidents were single occurrences—incidents not satisfying the intensity criterion. She concluded respondent only "marginally met" the diagnostic criteria for pedophilia, and she was "clinically not confident" in a diagnosis. However, she believed that respondent's self-reported deviant thoughts (including, in 2005, when respondent reported masturbating to fantasies of children and feeling emotional congruence with children), coupled with his past behavior, established the intensity criterion and qualified him for a diagnosis of pedophilic disorder. In considering the severity of the diagnosis, especially after significant treatment, Kostyshyna found that respondent did not display an "active disorder" under the Act since "the last time [] he attended to those sexually deviant thoughts was in 2005." Rather, respondent was in remission, as he had volitional control over the disorder. Kostyshyna agreed that respondent was in a controlled environment between 1998 and 2005, which may have impacted his actions; however, she stated

that respondent could have written or drawn child pornography, which would have expressed continued sexually deviant thoughts. Accordingly, Kostyshyna opined that Illinois sex offender treatment would not offer anything additional to respondent because "he doesn't have many dynamic risk factors" and his pedophilic disorder was not so pronounced that it qualified as a mental disorder under the Act.

¶ 49 Kostyshyna also considered other mental health diagnoses. She noted this further examination was important, as one dynamic sexual risk factor for reoffending is a personality disorder. She found respondent met the diagnostic criteria for antisocial personality disorder with borderline features. This diagnosis, however, does not serve as the basis for someone to qualify as an SVP under the Act. In sum, Kostyshyna found "to a reasonable degree of psychological certainty that [respondent] doesn't have a qualifying SVP mental disorder under the Act."

¶ 50 After completing her initial report, Kostyshyna reviewed several short stories respondent received while incarcerated. She opined that her diagnosis would not change based on these stories, as there were no drawings or other depictions of childlike sexual material. She noted only "one or two times" someone was sexual with a younger person, or that the story otherwise cross-referenced a minor, but there was no indication that the sexualized person was prepubescent. Further, there were no "[self-]initiated references," like handwriting, relating the stories to prepubescent children. Generally, Kostyshyna found the material to be "just [] pornographic material but legal pornographic material." She concluded that there was "too little evidence" to conclude that respondent had "pedophilic recurring thoughts or rumination of those thoughts or even behaviors."

¶ 51 After the close of Kostyshyna's testimony, the cause was continued to May 15, 2025, for closing arguments and deliberation. The jury found respondent to be an SVP. The case proceeded

directly to a dispositional hearing, and the court committed respondent to DHS for treatment in a secure facility. See 725 ILCS 207/40(b)(2) (West 2024).

¶ 52 On June 6, 2025, respondent moved for judgment notwithstanding the verdict or for a new trial. The motion was denied on October 8, 2025. This timely appeal followed.

¶ 53 II. ANALYSIS

¶ 54 Civil commitment is permissible in narrow circumstances where the government has established that an individual exhibits a "special and serious lack of ability to control behavior" and, thereby, poses a danger to the public. *Kansas v. Crane*, 534 U.S. 407, 409, 412-13 (2002). For example, in Illinois, the State may petition to extend the incarceration of a criminal defendant if he or she is found to be sexually violent. *In re Detention of Hardin*, 391 Ill. App. 3d 211, 216 (2009). This continued commitment is civil in nature, not criminal. 725 ILCS 207/20 (West 2024). An SVP is someone who has been convicted of a sexually violent offense and is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence. *Id*. § 207/5(f). Involuntary commitment of an SVP is authorized "for control, care and treatment until such time as the person is no longer a sexually violent person." *Id*. § 207/40(a).

¶ 55 In reviewing challenges to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider whether any rational trier of fact could find the elements proved beyond a reasonable doubt. *In re Commitment of Fields*, 2014 IL 115542, ¶ 20. "A reviewing court will not reverse a [factfinder's] [SVP] determination unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt," as "[i]t is not the role of the reviewing court to substitute its judgment for that of the trier of fact regarding the credibility of the witnesses or the weight to be given the evidence." *In re Detention of White*, 2016 IL App (1st)

151187, ¶ 56. Here, respondent does not dispute the State's proof that he was convicted of a sexually violent offense. See 725 ILCS 207/15(b)(1)(A) (West 2024).

¶ 56 A. Mental Disorder

¶ 57 Respondent challenges the sufficiency of the evidence that he has "Pedophilic Disorder, Sexually Attracted to Males, Nonexclusive Type" (pedophilic disorder), arguing the diagnosis was supported only by "disputed expert opinion based on flawed conclusions." The State responds that the expert testimony sufficiently established that respondent suffered from a qualifying mental disorder, which predisposed him to engage in acts of sexual violence. We agree with the State.

¶ 58 A "mental disorder" is "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." 725 ILCS 207/5(b) (West 2024). Our supreme court "has not given us guidance as to what sort of factual predicate suffices to establish the presence of a mental disorder," in determining whether the State has met its burden. *In re Commitment of Gavin*, 2019 IL App (1st) 180881, ¶ 36 (*Gavin II*). However, reviewing courts routinely rely on expert testimony and defer to the factfinder's determinations of expert credibility. *Id*.

¶ 59 As is typical, only experts testified at respondent's hearing. See *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶ 4 ("As is common with commitment proceedings under the SVP Act, only expert witnesses testified."). Accordingly, here, the proofs come down to the competing diagnoses of the expert witnesses. Leavitt and Smith diagnosed respondent with pedophilic disorder and antisocial personality disorder, while Kuzia and Kostyshyna did not believe that there was enough evidence to confirm respondent currently had pedophilic disorder.

¶ 60 Respondent contends that the expert opinions of the State's witnesses were not sufficient to prove beyond a reasonable doubt that he suffers from a current mental disorder. In support,

respondent cites the supreme court's decision in *People v. Murray*, 2019 IL 123289, and his own experts' opinions that he did not currently suffer from pedophilic disorder. We find respondent's reliance on *Murray* misplaced, and we will not substitute our judgment for that of the trier of fact regarding the weight to give the evidence.

¶ 61 Respondent argues that *Murray* controls because the inconsistencies in the experts' opinions here failed to adequately explain how respondent's diagnoses presently influenced his volitional capacity. In *Murray*, the defendant appealed, asserting that the State had failed to prove him guilty of unlawful possession of a firearm by a gang member because the State failed to prove the Latin Kings were a street gang. *Id*. ¶¶ 1, 17. To succeed, the State was required to prove that the Latin Kings are a "streetgang" defined by the Illinois Streetgang Terrorism Omnibus Prevention Act (740 ILCS 147/10 (West 2012) (defining "streetgang" as "any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of 3 or more persons with an established hierarchy that, through its membership or through the agency of any member engages in a course or pattern of criminal activity"). *Id*. ¶ 22. During trial, the court allowed a detective to testify as an expert on street gangs. He concluded that the Latin Kings were a street gang but did not disclose any specific crime evidence. *Id*. ¶¶ 26-27.

¶ 62 The supreme court reversed the defendant's conviction, finding the State failed to prove that the Latin Kings were a street gang. In reaching its conclusion, the court found that the detective "generally described in broad terms the types of information and facts on which his opinion was based, but he never explained his reasons as to why that information supported his opinion." *Id*. ¶ 31. Specifically, he never described the nexus between the street gang databases he utilized and facts that established the Latin Kings were a street gang. Moreover, "[h]e described the nature of his experience and familiarity with the databases, but he never explained the reasons or

information and facts that supported his opinion, and he never connected his reasons or the information and facts to defendant to satisfy the statutory definition of 'street gang.' " *Id*. ¶ 34. In sum, this amounted to insufficient evidence.

¶ 63 Respondent's reliance on *Murray* is misplaced, as the appellate court rejected, in *In re Commitment of Moody*, 2020 IL App (1st) 190565, its application to expert testimony provided in SVP cases. There, relying on *Murray*, the respondent argued that the State failed to prove beyond a reasonable doubt that he had a mental disorder as defined by the Act. *Id.* ¶ 47. The court concluded that,

> "Contrary to *Murray*, which involved an expert who testified as to the types of information underlying his opinion without testifying as to the connection between that information and his summary opinion, both [of the experts] extensively testified that the pattern of respondent's behavior documented in the records they reviewed led directly to their diagnoses. The two experts did not render summary opinions on a requisite element based merely on unexplained personal familiarity." *Id.* ¶ 53.

¶ 64 In *Moody*, the court concluded that two experts provided clinical definitions for the respondent's conditions and detailed why they diagnosed the respondent with the disorders. Further, the experts explained that their "conclusions were based upon the respondent's records and his admissions while in treatment and outlined how the facts of the respondent's life and the circumstances of his repeated sexual offenses supported their diagnoses." *Id*. ¶ 49. Accordingly, the court concluded that, in such circumstances, *Murray* was inapposite. *Id*. ¶ 53.

¶ 65 *Murray* is similarly distinguishable from this case. Here, the State's experts, Leavitt and Smith, provided sufficient relevant testimony that respondent has a mental disorder under the Act. The experts found that respondent had pedophilic disorder, a mental disorder as defined by the

Act, and antisocial personality disorder. Both State's experts described the applicable diagnostic criteria and provided an evaluation supporting respondent's diagnosis. They then explained *why* they diagnosed respondent with pedophilic disorder. Further, they also explained facts from respondent's history, circumstances of his repeated sexual offenses, present deviant sexual fixations, and instances and lapses in treatment history that supported their diagnoses. Significantly, respondent's own expert, Kostyshyna, did not completely depart from Leavitt's or Smith's findings, where she concluded that respondent did have pedophilic disorder but used an unrecognized diagnostic specifier ("in remission"). Moreover, Smith and Leavitt detailed that pedophilic disorder is a longstanding condition and described how respondent's conditions currently affected his emotional and volitional capacity. Additionally, these experts analyzed respondent's reoffense risk under two actuarial instruments, including assessing dynamic factors (*e.g.*, sexual violence, impulsivity, minimization of his acts and offense and his responsibility, and noncompliance with rules) that impacted his mental disorder.

¶ 66 Specifically, Leavitt opined that respondent currently had pedophilic disorder because the diagnosis was chronic, respondent reported limited volitional control during the index offense, he exhibited a pattern of escalating deviant behavior, and he failed to enroll in sex offender treatment, which, after his release from Sand Ridge, led to him downloading child pornography. Leavitt also remarked that respondent had a continued preoccupation with prepubescent children. For example, Leavitt noted respondent's statements that he not only fantasized about the sexual encounter with the victim in his index offense, but also the victim's statement to respondent that the victim had "groomed a 13-year-old boy for sex."[1] Moreover, the confluence of respondent's dual disorders

[1] Leavitt detailed that a victim having not yet hit puberty, not his or her reported age, is controlling for a diagnosis of pedophilic disorder, as a "15-year-old could look like a 12- or 11-year old."

created a "more significant problem" and made it more likely that he will act on the pedophilic disorder because he is impulsive and disregards rules. "He's someone who really struggles to control his sexual impulses when certain stimuli, certain sexual stimuli are present." This was of particular concern, as Leavitt noted, because respondent was not currently seeking treatment at Rushville and refused psychosexual testing, nor had he ever *completed* a treatment program for his sex offenses.

¶ 67 Similarly, Smith opined that respondent continued to suffer from pedophilic disorder, finding he has "an extensive history of sexual interest in children," engaged in sexual fantasies, committed offenses against children and been sanctioned, and continuously experienced sexual attraction to children. As to the index offense, Smith found the offense relevant to diagnosis, despite the victim being 15 years old, because the record did not show how old the minor actually looked, and respondent described, "digressing into *** that idea of younger males" and stated, "age didn't matter." Smith stressed the problematic nature of these findings, considering that respondent was not presently participating in sex offender treatment and he did not appear to understand treatment concepts, relaying only vague recollections of the sexual offense cycle and relapse prevention plan. Smith further echoed Leavitt's findings that respondent's diagnoses "set the foundation" for him to act out on his sexual urges.

¶ 68 In sum, *Moody* distinguished *Murray* by showing that the expert witnesses in an SVP case testified extensively as to the respondent's behavior, history, and background that ultimately led to their diagnoses. Thus, found such expert witness testimony to be sufficient under the Act. *Moody*, 2020 IL App (1st) 190565, ¶ 53. We find no reason to depart from the *Moody* court's analysis regarding expert witness testimony and conclude, viewing the evidence in the light most favorable

to the State, the jury could have found, beyond a reasonable doubt, that respondent had a mental disorder as defined by the Act.

¶ 69 The remainder of respondent's argument—that his offenses were remote and his diagnosis was not based on diagnostically relevant information or an interview—attacks the weight of the evidence against him. It is not our function to retry respondent, and the question of whether the weight of the evidence and the credibility of the witnesses proved that he was an SVP was ultimately the responsibility of the factfinder. *In re Detention of White*, 2016 IL App (1st) 151187, ¶ 62. Based on the foregoing, viewing the evidence in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that the State proved that respondent was an SVP under the Act. See 725 ILCS 207/5(b) (West 2024).

¶ 70 B. Substantial Probability

¶ 71 Next, respondent argues that the State failed to prove, beyond a reasonable doubt, that his mental disorder made it substantially probable that he would engage in future acts of sexual violence. In particular, respondent takes issue with the margin of error expressed by the experts' testing, the variance in dynamic risk factors utilized, and the weight afforded to respondent's protective factors. The State responds that both doctors appropriately assessed respondent, and respondent's disagreement with State's experts' conclusions is merely an attempt to request this court to improperly reweigh evidence. We agree with the State.

¶ 72 Courts have found expert witness testimony to be sufficient where "the experts' testimony sufficiently linked the respondent's likelihood to reoffend to his diagnoses." *Moody*, 2020 IL App (1st) 190565, ¶ 64. It is the province of the factfinder to draw reasonable inferences from witness testimony. *In re Detention of Welsh*, 393 Ill. App. 3d 431, 455 (2009). No exact testimony is required to find that an expert sufficiently connected a respondent's mental disorder and his or her

reoffense risk; rather, the factfinder "must consider all factors that either increase or decrease the risk of reoffending," then "make a commonsense judgment as to whether a respondent falls within the class of individuals who present a danger to society sufficient to outweigh their interest in individual freedom." *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001); see also *Gavin II*, 2019 IL App (1st) 180881, ¶ 50 ("When reading the experts' conclusions in their proper context, we find the record shows their determinations about [the respondent's] likelihood to reoffend eminently linked to their conclusions that he had a mental disorder.").

¶ 73 Here, the State presented two uncontested experts who concluded that respondent was substantially probable to reoffend. Leavitt and Smith scored respondent similarly, although not identically, on a risk assessment. Both experts discussed how they conducted the risk analyses and how the assessment informed their conclusions. Leavitt stated that, to a reasonable degree of psychological certainty, respondent was substantially probable to reoffend based on respondent's score of a six on the Static-99R and a variety of dynamic risk factors, namely his sexual interest in prepubescent children, intimacy deficits, sexual regulation deficits, and dysfunctional or sexualized coping. Correspondingly, Smith also concluded that respondent was substantially probable to reoffend based on respondent's score of a five on the Static-99R, score of seven on the Static-2002R, and a variety of dynamic risk factors, including: deviant sexual interest and antisocial personality disorder. Between these two doctors, three actuarial assessments were completed and a panoply of dynamic risk factors were discussed, all with significant overlap. In fact, Smith's consideration of respondent's deviant sexual interest corresponds significantly with Leavitt's consideration of respondent's sexual interest in prepubescent children and his sexual regulation deficits. Overall, both experts' conclusions were based on their professional judgment and more than "a mere mathematical formula or statistical analysis"; their findings were grounded

in statistical analysis and dynamic and idiosyncratic factors that provided a holistic evaluation of respondent. *Hayes*, 321 Ill. App. 3d at 188. Accordingly, respondent's arguments, challenging the margin of error in the experts' actuarial assessments and the variance of the dynamic risk factors utilized, fail.

¶ 74 As to the assessment of respondent's protective factors, respondent asks this court to reweigh the evidence and substitute our judgment for the jury's. We decline to do so. See *Gavin II*, 2019 IL App (1st) 180881, ¶ 49. Thus, we conclude, viewing the evidence in the light most favorable to the State, that the evidence was sufficient to prove that respondent is substantially probable to commit future acts of sexual violence.

¶ 75 III. CONCLUSION

¶ 76 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 77 Affirmed.