2026 IL App (2d) 240448-U
No. 2-24-0448
Order filed August 7, 2026

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).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

(The People of the State of Illinois, Petitioner-Appellee, v. Erik Paxton, Respondent-Appellant).

Appeal from the Circuit Court of Kane County.
Honorable Thomas C. Hull, III, Judge, Presiding.
No. 14-MR-401

JUSTICE BIRKETT delivered the judgment of the court.
Justice Jorgensen concurred in the judgment.
Justice McLaren dissented.

ORDER

¶ 1 *Held*: The State proved beyond a reasonable doubt that respondent suffered from a mental condition and was substantially probable to engage in acts of sexual violence.

¶ 2 In these proceedings under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2022)), respondent, Erik Paxton, appeals from the trial court's orders finding that the State proved beyond a reasonable doubt that respondent is a sexually violent person (SVP) because a mental disorder makes him substantially probable to engage in acts of sexual violence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Underlying Conviction

¶ 5 On March 20, 2012, a woman in Aurora discovered a man standing on a chair placed outside of her 13-year-old daughter's bedroom window. The man ran away when the woman yelled. On April 26, 2012, police were called to a second home where a man had placed a folding chair below a bathroom window to watch a 13-year-old girl take a shower. The man was chased away by the girl's father. On May 20, 2012, police were called again to the same house where a stepstool had been placed by an 11-year-old's bedroom window. The suspect, dressed in black, left after dogs barked.

¶ 6 Police searched the area and found respondent, dressed in black and running nearby. Respondent was released when the girls' father was unable to identify him as the man who had run away from his house. Police interviewed respondent again the next day and respondent admitted that he had been peeping through the windows. Respondent admitted to going to the house to look at the girls through the window and masturbating. Police arrested respondent for disorderly conduct.

¶ 7 Following his arrest, respondent admitted to a wide range of offenses. He told police that he had been at the house on April 26, 2012, and he had been at the home at least five times between the April incident and his arrest in May. He would wait outside for the bathroom light to turn on and would masturbate to the thoughts of the girl naked in the bathroom. On one occasion, he entered the attached garage and stole multiple pairs of women's and girl's underwear and a one-piece pair of pajamas. Respondent took these articles home and masturbated with them.

¶ 8 Respondent further admitted that he had been the peeper at the first home on March 20, 2012. He had watched an adult woman shower at that residence for roughly 30 minutes while he

masturbated. He had been to the home on multiple occasions and claimed that he had entered the home three times and once stole several pairs of women's underwear from the dryer. He had also peeped at a third house, the residence of an elderly woman. He had also entered that home and walked in as far as her bedroom door. He stopped when he heard a dog bark.

¶ 9 Respondent also told police that he had been following female joggers at night since 2008. He had tracked one of the joggers back to her home and watched her through her windows on several occasions. In 2011, he had waited for the woman to leave for a run, entered her unlocked car, and took her driver's license from her purse. He took a photograph of the license at his home and then replaced the license before the woman returned home.

¶ 10 Police searched respondent's bedroom, computer, and storage devices. A large collection of women's and children's underwear and clothing was recovered from the room. A blow-up sex doll was found in respondent's room and had been stuffed with underwear. The computer and storage devices contained a wide range of pornography, including more than 30 images of nude female children, 200 images of young girls in a variety of settings, nearly 2,400 images of nudism and adult pornography, and several sets of images in which respondent had digitally inserted photos of himself naked with children. Police also found 24 photos of young girls that respondent had taken while peeping through their windows and 71 Google Maps images with nearby homes circled. The search of respondent's computer also revealed almost 200 images of death, including graphic images of accidents, beheadings, autopsies, and dead children. Respondent had apparently edited some of the images by inserting himself into them, including superimposing his face onto a body in an image from a concentration camp. Respondent had also collected many images of male and female circumcision.

¶ 11 Respondent told police that he had been sexually attracted to young girls since at least 2006, when he was 18 years old. To that end, respondent had sought out opportunities to be around children. Respondent worked at a local YMCA's "Safe and Sound Program" and volunteered for other organizations that put him into contact with children. Respondent described becoming sexually aroused when he placed a three-year-old girl on his lap to take her down a slide.

¶ 12 Respondent told police that he had a "special bond" with an 11-year-old girl from the YMCA and had secretly taken multiple photographs of her. He asked this girl to go down the slide with him, but she had declined. Respondent admitted to going to the girl's home, and the home of another girl in the Safe and Sound Program, in the middle of the night to look through their windows in hopes of seeing them naked.

¶ 13 Digital forensics showed that respondent had run searches for "pre-teen girls naked," "little naked girls," "naked little girl vagina," "naked girl makeshift morgue," "dead little girl," and "making chloroform at home." Respondent told police that he had thought of having sex with the people in the homes he had entered. He did not want the children to know it was him, so he had thought of making them unconscious through strangulation or the use of a chemical like chloroform. When asked if he would continue to have sex with a girl if he had accidentally killed her, respondent said that he would because she "would not know" and it "wouldn't be any harm to her." Respondent admitted to masturbating images of a deceased six-year-old girl he had found online.

¶ 14 On November 5, 2012, respondent was indicted and charged with 14 counts of aggravated child pornography and 12 counts of child pornography. On February 27, 2014, respondent pleaded guilty to one count of child pornography, and the State dismissed the remaining counts. Other charges for disorderly conduct for peeping into homes, trespass to residence and residential

burglary were nol-prossed. Respondent was sentenced to a 4-year term of imprisonment with credit for 647 days. Although sex offender treatment was available at the Department of Corrections, respondent did not participate in the treatment during his incarceration. The record shows respondent did not receive any disciplinary tickets during his time in the Department of Corrections. His term of mandatory supervised release (MSR) was scheduled to begin on May 9, 2014.

¶ 15 B. The State's SVP Petition

¶ 16 On May 6, 2014, three days prior to his scheduled release from prison, the State petitioned to commit respondent as an SVP pursuant to the Act. On June 12, 2014, after a hearing, the trial court found probable cause that respondent was an SVP and ordered him to be detained at the Rushville Treatment and Detention Facility (TDF) approved by Illinois Department of Human Services (the Department) and to undergo and cooperate with an evaluation by the Department to determine whether he was an SVP. Respondent received a disciplinary violation while at the TDF in 2020 for masturbating on his bed without his window covered. The State's petition was continued for years before it went to trial in 2024.

¶ 17 C. The Bench Trial

¶ 18 On February 13 and 14, 2024, the trial court held a bench trial on the State's petition. Pursuant to the Act, the State was required to prove respondent was an SVP by proving beyond a reasonable doubt that he (1) had been convicted of a sexually violent offense, (2) has a mental disorder that predisposes him to engage in acts of sexual violence, and (3) is dangerous because the mental disorder creates a substantial probability that he will engage in acts of sexual violence. 725 ILCS 207/5, 35 (West 2022).

¶ 19 In addressing the first element, the State introduced a certified statement of respondent's conviction for child pornography (720 ILCS 5/11-20.1(a)(1)(vii) (West 2012)), a sexually violent offense under the Act. Both parties then introduced expert testimony relating to the two remaining elements.

¶ 20 1. The State's Expert Witnesses

¶ 21 The State presented evaluation reports and testimony from two expert witnesses, Dr. Angeline Stanislaus and Dr. David Suire. Both doctors had evaluated respondent in 2014 and filed multiple updated written evaluations over the years. Both witnesses were found to be experts in the field of sex offender evaluation and risk assessment. Both relied on in-person interviews with respondent, police reports, court records, and digital forensic records such as photographs, images, and computer records.

¶ 22 i. Stanislaus

¶ 23 Stanislaus testified that, on April 25, 2014, she conducted a 2½-hour interview with respondent and, on May 21, 2017, conducted a 30-minute interview with him. In 2021 Stanislaus again asked to interview respondent, and he declined to speak with her. Stanislaus met with an investigator to review the materials collected from respondent's computer and residence. Based upon this information, Stanislaus conducted a risk assessment on respondent and made her recommendations in a written report. On May 5, 2014, Stanislaus completed her first report, and it was updated in 2017, 2021, and 2024.

¶ 24 In her 2014 report, Stanislaus determined that respondent met the criteria to be found an SVP. Her opinion remained the same in each subsequent report.

¶ 25 Stanislaus testified it was common for her to consider all relevant arrests, even those that did not directly result in a conviction and did not involve hands-on sexual violence. She concluded

that all the charges originally against respondent were sexually related, including the charges of residential burglary and disorderly conduct.

¶ 26 Respondent told Stanislaus that he had digitally inserted himself into photos because he "wanted to feel like he was with them, posing with them." He had used Microsoft Paint to edit the photos and estimated that each photo would take him at least four hours. Stanislaus noted that respondent had digitally erased the nipples and vulva in some of the images of young girls.

¶ 27 Stanislaus testified that respondent had reported not participating in sex offender treatment while at the Treatment Detention Facility. He had participated in "treatment foundations," but had not continued as of 2017 because he had "not touched anyone," he did not have a sexual interest in children, and he believed he did not require treatment. Stanislaus testified that she considered this in her evaluation because it showed that respondent "doesn't understand the sexual deviancy that he is suffering from."

¶ 28 Stanislaus testified she used the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) in her evaluation of respondent. Using this tool, Stanislaus diagnosed respondent with: (1) pedophilic disorder, sexually attracted to females, nonexclusive subtype; (2) voyeuristic disorder; (3) fetishistic disorder; and (4) other specified paraphilic disorder. She also included sexual sadism disorder as a "rule-out" disorder. Stanislaus explained that she would need more information to clearly make a diagnosis on the rule-out disorder.

¶ 29 The pedophilic disorder was based on respondent's sexual attraction to pre-pubertal girls, typically age 13 or under. Stanislaus testified the diagnosis was based on respondent's "self-reported arousal and sexual interest in young girls dating back to 2006." She also considered respondent's collection of child pornography and his considerable effort in finding employment where he had access to children under the age of 13. Stanislaus diagnosed respondent with

voyeuristic disorder based on respondent's repeated peeping into windows to try to observe women and girls naked. The fetishistic disorder was based on respondent's sexual arousal from underwear and clothing, both items he purchased and items he stole during burglaries.

¶ 30 Finally, Stanislaus diagnosed respondent with "other specified paraphilic disorder" (OSPD). She defined OSPD as "sexual interest in which engaging in sex without the consent of the other person." She diagnosed respondent with OSPD based upon his entry into multiple homes and his thoughts "about either having sex with them after they are passed out, either by strangulating them or knocking them out by using a chemical on a cloth."

¶ 31 Stanislaus testified that she had identified sexual sadism as a rule-out diagnosis based on respondent's self-reported "obsession with death, dead children, you know, morgue." She found his statement to police that he would have sex with a dead child troublesome but needed more information before she could confidently make the diagnosis.

¶ 32 Stanislaus opined that respondent still suffered from each of the diagnosed conditions at the time of the hearing. She testified that "these are deviant sexual interests where the brain is wired to respond to scenarios. Respondent could learn to manage these sexual interests, Stanislaus noted, but only through treatment. Left untreated, both the pedophilic disorder and OSPD could lead respondent to commit acts of sexual violence.

¶ 33 Stanislaus testified she used the STATIC-99R actuarial instrument in conducting a risk assessment. The STATIC-99R provides a baseline evaluation and sex offenders fall into one of five categories of risk: very low risk, low risk, average risk, above average risk, and well above average risk. The ten static factors can include items like respondent's age, whether he had any prior violent convictions, or whether he ever lived with an intimate partner for two or more years. Stanislaus scored respondent 4 on a scale that ranged from negative 3 to positive 12 or 13. This

score would place him in the above average risk level. Based on this, Stanislaus testified that respondent's absolute recidivism risk, when including other dynamic risk factors, was 17% after 5 years, 27% for 10 years, and 32% after 20 years. Stanislaus opined that the majority of sexual offenses are unreported and the authors of the STATIC-99R indicated that the relevant score would be an underrepresentation.

¶ 34 Stanislaus explained that the dynamic risk factors include things such as sexual preoccupation, sexual interest in children, and poor problem-solving skills. The factors came from a 2010 article written by Mann, Hanson, and Thornton. Hanson and Thronton were the authors of the STATIC-99R. See Ruth E. Mann, R. Karl Hanson, David Thornton, *Assessing Risk for Sexual Recidivism: Some Proposals on the Nature of Psychologically Meaningful Risk Factors*, Sexual Abuse, 22(2), 191-217 (2010). The dynamic factors she identified as relevant to respondent were: (1) multiple paraphilia, (2) sexual preference for children, (3) indecent sexualized violence, (4) sexual preoccupation, (5) poor cognitive problem solving skills, (6) emotion congruence with children, and (7) a lack of an emotional relationship with adults. These dynamic risk factors led to Stanislaus placing respondent in the high-risk/high-needs group.

¶ 35 Based on this analysis, Stanislaus opined that respondent was substantially probable to sexually reoffend. She defined "substantially probable" as "much more likely than not." Stanislaus testified that respondent met the criteria to be found an SVP under the Act. She noted that respondent's possession of child pornography made future sexual offenses more probable, and respondent's effort in modifying the material and his interest in finding employment with children further increased his risk.

¶ 36 On cross-examination, Stanislaus testified that she was contracted by the Attorney General to provide a second opinion after another evaluator has found that the person does not meet the

criteria for the Act. She agreed that respondent's peeping into windows and stealing underwear were not sexually violent acts. She agreed that none of the child sexual abuse materials showed an adult engaging in a sexual act with a child. Of the thousands of images on respondent's computer, the vast majority were legal pornography. He digitally altered some images to insert himself, but the images did not purport to show respondent having sexual penetration of a child. She also agreed that the DSM-5 states that a diagnosis does not mean that the subject is unable to control his or her behavior.

¶ 37 ii. Suire

¶ 38 Suire testified that, on July 15, 2014, he conducted a two-hour interview with respondent. In 2023, he attempted to meet with respondent, but respondent declined. In 2014, Suire drafted a report on respondent in and updated it in 2017, 2019, 2021, and 2023. Suire's testimony about the circumstances leading to the criminal charges against respondent was consistent with Stanislaus's testimony.

¶ 39 Suire estimated that, of the 125 to 150 evaluations he conducted, he found the subject to be an SVP over 95% of the time.

¶ 40 Suire testified that he diagnosed respondent with five mental disorders utilizing the DSM-5: (1) pedophilic disorder, sexually attracted to females, nonexclusive type, (2) other specified paraphilic disorder, sexually attracted to nonconsenting persons and necrophilia, (3) voyeuristic disorder, (4) fetishistic disorder, and (5) schizotypal personality disorder. Suire also identified four rule-out diagnoses: (1) sexual masochism disorder, (2) sexual sadism disorder, (3) schizophrenia, and (4) substance use induced psychotic disorder. Suire opined that respondent continued to suffer from each disorder at the time of the hearing.

¶ 41 Suire testified that diagnoses can be made in the absence of respondent actually engaging in the conduct because "they can be urges, fantasies, or behaviors. So they don't require actual behavior. What they would require though is that there be some sort of distress or difficulty related to them." He noted that respondent had only been engaged in voyeurism for two to three months, but believed it was "likely that [respondent's] interest pre-existed before he acted on it."

¶ 42 Schizotypal personality disorder is, according to Suire, sometimes called "schizophrenia light." He diagnosed respondent with this disorder because he has odd beliefs, like that he can predict the future, and has odd social interactions. "When he describes his social interactions, you get a sense that he didn't really understand how people work, how they think." Suire testified that it is possible that respondent has "high order Asperger's or some sort of high order autistic spectrum," but that he believed schizotypal personality disorder was the best diagnosis available at the time of the hearing.

¶ 43 With regards to the sexual masochism diagnosis, Suire noted a photo respondent had created in which he appeared to be dead and about to be autopsied by children with scalpels. Suire also stated that respondent created a female social media alter ego who would make denigrating comments about his penis. As for substance-induced psychotic disorder, Suire noted respondent had told him that he believed his behavior was driven by "some combination of diet pills, energy drinks, [and] drinking alcohol." Suire did not believe this truly explained respondent's behavior but included it under the rule-out category.

¶ 44 Unlike Stanislaus, Suire used three different actuarial instruments: the STATIC-99R, the STATIC-2002R, and the STABLE-2007. Suire testified that the STATIC-2002R was based on the same set of meta-analytic data as the STATIC-99R but was slightly different and yielded an overall score. The STABLE-2007, on the hand, also inherently includes dynamic risk factors. Suire

explained that most of the items included in the STABLE-2007, such as resentment toward women or sexual preoccupation, can be addressed through treatment.

¶ 45 Suire also gave respondent a score of 4 under the STATIC-99R and a 5 under the STATIC-2002R. These scores would place respondent in the above-average risk group in both STATIC instruments. When he interviewed him in 2014, Suire gave respondent a score of 15 under STABLE-2007. The score of 15 placed respondent in the highest risk range under that actuarial instrument. Suire testified that he had combined the risk given under a STATIC instrument to raise the STABLE-2007 score. It was this combining that raised respondent to the highest risk category.

¶ 46 Suire opined that the actuarial data underpredicts the risk respondent poses. He testified that this is because that respondent was "interrupted very early in the process" and "his behaviors appeared to be escalating." Suire believed that, if respondent had not been caught, he could have committed "considerably worse" offenses. Like Stanislaus, Suire testified that he found respondent "substantially probable" to reoffend and defined it as "much more likely than not."

¶ 47 On cross-examination, Suire agreed that respondent would be a registered sex offender upon release and would not be able to work around children. Suire conceded that abuse of a corpse is not a sexually violent offense and there was no evidence that respondent actually engaged in sex with a corpse. The hundreds of photos respondent downloaded of dead bodies were not sexual "to an outside observer," but he could not testify to what was in respondent's mind. Suire stated that the photos of children in their homes did not include nudity.

¶ 48 In scoring respondent under the STABLE-2007, Suire agreed that he had rated him as a 1 for the risk factor of hostility towards women, with 0 meaning no risk and 2 representing a high risk. Suire admitted that he had written a question mark next to that score and that the accompanying coding manual for the STABLE-2007 explained that a person with a score of 1 may,

for example, have a history of domestic abuse, demean his wife, or believe that all women are irresponsible with money. Suire testified that there were several drafts of emails to a woman on respondent's computer and while some of them were complimentary, others showed anger and hostility. Suire found these drafts of unsent emails "notable."

¶ 49 Suire conceded that some of the risk factors listed under STATIC are very similar to STABLE, such as "emotional identification with children" in STABLE-2007 and "emotional congruence with children" in STATIC. Suire testified that "you would be double dipping to consider both the STABLE and those additional risk factors." He concluded that the examiner should consider one or the other, not both.

¶ 50 Suire found that respondent was 26.8 percent likely to re-offend within 5 years. He testified that this is the maximum that anyone could score under the actuarial instruments.

¶ 51 2. Respondent's Expert Witness

¶ 52 Dr. Luis Rosell, a forensic psychologist who was qualified to perform SVP evaluations in Illinois, testified on behalf of respondent. Rosell testified he first met with respondent in 2015. Since then, he met with respondent four additional times in person and twice remotely. Rosell included his findings in a report dated November 14, 2016, and subsequently updated it in 2021 and 2023.

¶ 53 Rosell opined that respondent did not meet the criteria for SVP commitment. Rosell noted that respondent was not charged with, or convicted of, any "hands-on offending." Rosell testified that he viewed respondent very differently because respondent was a hands-off offender. He explained that, in his experience with "the hundreds of cases that I've done in this state, I can't recall any one similar to [respondent's]. So if you looked at the TDF, the 6 or 700 individuals that are in there, I don't think there's many other people who have not [*sic*] engaged in a hands-off

offense;" rather, most people in the TDF have "all been hands-on-offenders." Moreover, Rosell noted that respondent had not engaged in any problematic behavior while in confinement.

¶ 54 Rosell, like the other experts, utilized the DSM-5 in diagnosing respondent. Rosell found that respondent may have met the criteria for pedophilic disorder, voyeuristic disorder, and fetishistic disorder. However, Rosell noted that the DSM-5 cautions that a specific diagnosis in a forensic setting does not mean that the subject would have serious difficulty controlling their behavior. While respondent did commit offenses, Rosell noted that "he's actually never actually really recidivated in the way we look at recidivism."

¶ 55 Rosell disagreed with the diagnosis of unspecified paraphilic disorder attracted to nonconsenting persons. Rosell opined that his disorder is commonly diagnosed in cases of rape, but that there was nothing to support it being applied to respondent. Similarly, Rosell found there was no evidence to support a diagnosis of necrophilia because there was nothing to suggest respondent's curiosity would lead to him actually engaging in the behavior. Rosell also rejected a diagnosis of antisocial personality disorder because of respondent's compliance with rules while confined.

¶ 56 Like the other experts, Rosell scored respondent as a 4 on the STATIC-99R actuarial instrument. He testified that he has stopped using the STATIC-2002R because the norms have not been continually updated. Rosell explained that the STATIC-99R was updated as recently as 2021. Rosell testified that the base rate of recidivism in the STATIC-99R is 8%, and the average rate is 4.6%.

¶ 57 Rosell further testified that studies over the past 20 years have shown that the great majority of individuals who possess child pornography do not engage in "hands-on offending." Over 95% of individuals convicted of possessing child pornography do not engage in either "hands-on

offending" or possession of child pornography again. He noted that studies in California and Florida found that the recidivism estimates were significantly overestimated compared to the actual figures. Rosell also testified that desistance literature "demonstrates that individuals, even if they don't participate in treatment, just by being either incarcerated, confined, or getting older, maturity, education, et cetera, that they stop the behavior that got them in trouble to begin with." And while individuals who go through treatment have a lower recidivism rate, 80 percent of individuals who do not go through treatment also do not recidivate.

¶ 58 Rosell also disputed the applicability of the 2010 article by Mann, Hanson, and Thornton. Rosell considered almost all the dynamic factors to have a very low correlation with sexual recidivism. The exception was "failure on supervision," but Rosell found that this was not relevant as respondent has followed the rules during confinement. Rosell explained that both the STABLE-2007 and the Mann dynamic factors were created to examine an individual's behavior while in the community and should not be applied to individuals who are confined. For example, respondent is not allowed to have an intimate relationship while in confinement and that reduces the relevance of the factor.

¶ 59 On cross-examination, Rosell agreed that he predominately testifies on behalf of the defense and that he has historically found 85% of the individuals he evaluated as not meeting the criteria for SVP or were suitable for conditional release. He agreed that respondent admitted to multiple crimes during 2012, including peeping, entering homes and stealing items of clothing. Rosell agreed that several statements made by respondent in their interviews were not factually accurate.

¶ 60 Respondent chose not to testify and rested at the end of Rosell's testimony. The court heard argument and took the matter under advisement.

¶ 61 D. Trial Court's Ruling

¶ 62 The trial court filed its written ruling on April 24, 2024. The court wrote that it considered the testimony of all witnesses, the exhibits entered and assessed the credibility of the witnesses in light of all evidence received during the trial. It held that the State had proved that respondent was convicted of a sexually violent offense, specifically child pornography in case No. 12-CF-1076.

¶ 63 Regarding the mental disorder requirement, the trial court found the State's experts to be more credible than respondent's expert "based upon their testimony explaining their reasons for each diagnosis and for their belief the Respondent has a mental disorder that qualifies as a mental disorder defined by the [Act]." The court found that the State had proved this requirement beyond a reasonable doubt.

¶ 64 The trial court further found that the State had proven beyond a reasonable doubt that respondent's mental disorder creates a substantial probability that he will engage in future acts of sexual violence. In making this conclusion the court miscited *In re Commitment of Haugen*, 2017 IL App (1st) 160649, ¶ 24, stating that "Courts have defined 'substantially probable' to mean 'more likely than not that the respondent will commit acts of sexual violence as a result of his mental disorder.' " *Haugen* actually states that "Illinois courts have defined 'substantially probable' to mean 'much more likely than not.' " *Id.* Given the consistent testimony throughout the proceeding that each expert defined "substantially probable" to mean "much more likely than not," we believe the court's definition omitting the "not" was simply a typographical error. Citing the testimony of Stanislaus and Suire, the trial court noted the experts had testified that respondent's recidivism rate was between 17 and 27.6% after 5 years.

¶ 65 The trial court found that respondent was an SVP under the Act.

¶ 66 E. Posttrial Motions

¶ 67 Respondent filed a posttrial motion on May 24, 2024, asking the trial court to set aside its finding and dismiss the SVP petition. The State filed a written response on June 14, 2024. After a hearing, the trial court denied respondent's post-trial motion on July 31, 2024. The trial court concluded that respondent should be committed to institutional care.

¶ 68 Respondent timely appeals.

¶ 69 II. ANALYSIS

¶ 70 Civil commitment is only constitutionally permissible when there has been a showing that an individual has serious difficulty controlling sexually violent behavior. *Kansas v. Crane*, 534 U.S. 407, 413 (2002). The Act allows the State to extend the incarceration of a criminal defendant beyond the time he or she would otherwise be released if the defendant is found to be sexually violent. 725 ILCS 207/1 *et seq.* (West 2022); *In re Detention of Samuelson*, 189 Ill. 2d 548, 552 (2000); *In re Detention of Hardin*, 391 Ill. App. 3d 211, 216 (2009). 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." 725 ILCS 207/40(a) (West 2022). While individuals committed under the Act are afforded some of the same procedural safeguards as in criminal prosecutions, proceedings under the Act are civil in nature, not criminal. *Id.* § 20; *Samuelson*, 189 Ill. 2d at 553.

¶ 71 The Act serves the dual purposes of treatment for those found to be sexually violent and the protection of the public. *In re Detention of Lieberman*, 201 Ill. 2d 300, 319 (2002); *In re Detention of Trevino*, 317 Ill. App. 3d 324, 334 (2000). The State has interests in both protecting its citizens from violent sexual offenders and treating the mental disorders of those found to be SVPs. *In re Commitment of Weekly*, 2011 IL App (1st) 102276, ¶ 54. Therefore, the Act reflects the legislature's intent that SVPs are to be committed for treatment until they are no longer

considered sexually dangerous, whereupon they will be discharged. See *Kansas v. Hendricks*, 521 U.S. 346, 363-64 (1997).

¶ 72 To commit a person under the Act, the State must prove three elements beyond a reasonable doubt: (1) the person must have been convicted of a sexually violent offense, (2) the person must have a mental disorder, and (3) the person's mental disorder must create a "substantial probability" that he or she will engage in acts of sexual violence. 725 ILCS 207/15(b)(1)(A), (b)(4), (b)(5) (West 2022). Respondent does not dispute the State's proof of the first element. Under the Act, we review challenges to the sufficiency of the evidence considering whether viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements in the Act proved beyond a reasonable doubt. *In re Commitment of Fields*, 2014 IL 115542, ¶ 20.

¶ 73 On appeal, respondent challenges the sufficiency of the evidence regarding the second and third elements. Specifically, respondent contends: (1) the State failed to prove beyond a reasonable doubt that he is "dangerous because a mental disorder makes him substantially probable to engage in acts of sexual violence;" and (2) the "State failed to prove that (a) [he] is predisposed to engage in acts of sexual violence or (b) he was substantially probable to engage in acts of sexual violence as opposed to non-sexually violent offenses."

¶ 74 We first note that respondent's statement of the issues he seeks to appeal bears only passing relation to the longstanding manner courts have consistently viewed the elements essential to proving a person to be an SVP. *Fields*, 2014 IL 115542, ¶ 20 (for an individual to be deemed an SVP under the Act, the State must prove beyond a reasonable doubt that (1) the respondent was convicted of a sexually violent offense, (2) the respondent has a mental disorder, and (3) the mental disorder makes it substantially probable that he will engage in acts of sexual violence).

¶ 75 Respondent's first issue conflates the second and third elements necessary to prove that an individual is an SVP. As noted, the second element requires the State to prove the existence of a mental disorder, yet respondent imports wholesale the third, "substantial probability," element into his statement of the issue. Respondent's second issue entirely jettisons "substantially probable" in favor of predisposition, and it adds an unexpressed distinction to the statutory text, requiring the State to prove that he will engage in sexually violent *offenses* (*i.e.*, actual criminal offenses) instead of engaging in acts of sexual violence, which include conduct not rising to the level of criminality.

¶ 76 We reject respondent's framing of the issue of sufficiency of the evidence, but we accept that he is challenging the sufficiency of the evidence pertaining to the second and third elements. See *Id.* (the State must prove that the respondent has a mental disorder, and the mental disorder makes it substantially probable that he will engage in acts of sexual violence). While there may be an argument to be made that the law, and thus, the analytical framework, should be changed, respondent does not make it; instead, respondent assumes that his analytical rubric is a *fait accompli*. Thus, we cannot entertain the unstated, but necessary, argument that we must consider a qualifying mental disorder to be one that makes it substantially probable that an individual will engage in acts of sexual violence. Similarly, we cannot entertain the unstated, but necessary, argument that "predisposition" equates to "substantial probability," or that we must depart from the statutory text and juxtapose "acts of sexual violence" versus "non-sexually violent offenses." Therefore, we will adhere to the longstanding and established rubric set forth in the statutory text and the analytical framework employed in *Fields* and address respondent's arguments that pertain to whether the evidence was sufficient to prove that he (1) had a mental disorder, and (2) whether the evidence was sufficient to prove that the mental disorder makes it substantially probable that

he will engage in acts of sexual violence. 725 ILCS 207/15(b) (West 2022); *Fields*, 2014 IL 115542, ¶ 20.

¶ 77 A. Mental Disorder

¶ 78 As we have reframed it, respondent challenges the sufficiency of the evidence that he has a mental disorder. For the purposes of the Act, 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 2022). Respondent argues that the State failed to meet its burden of proving beyond a reasonable doubt that he has a mental disorder as defined by the Act. We disagree.

¶ 79 The State's experts concluded that respondent had a mental disorder as defined by the Act. In explaining their conclusions that respondent suffers from a mental disorder under the Act, the State's experts both testified that they used the DSM-5, an authoritative manual in their field, in evaluating respondent. Both testified that respondent suffers from pedophilic disorder and OSPD, sexually attracted to nonconsenting persons. Likewise, respondent's own expert conceded that respondent may meet the requirements for pedophilic disorder. The doctors defined pedophilic disorder as a persistent and intense sexual interest in prepubescent children that endures for at least a six-month period and causes distress to the person or harm to others.

¶ 80 Respondent self-reported that he has had a sexual interest in children since 2006. This interest led to his collection of child sexual assault materials and to employment where he had access to children (where he described becoming aroused when assisting girls on a playground slide). And this persistent interest eventually led to respondent being confined for over a decade. Based on this record, we find that a reasonable trier of fact could have determined that the State proved beyond a reasonable doubt that respondent had a mental disorder under the Act.

¶ 81 Respondent does not address "mental disorder" or its statutory definition. Instead, respondent disputes whether the experts' testimony was sufficient to prove beyond a reasonable doubt that he was substantially probable to engage in acts of sexual violence. As noted at the outset of our analysis, a mental disorder is a condition "that *predisposes* a person to engage in acts of sexual violence." (Emphasis added.) *Id.* The concept of "substantially probable" is not found within the definition of mental disorder and respondent's arguments about substantially probable or substantial probability are misdirected regarding mental disorder as defined under the Act.

¶ 82 To the extent that respondent's contentions may be understood as an interpretation of the Act in which the terms "substantial probability" or "substantially probable" are deemed wholly synonymous with "predisposition," we disagree. "Substantially probable" is defined as "much more likely than not." *In re Commitment of Gavin*, 2024 IL App (1st) 230246, ¶ 44 (*Gavin III*). By contrast, "predisposition" is defined as a "person's inclination to engage in a particular activity." Black's Law Dictionary (12th ed. 2024). While both terms may be related to likelihood, "substantial probability" means an outcome is much more likely than not to occur, and "predisposition" means an individual is inclined or vulnerable to a certain condition or circumstance. Neither definition includes or expresses itself as a numerical probability We conclude that the two terms are not synonymous.

¶ 83 The difference in the two terms can be seen if we substitute the statutory definition of "mental disorder" from section 5(b) into section 5(f). Section 5(b) defines "mental disorder" to mean "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 2022). The relevant portion of the definition of an SVP is a person "who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of

sexual violence." *Id.* § 5(f). Making the definitional substitution, indicated by bracketed and bolded text, an SVP is a person "who is dangerous because he or she suffers from a ['a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence' (*id.* § 5(b))] that makes it substantially probable that the person will engage in acts of sexual violence." *Id.* § 5(f). If "substantially probable" and "predisposition" are interchangeable synonyms, then section 5(f) would read: an SVP is a person "who is dangerous because he or she suffers from a ['a congenital or acquired condition affecting the emotional or volitional capacity that [*makes* a person *substantially probable*] to engage in acts of sexual violence' (emphasis added) (*id.* § 5(b))] that makes it substantially probable that the person will engage in acts of sexual violence." *Id.* § 5(f). Thus, if "predisposition" were fully and interchangeably synonymous with "substantial probability" or "substantially probable," section 5(f) would not have become redundant and circular upon making the substitutions of the terms. Instead, it is clear that the two terms are not and are not intended to be synonymous, and, under respondent's interpretation, "predisposition" is reduced to meaningless surplusage. Such an interpretation is against well settled canons of interpretation. See *Stroger v. Regional Transportation Authority*, 201 Ill. 2d 508, 524 (2002) (a court must interpret a statute so that no term is rendered meaningless or superfluous). We reject respondent's contention.

¶ 84 To the extent that respondent argues that pedophilic disorder is not a qualifying mental disorder under the Act, we disagree. Respondent bases his claim on the contention that the statutory definition of "mental disorder" under the Act is different than the definition of a mental illness in the DSM-5. Respondent emphasizes that a diagnosis pursuant to the standards set forth in the DSM-5 do not include whether the individual may be able to control his or her behaviors. This argument, however, addresses whether the mental condition makes it substantially probable

that an individual will commit acts of sexual violence in the future, not whether an individual has a qualifying mental disorder under the Act. As such, it is misplaced. Moreover, to the extent that respondent disputes that pedophilic disorder is a qualifying mental disorder under the Act, it has consistently been held to be. See, *e.g.*, *In re Commitment of Montilla*, 2022 IL App (1st) 200913, ¶ 107 (respondent deemed to have a qualifying mental disorder where three experts testified he currently suffered from pedophilic disorder).

¶ 85 We note that respondent purports to challenge the sufficiency of the evidence that he is substantially probable to engage in acts of sexual violence. Such an argument is structurally misplaced; however, while labeling his argument as a challenge to the substantially probable element, his argument actually concerns whether the evidence was sufficient to prove that he had a mental condition, just not in so many words and without acknowledging that the actual argument that is made repeats or magnifies his mental condition argument. Even though the argument is misplaced, we will address its substance below because we look to substance, and not simply the form, when evaluating an argument. We suggest that, in future, it might behoove counsel to attempt to maintain logical coherence and organization instead of a scattershot presentation.

¶ 86 Respondent argues that various diagnoses, like Stanislaus's diagnoses of fetishistic disorder and voyeuristic disorder, either were not qualifying mental disorders under the Act or did not prove beyond a reasonable doubt that the diagnosed conditions predisposed him to engage in acts of sexual violence. Respondent's argument is either a straw-man, or it simply begs the question. Whether other diagnoses satisfy the definition of mental condition under the Act ignores the facts that both Stanislaus and Suire diagnosed respondent with pedophilic disorder, and Rosell agreed that respondent met the diagnostic criteria for pedophilic disorder. If we assume, for the sake of argument, that every diagnosis except pedophilic disorder is insufficient to support beyond a

reasonable doubt that respondent possessed a mental condition—meaning a congenital or acquired condition that affected respondent's emotional or volitional capacity and predisposed him to commit acts of sexual violence—the diagnosis of pedophilic disorder still satisfies the definition of mental condition and, as we have held above, was sufficient standing alone.

¶ 87 Respondent argues that the diagnoses, including that of pedophilic disorder, are insufficient to prove the existence of a mental condition because they do not account for an individual's control over behaviors associated with the diagnoses. Stanislaus agreed that "just because you have a [qualifying] diagnosis[, it] doesn't mean you can't control [your behaviors]." From this, respondent infers there was no testimony demonstrating that defendant had either engaged in or was likely to engage in acts of sexual violence which, in turn, demonstrates that he currently did not have a mental condition. While Stanislaus agreed that a diagnosis did not account for an individual's ability to control his or her behaviors, she also testified that pedophilic disorder drove respondent's behavior as evidenced by his frequent acts of voyeurism in hopes he would observe naked young girls, his acts of stealing items of girls' clothing, and his continued fantasizing about engaging in sexual acts with children after he rendered them unconscious by strangling them or using chloroform. Thus, while a diagnosis does not necessarily comment on an individual's ability to control his or her behavior, Stanislaus expressly testified that pedophilic disorder was driving respondent's historical behaviors and his current sexual fantasies.

¶ 88 Moreover, the argument continues to misstate and confuse the statutory definition of "mental condition." The Act requires only that a mental condition "predispose[] a person to engage in acts of sexual violence." 725 ILCS 207/5(b) (West 2022). "Predispose" or "predisposition" means a person's inclination to engage in a particular activity and, as noted above, is not synonymous with "substantially probable." Both Stanislaus and Suire testified that pedophilic

disorder inclined respondent to engage in acts of sexual violence, and Stanislaus expressly testified that it was a driving motivation behind respondent's historical behaviors and current fantasies.

¶ 89 Respondent also argues that, because sexual drive may decrease over time, the disorder itself decreases over time. This argument fails. Indeed, Stanislaus testified that pedophilic disorder remains unaffected by advancing age even as advancing age may curtail the individual's sexual drive. This testimony precisely illustrates the flaw in respondent's reasoning: he confuses predisposition with likelihood. The predisposition remains unabated because pedophilic disorder is "a lifetime—it is a long time disorder" that "does not decrease." However, the "sexual interest[in children] eventually dies down with advanced age." Thus, while "the interest overall, the child interest, might go down, but the wiring to be sexually aroused at children does not go away." Respondent's argument confuses predisposition or inclination with likelihood or probability of acting on that inclination.

¶ 90 Respondent argues Stanislaus's and Suire's diagnoses ignore the DSM-5's statement that advancing age may cause behaviors to decrease over time. Respondent's argument conflates a disorder with the behaviors growing out of the disorder—effectively comparing apples to oranges. Both Stanislaus and Suire testified that pedophilic disorder is a lifelong disorder, part of how an individual is mentally wired. Behaviors, by contrast, are the actions undertaken by the individual. Thus, increasing age may decrease the behaviors, but the underlying predisposition remains in the individual whether he or she acts upon it. We reject respondent's contention.

¶ 91 Respondent argues that he never acted upon his thoughts and fantasies, and this should rebut his various diagnoses. We disagree. Both Stanislaus and Suire testified that the criteria for a diagnosis of pedophilic disorder include fantasies, urges, *or* behaviors involving sexual activity with prepubescent children. The DSM-5 lists the diagnostic criteria as: "Over a period of at least

6 months, recurrent, in tense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger)." DSM-5, at 697. Regarding actions, Suire testified that the urges, fantasies, or behaviors caused clinical distress or interpersonal difficulty for the patient or possibly harm to others. The DSM-5 diagnostic criteria require that: "The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty." *Id.* While prior actions or behaviors may support a diagnosis of pedophilic disorder, clearly, such a diagnosis may be based entirely on a person's thoughts or fantasies, even if the person has not previously acted upon those thoughts or fantasies. Stanislaus and Suire both based their diagnoses of pedophilic disorder on respondent's report of his own thoughts and fantasies. Moreover, Stanislaus recounted that respondent described that, when he was working with young children at a YMCA, he was sexually aroused when he touched them, which takes the foundation of the diagnosis beyond only thoughts or fantasies into the of having "acted on these sexual urges".[1] The record thoroughly rebuts respondent's contention.

[1]We note that respondent's conduct while performing his playground duties at the YMCA—placing a child on his lap and becoming aroused—is potentially chargeable criminal conduct, particularly where respondent admitted to asking other young girls present if they needed him to accompany them on the slide. See 720 ILCS 5/11-1.60(c) (West 2012) (a person commits aggravated sexual abuse if the person is 17 years of age or over and commits an act of sexual conduct—the knowing touching of any part of the body of a child under 13 years of age for the purpose of the person's sexual gratification or arousal—with a victim who is under 13 years of age). Respondent worked at the YMCA in 2011 when he was 23 years of age, and he related assisting a child under the age of 13, along with asking 11-year-olds to go on the slide with him.

¶ 92 Respondent argues that the State failed to prove beyond a reasonable doubt that any mental disorder predisposed him to engage in acts of sexual violence. Stanislaus testified that respondent suffered from two mental disorders, as defined by the Act, pedophilic disorder and other specified paraphilic disorder (OSPD), and both disorders predisposed him to engage in acts of sexual violence. According to Stanislaus, pedophilic disorder predisposed respondent to engage in acts of sexual violence because it involved children and touching children. Respondent had reported to Stanislaus that, when working at the YMCA, he had worked with children and had become sexually aroused simply when he touched them. Regarding OSPD, Stanislaus testified that respondent reported to her that he had repeated fantasies of engaging in sexual contact with persons he had rendered unconscious by strangling them or by forcing them to inhale chemicals such as chloroform through covering their noses with a chemical-laced cloth. Additionally, he had already broken into different homes, and while he did not physically or sexually harm anyone in these instances, he reported to Stanislaus that he had done so because he was thinking about his fantasies and he was trying to facilitate his fantasies by becoming comfortable with breaking into and remaining undiscovered in others' homes.

¶ 93 Suire testified that respondent suffered from pedophilic disorder based respondent's reports of sexual interest in younger children, his possession of child pornography, becoming sexually aroused when interacting with young children, and peeping on a 13-year-old child. Moreover, respondent's employment history showed a pattern of volunteering for positions giving him access to children. Suire testified that respondent was predisposed to engage in acts of sexual violence because his pedophilic disorder prompted him to seek out contact with underage children, and this

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While respondent was not charged criminally for this conduct, it is also, nevertheless conduct that could constitute a "hands-on" offense.

urge was well supported by respondent's own reports of attraction as well as his employment history and his voyeuristic activities. Suire also testified that he diagnosed respondent with OSPD. Suire explained that this disorder predisposed respondent to engage in acts of sexual violence because, although he had not previously engaged in sexual contact with a nonconsenting partner, he had engaged in extensive acts of voyeurism (which was, by definition, nonconsensual), and had engaged in extensive fantasizing and some planning to strangle or restrain with chemical agents nonconsenting persons and engage in sexual contact. This was sufficient, in Suire's opinion, to demonstrate that OSPD also predisposed respondent to engage in acts of sexual violence. Thus, both Stanislaus and Suire opined that two separately diagnosed mental conditions inclined respondent to engage in acts of sexual violence, and they supported their opinions with reference to respondent's actions before his arrest as well as his own words about his conduct.

¶ 94 Respondent observes that an expert's opinion is only as valid as the basis and reasons for the opinion, a proposition well established and well supported in Illinois law. *E.g.*, *Gillespie v. Edmier*, 2020 IL 125262, ¶ 15; *Soto v. Gaytan*, 313 Ill. App. 3d 137, 146 (2000). However, respondent's attacks on the basis and reasoning of Stanislaus's and Suire's opinions regarding predisposition fail to land. First, respondent contends that both the State's experts testified about multiple rule-out diagnoses, so those diagnoses were not established to a reasonable degree of psychiatric or psychological certainty. While this is a definitionally true statement, it begs the question of whether pedophilic disorder or OSPD predisposed respondent to engage in acts of sexual violence; moreover, the statement altogether fails to address the experts' diagnoses of pedophilic disorder and OSPD.

¶ 95 Continuing, respondent notes that the evidence demonstrated that sexual drive could decrease over time and with advancing age; likewise, so could the behaviors associated with

pedophilic disorder and OSPD. Again, this complaint does not address *predisposition* to engage in acts of sexual violence; rather, the contention goes to actions and whether respondent follows through and engages in acts of sexual violence in light of his decreased urges and drives. The statute distinguishes between predisposition and substantial probability, but respondent conflates the two in an analytically untenable fashion.

¶ 96 Respondent continues the conflation between inclination and predisposition and concrete physical actions, complaining that the State's experts diagnosed him with pedophilic disorder and OSPD based on his thoughts and fantasies and failing to account that he never engaged in the associated behaviors. First, respondent effectively is advocating that he should get a "freebie," meaning that we should disapprove of the State's effective actions to identify and prevent respondent from overtly acting on his thoughts, fantasies, and urges by actually strangling or chloroforming a woman or child. Second, the contention ignores that respondent admitted to becoming sexually aroused while engaging in contact with children while working at the YMCA, including placing a child on his lap with the result of respondent becoming sexually aroused (which, as noted above, could constitute criminal conduct including aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c) (West 2012)). Thus, respondent himself identified and admitted to overt physical behaviors associated with pedophilic disorder. Finally, predisposition means an inclination to action, not the action itself, and it does not depend on respondent's physical ability to act upon any inclination; this is the key distinction that respondent obscures in his arguments.

¶ 97 Regarding pedophilic disorder specifically, respondent challenges Suire's diagnosis because it failed to account for the essential fact that, were respondent released, he would serve a two-year MSR term, which would effectively negate his ability to engage in any pedophilic actions, including obtaining and promulgating child pornography. In support, respondent relies on

People v. Wilhoite, 228 Ill. App. 3d 12, 21 (1991) for the proposition that, if an expert's opinion ignores an essential fact, it must be disregarded. Respondent contends that the MSR is such an essential fact unaccounted for in Suire's diagnosis of pedophilic disorder. While respondent raises this contention specifically to challenge Suire's testimony about his belief that respondent would continue to engage in obtaining and promulgating child pornography, Stanislaus likewise did not account for a term of MSR in her opinions. According to respondent, the conditions of his MSR would shut down his ability to engage in any pedophilic behavior, subject him to re-incarceration for any violations, and modify his behaviors accordingly because there is no evidence that he has been diagnosed with antisocial personality disorder that could prompt him to violate the terms of his MSR. We disagree.

¶ 98 The logic of *Wilhoite*, that an opinion that ignores an essential fact should be disregarded, applies fully to respondent's argument itself. Respondent persistently ignores the inquiry into predisposition, his purported overarching argument; instead, he raises complaints irrelevant to predisposition. Under *Wilhoite*, respondent's argument should be disregarded because it ignores the central inquiry into predisposition in favor of irrelevancies on which petitioner believes he has a favorable argument. Even so, the term of MSR is a finite and brief period that will expire by its own terms. As such, it is not an essential fact that must be accounted in the State's experts' opinions; at best, the strictures of MSR would not affect respondent's predisposition to engage in acts of sexual violence; it would only limit his opportunities. Consideration of MSR is wholly immaterial to Stanislaus's and Suire's opinions concerning respondent's mental disorders and whether those disorders predispose him to engage in acts of sexual violence.

¶ 99 Respondent last challenges Suire's testimony because he "repeatedly couched his testimony and conclusions in hedging language." This argument does not speak to predisposition.

Further, respondent does not similarly challenge Stanislaus's opinions, which, if credited, would be sufficient to support the State's case.

¶ 100 For these reasons, we reject respondent's argument that the State failed to establish that he is predisposed to engage in acts of sexual violence. Stanislaus's and Suire's opinions are rooted in the facts and respondent's own admissions about his thoughts and actions. The opinions neither omit essential facts or factors, and are otherwise well reasoned and not inherently improbable or illogical. Accordingly, we hold that a rational finder of fact could find beyond a reasonable doubt that respondent had a mental condition as defined by the Act. See 725 ILCS 5/207(b) (West 2022).

¶ 101 B. Substantial Probability

¶ 102 Respondent's arguments about substantial probability are haphazardly strewn throughout his arguments in this appeal. Most of the substantial probability arguments are raised to further respondent's attempt to synonymize this term with "predisposition," as discussed and rejected above. Despite this, we shall address the contentions specifically related to the element of substantial probability to engage in acts of sexual violence.

¶ 103 As used in the Act, substantially probable means "much more likely than not" that respondent will commit acts of sexual violence as a result of his mental disorder. *In re Commitment of Gavin*, 2019 IL App (1st) 180881, ¶ 43 (*Gavin II*); *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1086 (2000). This definition "cannot be reduced to a mere mathematical formula or statistical analysis." *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001). Instead, the factfinder makes a "commonsense judgment" based on "all factors that either increase or decrease the risk of reoffending." *Hayes*, 321 Ill. App. 3d at 188. We also typically rely "heavily on the conclusions of experts" and defer to the factfinder on expert credibility. *In re Commitment of Montanez*, 2020 IL App (1st) 182239, ¶ 70 (citing *Gavin II*, 2019 IL App (1st) 180881, ¶ 36).

Courts have found expert witness testimony to be sufficient when "the experts' testimony sufficiently linked the respondent's likelihood to reoffend to his diagnoses." *Moody*, 2020 IL App (1st) 190565, ¶ 64. The trier of fact is in the best position to weigh the expert's testimony and assess their credibility. *In re Commitment of Adams*, 2021 IL App (1st) 182049, ¶ 61. Further, it is not this court's job to retry respondent and substitute our judgment with that of the trial court. *Gavin II*, 2019 IL App (1st) 180881, ¶ 49. We will not reverse a fact finder's determination that an individual is a sexually violent person unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt on the question. *In re Detention of White*, 2016 IL App (1st) 151187, ¶ 56.

¶ 104 All three experts considered the question of whether respondent posed a danger to others because his mental disorder created a substantial probability that he would engage in future acts of sexual violence. They each testified about their methodology in forming their opinions about substantial probability to engage in acts of sexual violence, including materials used to judge respondent's risk, how those materials were utilized, and what other factors were considered and used in forming their ultimate opinions. Further, each expert was extensively cross-examined about their methods, findings, and conclusions.

¶ 105 Stanislaus testified about how she evaluated respondent's likelihood to engage in future acts of sexual violence. She first assessed respondent with the STATIC-99R, and her scoring of respondent placed him at an above average risk level to engage in future acts of sexual violence. Next, Stanislaus considered various dynamic factors that might influence her assessment of respondent's risk, which were drawn from an article cowritten by the creators of the STATIC-99R. Stanislaus identified seven dynamic factors relevant to respondent: multiple paraphilia, sexual preference for children, indecent sexualized violence, sexual preoccupation, poor cognitive

problem-solving skills, emotional congruence with children, and lack of emotionally intimate relationships with adults. These factors, along with her STATIC-99R assessment, placed respondent into a high-risk/high-needs group. Finally, Stanislaus considered protective factors that decreased the likelihood of engaging in sexually violent acts, such as completing sex offender treatment programs, physical conditions, or extremely advanced age. Stanislaus concluded that respondent did not have any protective factors, because he had not participated in any treatment, was in good health, and was relatively young at 36 years of age. Based on this analysis, Stanislaus determined that respondent was substantially probable, meaning much more likely than not, to engage in acts of sexual violence in the future.

¶ 106 Suire testified that he used three actuarial instruments in assessing respondent's risk of engaging in acts of sexual violence: the STATIC-99R, the STATC-2002R, and the STABLE-2007. The two STATIC instruments were based on the same data, but the STATIC-2002R is less widely used even though it allows the professional to cross-reference the score with whatever measure he or she desires. Suire's assessment using both STATIC instruments placed respondent at an above-average risk of engaging in acts of sexual violence. In contrast to the STATIC instruments, the STABLE-2007 also includes some dynamic risk factors, like resentment toward women, sexual preoccupation, and social connectedness, all of which can be addressed in various ways or through treatment. Suire assessed respondent in 2014 with the STABLE-2007 instrument, placing him in a high-risk category. When Suire made a composite assessment of the results from the STABLE-2007 and the STATIC-99R, he placed respondent in the high priority category for supervision and intervention when compared to other sexual offenders. Suire also assessed dynamic factors in his overall determination, finding that respondent's dynamic risks included multiple paraphilia, sexual preoccupation, emotional identification with children, and lack of satisfying adult emotional

relationships, and these factors elevated his overall risk of engaging in acts of sexual violence. Suire also considered whether protective factors applied to ameliorate respondent's risk. He concluded that none applied because respondent's age was accounted for in the actuarial instruments, his health was good, and he had not participated meaningfully in any sex offender treatment.

¶ 107 Suire elaborated on his determination. He testified that the actuarial instruments and data underpredicted respondent's risk because his behaviors were escalating at the time of his arrest. Suire believed respondent was interrupted early in his development. Suire discerned a pattern to respondent's escalation and used respondent's downloading history as an example. Suire observed that, as time progressed, respondent began to download more deviant images. Further, as time progressed, respondent began to use tools to literally insert himself into the images, leading Suire to opine that the photographic manipulation was practicing or trying out the notion of engaging in the situations the downloaded photographs depicted. Suire noted that, around the time of this escalation, respondent began to engage in physical behaviors, such as peeping, along with and entering, going further into, and spending more time in occupied homes. Respondent additionally began searching how to make chloroform, from which Suire concluded that respondent was beginning to contemplate actually committing some sort of sexual offense. At that point in his progression, respondent was interrupted by his arrest and confinement. Suire further considered respondent's interactions with young girls through work, emphasizing that respondent had admitted becoming aroused when he went down a slide with a child. Suire concluded that respondent was trying to escalate his behaviors and have a contact victim once respondent attempted to entice another young girl to go down the slide with him. Based on these

considerations, Suire determined that respondent was substantially probable, meaning much more likely than not, to engage in acts of sexual violence in the future.

¶ 108 Rosell also assessed respondent's risk of engaging in acts of sexual violence by using the STATIC-99R. He assessed respondent as an above average risk using that instrument. The balance of Rosell's testimony disputed the methodology and choices made by the Stanislaus and Suire in determining respondent's risk of reoffending. In particular, Rosell declined to utilize dynamic risk factors as outlined by the authors of the STATIC-99R because they were poorly correlated with sexual recidivism. Rosell opined that respondent was not substantially probable to engage in future acts of sexual violence.

¶ 109 The trial court considered the testimony of the three experts in determining that the State had proved beyond a reasonable doubt that respondent was substantially probable to engage in acts of sexual violence. The court expressly found "Dr. Stanislaus and Dr. Suire to be more credible than Dr. Rosell." It considered and weighed "their explanations as to the evidence they relied upon in reaching their ultimate opinion[s]" concerning respondent's risk to engage in acts of sexual violence.

¶ 110 We have carefully reviewed the record, including the experts' testimony and reports, as discussed above, and hold that a reasonable fact finder could find beyond a reasonable doubt that respondent is substantially probable to engage in acts of sexual violence in the future. We first note that respondent admitted that, beginning in 2008, he began following women as they jogged at night. He followed one jogger to her home and watched her through the windows of her home. In 2011, he waited for the woman to leave for a run and then took, copied, and replaced the woman's driver's license. In 2012, his behavior escalated to peeping at young girls and adult women in their homes and masturbating as he did so. Respondent also began entering the homes,

first entering an attached garage and taking clothing, then entering a home itself, again stealing underwear from a dryer. Respondent also repeatedly entered the home of an elderly woman, progressing deeper into the home for longer periods of time, until he reached her bedroom door. Respondent explained that he was trying to become comfortable with secretly entering and staying in women's homes.

¶ 111 In his own home, respondent possessed a large amount of pornography on his computer and other storage devices, including images of children, images in which he had inserted himself through editing the images, and images taken as he peeped. Respondent also possessed images depicting dead children and other graphic images of death. Additionally, respondent had conducted searches for child pornography, including searches for dead girls, such as "dead little girl," and "naked girl makeshift morgue." In addition to images, respondent had numerous pairs of women's and girl's underwear and sex dolls.

¶ 112 Respondent admitted his attraction to children, and he admitted working at jobs and volunteer positions that gave him access to young girls. He held a three-year-old on his lap and went down a slide with her, becoming sexually aroused. He tried to entice other young girls onto the slide with him, but was not successful. One such girl was an 11-year-old, and he had gone to her home, and looked in her windows, hoping to see her naked. He also went to the home of another girl he encountered while working at the YMCA program. Respondent further admitted to police that he had thought about having sex with the women or girls in the homes he had entered. However, he claimed that he did not want the children to be aware of the violation, so he thought about rendering them unconscious, either through manual strangulation or using a chemical agent such as chloroform. Respondent claimed that, if the girl were killed by his efforts to render her

unconscious, he would continue to have sex with her because she "would not know," and she would not be harmed any more.

¶ 113 While respondent has been held in the TDF, he has not participated in any sex offender treatment. Respondent explained his choice not to participate because he claimed he did not have a sexual interest in children, and he had not committed a physical offense against anyone.

¶ 114 Based on this record, it is apparent that respondent's actions show a steady escalation, from following joggers, to peeping through windows at women and girls, to entering homes and stealing items. During this escalation, respondent began to fantasize about sexual acts with the occupants. This coincided with amassing pornographic images and child sexual abuse materials, along with images of dead women and girls. In some images, respondent had digitally inserted his own image. Respondent also began to fantasize about inducing unconsciousness or even death, either by manual strangulation or chemical agents. In furtherance of this fantasy, respondent sought to learn how to manufacture chloroform at home. However, respondent's disturbing progression was interrupted by his arrest, incarceration, and eventual commitment to the TDF.

¶ 115 In addition to these facts, about which Stanislaus and Suire testified, they also testified extensively about how they completed their diagnoses and reached their opinions. They interviewed respondent, where they could, and reviewed the records from his commitment. They utilized an appropriate methodology, considering the results from actuarial risk assessment instruments and included appropriate dynamic factors, protective factors, and individualized assessments of respondent's particular circumstances.

¶ 116 We also note that the trial court expressly determined that, insofar as the determination concerning substantial probability rested upon credibility, Stanislaus and Suire were more credible than Rosell. We cannot say that this credibility determination was against the manifest weight of

the evidence where all the experts reported using substantially the same materials and general methodologies from which to craft their opinions. Accordingly, we hold that the State proved beyond a reasonable doubt that respondent was substantially probable to engage in acts of sexual violence.

¶ 117 Respondent challenges the sufficiency of the proof that he is much more likely than not to engage in acts of sexual violence by noting that the actuarial instruments show that his statistical risk of reoffending is less than 50%, which is itself definitionally inconsistent with "much more likely than not." Respondent's statement is tautological because a percentage of less than 50% can never meet the requirements that it be much greater than 50%, and respondent's underlying premise is flawed. Courts have repeatedly and consistently held that the assessment of substantially probable (much more likely than not) cannot be reduced to a mathematical formula or statistical analysis. *E.g.*, *Hayes*, 321 Ill. App. 3d at 188 (the meaning of substantially probable (much more likely than not) "cannot be reduced to a mere mathematical formula or statistical analysis;" instead, "the [trier of fact] must consider all factors that either increase or decrease the risk of reoffending, and 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"); *People v. Kallal*, 2024 IL App (4th) 231201-U, ¶ 82 (same).

¶ 118 Respondent's emphasis on whether the static actuarial instruments could alone satisfy the substantially probable standard is misplaced. Illinois authority has consistently maintained that, to meet the standard, the expert must link the likelihood of future offenses to a respondent's diagnoses by considering dynamic and idiosyncratic factors to fully evaluate the respondent. *Montilla*, 2022 IL App (1st) 200913, ¶¶ 119-20. The use of the actuarial instruments is but a single facet of the necessary "holistic evaluation of the individual." *Id.* ¶ 120. Thus, respondent's

contention—that the actuarial instruments alone, even at their highest risk levels, are insufficient to meet the substantially probable standard—is incomplete and misleading in its incompleteness.

¶ 119 Respondent next argues that State's experts' evaluation of applicable dynamic factors was insufficiently quantified or quantifiable, and even where attempted, resulted in a risk of reoffending percentage of less than 30%. This contention continues to run afoul of *Hayes* and *Montilla*: the assessment of whether a respondent is substantially probable to engage in acts of sexual violence is not a mathematical and statistical exercise (*Hayes*, 321 Ill. App. 3d at 188), but should instead be a comprehensive and holistic evaluation of the individual (*Montilla*, 2022 IL App (1st) 200913, ¶ 120). Respondent continues in this vein, arguing that Stanislaus's consideration failed to quantify the impact of the dynamic factors she identified, and Suire's consideration using a different methodology, in which he did quantify the impact, still resulted in a five-year risk percentage of less than 30%. We remain unwilling to abandon a quarter-century of consistent authority cautioning against treating actuarial instruments as the be-all and end-all of any inquiry into a respondent's risk of engaging in future acts of sexual violence (*e.g.*, *Hayes*, 321 Ill. App. 3d at 188; *Kallal*, 2024 IL App (4th) 231201-U, ¶ 82), and instead continue to endorse the holistic evaluation of the individual that requires the linkage of the likelihood to reoffend with the respondent's diagnoses by considering dynamic and idiosyncratic factors along with the results of the actuarial instruments (*Montilla*, 2022 IL App (1st) 200913, ¶¶ 119-20).

¶ 120 Respondent bases much of this argument on two cases: *In re Commitment of McCormack*, 2021 IL App (1st) 181930-U, in which the evidence, namely Stanislaus's testimony, was deemed insufficient to support the substantially probable finding, and *Gavin III*, in which the evidence, namely Suire's testimony, was deemed insufficient to support the substantially probable finding.

¶ 121 *McCormack* is inapposite. There, Stanislaus employed the STATIC-99R and determined that the respondent had an average risk of reoffending. *Id.* ¶ 12. In her evaluation of dynamic and specific factors, Stanislaus concluded that the respondent was substantially probable to reoffend. *Id.* ¶¶ 12, 29. The *McCormack* court determined that the State had "left too much to inference" when eliciting Stanislaus's testimony and it had not elicited an explanation why the respondent's risk of reoffending was substantial. *Id.* ¶ 42. Here, Stanislaus explained, and provided some level of quantification, concerning how the dynamic factors she identified increased respondent's risk of engaging in acts of sexual violence. She also thoroughly explained her methodology and how she approached and constructed her opinion. Thus, the holes in Stanislaus's testimony in *McCormack* are not present here. We note that respondent takes issue with Stanislaus's quantification of the dynamic risk factors in this case, contending that each of the factors had small effects on the likelihood of recidivism. Stanislaus explained, however, that the dynamic factors were all correlated with sexual offending, and the presence of greater numbers of dynamic factors was further correlated with an increased risk. Thus, she explained that, while each dynamic factor individually may have had a small effect on the likelihood of recidivism, the presence of seven factors together acted to increase his likelihood of engaging in future acts of sexual violence. We believe that, regardless of respondent's acceptance of her explanation, Stanislaus adequately explained in this case how she made the transition from the STATIC-99R's result of an above-average risk of recidivism to her conclusion that he was substantially probable to engage in acts of sexual violence.

¶ 122 Likewise, *Gavin III* is inapposite. In *Gavin III*, 2024 IL App (1st) 230246, ¶ 30, the respondent was 64 years old at the time of the trial; he had many medical conditions, including a replaced hip, a surgically removed testicle, hypertension, and he used a cane to help him move

around. Despite the respondent's age and medical conditions, Suire evaluated him as if he were 37 or 38 years old instead of his actual age of 64 and testified that the respondent was at the highest risk to reoffend despite acknowledging that the respondent's actual age should have lowered his scores on the actuarial instrument. *Id.* ¶¶ 49-51. Suire also did not explain how or why he selected the dynamic risk factors he considered. He did not explain the significance to his risk assessment of an incident in which the respondent exposed himself, or how the respondent's medical conditions and limited mobility impacted his conclusion that the respondent remained substantially probable to engage in acts of sexual violence. *Id.* ¶¶ 54-64. The *Gavin III* court determined that Suire's analysis was "arbitrary and not based on the evidence" because Suire persisted in conducting his analysis as if the respondent were nearly 30 years younger without giving any explanation as to why it was sound methodology; moreover, Suire disregarded the respondent's age, medical conditions, and physical infirmities as protective factors. *Id.* ¶¶ 66-68. The court concluded that Suire had effectively testified to a naked conclusion because any rationale was based on internally conflicting, or even wholly absent, reasoning. *Id.* ¶ 69. Here, by contrast, Suire's testimony was firmly based on the evidence, and he explained how and why he made the choices he did regarding dynamic and specific factors. Thus, the infirmities of Suire's testimony in *Gavin III* are not present here.

¶ 123 Respondent argues Suire's testimony did not account for the discrepancy between his conclusion that he was substantially probable to reoffend and the combination of static and dynamic risk factors indicating a maximum 5-year recidivism rate of under 30%. As we have previously noted, however, we do not subscribe to respondent's position that the substantially probable assessment is no more than a mathematical and statistical exercise of plugging values into an algorithm and waiting for a number to appear. See *Hayes*, 321 Ill. App. 3d at 188. Rather,

Suire properly linked his assessment of respondent's likelihood to reoffend with his diagnoses, and he provided several bases to support his conclusion: the statistical actuarial instruments used, as well as dynamic factors and why they were chosen, and why protective factors like age and health did not apply. We reject respondent's contention.

¶ 124 Respondent contends that the MSR term he would be required to serve was a significant protective factor that neither Stanislaus nor Suire considered. He argues that the conditions to be imposed would likely include significant restrictions on access to computers and the internet, and these restrictions should have been deemed to substantially lower his risk of reoffending. We reject respondent's argument because his risk of offending during MSR is only constrained by the conditions of MSR. Once the MSR term expires, the conditions will be removed, and respondent's risk of offending is no longer depressed by external factors. Stanislaus and Suire properly considered respondent's risk of offending in the absence of external and artificial factors that preclude offending.

¶ 125 Respondent argues that Stanislaus and Suire failed to properly discuss whether sex offender treatment options at the TDF were actually beneficial, and they presented no research indicating whether such treatment is, in fact, a protective factor lowering a respondent's likelihood of reoffending. Respondent's argument is without merit. The record belies respondent's argument because Suire expressly testified that treatment was associated with a reduction in the risk of committing sexual offenses in the future. Additionally, respondent experienced no detriment because neither Stanislaus nor Suire opined that respondent's refusal to participate in treatment enhanced his risk of reoffending. Instead, they opined its lack was not a factor that lowered his risk of reoffending. Moreover, clearly, by not engaging in treatment, respondent did nothing that affected his likelihood of committing sexual offenses, and the testimony reflected this: the State's

experts stated his risk of committing sexual offenses was neither increased nor lowered. We reject respondent's contention.

¶ 126 Respondent argues that the State failed to prove that he "is substantially probable to engage in acts of sexual violence as opposed to non-sexually violent offenses." Respondent's argument is little more than verbal chicanery. Respondent argues that sexually violent offenses are defined in section 5(e) of the Act (725 ILCS 207/5(e) (West 2022)), and consist mainly of various iterations of criminal sexual assault and criminal sexual abuse which involve some sort of penetrative act. However, the element the State was required to prove was simply that respondent is "substantially probable [to] engage in *acts of sexual violence*." (Emphasis added.) *Id.* § 5(f). Respondent does not demonstrate that a "sexually violent offense" means the same thing as "acts of sexual violence." Indeed, the fact that the legislature specifically defined "sexually violent offense" to mean any one of eight enumerated criminal offenses, yet employed the different phrase, "acts of sexual violence" in defining a "sexually violent person" strongly suggests that the legislature did not intend that "sexually violent offense" to be synonymous with "acts of sexual violence." It is an elementary rule of statutory construction that, when the legislature uses different terms or phrases the meanings of the terms or phrases should also be different. *People v. Whitmore*, 2023 IL App (1st) 231807, ¶ 8. We conclude that respondent misstates what the State was required to prove and misapplies the section 5(e) definition of sexually violent offense to the section 5(f) definition of sexually violent person.

¶ 127 Respondent argues that *People v. Bingham* 2014 IL 115964, supports his contention. The issue in that case was whether the defendant was a sexually dangerous person and whether it was substantially probable that she will engage in the commission of future sex offenses if not confined. *Id.* ¶ 32. The issue in *Bingham* is whether the defendant would commit sex offenses—actual

criminal offenses. Here, by contrast, the State need only prove that respondent will engage in *acts*, not offenses. The difference in verbiage requires that different meanings be attributed to the different terms. *Whitmore*, 2023 IL App (1st) 231807, ¶ 8. Additionally, we note that *Bingham* involves the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.* (West 2024)), with different concerns and definitions than the statutory regime at issue here. *Bingham* is inapposite.

¶ 128 Nevertheless, respondent argues that the *Bingham* rationale applies when considering section 35(e) of the Act (725 ILCS 207/35(e) (West 2022)). Section 35(e) provides that the respondent of a petition under the Act who "was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the [respondent] has a mental disorder." Respondent reasons that, because the evidence of his conviction of child pornography is insufficient by itself to prove beyond a reasonable doubt that he has a "mental disorder" under the Act, the State has somehow failed to prove that he is substantially probable to commit sexually violent offenses. This is simply a *non sequitur*. As discussed above, "mental disorder" does not involve the concept of "substantially probable," only predisposition. Additionally, while a conviction for a sexually violent offense is an element that must be proved by the State, respondent has hitherto not challenged the proof of this element. Rather, now, he seeks to transmute "sexually violent offense" into a synonym for "acts of sexual violence," which is improper because the difference in terms requires a difference in meaning. *Whitmore*, 2023 IL App (1st) 231807, ¶ 8. Accordingly, we reject respondent's contention.

¶ 129 For these reasons, we hold that the State proved beyond a reasonable doubt that respondent is substantially probable to engage in acts of sexual violence. Both Stanislaus's and Suire's testimony linked respondent's diagnoses to the likelihood that he would engage in acts of sexual

violence by considering not only the statistical actuarial instruments, but also by considering dynamic factors that affected that likelihood as well as respondent's specific circumstances and any protective factors. The evidence clearly demonstrated that respondent was unable to control his urges, and his actions demonstrated an alarming escalation in the pace of his offending and in the disturbing nature of his sexual urges and fantasies. While he had not yet been charged with a hands-on offense, his conduct while employed with the YMCA was, in fact, conduct that could have resulted in a charge of aggravated criminal sexual abuse. He also admitted he was thinking about acting on his fantasies and urges, and his escalating actions show he was practicing doing so. The evidence proves beyond a reasonable doubt that respondent is substantially probable to engage in an act of sexual violence.

¶ 130 III. CONCLUSION

¶ 131 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 132 Affirmed.

¶ 133 JUSTICE McLAREN, dissenting:

¶ 134 I respectfully dissent from the majority's decision. While I agree that the State proved that defendant suffered from a mental disorder as defined by the Act, I disagree that it proved that it was "much more likely than not" that respondent will commit acts of sexual violence. See *Gavin II*, 2019 IL App (1st) 180881, ¶ 43; 725 ILCS 207/5(f) (West 2022). Expert testimony largely ignored the possibility that respondent would download child pornography again. Instead, the experts for the State focused on non-violent, nol-prossed charges to try to convince the trier of fact that respondent was much more likely than not to commit offenses that he had never committed before. I am unconvinced.

¶ 135 We must recognize that an individual's liberty is at stake in this matter. While denominated a civil proceeding, respondent is facing the very real possibility of " 'confinement for life.' " *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶ 55 (*Gavin I*) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 372 (1997) (Kennedy, J., concurring)). Once a person is found to be an SVP, the Act instructs that "the court shall order the person to be committed to the custody of the Department for control, care and treatment *until such time as the person is no longer a sexually violent person*." (Emphasis added) 725 ILCS 207/40 (a) (West 2022). It is vital, therefore, that we carefully analyze whether the State proved *beyond a reasonable doubt* that respondent was substantially probable to engage in acts of sexual violence in the future.

¶ 136 SVP cases predominately rely on psychological testimony. With Stanislaus and Suire testifying for the State and Rosell for the defense, the fact finder heard three ultimately divergent opinions from not-so-different underlying facts. As discussed above, Stanislaus and Suire relied on a variety of dynamic factors to *increase* the level of perceived threat posed by respondent. Rosell, on the other, concluded that dynamic factors were inapplicable to respondent because he had never been charged with a "hands-on" sexual offense. The majority's claim that respondent's "hands-on" actions at the YMCA "could have resulted in a charge of aggravated criminal sexual abuse" is speculative as respondent was *not* charged with any hands-on crime. In fact, respondent has never been charged with a "hands-on" offence, so the use of dynamic factors by Stanislaus and Suire requires a closer examination.

¶ 137 The State's experts opined that respondent was at an above average risk of committing future acts of sexual violence. Stanislaus further placed respondent in a high-risk/high-need category based upon combining the STATIC-99R risk assessment with dynamic risk factors from the 2010 Mann article. However, many of these dynamic factors were based upon *non-violent*

sexual offenses. Similarly, Suire raised respondent's recidivism risk by combining STATIC-99R risk assessment with STABLE-2007. But Suire also relied primarily on *non-violent* sexual offenses in assessing the dynamic risk factors under STABLE-2007. If the Act is clear that evidence of prior committed sexual violent offenses are "not sufficient to establish beyond a reasonable doubt that the person has a mental disorder" (725 ILCS 207/35(e) (West 2022)), why would we accept the reliance upon evidence of *non-violent* offenses to raise the purported risk of recidivism of violent offenses?

¶ 138 As respondent notes, Stanislaus scored him at 4 on STATIC-99R, a score that would project the rate of recidivism at 8 percent over 5 years and 11 percent over 10 years. Stanislaus then moved respondent into "high-risk/high-needs" based primarily upon non-violent sexual offenses, a move that increased the reported risk from 8 percent to 17 percent over 5 years. Stanislaus then appeared to use the dynamic factors again to increase the risk to 27 percent over 5 years. Unfortunately, all of these numbers of risk categories and percentages of recidivism lend the appearance of certainty to analysis that may be more art than science. See Linda E. Weinberger et al., *Linking Mental Disorder and Risk in Sexually Violent Person Assessments*, Journal of the American Academy of Psychiatry and the Law Online, 46(1), 63, 70(March 2018) ("[A]ctuarials have been relied upon greatly as they give a sense of quantification to the process; however, dependence on actuarials has been criticized as representing to the trier of fact a sense of certainty regarding risk that is not supported by the data.").

¶ 139 In this case, respondent was charged with a *single* count of possession of child pornography, a crime that is classified as a sexually violent offense for important societal reasons. But that crime does not automatically lead to an escalation of other, "hands-on" sexually violent

offenses.[2] "So just as in *United States v. Coopman*, 602 F.3d 814, 818 (7th Cir. 2010), the expert 'undermined the relevance of his testimony' by focusing exclusively on the likelihood that a child-pornography offender would commit a 'hands-on' offense and ignoring the likelihood that he would commit future child-pornography offenses." *United States v. Garthus*, 652 F. 3d 715, 719 (7th Cir. 2011). It is a mistake to lump together different types of sex offender. Lisa L. Sample & Timothy M. Bray, *Are Sex Offenders Different? An Examination of Rearrest Patterns*, 17 Crim. Justice Policy Rev. 83, 93–97 (2006). One study found that only 6.8 percent of consumers of child pornography had been charged with a new child-pornography offense within 4 years but that the percentage rose to 9.5 percent within 6 years. Angela W. Eke, Michael C. Seto & Jennette Williams, *Examining the Criminal History and Future Offending of Child Pornography Offenders: An Extended Prospective Follow-up Study*, Law & Human Behavior, Nov. 19, 2010 (tab.1), https://www.utah.gov/pmn/files/1094133.pdf (last visited February 6, 2026). A pedophilic sex offender who has committed both a child-pornography offense and a hands-on sex crime is much more likely to commit a future crime, including another hands-on offense, than a defendant who

[2]The legislature clearly defined "sexually violent offense" by referring to a list of specific crimes from the criminal code: (1) criminal sexual assault (720 ILCS 5/11-1.20 (West 2012)); (2) aggravated criminal sexual assault (*id.* § 11-1.30); (3) predatory criminal sexual assault of a child (*id.* § 11-1.40); (4) aggravated criminal sexual abuse (*id.* § 11-1.60); (5) indecent solicitation of a child (*id.* § 11-6); (6) child sexual abuse material (*id.* § 11-20.1); (7) adult obscenity or child sexual abuse material internet site (*id.* § 11-20.3); (8) criminal sexual assault (*id.* § 12-13); (9) aggravated criminal sexual assault (*id.* § 12-14); (10) predatory criminal sexual assault of a child (*id.* § 12-14.1); (11) aggravated criminal sexual abuse (*id.* § 12-16); (12) first degree murder, if sexually motivated (*id.* § 9-1); or solicitation, conspiracy or attempt to commit one of the above listed crimes (725 ILCS 207/5(f) (West 2012)).

has committed only a child-pornography offense. Drew A. Kingston et al., *Pornography Use and Sexual Aggression: The Impact of Frequency and Type of Pornography Use on Recidivism Among Sexual Offenders*, 34 Aggressive Behavior 1, 9 (2008); Michael C. Seto & Angela W. Eke, *The Criminal Histories and Later Offending of Child Pornography Offenders*, 17 Sexual Abuse 201, 207 (2005) (tab.3). Research has shown that internet sex offenders were significantly less likely (4 percent vs 29 percent) to fail in the community than child molesters in terms of all types of recidivism. Liane Webb, Jackie Craissati, Sarah Keen, *Characteristics of Internet Child Pornography Offenders: A Comparison with Child Molesters*, Sexual Abuse, 19, 459 (2007).

¶ 140 The pattern of behavior exhibited by respondent is undoubtedly deeply troubling. It is understandable that the State's experts highlighted his fascination with dead children, his searching online for methods of making chloroform, his statement that he would have sex with a child he had strangled to death because she "would not know," and his pattern of venturing increasingly deeper into homes he had invaded. Any one of these individual behaviors would be concerning. However, it is worth noting the gulf between respondent's impulses and his actions. Respondent fantasized about making chloroform at home, but there was no evidence he took any steps beyond entering a single search into an online search engine. Respondent has a fascination with death, but there is no evidence he committed any type of actual violence. Peeping is *not sexual violence*. Home invasion is *not sexual violence*. Burglary is *not sexual violence*. Stanislaus conceded that fetishistic and voyeuristic disorders do not predispose respondent to the commission of sexual violence. And Suire's conclusion that respondent's possession of images of dead bodies implied future sexual violence because "*[p]otentially it could theoretically* lead him to actually kill somebody to have sex" stretches credulity and falls well short of beyond a reasonable doubt. Both

State's experts appear committed to "precrime" prognostications[3] rather than a review of the crimes actually committed by respondent.

¶ 141 Again, the gravity of respondent's offense should not be denigrated. The Illinois Supreme Court has recognized that child pornography is "a grave national problem and one that has seriously infected our [s]tate." *People v. Geever*, 122 Ill.2d 313, 324 (1988). But respondent pled guilty to this *single* charge and served his sentence for the "non-hands-on" crime. Respondent's status as a registered sex offender means that he will never work with children again, so his commitment to institutional care was not needed to address this concern. He was scheduled to be released in May 2014 and his bench trial pursuant to the Act did not even begin until almost a decade later. Now he has been civilly committed for an indefinite period that could last the rest of his life. A civil commitment under the Act could be appropriate if he were proven to meet the requirements, but I believe such proof was lacking in this case. The State's experts largely ignored assessing the probability that respondent would reoffend the crime with which he was sentenced and instead concluded that he was a greater risk to society based on non-violent, nol-prossed charges. Respondent has not committed an act of sexual violence, except for one that is defined as such for public policy reasons and ignored by the State's expert witnesses. Can we really find that a reasonable fact finder could have found that the State proved beyond a reasonable doubt that respondent's mental disorder made him "much more likely than not" to engage in acts of sexual violence based upon such flawed analysis of expert witnesses? Even viewing the evidence in a

[3]In "The Minority Report," the 1956 novella from Philip K. Dick, "Precrime" police arrested suspects before they actually commit crimes thanks to three "precogs" who can foresee crime. Philip K. Dick, *The Collected Stories of Philip K. Dick (Vol. 4)* 120-155 (1991).

light most favorable to the State, I would find that no rational trier of fact could have found this element of the Act proven beyond a reasonable doubt. See *Fields*, 2014 IL 115542, ¶ 20.

¶ 142 For these reasons, I dissent.