Illinois Official Reports

Appellate Court

In re Commitment of Edwards, 2021 IL App (1st) 200192

Appellate Court Caption	*In re* COMMITMENT OF ALFRED EDWARDS (The People of the State of Illinois, Petitioner-Appellee, v. Alfred Edwards, Respondent-Appellant).
District & No.	First District, Third Division No. 1-20-0192
Filed	December 8, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 09-CR-80005; the Hon. Peggy Chiampas, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Michael R. Johnson and Daniel T. Coyne, of Johnson & Levine LLC, of Chicago, for appellant. Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Michael M. Glick and Joshua M. Schneider, Assistant Attorneys General, of counsel), for the People.
Panel	PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion. Justices McBride and Ellis concurred in the judgment and opinion.

OPINION

¶ 1 After a jury trial, respondent Alfred Edwards was found to be a sexually violent person under the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 to 99 (West 2018)) and was ordered committed to institutional care in a secure facility. Respondent appeals, claiming (1) that the trial court deprived him of his statutory right to be present during the court proceedings, (2) that the court erred in failing to ask a question requested by respondent during *voir dire*, and (3) that the court deprived respondent of a fair trial through comments made by the court in the presence of the jury during the trial. For the reasons set forth below, we affirm.

¶ 2 BACKGROUND

¶ 3 On September 22, 2009, the State filed a petition to civilly commit respondent as a sexually violent person under the SVP Act,[1] alleging that respondent had been convicted of attempted criminal sexual assault, a sexually violent offense under the SVP Act, in two separate cases, for which he served seven years in the Illinois Department of Corrections (IDOC). The petition alleged that respondent suffers from "Paraphilia, Not Otherwise Specified, Nonconsenting Persons" and "Schizophrenia, Undifferentiated, Chronic"—mental disorders that predisposed respondent to sexual violence—and further alleged that respondent was dangerous because his mental disorders made it substantially probable that he would be a repeat offender and engage in future acts of sexual violence. The State's petition was supported by an evaluation conducted by Ray Quackenbush, Psy.D., a "consulting psychologist" with Affiliated Psychologists, Ltd., an independent company providing evaluation services to the IDOC.[2]

¶ 4 On October 16, 2009, respondent's counsel filed a petition for a fitness evaluation, alleging that counsel had a *bona fide* doubt about respondent's fitness to stand trial. Respondent's petition was consolidated with three other similar petitions, and on February 19, 2010, all four petitions were denied. The trial court granted the respondents' petition to certify several questions concerning the right to a fitness evaluation for interlocutory review, and we answered the certified questions in the negative, finding no right to a fitness evaluation in civil commitment proceedings under the SVP Act. *In re Commitment of Weekly*, 2011 IL App (1st) 102276, ¶ 75.

¶ 5 After the issuance of this court's opinion, a probable cause hearing was held on September 12, 2012; respondent was not present at the probable cause hearing. On the same day, the trial court entered an order finding probable cause to believe that respondent is a sexually violent person and ordered him detained at a facility approved by the Department of Human Services (DHS). The parties then engaged in discovery and other pretrial matters and ultimately scheduled a trial date of April 8, 2019.

¶ 6 On March 28, 2019, respondent's counsel filed a motion for a continuance, claiming that counsel had been unable to communicate with respondent in preparation for the upcoming trial,

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[1]The petition was amended several times. However, the only petition that is contained in the record on appeal is the amended petition that was filed on May 7, 2012.

[2]In the State's May 7, 2012, amended petition, after an evaluation by Dr. Deborah Nicolai, a licensed clinical psychologist, respondent's diagnosis was changed to "Paraphilia Not Otherwise Specified, Sexually Attracted to Non-Consenting Females" and "Personality Disorder, Not Otherwise Specified with Antisocial Features."

either in person or by phone. This lack of communication meant that counsel had not been able to discuss with respondent whether he would prefer a bench or jury trial, whether he wanted to testify, or any details about his case. Counsel acknowledged that respondent did not have a right to a fitness evaluation but continued to have a *bona fide* doubt of respondent's fitness, based on the records from the treatment and detention facility (TDF) showing that respondent had reported both auditory and visual hallucinations on numerous occasions over the past year. Counsel also claimed that respondent had never been admonished as to a trial *in absentia* and that counsel had a *bona fide* doubt that respondent would be able to understand such admonishments. Accordingly, counsel requested a continuance and a new trial date.

¶ 7 Attached to the motion was an affidavit from one of respondent's attorneys, who averred that, over the past five years, his attorneys had attempted to visit respondent in person, with unsuccessful results. In over 16 attempts to visit respondent, respondent declined the visits 14 times. On the two occasions where respondent met with any of his attorneys, the visits lasted for 20 minutes and 8 minutes, respectively, and based on the conversations and conduct of respondent during those visits, respondent's attorneys continued to have a *bona fide* doubt as to respondent's fitness. The last conversation his trial attorney had with respondent was by phone on May 25, 2018, for approximately 15 minutes, at which time counsel attempted to explain the proceedings to respondent; according to the attorney's affidavit, counsel did not believe that respondent understood the explanation, and counsel continued to have a *bona fide* doubt as to respondent's fitness. Respondent also regularly declined mail that had been sent to him by his attorneys and last appeared in court on April 13, 2012. Counsel estimated that, over the last five years, respondent's attorneys had spoken with respondent for approximately 45 minutes, with his trial attorney speaking with respondent for only 15 minutes.

¶ 8 On March 29, 2019, the trial court entered an order denying the motion for continuance. The order provided, in full:

> "This matter coming before the Court, the People being represented by Assistant Attorney General Mary Lacy, the Respondent not being present after having refused to be present for a video-conference on March 28, 2019, but being represented by his attorney Kate Levine, IT IS HEREBY ORDERED:
>
> 1. The jury trial on this case is set for April 8, 2019, and the Motions in Limine are set for hearing on April 1, 2019.
>
> 2. The Department of Human Services (DHS) has been ordered to transport the Respondent, Alfred Edwards, to court in order to be present for the jury trial and to be present at the Treatment and Detention Facility video-conference room for a video-conference on April 1, 2019. The Respondent, Alfred Edwards, has the right to be present at the jury trial and at the video-conference on the Motions in Limine, as indicated in the Sexually Violent Persons Commitment Act.
>
> 3. The Respondent, Alfred Edwards, also has the right to waive his presence at all video-conferences, hearings and the jury trial.
>
> 4. If the Respondent, Alfred Edwards, refuses to be transported by DHS on any hearing or trial date, including the jury trial date, or the video-conference date for the Motions in Limine, the Respondent, Alfred Edwards, will have waived his right to be present at the jury trial or the Motions in Limine, and both the jury trial and Motions in Limine will proceed in his absence.

5. Eric Kunkel, Treatment and Detention Center (TDF) Security Chief or other TDF staff member is appointed to serve this order upon the Respondent and read it to him.

6. The Respondent, Alfred Edwards, is to be served with this order prior to the next hearing date of April 1, 2019."

¶ 9 During the April 1, 2019, motion *in limine* hearing, the parties also discussed questions to be asked during jury selection, and respondent's counsel tendered several proposed questions. As relevant to the issues on appeal, counsel requested the court to ask the venire:

"1. You will hear evidence that [respondent] has been convicted of three sexually violent offenses. Having heard that evidence, will you be able to be fair and impartial in reaching your decision in this case?

2. You will hear evidence that [respondent] committed a sexually violent offense against a child. Having heard that evidence, will you be able to be fair and impartial in reaching your decision in this case?"

The trial court agreed to ask a version of the first proposed question, without specifying the number of offenses, but declined to ask the second proposed question, finding that the question inappropriately related to the specific evidence in the case.

¶ 10 The jury trial on the State's petition began on April 8, 2019. Prior to trial, the assistant attorney general noted that respondent "has declined to be present," and a secured therapist aide from the TDF testified about reading the court's March 29 order to respondent. Stephanie Jackson testified that she was a secured therapy aide at the Rushville TDF, where respondent is detained. Jackson and her captain, K. Smith, spoke with respondent in his room at 3:30 a.m. and asked if he was going to attend court that morning. Respondent stated that he was not, and Jackson asked him why. Respondent informed her that he was "sick." Jackson then read respondent the court's March 29 order, from beginning to end, and then asked respondent whether he was refusing to attend court. Respondent said that he was. Jackson asked respondent if he understood the warning read to him, and he responded that he did. Respondent then signed the "writ refusal form" stating that he was choosing not to appear in court. Jackson asked respondent if he was sure that he wished to refuse to attend, and respondent confirmed that he was sure.

¶ 11 On cross-examination, Jackson testified that, when she read the court's order to respondent, she did not ask him to repeat anything from the order or to explain the order in his own words. She further testified that, when he told her he did not feel well, she did not offer to take him to the doctor. In response to the court's questioning, Jackson testified that she read all of the items on the order but did not wait for a response after each item; Jackson testified that respondent "just stood there and stared at me" while she read the order.

¶ 12 After Jackson's testimony, the State asked for the trial to proceed, arguing that respondent had waived his right to be present, while respondent's counsel asked for a continuance, arguing that respondent had stated that he was ill and had not knowingly and voluntarily waived his right to be present. Respondent's counsel also claimed that the State had received an e-mail from a TDF employee on April 4,[3] in which the employee claimed that TDF staff had spoken to respondent in the hopes of convincing him to speak to his attorney "and he said things like

[3]While there is no dispute as to the existence of the e-mail or its contents, the e-mail does not appear in the record on appeal.

trial for what and I ain't got no case." The trial court denied the request for a continuance, finding:

> "THE COURT: That's denied.
>
> This Court on numerous occasions has gone above and beyond in order to accommodate both respondent's attorneys. They by their own representations to this court have indicated that Mr. Edwards has refused continuously to communicate with them. And the Court in response to that on numerous occasions the record is very clear has made attempts to give Mr. Edwards the opportunity on numerous occasions to appear via video, to come to court. This case is pending since 2009. It's a 09 CR case.
>
> The respondent's attorney has provided nothing to the contrary regarding Mr. Edwards' refusal to appear because he fails to communicate with them as well. Frankly his comments as testified to by the officer this morning indicating and I don't want to misquote.
>
> What were those statements, [Assistant Attorney General] Lacy again. I remember I ain't got no case and what was the other one.
>
> RESPONDENT'S COUNSEL: Let me get that for you. It's from an e-mail that—
>
> ASSISTANT ATTORNEY GENERAL: Trial for what. I remember that.
>
> THE COURT: Trial for what and I ain't got no case. Could also be construed as to what he believes and there is nothing to the contrary to indicate that he did not understand what was going on and the fact that he may not wish to be present because he may not have a case in terms of *** the petition pending against him as to whether or not the [S]tate is going to declare him a sexually violent person. He may feel that he does not have any type of defense for lack of a better word to that offense.
>
> There is nothing that has been shown to this court regarding any type of mental health issue. If he was ill or had requested [*sic*] that he would be ill, the TDF has taken the necessary steps. He did not indicate in questioning from the officer this morning that he was ill. He merely indicated that on the form that he signed."

¶ 13 The court then brought in the venire for jury selection. During jury selection, the court asked each member of the venire: "[Y]ou will hear evidence that Mr. Edwards has been convicted of sexually violent offenses. Having heard that evidence, will you be able to be fair and impartial in reaching your decision in this case?" The court also asked each member of the venire (1) whether they had been the victim of any crime involving sexual abuse, (2) whether a friend or family member had been the victim of any crime involving sexual abuse, and (3) whether they or any of their friends or family were part of any organization that represents or advocates on behalf of crime victims, sexual assault victims, or victims of domestic violence.

¶ 14 During the trial, the State called two clinical psychologists as witnesses: Dr. Deborah Nicolai and Dr. Steven Gaskell. Respondent presented no evidence. Since respondent does not challenge the sufficiency of the evidence on appeal, we provide only the detail necessary to understand the issues raised on appeal.

¶ 15 Dr. Nicolai testified that she is a clinical psychologist contracted to complete sex offender evaluations with DHS and with IDOC. Over the course of her career, she had conducted approximately 85 initial evaluations pursuant to the SVP Act and had determined that the person being evaluated satisfied the criteria for being a sexually violent person in 50 of those

cases. The typical procedure she followed in conducting an evaluation under the SVP Act consisted of reviewing documents, conducting a clinical interview when possible, reaching a diagnostic conclusion, completing a risk assessment, formulating an opinion, and writing a report. She was assigned to perform an evaluation of respondent in January 2011 and followed the typical procedure, although respondent declined to be interviewed. Based on her review of respondent's records, Dr. Nicolai completed her evaluation and wrote a report on March 23, 2011, in which she diagnosed respondent with "Paraphilia, Not Otherwise Specified, Sexually Attracted to Non-Consenting Females," and "Personality Disorder, Not Otherwise Specified with Antisocial Features," and opined that respondent satisfied the criteria for civil commitment under the SVP Act. She amended her report to add another diagnosis of "Schizophrenia, Undifferentiated Type (Provisional)" on May 15, 2012, after receiving additional documents from respondent's IDOC medical file. Dr. Nicolai amended her report a third time on April 1, 2014, to update respondent's diagnoses under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which was published in May 2013; her earlier reports contained diagnoses based on the Diagnostic and Statistical Manual of Mental Disorders-IV-Text Revised (DSM-IV-TR). The updated DSM-5 diagnoses were "Other Specified Paraphilic Disorder, Sexually Attracted to Nonconsenting Females, In a Controlled Environment," "Schizophrenia (Provisional)," and "Other Specified Personality Disorder, Antisocial Personality Features." Finally, Dr. Nicolai updated her report a fourth time on February 13, 2018, after conducting a reexamination in order to review any new information since her first report. The 2018 report updated respondent's schizophrenia diagnosis to "Schizoaffective Disorder, Bipolar Type." Dr. Nicolai attempted to interview respondent prior to issuing her 2018 report, but respondent declined to meet with her.

¶ 16 In forming her opinions, Dr. Nicolai testified that she relied on respondent's criminal history. First, she learned that respondent had been convicted of aggravated criminal sexual abuse for conduct occurring in early 1998. That case, which occurred when respondent was 18 years old, involved two incidents of sexual abuse of the 8-year-old daughter of his father's girlfriend and resulted in a conviction and sentence of three years in the IDOC. Another incident in the fall of 1998, involving a 31-year-old woman, resulted in defendant's arrest; Dr. Nicolai was not aware of the disposition of that case but testified that experts in her field rely on the facts of such cases in forming their opinions. In 1999, respondent was convicted of two counts of attempted criminal sexual assault for two incidents occurring within the span of a few minutes, involving a 19-year-old woman and a 21-year-old woman, for which he was convicted and sentenced to two concurrent seven-year terms in the IDOC. Respondent was also convicted in 2002 of aggravated battery after spitting in the face of a correctional officer and was convicted and sentenced to two years in the IDOC; while this conviction did not involve a sexual offense, Dr. Nicolai testified that experts in her field nevertheless rely on such conduct in forming their opinions. Finally, in 2003, respondent was convicted of three counts of aggravated battery for conduct occurring while he was incarcerated at the Pontiac Correctional Center, one of which involved grabbing the buttocks of a female correctional officer, for which he was convicted and sentenced to four years in the IDOC.

¶ 17 Dr. Nicolai testified that she also considered respondent's disciplinary history in the IDOC in forming her opinions. First, Dr. Nicolai considered respondent's disciplinary tickets involving sexual misconduct. In addition to the incident resulting in his 2003 conviction, respondent received four sexual misconduct tickets for masturbating in front of female

correctional officers. A similar incident involving a psychology intern performing a crisis assessment did not result in a ticket. Additionally, Dr. Nicolai considered respondent's disciplinary tickets that did not involve sexual misconduct. Dr. Nicolai testified that respondent was found guilty of over 200 inmate disciplinary reports, all of which were found to be major infractions. These reports included 18 staff assaults; attempted assaults of staff and inmates; and tickets for fighting, arson, health and safety violations, violations of rules, destruction or damage and misuse of property, and disobeying direct orders.

¶ 18 Dr. Nicolai also considered information concerning respondent's mental health history. She testified that respondent's first admission to a DHS facility was an admission to the Elgin Mental Health Center in 1998, where he reported that, when he was 17 years old, he had hallucinations of devils and had also experienced auditory hallucinations. In March 2000, while at the Cook County jail, he was sent to Chester Mental Health Center, and in March and April 2000, there were at least seven occasions where he was placed in restraints. From 2001 to 2009, he was incarcerated with the IDOC and was taking psychotropic medication. Dr. Nicolai testified that respondent was currently on medication, including Haldol, Depakote, and Cogentin.

¶ 19 Finally, Dr. Nicolai testified that she considered respondent's behavior at the TDF in forming her opinions. Dr. Nicolai testified that respondent was admitted to the TDF on September 23, 2009, and in February 2010, respondent was found guilty of a major infraction for fighting with another resident. Since that time, respondent had received multiple behavior infractions for fighting, battery, causing a dangerous disturbance, and destruction of state property, including an incident in 2016 where respondent "went on a tirade" in the dayroom, an incident in 2018 where he masturbated in front of female staff, and an incident in 2018 for "manipulating staff."

¶ 20 After testifying about respondent's history, Dr. Nicolai testified about the formation of her diagnosis. Initially, when she diagnosed respondent in 2011, Dr. Nicolai used the DSM-IV-TR source. However, when she later reevaluated respondent in 2018, she used the DSM-5 source, which was the authoritative edition in her field at the time. Dr. Nicolai diagnosed respondent with "other specified paraphiliac disorder, sexually attracted to nonconsenting females in a controlled environment," "schizoaffective disorder bipolar type," and "other specified personality disorder antisocial features." Dr. Nicolai testified that the three diagnoses impacted each other because, "in addition to having the paraphilia that creates urges to sexually offend nonconsenting females, he has the schizoaffective disorder that worsens his impulsive control and judgment. And then on top of that, the antisocial personality features is somebody who has a disregard for rules, laws, the rights of others." Dr. Nicolai opined that respondent's diagnoses were all mental disorders under the SVP Act and they were congenital or acquired conditions that affected his emotional or volitional capacity and predisposed him to being a repeat offender and engaging in future acts of sexual violence.

¶ 21 Dr. Nicolai also testified that she performed a risk assessment to determine whether it was substantially probable that respondent would be a repeat offender and commit an act of sexual violence in the future. Dr. Nicolai used the Static 99R actuarial instrument, and respondent scored an eight, which placed him in the highest risk category. On the Static 2002R actuarial instrument, respondent scored a nine, which also placed him in the highest risk category. In addition to the static risk factors measured by the actuarial instruments, Dr. Nicolai also considered dynamic risk factors. She identified several dynamic risk factors that increased

respondent's risk of reoffending, including a lack of emotionally intimate relationships with adults, lifestyle impulsivity, poor cognitive problem solving, and lack of cooperation with supervision. She also considered protective factors but found that none applied. After considering the actuarial instruments, the dynamic risk factors, and the lack of protective factors, Dr. Nicolai opined that respondent was substantially probable to sexually reoffend. Dr. Nicolai further opined that, to a reasonable degree of psychological certainty, respondent satisfied the criteria necessary to be found a sexually violent person under the SVP Act.

¶ 22 On cross-examination, while respondent's counsel was questioning Dr. Nicolai, the trial court several times instructed counsel to "[m]ove on" or stated, "Next question, please." On one occasion, while counsel was asking Dr. Nicolai whether respondent had been charged with sexually violent offenses while in IDOC or DHS custody, the court called a sidebar and asked counsel: "I've granted you extensive leeway, but you need to move on. *** How long do you anticipate your cross?" Twice, during sidebars, counsel made an offer of proof as to the intended line of questioning, and the trial court ultimately permitted the questioning.

¶ 23 Additionally, when counsel attempted to cross-examine Dr. Nicolai about the DSM-5 criteria, the trial court sustained several objections to counsel "reading" from the manual and sustained similar objections when counsel was cross-examining Dr. Nicolai about respondent's medical history. Counsel also questioned Dr. Nicolai about respondent's hallucinations of Adolf Hitler:[4]

> "Q. *** [H]e has also reported seeing Hitler?
>
> A. I think [he] was hearing Hitler's voice. I don't know if he—He said he saw a picture of Hitler, so he knew who Hitler was, but I'm pretty sure that was just reporting Hitler's voice.
>
> Q. And amongst those auditory hallucinations involving Hitler, that has included things like saying he is going to go live with Hitler when he gets out on the south side of Chicago?
>
> A. The Hitler one that I'm recalling specifically was not that one. I didn't see more than one Hitler report.
>
> Q. Which one did you see?
>
> A. He said that Hitler wanted to whip him, something about racism.
>
> Q. Did he say Hitler is going to beat me with a whip. I want to leave the earth because of the racism?
>
> ASSISTANT ATTORNEY GENERAL: Judge, I'm going to object to counsel reading.
>
> THE COURT: That will be sustained.
>
> And do not do that again, [counsel]. Okay. Suggest an answer.
>
> Ask another question.
>
> Q. He has also reported—
>
> Your Honor, can we have a sidebar, please."

Outside the presence of the jury, the following sidebar occurred:

[4]We include a lengthy quotation of this exchange, as it is one identified by respondent on appeal as an example of the trial court's improper comments.

"THE COURT: What is the nature of your sidebar, [counsel]?

RESPONDENT'S COUNSEL: Your Honor, I just want to attain some clarification about the Court's ruling because—

THE COURT: It's a form of a question, [counsel]. You can ask her the question. She answered it. You didn't like her answer and then you volunteered it, so—And I've given you extensive leeway. You're repeating the same questions over and over again. There's no objection by the State. I'm allowing them in. However, do not suggest the answer. Ask the questions.

RESPONDENT'S COUNSEL: Well, that's why I want to—I want clarification on.

THE COURT: I don't understand what else you don't understand about that. This is cross-examination.

RESPONDENT'S COUNSEL: Right.

THE COURT: Cross-examination. The form of the question and how you asked it was not correct. You asked her the question. She didn't know. Then you asked her again. It's not proper. If you're trying to impeach her, that was not proper."

¶ 24 The other witness called by the State to testify was Dr. Steven Gaskell, a forensic psychologist who was contracted with DHS to conduct sexually violent person evaluations. Over the course of his career, he had conducted approximately 85 initial evaluations pursuant to the SVP Act and had determined that the person satisfied the criteria for being a sexually violent person in 67 of those cases. Dr. Gaskell testified that he was assigned to evaluate respondent in September 2016; as part of his evaluation, he attempted to interview respondent, but respondent declined to be interviewed. Based on his review of respondent's records, Dr. Gaskell completed an evaluation and wrote a report on September 30, 2016, in which he opined that respondent satisfied the criteria for civil commitment under the SVP Act. Since authoring that report, Dr. Gaskell had reviewed documents from the TDF dating from the date of the report through the end of February 2019. He did not prepare an updated report after reviewing the records but continued to opine that respondent satisfied the criteria for civil commitment under the SVP Act.

¶ 25 As Dr. Nicolai had previously done, Dr. Gaskell testified as to the basis of his opinions, including testifying to respondent's criminal history, his disciplinary history at IDOC and at the TDF, and his medical and mental health history. Dr. Gaskell also testified that he diagnosed respondent with several mental disorders based on the DSM-5 criteria: "Other specified paraphilic disorder, sexually attracted to nonconsenting females," "other specified personality disorder with antisocial traits," and schizophrenia. Dr. Gaskell testified that these mental disorders were congenital or acquired mental disorders that affected respondent's emotional or volitional capacity and impacted his ability to control his sexually violent behavior.

¶ 26 Dr. Gaskell testified that he also conducted a risk assessment of respondent using actuarial tools. Respondent scored a seven on the Static 99R, which placed him within the highest risk category. On the Static 2002R, he scored an eight, which also placed him within the highest risk category. In addition to the static risk factors measured by the actuarial instruments, Dr. Gaskell also considered dynamic risk factors. He identified nine dynamic risk factors that increased respondent's risk of reoffending, including separation from parents, "any deviant sexual interest, paraphilic interest, any personality disorder, hostility, employment instability, any substance abuse, intoxicated during the offense, and severely disordered psychotic." He

also considered protective factors but found that none applied. After considering the actuarial instruments, the dynamic risk factors, and the lack of protective factors, Dr. Gaskell opined that it was substantially probable that respondent would be a repeat offender and commit future acts of sexual violence. Dr. Gaskell further opined that, to a reasonable degree of psychological certainty, respondent satisfied the criteria necessary to be found a sexually violent person under the SVP Act.

¶ 27 During the cross-examination of Dr. Gaskell, the trial court sustained a number of objections during counsel's attempt to question Dr. Gaskell about a crisis log from Dixon Correctional Center that was included in respondent's medical records. The objections were based on foundation and on the form of the question, and the trial court ultimately permitted counsel to cross-examine Dr. Gaskell about the contents of the crisis log. Throughout the cross-examination, the court also sustained several objections as "[a]sked and answered" and instructed counsel by saying, "Next question, please."

¶ 28 After Dr. Gaskell's testimony, the State offered into evidence, over objection, both psychologists' evaluations and certified copies of respondent's convictions for the 1999 attempted criminal sexual assaults, and the court admitted the documents into evidence. The State then rested. Respondent's counsel made a motion for a directed verdict, which was denied, and then rested without presenting any evidence.

¶ 29 During closing arguments, the trial court sustained several objections to comments made by respondent's counsel and also *sua sponte* addressed the jury to remind them that closing arguments were not evidence. The court also *sua sponte* admonished counsel to "refrain [from] stating any personal opinions and beliefs" and ordered the jury to disregard counsel's argument that the psychologists were "looking at [respondent] as an inmate" rather than as a complete person. On several occasions, the trial court also admonished the jury that "factual misstatements are improper" and that the jurors were to use their own recollection of the evidence.

¶ 30 The jury returned a verdict finding that respondent is a sexually violent person, and the trial court entered judgment on the verdict.

¶ 31 On May 9, 2019, respondent filed a motion for a new trial, which was denied on August 12, 2019. A dispositional hearing was held on December 19, 2019, and the trial court found that the least restrictive placement within which respondent may be adequately, effectively, and safely managed and treated was to continue to remain at the TDF, where he could continue to receive psychiatric treatment.

¶ 32 ANALYSIS

¶ 33 On appeal, respondent claims (1) that the trial court deprived him of his statutory right to be present during the court proceedings, (2) that the court erred in failing to ask a question requested by respondent during *voir dire*, and (3) that the court deprived respondent of a fair trial through comments made by the court in the presence of the jury during the trial. We consider each argument in turn.

¶ 34 I. Right to Be Present

¶ 35 Respondent first contends that the trial court deprived him of his right to be present at the hearing on the commitment petition. A respondent who is the subject of a petition under the

SVP Act has the right to be present at any hearing conducted under the statute. 725 ILCS 207/25(c)(1) (West 2018). As with any right, the right to be present can be waived. *In re Commitment of Anderson*, 2014 IL App (3d) 121049, ¶ 19. We review the trial court's decision to accept respondent's waiver of his right to be present under an abuse of discretion standard. *People v. Justice*, 349 Ill. App. 3d 981, 988 (2004) (in cases where trial courts are called upon to determine whether defendants have validly waived their rights, the acceptance of the waiver is reviewed for an abuse of discretion). "An abuse of discretion occurs only where the court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person could take the view adopted by the trial court." (Internal quotation marks omitted.) *In re Commitment of Butler*, 2013 IL App (1st) 113606, ¶ 45.

¶ 36 In the case at bar, the trial court proceeded to hold a trial *in absentia* after respondent failed to appear on the day of trial. According to the testimony of Jackson, the secured therapy aide at the TDF, respondent indicated on the morning of trial, at 3:30 a.m., that he was not attending because he was ill. Jackson read respondent the trial court's March 29 order, in which the court informed respondent that trial would proceed in his absence if he chose not to be present, and asked respondent whether he understood the order before confirming with respondent that he did not wish to appear. Respondent then signed the "writ refusal form" stating that he was choosing not to appear in court, marking that he was ill on the form. We cannot find that the trial court abused its discretion in finding that this constituted a waiver of respondent's right to be present, even though this interaction occurred at 3:30 a.m., which we find troublesome.

¶ 37 A defendant's voluntary absence from trial may be construed as an effective waiver of his right to be present. *People v. Miller*, 2014 IL App (1st) 122186, ¶ 31; *People v. Smith*, 188 Ill. 2d 335, 341 (1999). However, a waiver is only valid where there is a knowing and voluntary relinquishment of a known right. *People v. Reid*, 2014 IL App (3d) 130296, ¶ 11. In making this determination, in several contexts, the legislature has made clear the procedures to be used in finding whether a person may be found to have waived their right to be present.

¶ 38 For instance, in criminal matters, section 113-4(e) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) requires that, if a defendant pleads not guilty:

> "[T]he court shall advise him at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." 725 ILCS 5/113-4(e) (West 2020).

Our supreme court has interpreted this language to require the trial court to admonish the defendant in open court about the possibility of trial *in absentia*. *People v. Phillips*, 242 Ill. 2d 189, 199 (2011). Where there is a lack of such an admonishment, there is reversible error.[5] *Phillips*, 242 Ill. 2d at 201.

¶ 39 Similarly, section 3-806 of the Mental Health and Developmental Disabilities Code (Mental Health Code) addresses a respondent's right to be present at any hearing for involuntary commitment under the statute:

[5]We note that the error is due to violation of a statutory right, not a constitutional one, because a defendant may effectively waive his constitutional right to be present through his voluntary absence even if he has not specifically been warned about the possibility of a trial *in absentia*. *Phillips*, 242 Ill. 2d at 195.

> "(a) The respondent shall be present at any hearing held under this Act unless his attorney waives his right to be present and the court is satisfied by a clear showing that the respondent's attendance would subject him to substantial risk of serious physical or emotional harm.
>
> (b) The court shall make reasonable accommodation of any request by the recipient's attorney concerning the location of the hearing. If the recipient's attorney advises the court that the recipient refuses to attend, the hearing may proceed in his or her absence." 405 ILCS 5/3-806(a)-(b) (West 2020).

Thus, under the Mental Health Code, a hearing may proceed in a respondent's absence if one of two specific circumstances is satisfied. However, "the court should not allow waiver without considering the respondent's capacity to waive her rights and her understanding of the consequences of waiver." *In re Christine R.*, 2019 IL App (3d) 180264, ¶ 19. Accordingly, where there is no information as to whether a respondent was afforded the opportunity to be present, it is reversible error to continue with such a hearing. *Christine R.*, 2019 IL App (3d) 180264, ¶ 26.

¶ 40 Unlike the procedures set forth in the Code of Criminal Procedure or the Mental Health Code, however, the SVP Act does not contain any specific rules or requirements for holding a hearing *in absentia*. Thus, for instance, there are no rules requiring admonishments to be given in person. Accordingly, given respondent's repeated refusal to attend any court proceedings or to have a meaningful relationship with his attorneys, we cannot find any error in the trial court's issuing respondent admonishments in a written order that was read aloud to him by TDF staff, instead of in person, even though the interaction occurred at 3:30 a.m. In the case at bar, however, the issue becomes more complex because respondent's counsel claims that respondent did not understand his rights and, therefore, did not knowingly waive them through his absence.

¶ 41 We note that all adults are presumed legally competent to direct their legal affairs, even if they are mentally ill. *In re Phyllis P.*, 182 Ill. 2d 400, 402 (1998); see also *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991) ("A defendant may be competent to participate at trial even though his mind is otherwise unsound."). Thus, even in proceedings for involuntary commitment under the Mental Health Code, a respondent may represent themselves so long as they are capable of making an informed waiver of the right to counsel. *In re Barbara H.*, 183 Ill. 2d 482, 495 (1998). In the case at bar, respondent's counsel claims there was a *bona fide* doubt as to respondent's fitness and, accordingly, that respondent was not capable of making an informed waiver of his right to be present.

¶ 42 There was no simple way for the trial court in the case at bar to determine respondent's ability to waive his right to be present. As the parties acknowledge, we have previously determined that respondent had no right to a fitness evaluation. See *Weekly*, 2011 IL App (1st) 102276, ¶ 75. Thus, the only way for the question of respondent's competence to have been considered by an expert would have been if respondent, through his counsel, chose to obtain his own fitness evaluation. Additionally, there was no opportunity for the trial court to question respondent or to observe his demeanor, as respondent repeatedly refused to participate in any court proceedings. According to the affidavit attached to counsel's motion for a continuance,

respondent last appeared in court on April 13, 2012.[6] Thus, respondent was not present in court for the probable cause hearing, any pretrial hearings, or for the trial itself; indeed, the record does not indicate that the trial judge who ultimately presided over the trial ever had any interaction with respondent.

¶ 43 As noted, we review the trial court's decision to accept respondent's waiver of his right to be present under an abuse of discretion standard. *Justice*, 349 Ill. App. 3d at 988. "An abuse of discretion occurs only where the court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person could take the view adopted by the trial court." (Internal quotation marks omitted.) *Butler*, 2013 IL App (1st) 113606, ¶ 45. In the case at bar, while the circumstances certainly were not ideal, given the lack of any expert opinion to the contrary and the inability of the court to personally observe respondent's demeanor, we cannot find that the trial court abused its discretion in relying on the presumption of respondent's competence and finding that respondent knowingly waived his right to be present by refusing to attend his trial after being admonished about the consequences of doing so. Respondent's conduct, including his longstanding refusal to speak to his counsel, the numerous times he refused to attend court proceedings, and his comments that he "ain't got no case" reasonably indicated to the trial court that he thought he had no defense to the issues in this case and, thus, was not interested in cooperating with his lawyers and/or being present during court proceedings.

¶ 44 II. *Voir Dire* Question

¶ 45 Respondent next claims that the trial court erred in failing to ask a certain question requested by respondent during *voir dire*. "One of the purposes of *voir dire* is to filter out those potential jurors who are either unable or unwilling to be fair and impartial." *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 44. Accordingly, Rule 234 provides that a trial court "shall conduct the *voir dire* examination of prospective jurors by putting to them questions it thinks appropriate touching upon their qualifications to serve as jurors in the case on trial." Ill. S. Ct. R. 234 (eff. May 1, 1997). "[T]he trial court is given the primary responsibility of conducting the *voir dire* examination, and the extent and scope of the examination rests within its discretion." *People v. Strain*, 194 Ill. 2d 467, 476 (2000).

¶ 46 Additionally, "[t]he court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate, and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, [and] the complexity of the case." Ill. S. Ct. R. 234 (eff. May 1, 1997). The question that was requested by respondent was gauged to determine whether the jury would be prejudiced against respondent before hearing the case because a child may have been involved.

> " '[A] failure to permit pertinent inquiries to enable a party to ascertain whether the minds of the jurors are free from bias or prejudice which would constitute a basis of challenge for cause, or which would enable him to exercise his right of peremptory challenge intelligently, may constitute reversible error.' " *Strain*, 194 Ill. 2d at 476-77 (quoting *People v. Lobb*, 17 Ill. 2d 287, 300 (1959)).

[6]The record on appeal does not contain any reports of proceedings between November 11, 2011, and April 27, 2012.

However, *voir dire* "is not to be used to indoctrinate jurors or to impanel a jury with a particular predisposition or ascertain prospective jurors' opinions with respect to evidence to be presented at trial." (Internal quotation marks omitted.) *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶ 39; *In re Commitment of Brown*, 2021 IL App (1st) 191606, ¶ 69. We review the limitations on supplemental questions for an abuse of discretion and will reverse the trial court's decision "only when the trial court's conduct thwarts the selection of an impartial jury." *Gavin*, 2014 IL App (1st) 122918, ¶ 41; *Butler*, 2013 IL App (1st) 113606, ¶ 15. " 'So long as the procedures employed by the circuit court provided a reasonable insurance that prejudice, if any, would be discovered, the court's exercise of discretion [will] be upheld.' " *Gavin*, 2014 IL App (1st) 122918, ¶ 41 (quoting *People v. Allen*, 313 Ill. App. 3d 842, 845-46 (2000)).

¶ 47 In the case at bar, counsel requested the court to ask two questions concerning respondent's criminal history during *voir dire*:

> "1. You will hear evidence that [respondent] has been convicted of three sexually violent offenses. Having heard that evidence, will you be able to be fair and impartial in reaching your decision in this case?
>
> 2. You will hear evidence that [respondent] committed a sexually violent offense against a child. Having heard that evidence, will you be able to be fair and impartial in reaching your decision in this case?"

The trial court agreed to ask a version of the first proposed question, without specifying the number of offenses, but declined to ask the second proposed question, finding that the question inappropriately related to the specific evidence in the case.

¶ 48 The purpose of *voir dire* is not to ascertain prospective jurors' opinions with respect to evidence to be presented at trial. *People v. Buss*, 187 Ill. 2d 144, 179-80 (1999), *abrogated on other grounds by In re G.O.*, 191 Ill. 2d 37, 46-50 (2000). Normally, an experienced lawyer knows his or her case better than the judge, but the judge as the gatekeeper has the duty to make sure that *voir dire* is not to be used to indoctrinate jurors or to impanel a jury with a " 'particular predisposition.' " *Buss*, 187 Ill. 2d at 178 (quoting *People v. Bowel*, 111 Ill. 2d 58, 64 (1986)). A trial court can deny proposed questions that are too fact specific. See *People v. Jackson*, 182 Ill. 2d 30, 61 (1998). However, jurors should be questioned with regard to any bias or prejudice concerning controversial subject matter—that is the real purpose of questioning the venire. To be constitutionally compelled, a trial court's failure to ask a question must render the proceedings fundamentally unfair. *People v. Terrell*, 185 Ill. 2d 467, 485 (1998).

¶ 49 "Where a trial deals with a controversial subject matter, prospective jurors should be questioned about the controversial subject matter to elicit facts of possible bias or prejudice regarding the controversial subject matter." *Gavin*, 2014 IL App (1st) 122918, ¶ 40; see, *e.g.*, *Strain*, 194 Ill. 2d at 477 (a defendant must be permitted to question the venire about gang bias, where gang membership and gang-related activity is an integral part of the trial). However, it is inappropriate to use *voir dire* to gauge the potential jurors' reaction to specific evidence. *Gavin*, 2014 IL App (1st) 122918, ¶ 40. Thus, a question may not ask members of the venire their reaction to specific evidence that the parties know will be introduced at trial. *Butler*, 2013 IL App (1st) 113606, ¶ 21. In the case at bar, respondent claims that his proposed question sought to question potential jurors about a controversial subject matter and did not seek to

judge their reaction to specific evidence. Accordingly, respondent claims that it was error for the court to decline to ask his proposed question.

¶ 50 While respondent's proposed question addressed a more specific subset of sexually violent offenses, it does not necessarily follow that the question itself improperly asks about "specific evidence." In general, sexually violent offenses are "particularly troubling," meaning that it is appropriate to raise a general inquiry into the issue during *voir dire*. See *Butler*, 2013 IL App (1st) 113606, ¶ 23. However, we have also recognized that sex crimes against children, specifically, can incite passion and bias in many. See, *e.g.*, *Gavin*, 2014 IL App (1st) 122918, ¶ 45; *People v. Bailey*, 249 Ill. App. 3d 79, 84 (1993) (Stouder, J., dissenting) ("There are few crimes more heinous and that evoke more outrage than sex crimes with a child victim."). Consequently, we suggested in *Gavin* that a well-worded question on the subject may be appropriately given. See *Gavin*, 2014 IL App (1st) 122918, ¶ 45 (finding that the particular question posed was improper, but leaving open the possibility that an appropriately worded question may be properly given).

¶ 51 In the case at bar, the question proposed by respondent did not include any facts about respondent's crime against the child and did not include any details such as age or gender or even the number of offenses. It simply inquired about the subject matter of sexually violent offenses against a child in order to ascertain whether any member of the venire harbored possible bias or prejudice against the controversial subject matter. Accordingly, we agree with respondent that the trial court could have appropriately asked the question during *voir dire*.

¶ 52 However, whether such a question *may* be asked is not the issue before us. Instead, we are required to determine whether such a question *must* be asked. By asking us to find that the trial court abused its discretion in not permitting his question in the case at bar, respondent is asking us to, in effect, find that the court was required to ask such a question. This we cannot do.

¶ 53 As the *Butler* court recognized, questioning the venire in this type of case requires the trial court to strike an appropriate balance between (1) informing the venire of a "particularly troubling aspect" of the expected evidence and ascertaining any bias or prejudice and (2) the risk of being too specific and thereby inappropriately prequalifying jurors with regard to specific evidence. *Butler*, 2013 IL App (1st) 113606, ¶ 24. In the case at bar, the trial court determined that the appropriate balance included asking the members of the venire about their attitudes toward sexually violent offenses generally and declining to ask about sexually violent offenses against children specifically. We cannot find that drawing such a line was unreasonable. This is especially true in this case, because the offense against the child was not one of the offenses that formed the basis of the SVP Act petition against respondent but was only used by the psychologists in rendering their opinions. Therefore, the offense against the child did not constitute an element that the State was required to prove, unlike the two convictions that were specified in the petition.

¶ 54 Additionally, as noted, we will reverse the trial court's decision "only when the trial court's conduct thwarts the selection of an impartial jury." *Gavin*, 2014 IL App (1st) 122918, ¶ 41; *Butler*, 2013 IL App (1st) 113606, ¶ 15. Our supreme court has found that, "[t]o be constitutionally compelled, it is not enough that a *voir dire* question be helpful, rather, the trial court's failure to ask the question must render the defendant's proceedings fundamentally unfair." *Terrell*, 185 Ill. 2d at 485. " 'So long as the procedures employed by the circuit court provided a reasonable insurance that prejudice, if any, would be discovered, the court's

exercise of discretion [will] be upheld.' " *Gavin*, 2014 IL App (1st) 122918, ¶ 41 (quoting *Allen*, 313 Ill. App. 3d at 845-46).

¶ 55 In the case at bar, the trial court extensively questioned the venire about sexually based offenses. As noted, the court asked each member of the venire: "[Y]ou will hear evidence that Mr. Edwards has been convicted of sexually violent offenses. Having heard that evidence, will you be able to be fair and impartial in reaching your decision in this case?" Furthermore, the court inquired as to each member of the venire's experience with sexually based offenses, asking whether they or any of their family members had been victims of sexual abuse and whether they or any of their friends or family members were part of any organization that represents or advocates on behalf of victims of crime, sexual assault, or domestic violence. Depending on their answers to these questions, the court questioned the member of the venire further in order to determine if they could be fair and impartial. As a result of the court's questioning, respondent's counsel used peremptory challenges against four individuals who had been sexually abused, while declining to exercise peremptory challenges against two individuals whose friends or family members had been sexually abused. Under these circumstances, the trial court's questioning of the venire created a reasonable assurance that any prejudice would have been discovered. See *Gavin*, 2014 IL App (1st) 122918, ¶ 41. Accordingly, we cannot find that the trial court's failure to allow respondent's additional question specifically concerning sexually violent offenses against a child thwarted the selection of an impartial jury.

¶ 56 III. Trial Court's Comments

¶ 57 The final issue raised by respondent on appeal is his contention that he was denied his right to a fair trial because the trial court prejudiced the jury with its comments to respondent's counsel during trial and closing argument. "A trial judge has a duty to see that all persons are provided a fair trial." *People v. Sims*, 192 Ill. 2d 592, 636 (2000) (citing *People v. Burrows*, 148 Ill. 2d 196, 250 (1992)). Accordingly, a trial judge "must refrain from interjecting opinions, comments or insinuations reflecting bias toward or against any party." *Sims*, 192 Ill. 2d at 636 (citing *People v. Garrett*, 276 Ill. App. 3d 702, 712 (1995)). " 'Jurors are ever watchful of the attitude of the trial judge and his influence upon them is necessarily and properly of great weight, thus his lightest word or intimation is received with deference and may prove controlling.' " *People v. Wiggins*, 2015 IL App (1st) 133033, ¶ 46 (quoting *People v. Marino*, 414 Ill. 445, 450-51 (1953)). "Judicial comments can amount to reversible error if the defendant can establish that such comments were 'a material factor in the conviction or were such that an effect on the jury's verdict was the probable result.' " *Burrows*, 148 Ill. 2d at 250 (quoting *People v. Harris*, 123 Ill. 2d 113, 137 (1988)). " 'Where it appears that the comments do not constitute a material factor in the conviction, or that prejudice to the defendant is not the probable result, the verdict will not be disturbed.' " *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 57 (quoting *People v. Williams*, 209 Ill. App. 3d 709, 718-19 (1991)). In evaluating the effect of the trial court's comments upon the jury, we consider the evidence, the context in which the comments were made, and the circumstances surrounding the trial. *Lopez*, 2012 IL App (1st) 101395, ¶ 57. Comments made to counsel during the trial should always be made at a sidebar, outside the presence of the jury, so that the jury is not in a position to hear them. This way, those comments will have no effect on the jury's verdict. Obviously, that was not always done in the case at bar.

¶ 58 In the case at bar, respondent suggests that the trial court conveyed to the jury that counsel's presentation of its case was improper, where the court made comments such as "[n]o leading," "[d]on't read," "[m]ove on," "[n]ext question, please," and "do not do that again *** Suggest an answer. Ask another question." While these comments appear innocuous on their face, we agree with respondent that some of the court's comments suggested to the jury that counsel was improperly wasting the jury's time. This was especially true where the court interjected comments *sua sponte*, without any objection by the State. For instance, this occurred several times while counsel was questioning Dr. Nicolai about a hospital visit due to respondent's sickle cell anemia:

"Q. Doctor, while Mr. Edwards was at St. John's he had what's called a Winter shunt performed; is that right?

A. That's correct.

Q. He also had a CT scan?

A. I don't recall that.

THE COURT: Okay. Next question.

Q. He was also noted to have sepsis; is that right?

A. I don't recall that.

Q. Doctor, what is a Winter shunt?

A. He had a procedure done on his penis due to blood flow blockage.

Q. *** Did you inquire as to what sickle cell anemia is?

A. I researched sickle cell anemia.

Q. Did you speak with a medical doctor about that disorder?

A. Not in this case. I don't recall if I ever have. Not in this case.

Q. He was given a diagnosis that he had a priapism secondary to sickle cell disease; is that right?

A. That's correct.

Q. What is a priapism?

A. An extended period of time of erection.

Q. So what is it about sickle cell anemia that causes that?

ASSISTANT ATTORNEY GENERAL: Objection to the relevance.

THE COURT: Overruled.

Do you know the answer?

DR. NICOLAI: I understand the question. ['']I do not know['] is my answer to the question.

THE COURT: Okay. Next question, please.

Q. Did you attempt to learn what that means?

A. No, I did not.

Q. So you did not consult a medical doctor about that?

A. No, I did not.

THE COURT: Next question, please.

Q. Mr. Edwards was prescribed antibiotics *** as a result of that hospital stay; is that right?

A. That's correct.

Q. What is the purpose of antibiotics for somebody with sickle cell anemia?

A. I don't know.

Q. Did you attempt to learn why he was prescribed antibiotics?

A. No, I did not.

Q. Doctor, was *** Mr. Edwards' condition described as one that had a high probability of imminent or life threatening deterioration?

ASSISTANT ATTORNEY GENERAL: Objection.

THE COURT: Overruled.

Do you understand the question?

DR. NICOLAI: I understand the question, and my answer is I don't know.

THE COURT: Okay. That answer will stand.

Next question."

Through this questioning, counsel was attempting to emphasize that Dr. Nicolai failed to investigate respondent's medical diagnosis of sickle cell anemia. However, by the trial court repeatedly commenting "[n]ext question," even when there was no objection pending, the court suggested to the jury that this was not a worthwhile line of questioning.

¶ 59 Nevertheless, even if all or some of a trial judge's comments are improper, that does not necessarily cause the jury to be prejudiced against the defendant. See *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 174 (even if some of the trial judge's comments demonstrated frustration with defense counsel, that does not necessarily mean that the judge was displaying bias); *People v. Urdiales*, 225 Ill. 2d 354, 426 (2007) ("The fact that a judge displays displeasure or irritation with an attorney's behavior is not necessarily evidence of judicial bias against the defendant or his counsel." (citing *People v. Jackson*, 205 Ill. 2d 247, 277 (2001))). Our supreme court has made clear that "[a] hostile attitude toward defense counsel, an inference that defense counsel's presentation is unimportant, or a suggestion that defense counsel is attempting to present a case in an improper manner may be prejudicial and erroneous." *Harris*, 123 Ill. 2d at 137. Nevertheless, " '[w]here it appears that the comments do not constitute a material factor in the conviction, or that prejudice to the defendant is not the probable result, the verdict will not be disturbed.' " *Lopez*, 2012 IL App (1st) 101395, ¶ 57 (quoting *Williams*, 209 Ill. App. 3d at 718-19).

¶ 60 In the case at bar, we find nothing in the trial court's comments that would have constituted a material factor in respondent's being found to be a sexually violent person. As noted, respondent was represented by able attorneys who vigorously cross-examined both of the State's experts, and even where the court made unnecessary comments, counsel was still permitted to explore nearly every line of inquiry sought. We have read the transcript of the trial in full, including each instance referenced by respondent, and find no comments that would have resulted in prejudice against respondent or his counsel in any way. Accordingly, we cannot find that respondent was deprived of a fair trial due to the court's comments during the trial.

¶ 61 We similarly cannot find that respondent was prejudiced by the trial court's comments during counsel's closing argument. Counsel's argument was primarily focused on challenging the credibility of the State's experts and their opinions. Several times, the court sustained objections to respondent's comments and also *sua sponte* addressed the jurors to remind them that closing arguments were not evidence. On several occasions, the trial court also admonished the jury that "factual misstatements are improper" and that the jurors were to use their own recollection of the evidence.

¶ 62 We note that, of the seven times the trial court gave these admonishments, five were in response to objections made by the State and were not initiated by the trial court.[7] The court gave the same admonishment when respondent's counsel objected during the State's rebuttal. Thus, we cannot find that the trial court erred in admonishing the jury when a party objected. However, we do agree that *sua sponte* interjecting to give admonishments during the middle of counsel's argument suggested to the jury that the attorney had said something improper that necessitated the court's intervention.

¶ 63 We also note that, on one occasion, the court directly instructed the jury to disregard specific comments made by counsel and also *sua sponte* admonished counsel to "refrain [from] stating any personal opinions and beliefs." During this portion of the argument, counsel was arguing that the psychologists should have inquired more into respondent's outside life:

> "Both Dr. Nicolai and Dr. Gaskell told you essentially that they had enough information. They didn't need to contact these other people. How can they know what is in that information if they don't seek it out[?]
>
> And the State has the burden here. It is entirely their burden to *** prove beyond a reasonable doubt that Mr. Edwards is a sexually violent person. You get to decide if that's credible. If their decision not to do that is credible. I submit that it is not.
>
> That they should have done this and without knowing what information is out there, they are looking at half a person. They are looking at Mr. Edwards as an inmate.
>
> THE COURT: *** [L]adies and gentlemen and counsel, please, refrain from stating any personal opinions and beliefs.
>
> Members of the jury you are to disregard those statements."

¶ 64 Counsel is afforded wide latitude in closing argument and may comment on the evidence, as well as any reasonable inference that can be drawn from the evidence. *Compton v. Ubilluz*, 353 Ill. App. 3d 863, 873 (2004). We cannot find that counsel's comment here was anything other than a comment on the evidence, and the trial court should not have ordered the jury to disregard it, especially where there was no objection. However, as with the earlier comments, we cannot find that the trial court's comment prejudiced the jury in any way. Accordingly, we cannot find that respondent was deprived of a fair trial by the court's comments.

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[7]We also note that the trial court twice admonished the jury that "arguments of the lawyers are not to be taken by you as statements of law. Instructions on the law will come from me after the closing arguments are finished." One of these admonishments was the result of an objection by the State, and the other was *sua sponte*.

¶ 65 CONCLUSION

¶ 66 For the reasons set forth above, we affirm the trial court's judgment. First, the trial court did not abuse its discretion in finding that respondent had waived his right to be present. Second, while the trial court could have properly asked the prospective jurors whether they could be impartial after hearing that respondent had been convicted of a sexually violent offense involving a child, the failure to ask the question does not constitute an abuse of discretion. Third, while some of the trial court's comments during trial and during closing argument were improper, they did not prejudice the jury by displaying a bias against respondent or his counsel.

¶ 67 Affirmed.