NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2025 IL App (4th) 230462-U

NO. 4-23-0462

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 5, 2025
Carla Bender
4th District Appellate
Court, IL

In re COMMITMENT OF JIMMY DUDLEY, a Sexually Violent Person	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 21MR1524
Jimmy Dudley,	)	
Respondent-Appellant).	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court (1) did not erroneously admit evidence of respondent's uncharged, out-of-state acts at the commitment hearing and (2) did not abuse its discretion when it committed respondent to institutional care at a secure facility.

¶ 2 Respondent, Jimmy Dudley, appeals from an order of the Sangamon County circuit court committing him to the custody of the Illinois Department of Human Services (DHS) for control, care, and treatment under section 40(b) of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/40(b) (West 2022)). On appeal, respondent argues the court (1) erroneously permitted the State to present inadmissible evidence of respondent's alleged uncharged, out-of-state acts at the commitment hearing and (2) abused its discretion when it committed him to institutional care at a secure facility. The State contends respondent forfeited his arguments

pertaining to the first claim and said forfeiture cannot be excused under the plain error doctrine. The State further asserts the court properly exercised its discretion in committing respondent to institutional care in a secure facility. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. State's Petition

¶ 5 In May 2021, respondent pleaded guilty to one count of child pornography in Sangamon County case No. 19-CF-662. Pursuant to the agreement, the trial court sentenced respondent to five years in prison. In November 2021, the State filed a petition under section 15 of the Act (725 ILCS 207/15 (West 2020)), asserting respondent is a sexually violent person (SVP) and should be civilly committed under section 40 of the Act (*id.* § 40). Specifically, the State asserted Dr. Vasiliki Tsoflias diagnosed respondent with "[(1)] Pedophilic Disorder, Non-Exclusive Type, Sexually attracted to females and [(2)] Other Specified Personality Disorder, with Antisocial Features." The State further alleged these conditions predisposed respondent to commit acts of sexual violence and, therefore, he was dangerous to others because one or more of these mental disorders created a substantial probability he would engage in future acts of sexual violence.

¶ 6 The trial court conducted a probable cause hearing on the State's petition on November 23, 2021. Following the hearing, the court entered a written order concluding there was probable cause to believe respondent is an SVP as defined in section 5(f) of the Act (*id.* § 5(f)).

¶ 7 B. Jury Trial

¶ 8 The trial court conducted a jury trial on the State's petition in September 2022.

¶ 9 During opening statements, the State addressed the jury as follows:

> "Both of the doctors [who will testify] also believe that [respondent] suffers

> from a personality disorder. And they're going to tell you how they came to that diagnosis in his case and what they relied on. Aside from that 2019 case and the police reports that they looked at they also looked at other police reports and other victim and witness statements from the State of Florida where it was reported that [respondent] sexually offended against several young girls.
>
> In one of those cases he was charged with sexual battery of a child under the age of 12. A little girl reported that he touched her vagina on multiple occasions. So the doctors looked at that. They looked at the Springfield case, and they also looked at [respondent]'s history of committing other offenses that were not sexual in nature. So besides hearing about the criminal conviction, the mental disorder, you're also going to hear the doctor[s'] ultimate conclusions; that they looked at all of those factors and they believe it is substantially probable that [respondent] will commit another sexually violent offense."

¶ 10 1. *The State's Case*

¶ 11 During the State's case-in-chief, it presented the testimony of two expert witnesses: Dr. Tsoflias and Dr. David Suire. A summary of their testimony follows.

¶ 12 a. Dr. Tsoflias

¶ 13 Dr. Tsoflias testified she was a licensed clinical psychologist and sex offender evaluator in Illinois and employed by Wexford Health Sources, Inc. (Wexford), a company contracted with the Illinois Department of Corrections (DOC) to perform SVP evaluations. Throughout her career, Dr. Tsoflias had performed approximately 162 SVP evaluations since September 2009. Additionally, Dr. Tsoflias had been trained to use instruments such as the Static-99R, the Static-99, the Static-2002R, and the STABLE-2007, which she used in her SVP

evaluations. The State tendered Dr. Tsoflias as an expert in clinical and forensic psychology—specifically in the area of SVP evaluation, diagnosis, and assessment—without objection.

¶ 14 Dr. Tsoflias testified she followed her standard procedure in her evaluation of respondent. Specifically, Dr. Tsoflias reviewed police reports and court documents from Sangamon County case No. 19-CF-662, police reports from other prior allegations against respondent, his criminal history, his medical documents, and his inmate history at DOC. Dr. Tsoflias also conducted an in-person clinical interview of respondent on September 20, 2021, at the Taylorville Correctional Center. Thereafter, Dr. Tsoflias prepared a report based on her findings, which the trial court admitted into evidence as People's exhibit No. 3 without objection. In forming her opinions, Dr. Tsoflias testified she considered respondent's criminal offending behavior, which included the facts and circumstances of the qualifying offense in this case, as well as alleged offending behavior. Dr. Tsoflias looked for a pattern of behavior indicating respondent committed sexual offenses due to a mental disorder. Dr. Tsoflias was familiar with case No. 19-CF-662 and relayed her understanding of the facts and circumstances of that case. When asked about the case during the interview, respondent told Dr. Tsoflias he had been living with the girl and her family. Respondent had been outside with the girl when she asked to borrow his phone to listen to music. Respondent gave her the phone, after which she went into the house for about five minutes. According to respondent, the girl then went to her aunt's house and showed her aunt the pictures she had found on respondent's phone, meaning the girl must have taken the pictures giving rise to the case herself.

¶ 15 Dr. Tsoflias testified she had also looked at multiple police reports from Florida describing respondent's other alleged sex offending behaviors and summarized the allegations contained in these documents. Specifically, Dr. Tsoflias indicated she considered sex offending

behavior for which respondent had not been arrested or charged because it still formed a pattern of behavior and, compared to being falsely accused of the same offenses, it was "more common for people who have committed the offenses to not be arrested and not be charged."

¶ 16 Additionally, Dr. Tsoflias considered respondent's nonsexual criminal history, concluding respondent had a "substantial" criminal history in addition to the underlying conviction in this case. Moreover, Dr. Tsoflias reviewed respondent's master file and disciplinary history from DOC. Dr. Tsoflias testified the records she reviewed did not indicate respondent had undergone sex offender treatment, although it was offered at the Rushville Treatment and Detention Facility (Rushville) where he had been incarcerated since the State's petition had been filed.

¶ 17 Dr. Tsoflias diagnosed respondent with "[p]edophiliac disorder, nonexclusive type sexually attracted to females, and other specified personality disorder with antisocial features." Specifically, the basis for the pedophiliac disorder diagnosis was that, over a period of seven years, respondent engaged in various sexual acts with girls under the age of 13. The "nonexclusive type" portion of the diagnosis meant respondent, in addition to being sexually attracted to children, was sexually attracted to adults.

¶ 18 Dr. Tsoflias further testified she diagnosed respondent with other specified personality disorder, with antisocial features. According to Dr. Tsoflias, respondent had antisocial aspects to his personality in the form of his failure to conform to social norms by "repeatedly engaging in acts that are grounds for arrest." Furthermore, respondent denied committing the offenses and therefore lacked remorse. Dr. Tsoflias explained that when paired with the paraphilic disorder, respondent's other specified personality disorder made it more likely he would act on his sexual urges. Accordingly, Dr. Tsoflias testified respondent was predisposed to commit acts of

sexual violence because of the particular combination of his conditions, with pedophiliac disorder generating his interest in prepubescent children and other specified personality disorder, with antisocial features, exacerbating his symptoms and making him more likely to act on his urges.

¶ 19 Additionally, Dr. Tsoflias testified she assessed respondent's likelihood of committing future offenses using adjusted actuarial instruments and tools. Using these tools, Dr. Tsoflias matches an individual's characteristics with those characteristics research has shown cause an individual to reoffend. Based on these characteristics, Dr. Tsoflias then assigns the individual a total score denoting his likelihood to reoffend. In respondent's case, Dr. Tsoflias used the Static-99R, for which respondent scored a 4. This score placed him in an "above average" risk category and indicated he was almost twice as likely to reoffend compared to the typical sex offender. Dr. Tsoflias testified respondent received one point for having a prior nonsexual violent conviction, one point for having a prior conviction, one point for having a prior sex offense charge, and one point for having more than four prior sentencing dates.

¶ 20 Dr. Tsoflias also addressed another instrument she used in respondent's case, the Static-2002R. Dr. Tsoflias testified that the Static-2002R examined different criteria compared to the Static-99R. Specifically, Dr. Tsoflias explained using the two instruments together allows the evaluator to gain a better understanding of a person's risk to reoffend than can be achieved by using just one. Respondent scored a 5 on the Static-2002R, placing him in an "above average" risk category, meaning he was almost twice as likely to reoffend compared to the typical sex offender.

¶ 21 Additionally, Dr. Tsoflias considered dynamic risk factors, which increase an individual's risk of reoffending but can be reduced through treatment. Dr. Tsoflias found respondent exhibited dynamic risk factors, including a sexual preference for children, lack of intimate relationships with adults, poor cognitive problem-solving skills, resistance to rules and

supervision, and negative social influences. According to Dr. Tsoflias, these dynamic risk factors added to respondent's risk of reoffending. However, Dr. Tsoflias identified callousness or lack of remorse for others as risk factors that could potentially be changed in respondent's case. Dr. Tsoflias discussed three "protective" risk factors that could decrease an individual's level of risk, but she found none of them applied in respondent's case.

¶ 22 Following Dr. Tsoflias's assessment of respondent, her ultimate opinion was that he was substantially probable, much more likely than not, to commit future acts of sexual violence. Dr. Tsoflias further testified she believed respondent suffered from (1) pedophiliac disorder, nonexclusive type—sexually attracted to females and (2) other specified personality disorder with antisocial features. Moreover, Dr. Tsoflias opined respondent was dangerous because of mental disorders making it substantially probable he would engage in future acts of sexual violence. In her expert opinion, respondent met the criteria to be considered an SVP.

¶ 23 On cross-examination, Dr. Tsoflias acknowledged respondent's score on the Static-99R would decrease with age. Specifically, it would decrease by two points at the time respondent turned 60 and could also be reduced through disease or other health concerns. Dr. Tsoflias conceded respondent had only been convicted of one sexual offense, *i.e.*, possession of child pornography. Moreover, Dr. Tsoflias agreed respondent was never charged with touching a nine-year-old girl and there were no other sex crime convictions in respondent's criminal history. Dr. Tsoflias acknowledged the State did not pursue the case for which respondent was arrested and charged in 2016. Dr. Tsoflias further admitted she was using an abandoned charge and another incident respondent was never charged with in her analysis. Dr. Tsoflias explained she relied on charged conduct and alleged conduct along with convictions because she was examining respondent from a behavioral—rather than a legal—perspective and there were many reasons why

charged conduct might be dismissed or otherwise not result in a conviction.

¶ 24 Dr. Tsoflias testified she did not use the Child Pornography Offender Risk Tool (CPORT) for cases involving child pornography, such as respondent's, because in her opinion, it was a newer and less reliable test that did not account for "other offenses that have happened." Dr. Tsoflias clarified she meant "other offenses" as arrested or charged conduct that did not result in a conviction or guilty plea. Dr. Tsoflias agreed there was "not a significant alcohol or substance abuse history" in respondent's case and he had not received any tickets for improper conduct while in DOC in October 2021.

¶ 25 b. Dr. Suire

¶ 26 Dr. Suire testified he was employed as a clinical psychologist for DHS and had worked there since 2006. As part of his role, Dr. Suire conducted SVP evaluations. Dr. Suire had been involved in the treatment or evaluation of sex offenders for about 20 years. After being assigned to respondent's case, Dr. Suire prepared both initial and supplementary reports. Prior to speaking with respondent, Dr. Suire reviewed substantially the same records as Dr. Tsoflias. With no objections, the trial court allowed (1) the State's motion to tender Dr. Suire as an expert and (2) the admission of Dr. Suire's report into evidence as People's exhibit No. 5.

¶ 27 Additionally, Dr. Suire testified it was important to consider past behavior—including a history of sex offenses—because it could predict future behavior. He further believed it was important to consider nonsexual criminal history, which in respondent's case generally fell into three categories: fraudulent acts, battery, and drug or drug paraphernalia possession. Dr. Suire then relayed respondent's sexual criminal history. According to Dr. Suire, each criminal incident, including conduct not ultimately resulting in charges or convictions, needed to be considered with its appropriate weight, and he assessed different levels of credibility depending on the

circumstances. Because there were formal criminal charges, an investigation, and a report from the Florida Department of Children and Families (DCF) with respect to three of respondent's alleged victims, Dr. Suire assessed those with a degree of credibility "beyond mere allegations." Dr. Suire assessed the fourth victim with lower credibility because authorities "did not conclude there was a credible reason to conclude that molestation had occurred."

¶ 28 Dr. Suire provided his understanding of the facts and circumstances of the 2019 child pornography case. Dr. Suire testified respondent denied having committed the acts when interviewed. Specifically, respondent stated the child must have taken the picture giving rise to the 2019 case herself. Dr. Suire testified significant progress and completion of sex offender treatment were correlated with a substantial reduction of risk. This treatment was offered at Rushville, but there was no evidence respondent was engaged in or had completed such treatment.

¶ 29 In addition, Dr. Suire diagnosed respondent with three mental disorders that qualified under the Act, including the following: pedophiliac disorder, sexually attracted to females—nonexclusive type; other specified paraphilic disorder, nonconsenting and adolescent persons—nonexclusive type; and antisocial personality disorder. Dr. Suire explained he conducted a risk assessment of respondent in which he considered three or four main sources of information, including actuarial data, other empirically identifiable risk factors, and special or specific case factors. Dr. Suire explained he found respondent endorsed certain beliefs tending to support or enable a sexual offender. These findings indicated respondent thought children were sexual beings who might want to have sex with an adult. During his interview, respondent indicated these remarks had been taken out of context, which Dr. Suire testified was not unusual in his experience.

¶ 30 Dr. Suire testified he used the Static-99R actuarial tool in respondent's case. Respondent scored a 5, placing him in an "above average" risk category. Respondent had a relative

risk level indicating he was 2.7 times as likely as the typical sex offender to reoffend. Dr. Suire also used the Static-2002R in respondent's case. Respondent again scored a 5, placing him in an "above average" risk category, and he was 1.9 times as likely to reoffend compared to the typical sex offender. Dr. Suire noted other empirical risk factors applied in respondent's case, including deviant sexual arousal, offensive supporting attitudes, impulsiveness, recklessness, noncompliance with supervision, and grievance hostility.

¶ 31 Moreover, Dr. Suire testified he also considered protective factors, *i.e.*, those factors that tend to decrease an individual's risk of reoffending, such as age, health, and treatment progress. Dr. Suire did not believe any protective factor—except, to some extent, age—applied in respondent's case. Dr. Suire testified he was familiar with the CPORT, but he did not consider it the most appropriate instrument to use in respondent's case because respondent had child victims, and, therefore, the Static-99R was the more appropriate risk assessment tool.

¶ 32 Dr. Suire opined respondent's pedophiliac disorder and other paraphilic disorder predisposed him to commit sexual offenses in the future. Specifically, the combination of sexual interest in children and antisocial personality disorder added to the risk in respondent's case. Dr. Suire testified he believed it was substantially probable, much more likely than not, that respondent would reoffend. In sum, Dr. Suire believed respondent met the criteria to be found an SVP.

¶ 33 Dr. Suire testified on cross-examination it was his understanding respondent had not received any tickets or DOC violations while incarcerated and that he knew of no sexual misconduct violations during that time. He further agreed that one of the allegations against respondent did not meet the applicable investigation criteria in that the authorities did not believe it was credible. Dr. Suire acknowledged Dr. Tsoflias's decision not to diagnose respondent with antisocial personality disorder, explaining that "[d]ifferent evaluators can read" the records

differently in deciding whether there was evidence of a conduct disorder.

¶ 34 c. Conclusion of the State's Case

¶ 35 Following Dr. Suire's testimony, the State rested. Respondent moved for a directed verdict, which the trial court denied. The court concluded the jury could reasonably find the State's evidence supported a finding it was substantially probable respondent would reoffend.

¶ 36 2. *Respondent's Case*

¶ 37 Respondent presented testimony from one expert witness, Dr. Mark Steven Carich.

¶ 38 Dr. Carich testified he was a clinical counselor and licensed sex offender evaluator. Dr. Carich currently worked at the Menard Correctional Center part-time for Wexford, where he provided mental health treatment services. With no objection, the trial court admitted Dr. Carich as an expert in the field of psychology, specifically in the area of sex offender evaluation and treatment.

¶ 39 Dr. Carich testified he reviewed the records in this case, as well as the evaluations completed by the State's experts. Dr. Carich interviewed respondent and had prepared a report. The trial court admitted Dr. Carich's report into evidence as respondent's exhibit No. 2 without objection.

¶ 40 In Dr. Carich's expert opinion, respondent did not suffer from a qualifying mental disorder under the definition of an SVP under the Act. Dr. Carich testified he diagnosed respondent with "personality disorder otherwise specified," which Dr. Carich described as "personality [disorder] with some features of antisocial, basically antisocial behavior," and was "not paraphilia." When asked to explain why he did not believe respondent suffered from a qualifying mental disorder under the Act, Dr. Carich testified respondent did not meet the criteria for pedophilia or another paraphilia. Specifically, respondent's single conviction for child

pornography possession did not fit the criteria for pedophilia in that respondent "has to be attracted to kids prior to puberty and it has to be ongoing for six months." Because respondent only lived with the minor involved in his child pornography conviction for three months, he could not be defined or diagnosed as a pedophile. Addressing the fact the State's experts had relied on uncharged allegations in their analysis and diagnosis of respondent, Dr. Carich testified he had not done the same because he did not know "what really transpired."

¶ 41 Additionally, Dr. Carich opined respondent was not dangerous, and he did not believe respondent was suffering from a mental disorder that made him substantially probable to commit further acts of sexual violence. When evaluating respondent with the Static-99R tool, respondent scored a 3, which indicated an "average" risk of reoffending. Dr. Carich did not believe respondent was a pedophile because in his experience, pedophiles "really c[o]me to life" during interviews in discussing what they found attractive and respondent had not done so during his interview.

¶ 42 Dr. Carich opined the CPORT was a superior actuarial tool for a case such as respondent's because it was "based primarily for child pornography." Dr. Carich believed respondent scored a 1 on the CPORT, placing him at "low risk" to engage in acts of sexual violence. When asked about the State's experts' decisions not to use the CPORT and to use the Static tools instead, Dr. Carich testified both tools were appropriate in this case.

¶ 43 According to Dr. Carich, none of the dynamic risk factors he identified increased respondent's risk of reoffending in the future. Respondent told Dr. Carich that to combat any risk of dangerous and impulsive decision-making, he would think about what was going on, take deep breaths, and make informed decisions, with an eye on the consequences.

¶ 44 Addressing respondent's strengths, Dr. Carich testified respondent "surprised [him] with a whole list, a page, of strengths," including empathy, resilience, and confidence in himself. With respect to respondent's adult prosocial life risk management plan, Dr. Carich stated respondent indicated he wanted to live a protective, non-offending lifestyle.

¶ 45 Dr. Carich reiterated respondent had no mental disorder within the meaning of the Act and, in his opinion, it was not substantially probable, or more likely than not, that respondent would engage in future acts of sexual violence. Therefore, respondent did not satisfy the criteria to be considered an SVP within the meaning of the Act.

¶ 46 On cross-examination, Dr. Carich testified he was unsure whether he had specialized training in evaluation and risk assessment of people under the Act. Dr. Carich testified he attended a training course on the STABLE-2007 about five years prior and that he could not recall the last time he'd taken a course on the Static-99R. In addition, Dr. Carich testified he had briefly reviewed the Act in preparation for his evaluation of respondent and had been doing evaluations under the Act for about four years. Of the approximately 10 evaluations he had performed, a majority had been performed at the subject's request.

¶ 47 Further, Dr. Carich acknowledged his report stated respondent had not historically exhibited strong evidence of the feelings of sexual entitlement commonly associated with sexual aggression, unless the allegations against respondent were true. Dr. Carich accepted that if "the allegations were absolutely true along with the dropped case[,] it would be a different scenario." Dr. Carich believed respondent was committed to using self-regulation skills based on how he responded to Dr. Carich's questions during their interview. Dr. Carich posited that if a dynamic risk factor did not apply, then it tended to decrease an individual's risk. This view was supported

in part by several "leading experts in the risk field," but Dr. Carich admitted there was not a current empirical research study that supported this conclusion.

¶ 48 3. *Verdict and Posttrial Motion*

¶ 49 After the presentation of evidence and closing arguments by both parties, the trial court provided instructions to the jury, both verbally and in writing, which included, *inter alia*, the following:

> "I have allowed the witnesses to testify in part to books, records, articles, and statements that have not been admitted in evidence. This testimony is allowed for a limited purpose. It is allowed so that the witness may tell you what he or she relied on to form his or her opinion. The material being referred to is not evidence in this case and may not be considered by you as evidence. You may consider the material for the purpose of deciding what weight, if any, you will give the opinions testified to by this witness."

¶ 50 The jury found respondent was an SVP. Following the verdict, the trial court entered a written judgment finding respondent was an SVP and scheduled the case for a dispositional hearing.

¶ 51 In October 2022, respondent filed a posttrial motion, asserting the evidence presented at trial was insufficient to prove he was an SVP and requesting a new trial on the State's petition.

¶ 52 4. *Dispositional Hearing*

¶ 53 In January 2023, the trial court conducted a dispositional hearing in respondent's case.

¶ 54 The State again presented testimony from Dr. Suire, who opined that commitment for secure care at Rushville was the least restrictive environment given respondent's treatment needs. In reaching this opinion, Dr. Suire considered the same types of information he had previously considered, including respondent's criminal history, treatment records, and prior evaluations. Specifically, Dr. Suire testified respondent's extensive sexual and nonsexual criminal history established his unwillingness "to obey the rules, to follow the law," and to comply with the terms of supervision.

¶ 55 Dr. Suire explained conditional release would be ineffective because respondent had not engaged in treatment for his disorders, and his antisocial personality disorder would make it "very difficult" for him to comply with rules if placed on conditional release. Respondent remained in the second highest risk category for reoffending and "has treatment needs that are more extensive than the treatment program in the community would likely meet." Based on all the information, Dr. Suire concluded that treatment in a secure facility was the least restrictive environment for respondent because Rushville offers a "considerably greater breadth" of treatment than treatment in the community, which would be "to [respondent's] benefit, particularly at this stage where he has never done treatment and has pretty extensive treatment needs."

¶ 56 During closing arguments, the State indicated the trial court was to consider whether respondent would be best suited for institutional care in a secure facility or for conditional release. Specifically, the State remarked, "We have the program at Rushville, and we have [the] conditional release program which is administered by Liberty Healthcare. And I know the Court is quite familiar with both of those options through other cases and as well through Dr. Suire's testimony." Ultimately, the State asserted that while "Liberty [Healthcare] does an excellent job administering the [conditional release] program," the GPS was not constantly monitored and

respondent "would still have the ability to violate the rules," which was too great a risk at that time.

¶ 57 Upon conclusion of the dispositional hearing, the trial court ordered respondent to be committed to institutional care in a secure facility. The court first referenced its experience and history adjudicating SVP cases and found the nature and circumstances of the underlying offense in this case was somewhat mitigating due to the lack of violence. However, the court found credible Dr. Suire's conclusion respondent will act on his urges without further treatment and his "inability to control" his urges "can lead to some serious harm" in the community. The court also found respondent's diagnoses—particularly the antisocial personality disorder—and history of resisting supervision "do not immediately lend him to a conditional release treatment option because" he "would be resistant" to the conditions of community treatment.

¶ 58 This appeal followed.

¶ 59 II. ANALYSIS

¶ 60 On appeal, respondent contends the trial court erroneously (1) permitted the State to present inadmissible evidence of his uncharged, out-of-state acts at the commitment hearing and (2) committed him to institutional care at a secure facility. The State contends respondent forfeited his arguments pertaining to the first claim and said forfeiture cannot be excused under the plain error doctrine. The State further asserts the court did not abuse its discretion when it committed respondent to institutional care in a secure facility. We affirm.

¶ 61 A. Forfeiture

¶ 62 We first address the State's claim respondent has forfeited any challenge to the admission of respondent's alleged uncharged, out-of-state sexual offenses at trial when he failed to contemporaneously object and raise the issue in his posttrial motion. In his reply brief,

respondent acknowledges he did not properly preserve this issue but contends his forfeiture should be excused under the second prong of the plain error doctrine. The State responds no clear or obvious error occurred and respondent nonetheless fails to demonstrate the alleged error deprived him of a fundamental constitutional right.

¶ 63 Generally, a party's failure to both (1) contemporaneously object to an alleged error at trial and (2) file a timely posttrial motion raising the issue will result in forfeiture of the argument on appeal. *People v. Sebby*, 2017 IL 119445, ¶ 48. However, under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), this court may review an unpreserved issue for plain error when (1) "a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the [respondent], regardless of the seriousness of the error," or (2) "a clear or obvious error occurred and that error is so serious that it affected the fairness of the [respondent's] trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *Sebby*, 2017 IL 119445, ¶ 48. In conducting this analysis, this court must first determine whether respondent has demonstrated a clear or obvious error occurred.

¶ 64 Respondent contends the trial court erroneously permitted Drs. Tsoflias and Suire to testify regarding allegations he sexually abused a child in Florida despite no charges being filed. Respondent also argues the State was impermissibly allowed to remark upon these allegations during opening statements. Specifically, respondent contends the experts' testimony went beyond mere discussion of the documents relied upon by the State's experts and resulted in unfair prejudice. Respondent further asserts the experts should not have relied upon the documents containing these allegations in forming the bases for their expert opinions because they were not sufficiently trustworthy. The State responds Drs. Tsoflias and Suire properly relied upon the police

reports discussing the Florida allegations because such documents are routinely relied upon by experts in the field in forming an opinion as to whether an individual meets the criteria for being an SVP under the Act.

¶ 65 To civilly commit an individual as an SVP under the Act, the State must allege and establish three elements: (1) the individual has been convicted of a qualifying sexually violent predicate offense as defined by the Act (725 ILCS 207/15(b)(1)(A) (West 2022)), (2) the person suffers from a mental disorder (*id.* § 15(b)(4)), and (3) the person is dangerous to others because his mental disorder creates a substantial probability he will engage in future acts of sexual violence (*id.* § 15(b)(5)). Although proceedings under the Act are civil in nature (*id.* § 20), the State must prove the foregoing elements beyond a reasonable doubt (*id.* § 35(d)(1)).

¶ 66 "It is well settled that an expert may give opinion testimony that relies on facts and data not in evidence if the underlying information is of the type reasonably relied upon by experts in that particular field." *In re Commitment of Moore*, 2023 IL App (5th) 170453, ¶ 52. Additionally, an expert may reveal the contents of materials she has relied upon to explain the basis for said opinion. *Id.* However, the underlying facts or data relied upon in forming the opinion are admissible *only* to the extent they provide the basis for the expert's opinion and "must not be presented to the jury as substantive evidence of the underlying assertions." *Id.* Furthermore, "[i]n cases brought pursuant to the Act, experts may diagnose paraphilia based on a person's behavior." *Id.*

¶ 67 Here, we conclude no clear or obvious error occurred with respect to the State's comments and the experts' testimony related to respondent's alleged sexual offenses in Florida. The record shows, when viewed in context, the State's allusion to the events in Florida was specifically mentioned when discussing the documents and reports the State's experts reviewed

when determining whether respondent had a qualifying mental diagnosis under the Act. Both Drs. Tsoflias and Suire testified the police reports from the Florida investigations were documents they reviewed to form the basis for their expert opinions as to whether respondent had a qualifying mental diagnosis under the Act and that they routinely use such documents in performing SVP evaluations. Both experts testified they considered the Florida allegations solely in the context of determining whether respondent displayed a pattern of behavior supporting a qualifying diagnosis under the Act, and they explained there were many reasons why allegations may not result in criminal charges or a conviction. Specifically, Dr. Tsoflias testified convictions or charges are not necessary for clinicians to determine the existence of a pattern which supports a diagnosis and the similarities between respondent's alleged sexual offenses established a "pattern of behavior" supporting her pedophiliac disorder diagnosis. In turn, Dr. Suire testified he relied on three of the four allegations against respondent because they were deemed credible by Florida DCF. Our review of the record does not show the Florida allegations were presented for any other purpose than to inform the jury of the information and documents the experts considered in preparing their reports and forming their diagnoses. Finally, the trial court provided verbal and written instructions to the jury indicating that documents, statements, and records discussed by witnesses that were not admitted into evidence did *not* constitute evidence in this case and were merely "allowed so the witness may tell you what he or she relied on to form his or her opinion." Absent any evidence to the contrary, this court presumes the jury will follow the instructions given. *People v. Birge*, 2021 IL 125644, ¶ 40.

¶ 68 Because we find no clear or obvious error occurred with respect to the State's opening statement alluding to the Florida allegations or the experts' reliance upon police reports

describing said allegations, we need not proceed with a plain error analysis. Accordingly, we honor respondent's forfeiture of this argument on appeal.

¶ 69 B. Respondent's Commitment

¶ 70 Respondent next argues the trial court abused its discretion when it ordered respondent to be committed to a secure facility because the State's expert "did not address what arrangements are available to ensure that [respondent] would have access to treatment on conditional release." The State responds the court properly weighed the applicable criteria and its decision to commit respondent to a secure facility for treatment was not arbitrary or unreasonable.

¶ 71 Under section 40(a) of the Act (725 ILCS 207/40(a) (West 2022)), once an individual is found to be an SVP, the trial court "shall order the person to be committed to the custody of [DHS]." In its order, the court must specify whether the individual is to be committed to institutional care in a secure facility or conditional release. *Id.* § 40(b)(2).

> "In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15, the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment." *Id.*

This court reviews an order committing an SVP to institutional care in a secure facility for an abuse of discretion. *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 52. An abuse of discretion occurs when the court's decision is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 72 Here, the trial court did not abuse its discretion when it committed respondent to institutional care in a secure facility because the record shows it properly weighed the applicable statutory criteria and reasonably concluded respondent's diagnoses required more intensive treatment that would be best addressed in an institutional setting and, in his current mental state, he lacked the skills to adequately comply with provisions of conditional release. Dr. Suire testified respondent had never participated in sex offender treatment, despite it being offered during his incarceration at Rushville. Additionally, his previous criminal history demonstrated a lack of willingness to comply with the law, as would be required upon conditional release. Furthermore, the results of Dr. Suire's statistical analyses showed respondent was in the "second-highest" risk category to reoffend, and he opined that the treatment options offered at Rushville provided greater "breadth" than what would be available in the community.

¶ 73 Moreover, the fact the State did not specifically mention Liberty Healthcare until its closing arguments did not deprive the trial court from understanding the treatment options administered by the company as part of the conditional release program. In delivering its decision, the court referenced its experience and history in adjudicating cases involving SVPs and specifically indicated it was hesitant to order respondent's conditional release for community-based treatment due to respondent's history of resistance to conforming his conduct to the law while on mandatory supervised release. The court did not take issue with or seem to misunderstand the quality of the available treatment options offered through Liberty Healthcare, but instead lacked confidence in respondent's ability to comply with the conditions that would be required for conditional release based on his present mental state and history of compliance issues. Because the record shows the court considered the appropriate statutory factors and its decision

was supported by the State's expert testimony, we find no abuse of discretion occurred when the court ordered respondent be committed to institutional care in a secure facility.

¶ 74 III. CONCLUSION

¶ 75 For the reasons stated, we affirm the trial court's judgment.

¶ 76 Affirmed.