

Opinion issued December 20, 2018.



In The
Court of Appeals
For The
First District of Texas

NO. 01-18-00164-CV

IN RE COMMITMENT OF CHRISTOPHER JOSEPH FARRO, Appellant

**On Appeal from the 185th District Court
Harris County, Texas
Trial Court Case No. 818810-0101Z**

MEMORANDUM OPINION

The State filed a civil petition to commit appellant Christopher Joseph Farro for involuntary treatment and supervision as a sexually violent predator.¹ After the jury found that Farro was a sexually violent predator, the trial court rendered a final

¹ TEX. HEALTH & SAFETY CODE §§ 841.001–.153.

judgment and an order of civil commitment. Farro raises five issues on appeal. In his first, second, and third issues, Farro argues that the trial court abused its discretion by allowing the State's experts to testify about information they learned from unreliable sources. In his fourth and fifth issues, Farro argues there is legally and factually insufficient evidence supporting the jury's finding that he has a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence because the only supporting evidence comes from the expert opinions and testimony based on these same unreliable sources. Finding no error, we affirm the trial court's order of civil commitment.

Background

In September 1999, Farro pleaded guilty to sexual assault of a child, a second-degree felony offense, and he was sentenced to twenty years' imprisonment. One month before Farro was scheduled to be released on parole, the State petitioned to have Farro declared a sexually violent predator subject to civil commitment under the SVP Act. *See* TEX. HEALTH & SAFETY CODE § 841.081.

Three witnesses testified at Farro's jury trial: Farro, and the State's experts, Dr. Randall Price and Dr. Michael Arambula.

A. Farro

Farro has a lengthy criminal history, including convictions for two sexual offenses: burglary of a habitation with the intent to commit sexual assault in 1986

and sexual assault of a child in 1999. Sexual assault of a child and burglary of a habitation with intent to commit sexual assault are sexually violent offenses. TEX. HEALTH & SAFETY CODE § 841.002(8)(A) & (C); TEX. PENAL CODE §§ 22.021 & 30.02. He also received a sexual misconduct disciplinary infractions in prison in 2017. Farro has an extensive history of substance abuse, mental illness, and childhood trauma.

Farro is currently incarcerated for a 1999 conviction for sexual assault of a child. Farro testified that he met the complainant, Amy,² in May 1999 when she was fourteen-years old and he was thirty-three. They had sex three times, even though he knew it was wrong because of her age. Farro claimed that he loved her and even made her a candlelight dinner once. Farro pleaded nolo contendere and was sentenced to twenty years' imprisonment.

Farro, who has been incarcerated for three offenses, was arrested for stealing his stepfather's gun in July 1984 and attempted theft, simple assault, battery of a police officer, and resisting arrest in October 1985. He explained, however, that he had only borrowed the gun and that the October 1985 charges were filed against him after he was "being beat up by a cop."

² To protect her privacy, we will refer to the victim as "Amy." We will use similar pseudonyms to protect the privacy of the other alleged victims addressed in this opinion.

Farro was arrested in December 1985 for burglary of a habitation with the intent to commit sexual assault. At trial, Farro claimed that he pleaded guilty to the charge in 1986 because he had no choice. When asked about the details of that offense, Farro testified that he did not know the complainant, Valerie, and he denied entering Valerie's home through a window, laying on top of her while she was in bed, and leaving when she screamed. Farro, who had been drinking the night of the offense, originally received probation, but his probation was revoked after he was arrested for public intoxication and a separate burglary in January 1987. He denied committing those offenses as well. Farro was sentenced to five years' incarceration for the 1986 burglary and was paroled on May 3, 1990.

Farro's parole was revoked, however, after he was arrested for assault-bodily injury, auto theft, and public intoxication in 1992. Farro explained that he was arrested for assault because he scratched his girlfriend, Tammy, on the neck while he was drunk.

Farro pleaded guilty to the auto theft charge and he was sentenced to six years' incarceration. Although he had pleaded guilty, Farro denied at trial that he had stolen the car and claimed that he was only driving it when he and his co-defendant were stopped by police. Farro was a "little bit" intoxicated when the offense occurred. When asked if he had stolen other cars, Farro testified that he had only "borrowed"

them. Farro admitted that he had been running with a bad crowd and had been with other people when they had stolen cars.

Farro was released on parole for his auto theft conviction after six months. Less than a month later, however, Farro was arrested for harassing Tammy and sent back to prison. According to Farro, he had called Tammy and threatened her when he was drunk. Farro was released on parole again in 1995. Although he was arrested for sexual assault while on parole in 1996, no charges were filed.³ Farro denied that he had been charged or arrested for aggravated sexual assault of a child with respect to a girl named Cheryl around the time he was arrested for assaulting Amy in 1999.

Farro testified that he was physically and sexually abused by his stepfather as a child and he suffered a serious, unrelated, head injury when he was ten-years-old. He began using alcohol and illegal drugs in his early teens and abused alcohol most of his adult life, except when he was incarcerated. He also used a variety of illegal drugs and he was addicted to cocaine when he was arrested for assaulting Amy.

Farro explained that he began drinking to quiet the voices in his head, specifically the voice of his stepfather telling Farro that he was not going to stop raping him. He also heard voices telling him to kill others.

Farro voluntarily admitted himself to Rusk State Hospital four times for inpatient treatment, but he immediately began drinking again each time he left.

³ Neither Dr. Price nor Dr. Arambula testified about this alleged offense.

Although the voices in his head still come and go, Farro testified that he does not need alcohol anymore because his current psychiatric medications are helping to quiet the voices and he had no plans to stop taking his medication. Farro testified that he kicked the habit in prison and no longer needs the drugs, alcohol, or treatment.

Farro has seven children, six of whom he has never met, and he has never paid child support for any of them. He denied telling one of his former case managers that he supported himself financially by stealing cars and testified that when he was out of prison he “supported [himself] by working a whole bunch of odd jobs and [he] sold a little dope every now and then.” Farro testified that he works as a janitor in the laundry room of the prison and that, when he is not at work, he pretends to be a porter and cleans up around other areas of the prison. He uses this opportunity to traffic and trade items in the prison, even though he knows that this violates prison rules.

Farro admitted that he had been disciplined many times for violating prison rules, and he received a sexual misconduct disciplinary infraction six months before trial. When asked if he pleaded guilty to exposing his penis to a female corrections officer for the intent of sexual gratification, he explained that he was only taking a “bird bath” in his cell and he claimed that he pleaded guilty to exposing his body. He also blamed the officer for failing to announce her presence on the row.

Farro also testified that he completed a four-month sex offender education program in prison, but he did not think that he needed treatment because he does not have a problem having sex with children and he did not rape anyone. Farro testified that he is not a sexual predator and he does not have any sexual issues that need to be addressed. Farro testified, “I’m not an animal. I made a mistake. I pleaded guilty to [assaulting Amy]. I served 18 years for it. And I’m sorry. . . . I made a mistake. I didn’t rape nobody. I liked [Amy]. I loved her. And I made a mistake.” Farro admitted that he did not pay attention in class and that he just went through the motions. He cannot describe an offense cycle or triggers. He admitted that he just went through the motions in class. When asked if he had a relapse-prevention plan in place, he testified, “Yeah, don’t do it.”

B. Dr. Randall Price

Dr. Price, a forensic psychologist, testified that based on his education, training, experience, and the methodology that he employed in this case, it is his expert opinion that Farro suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence, which is one of the requirements for civil commitment under the Sexually Violent Predator Act.⁴

⁴ In an SVP case, the State must prove beyond a reasonable doubt that a person is a sexually violent predator. TEX. HEALTH & SAFETY CODE § 841.062(a); *In re Commitment of Stuteville*, 463 S.W.3d 543, 552 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). A person is a “sexually violent predator” if he is a repeat sexually violent offender and suffers from a behavioral abnormality that makes him likely to

Dr. Price, who has been performing behavioral-abnormality evaluations for fifteen years, testified that when he evaluates someone for a behavioral abnormality he reviews any available records on that individual and then meets with the person and performs a face-to-face interview and evaluation. He also administers psychological tests to establish the person's baseline risk for reoffending sexually. Dr. Price explained that this methodology is used by other forensic psychologists when formulating an opinion in such cases.

In Farro's case, Dr. Price administered two psychological tests to Farro. These actuarial instruments rely primarily on static risk factors including objective data such as the victim's age, gender and relationship to the offender. The Hare Psychopathy Checklist-Revised is an instrument that rates the degree of psychopathic traits in a person. Farro scored 22 out of a possible 40, which is higher than 42% of the prison population, and indicates that Farro has an average amount of psychopathic traits. Dr. Price testified that these traits are consistent with a behavioral abnormality.

Dr. Price also administered the Static-99R test to Farro. The Static-99 is an instrument that looks at static risk factors to estimate the risk of sexual recidivism. Dr. Price originally scored Farro a two but raised the score to a three after learning

engage in a predatory act of sexual violence. TEX. HEALTH & SAFETY CODE § 841.003(a).

of a prison disciplinary infraction. According to Dr. Price, either score puts Farro into a group at average risk to reoffend.

After arriving at a baseline score, Dr. Price adjusted Farro's score based on the risk factors and protective factors he learned of during his interview with Farro and from Farro's records, including information regarding Farro's uncharged or unadjudicated offenses and convictions. Risk factors, based on empirical data, increase an offender's risk of reoffending sexually, whereas protective factors reduce the risk of recidivism.

Dr. Price testified that his opinion that Farro suffers from a behavioral abnormality is based primarily on three risk factors: his antisocial personality disorder, his sexual deviance, and his extensive history of substance abuse. According to Dr. Price, the research and literature show that sexual deviance and antisocial behaviors are the two of the biggest risk factors for reoffending sexually. Other risk factors include denial of responsibility or guilt, minimization and rationalization of inappropriate behavior, and the failure to successfully complete sex offender education or treatment.

Protective factors can include an offender's chronological age because research shows that the older an offender gets, the less likely he is to sexually reoffend. The victims' gender and relationship to the offender may also be a protective factor if it identifies a limitation on the scope of the offender's potential

victim pool, e.g., an offender who only offends against females poses less of a risk than someone who offends against both males and females. According to Dr. Price, “[s]tranger victims constitute the highest risk” because it “increases the potential victim pool dramatically.” Successful completion of sex offender education and treatment is also a protective factor.

The records that Dr. Price reviewed in this case include legal files containing information about Farro’s criminal history, including convictions and unadjudicated charges, Farro’s deposition testimony in the case as well as his prison administrative records which contain information about Farro’s prison disciplinary history, his mental health, medical treatment, prison work history, and education. After the face-to-face interview, Dr. Price received an update from the prison informing him of Farro’s sexual misconduct disciplinary infraction. Dr. Price testified that these are the same type of records that other forensic psychologists rely on when conducting a behavioral abnormality evaluation.

Dr. Price explained that historical records are key to an evaluation because they show how a problem developed and what it looked like in the past. These records also identify the victim’s characteristics, which are important factors that Dr. Price considers when assessing an offender’s risk of reoffending sexually. Among other factors, Dr. Price considers the victim’s age, sex, gender, and whether the victim is an acquaintance, a stranger, or a family member of the offender. Dr. Price

explained that the details of an offense are also important to him for purposes of his evaluation because they can identify a sexual component to an offense that is not otherwise ascertainable from the name of the offense alone and show a pattern of behavior over time. Dr. Price testified that past behavior is the best predictor of future behavior. In this case, he also used the data from the historical records he reviewed to corroborate, question, or analyze Farro's version of events.

When Dr. Price was asked about Farro's 1996 conviction for burglary with intent to commit sexual assault, Farro raised a hearsay objection. The court overruled Farro's objection and instructed the jury:

[I]n this case certain hearsay information contained in the records was reviewed and relied upon by experts and will be presented to you through the experts' testimony. Such hearsay evidence is being presented to you for the purpose of showing the basis of the experts' opinion and cannot be considered as evidence to prove the truth of the matter asserted. You may not consider this hearsay evidence for any purpose -- any other purpose including whether the facts alleged in the record are true.

The court also granted Farro "a running objection while [Dr. Price] is discussing any evidence or records that he reviewed."⁵

Dr. Price testified that the complainant in that case was a fifteen-year old girl named Valerie. Valerie claimed that she awoke to find a man in her bedroom "touching her and then falling on top of her. She screamed. She hit at the assailant

⁵ The trial court made similar rulings with respect to Dr. Arambula.

and saw him fall to the floor and then he jumped out of a window and fled.” According to Dr. Price, Valerie “was not able to positively identify him but was sure that [her assailant] was wearing a headband and he had thin curly hair and smelled badly.” According to Dr. Price, one of Farro’s family members gave a statement that Farro was known to wear a blue bandanna.

Dr. Price also testified that Farro’s co-defendant, Marcos De Los Santos, claimed that he and Farro had been drinking and decided to stop at the home of a girl De Los Santos knew. According to De Los Santos, he told Farro “to stay outside and watch while he took off a screen and entered the home.” Farro, who offered a similar version of events, told Dr. Price that “he was helping [De Los Santos] to commit a burglary, he was the lookout, he was intoxicated, that when the lights came on in the house, he yelled to [De Los Santos] to get out of there. He didn’t see [De Los Santos] leave. He ran, went to his parents’ house, got in the car to drive around and look for Mr. De Los Santos. The police stopped him, questioned him, told them about [De Los Santos]. Mr. Farro told me he did not plead guilty; he did not know [De Los Santos] was going to sexually assault anybody.”

The details of this offense were significant to Dr. Price because it is part of Farro’s pattern of “total denial of any responsibility or guilt.” According to Dr. Price, denial of responsibility for past sexual offenses is a risk factor for reoffending because a person’s failure to accept responsibility is “an indication of antisocial

personality disorder” and it prevents that person from successfully completing a sex offender treatment program. Dr. Price explained that an offender cannot successfully complete sex offender treatment unless they take responsibility for their offenses. Whereas successful completion of such treatment is a protective factor that lowers a person’s risk of reoffending sexually, the failure to successfully complete treatment increases the risk of reoffending. Dr. Price also testified that the fact that Farro was intoxicated when the offense occurred is another risk factor for reoffending, “especially if there’s a pattern of alcohol abuse and dependence, as it is in this case,” because alcohol and drugs lower an offender’s inhibitions.

Dr. Price further testified that the fact that this assault was nonconsensual and directed at a stranger were also risk factors. Dr. Price testified that the fact that Farro’s probation was revoked is another risk factor because it “indicates a lack of control over [his] behavior.”

The State also asked Dr. Price about the details of Farro’s current offense. Dr. Price testified that the records revealed that Farro met 14-year-old Amy on a street near her house. Amy told police that she had sex with Farro three times at different locations, including one time after Farro made her a candlelit dinner. Farro offered a similar version of events when he spoke with Dr. Price. Farro told Dr. Price that when he met Amy, she was “15 going on 20,” and “she looked like an adult, she acted like an adult.” According to Farro, Amy’s mother had asked him to help

straighten Amy out because she “wasn’t going to school, she was using drugs, having sex with people.” Farro claimed that he and Amy fell in love and wanted to get married when she was old enough. Farro told Dr. Price that he had consensual sex with Amy a few times and admitted that he had lied when he had previously denied having sex with her. Dr. Price testified that the fact that “Farro still doesn’t understand whether or not a 14-year-old can consent to sex” was a risk factor. “His pattern is to victimize teenage girls who are marginalized in some way, drugs, runaway, whatever, on the street, and that to not understand or refuse to accept that that’s against the law and that is a risk factor.”

During a bench conference, the State informed the court that it planned to ask Dr. Price about the details of several unadjudicated sexual offenses, including the offenses against Cheryl and Sarah.⁶ The court overruled Farro’s objections with respect to both victims.

Dr. Price testified that a 13-year old girl named Cheryl claimed that she met Farro when he approached her on the street near her home and walked her to her house. On another occasion in April 1999, Farro, who was living in a trailer nearby Cheryl’s home, invited Cheryl into his trailer. When she declined the invitation,

⁶ Although the State identified unadjudicated sexual offenses that Farro allegedly committed against two other teenaged girls, the State did not elicit any testimony regarding the third victim, and the court granted the objection with respect to the fourth victim.

Farro dragged her into the trailer, physically restrained her, removed her clothing, and had sexual intercourse with her without a condom. When she screamed, Farro told Cheryl to shut up and he later threatened to kill her if she told anyone. According to Dr. Price, the charge was dismissed after Farro was convicted for assaulting Amy because Cheryl had been admitted to a psychiatric hospital after the assault and her family did not want to put her through any additional trauma. Farro, who denied assaulting Cheryl, also denied being arrested or charged with Cheryl's assault at trial.

Dr. Price described another unadjudicated sexual offense that Farro allegedly committed against an adolescent female named Sarah. According to Dr. Price, Farro forced himself on Sarah and tried to assault her.⁷

Dr. Price explained that although he does not give the unadjudicated offenses as much weight as he does the convictions, the details of these unadjudicated offenses were important in Farro's case because, like the sexual offenses for which he was convicted, the unadjudicated offenses showed a pattern of victimization, victim selection, physical violence, and psychological coercion, and they illuminated other factors that placed Farro at a risk for reoffending, such as his pattern of denying or minimizing these offenses. Dr. Price noted that although Farro had admitted to some component of these offenses, he denied that any of them were sexual in nature, excluding the offense against Amy, which Farro described as consensual.

⁷ Dr. Armabula did not testify about this alleged offense.

Dr. Price testified that the details of Farro's recent prison disciplinary infraction also were important for his analysis, due in part to the exhibitionist nature of Farro's conduct, i.e., exposing himself to a female corrections officer for purposes of sexual gratification. According to Dr. Price, exhibitionism is a risk factor because it is a sexually deviant behavior. Dr. Price testified that although he initially considered Farro's chronological age (fifty-one years old) to be a protective factor, he changed his mind after he learned about Farro's latest prison disciplinary infraction. Dr. Price increased Farro's score in Static-99 test from two to three based on this information. According to Dr. Price, Farro's recent behavior mitigates against chronological age as a protective factor because he is essentially reoffending at his current age. Although Farro's age is not a protective factor in this case, the fact that Farro has never had a male victim is considered a protective factor because it limits the potential victim pool to females only.

Dr. Price testified that a large part of Farro's behavioral abnormality is his antisocial personality disorder and the records he reviewed support this diagnosis. According to Dr. Price, Farro's repeated arrests and incarcerations for a variety of sexual and non-sexual offenses since he was a teenager indicate that he has difficulty following the law. Farro is also impulsive, has difficulty planning ahead and difficulty controlling his sexual desires, as evidenced by the fact that several of Farro's offenses, including the alleged sexual assault against Cheryl, occurred while

he was on parole or probation. Farro's lack of remorse, his denial of responsibility for almost all of his sexual offenses, his rationalization of his improper sexual relationship with Amy, are also risk factors for reoffending and they support Dr. Price's antisocial personality disorder diagnosis. The diagnosis is also supported by Farro's consistent irresponsibility in other areas in his life, including the fact that he has never paid child support for any of his children and his difficulty maintaining stable employment.

Dr. Price testified that a second factor that supports his opinion that Farro suffers from a behavioral abnormality is Farro's sexual deviance, which is abnormal sexual behavior and patterns of arousal. According to Dr. Price, Farro's deviant sexual interests include his exhibitionism and his pattern of predatory sexual assaults against vulnerable, underaged girls, which is evident from the details of sexual assaults.

Another risk factor that supports Dr. Price's opinion that Farro has a behavioral abnormality is Farro's extensive history of substance abuse. According to Dr. Price, substance abuse is a risk factor for reoffending because it disinhibits an offender and allows him to act on his sexual deviance. Here, Farro admitted that he was addicted to cocaine when he sexually assaulted Amy and that he was drunk when the sexual assault against Valerie occurred. Farro's belief that he will not have a substance abuse problem in the future because his current psychiatric medications

are quieting the voices in his head is also a concern for Dr. Price because although Farro has sought out treatment multiple times for his substance abuse, he relapsed almost immediately thereafter. Dr. Price also noted that Farro was repeatedly physically and sexually abused as a child and the abuse is a risk factor for Farro because of the severe mental illness that apparently resulted from it.

C. Dr. Michael Arambula

Dr. Arambula, a forensic psychiatrist, has performed over 120 evaluations for behavioral abnormalities. He testified that based on his education, training, experience, and the methodology that he employed in this case, it is his expert opinion that Farro suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence.

Dr. Arambula testified that when he evaluates someone for a behavioral abnormality he reviews any available records on that individual, including the results of psychological tests that previous evaluators had administered, as part of his evaluation, any depositions in the case, and prison administrative records. In this case, Dr. Arambula reviewed, among other things, investigative reports and legal records associated with Farro's prior offenses, Farro's deposition testimony, as well as his administrative records from TDCJ. Dr. Arambula explained that this is the same methodology and the same type of records used by other experts in his field when formulating an opinion in such cases.

Like Dr. Price, Dr. Arambula testified that the two biggest risk factors for sexual recidivism are sexual deviance and an antisocial lifestyle or personality. According to Dr. Arambula, who diagnosed Farro with unspecified personality disorder with antisocial traits and unspecified paraphilic disorder, Farro has severe symptoms of antisocial personality disorder and his sexual deviance has displayed itself repeatedly. These factors comprised the basis for his opinion that Farro suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence.

Dr. Arambula testified that the traits of antisocial personality disorder are lying, stealing, physical aggression, lack of responsibility, and lack of remorse. "It's a pattern of personality or behavior where somebody essentially disregards how other people are around them or how they should carry on their life in the community." According to Dr. Arambula, Farro's antisocial personality disorder is evidenced by his:

repeated acts against other people. He didn't accept responsibility, he offended or recidivated -- and I'm not saying just sex crimes, just following probation, repeating another crime, exploiting other individuals while he was on parole, while he was on probation. He didn't cooperate with supervision, didn't accept much responsibility. He blamed the car thefts, the gun thing, on, I believe, it was somebody else's or borrowed it.

Dr. Arambula testified that Farro is sexually deviant because he engages in pathologic sexual behaviors as evidenced by his pattern of sexually offending

against young teenaged girls. Farro's sexual deviance is chronic and it is a part of his behavioral abnormality.

Like Dr. Price, Dr. Arambula identified several risk factors from the records regarding Farro's convictions and unadjudicated offenses and bad acts. Dr. Arambula testified that the details of Farro's offenses are important for him to know when evaluating Farro's risk of reoffending because they provide him with information about Farro's risk factors.

According to Dr. Arambula, the records regarding Farro's 1986 conviction for burglary with intent to commit sexual assault against Valerie suggested several risk factors for reoffending, including Valerie's age, the fact that Farro was intoxicated when the offense occurred, and that it happened late at night. Farro also denied committing the offense, which is also a risk factor for reoffending.

Dr. Arambula also identified several risk factors from the records regarding Farro's most recent conviction for sexually assaulting Amy. Specifically, Dr. Arambula testified that the records revealed that Amy was a vulnerable teenager who "was out on the streets, running around, [and] into drugs." There had been multiple sexual incidents between Amy and Farro, but Farro was only charged with one. The number of assaults is a risk factor. Dr. Arambula also noted that Farro's statements that he loved Amy and wanted to marry her "could have been true but it could have been part of the grooming process. And I didn't go one way or the other." According

to Dr. Arambula “grooming,” which is another risk factor for reoffending, occurs when an offender “interact[s] with a potential victim . . . to gain their trust and that way, they can subsequently exploit them for whatever it is that [the offender was] after them to begin with.”

Dr. Arambula explained that Farro knew that Amy was only fourteen years old and that it was wrong for him to have a sexual relationship with her, but he did not care, and he did it anyway and he gives reasons why it was okay to him at the time. Farro’s justifications for his inappropriate sexual relationship, despite knowing that it was wrong at the time, are risk factors that support Dr. Arambula’s opinion that Farro has an antisocial personality. Dr. Arambula also stated that although Farro denied that he was attracted to fourteen and fifteen-year-old girls, his admission that he had sex with Amy contradicts his claim.

In addition to Farro’s sexual assault convictions, Dr. Arambula also testified about the details of several unadjudicated offenses and bad acts allegedly committed by Farro. Although he considers the unadjudicated sexual bad acts and offenses, he does not give them the same weight as convictions.

Dr. Arambula testified that he spoke to Farro about the sexual assault against Cheryl and identified several risk factors from the records regarding this alleged offense. Dr. Arambula noted that, like Amy, Cheryl was a vulnerable young teenage girl that Farro had groomed before sexually assaulting her. According to Dr.

Arambula, Farro engaged in grooming behavior by acting as Cheryl's protector during their initial encounter at her home and sexually assaulting her later. He also noted that Farro denied having anything to do with Cheryl and denigrated her. According to Dr. Arambula, Farro's denigration of Cheryl is a risk factor because it indicates Farro's dismissive attitude towards young women like Cheryl and the ways in which he views such young, vulnerable women.

Dr. Arambula stated that, when considered collectively, the details of the offenses against Valerie, Amy, and Cheryl were significant because they showed "a pattern involving three young girls who were teenagers." Dr. Arambula testified that in addition to his "pretty significant denial," Farro minimized or justified his offenses and did not express any empathy with respect to his victims, which are all risk factors for reoffending. Dr. Arambula explained that the number of victims is also important for his analysis because the more victims an offender has, the greater the risk of recidivism.

Dr. Arambula identified other risk factors for reoffending in this case, including Farro's failure to successfully complete sex offender education, extensive history of substance abuse, mental illness, and childhood trauma. According to Dr. Arambula, Farro did not pay attention or take sex offender education seriously and, as a result, Farro lacks insight into his sexual deviance and cannot recognize the

events that trigger his inappropriate behavior, which increases his risk for reoffending.

Based on Farro's records and the information he provided, Dr. Arambula diagnosed Farro with polysubstance dependence in remission. Dr. Arambula stated that Farro used to be dependent on alcohol, cocaine, and marijuana, and that substance abuse is a risk factor because it disinhibits people and makes them more apt to act on their sexual urges.

Dr. Arambula also diagnosed Farro with two mental illnesses which can aggravate his behavioral abnormality and increase his risk of reoffending: unspecified bipolar disorder and unspecified trauma-related disorder. Dr. Arambula explained that he diagnosed Farro with unspecified bipolar disorder because he has some bipolar symptoms of hypomania, mood instability, and depressive symptoms. Farro's diagnosis of unspecified trauma-related disorder is based on the records and Farro's self-report that he was repeatedly sexually abused by his stepfather and has nightmares about the abuse and hears his stepfather's voice. According to Dr. Arambula, these symptoms, which are similar to symptoms of post-traumatic stress disorder, occur when Farro is upset and they interfere with his sleep.

Dr. Arambula opined that Farro likely has head injury from his childhood and explained that head injuries can lead to trouble focusing, concentrating, behaving appropriately, and maintaining a stable mood. Similar to substance abuse, head

injuries can disinhibit an offender, which makes them more likely to act on their sexual urges. According to Dr. Arambula, substantial drug and alcohol use can cause chronic mood instability. Dr. Arambula testified that he could not differentiate between Farro's various disorders and the effects of his drug use because Farro used a lot of drugs for a long period of time.

Sexually Violent Offender Act

In an SVP case, the State must prove beyond a reasonable doubt that a person is a sexually violent predator. TEX. HEALTH & SAFETY CODE § 841.062(a); *In re Commitment of Stuteville*, 463 S.W.3d 543, 552 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). A person is a “sexually violent predator” if he is a repeat sexually violent offender and suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. TEX. HEALTH & SAFETY CODE § 841.003(a). A “behavioral abnormality” is “a congenital or acquired condition that, by affecting a person’s emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.” *Id.* § 841.002(2).

Admission of Evidence

In his first, second, and third issues, Farro argues that the trial court abused its discretion by allowing the State’s experts to testify about information they learned from unreliable records pertaining to: (1) his 1986 conviction for burglary with intent

to commit sexual assault; and (2) the unadjudicated sexual offenses he allegedly committed against Cheryl, Sarah, and the female corrections officer. According to Farro, the evidence was admitted for its truth over his running hearsay and due process objections.⁸

A. Standard of Review

We review evidentiary rulings using an abuse of discretion standard. *U-Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118, 132 (Tex. 2012); *Stuteville*, 463 S.W.3d at 544 (quoting *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 906 (Tex. 2000)). A trial court abuses its discretion when it acts without regard to guiding rules or principles. *U-Haul Int'l, Inc.*, 380 S.W.3d at 132. We will uphold the trial court's evidentiary ruling if there is any legitimate basis for the ruling. *Id.*

B. Applicable Law

An expert in a SVP Act civil commitment proceeding may disclose details regarding the underlying facts or data that the expert relied on in arriving at his opinion, including the details of other sexual assaults even if those assaults are unadjudicated. *See Stuteville*, 463 S.W.3d at 554–55; *see also In re Commitment of Talley*, 522 S.W.3d 742, 748–49 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

⁸ Farro also contends that the State used this evidence “way beyond any limited purposes for its truth.” Farro did not raise this objection below, therefore, we will not consider it on appeal. *See Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012).

Having an expert explain the facts he considered, and how those facts influenced his evaluation, assists the jury in weighing the expert's opinion that the person has a behavioral abnormality, which is the ultimate issue that the jury must determine. *See Stuteville*, 463 S.W.3d at 555; *see also Talley*, 522 S.W.3d at 748–49. An expert's disclosure of such evidence, however, is subject to the same relevancy constraints that govern the admission of other kinds of evidence. *See Talley*, 522 S.W.3d at 748 (citing TEX. R. EVID. 403 & 705(d)).

C. Analysis

Here, Dr. Price and Dr. Arambula also testified that their respective opinions that Farro suffers from a behavioral abnormality are based in large part on Farro's antisocial personality and his sexual deviance.

Both experts testified that the details of Farro's sexual and non-sexual convictions and unadjudicated offenses and bad acts supported their conclusions that Farro has an antisocial personality. Specifically, Farro denied that he assaulted Cheryl and Valerie, as well as various other offenses, including auto theft, which demonstrates a pattern of denial and refusal to accept responsibility. Farro also initially lied about having sex with Amy, he expressed no remorse for any of his offenses, and he rationalized and justified his behavior, including his relationship with Amy, which he still considers having been consensual. The fact that Farro continued to engage in criminal behavior resulting in the revocation of his parole

and probation demonstrates his lack of respect for the law and societal norms, his impulsiveness, and his inability control his behavior and sexual urges, which are all factors that are indicative of an antisocial personality disorder.

Both experts also explained that Farro's chronic sexual deviance is evidenced by his established pattern of predatory sexual assaults against vulnerable, underaged girls, which they ascertained from the details of sexual assault convictions and unadjudicated offenses and bad acts. Dr. Price and Dr. Arambula identified specific risk factors from the details of Farro's 1986 burglary conviction, including the fact that it happened late at night, while Farro was intoxicated, Valerie's age, Farro did not know Valerie, and Farro's denial of the offense. Both experts also testified that they identified several risk factors from the details of Farro's most recent assault against Amy, namely, Amy's vulnerability, her age, and the fact that Farro had engaged in grooming behavior. Farro's insistence that the relationship was consensual is also a risk factor because he does not understand that a girl Amy's age cannot consent to sex under the law.

Dr. Price testified that although he does not give the unadjudicated offenses as much weight as he does the convictions, the details of these unadjudicated offenses were important in Farro's case because, like the sexual offenses for which he was convicted, the unadjudicated offenses against Cheryl and Sarah showed a pattern of victimization, victim selection, physical violence, and psychological

coercion and they illuminated other factors that placed Farro at a risk for reoffending, such as his pattern of denying or minimizing these offenses. Dr. Arambula also testified that, although the offense against Cheryl did not lead to a conviction and he did not give it as much weight as he did to the convictions, the details of the offense were significant for his analysis because they showed the same risk factors identified by Dr. Price, as well threats to and denigration of the girl, which are also risk factors for reoffending. Dr. Price also explained that the most recent disciplinary infraction demonstrates that Farro is an exhibitionist, which is another type of sexual deviance.

Dr. Price and Dr. Arambula opined that Farro suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence, which is the ultimate issue that the jury must determine. Each explained to the jury that their respective opinions were based in large part on Farro's sexual deviance and antisocial personality. They also identified underlying facts about Farro's assault conviction against Amy and the unadjudicated offenses and bad acts against Cheryl, Sarah, and the female corrections officer that supported their findings that Farro has a sexual deviance and an antisocial personality. Based on this evidence, the trial court could have reasonably concluded that the facts and details related to these offenses would be helpful to the jury in weighing the testimony from Dr. Arambula, Dr. Price, and Farro, and in explaining the basis for both experts' opinion that Farro suffers from a behavioral abnormality, which is the ultimate issue the jury must

determine. *See Talley*, 522 S.W.3d at 748–49 (citing to *Stuteville*, 463 S.W.3d at 556).

If the trial court admits underlying facts or data that would otherwise be inadmissible, such as hearsay, the court, on request, is required to give the jury a limiting instruction. *See* TEX. R. EVID. 705(d). When the trial court gives the jury a limiting instruction, we presume the jury followed it. *See In re Commitment of Day*, 342 S.W.3d 193, 199 (Tex. App.—Beaumont 2011, pet. denied). In light of the limiting instruction, the admission of the testimony explaining the data on which Dr. Price and Dr. Arambula based their opinions was not an abuse of discretion.

Farro argues that we are not bound by our decision in *Stuteville* because we were required to apply the Beaumont Court of Appeals’ legal precedent in that case.⁹ Farro’s argument is unavailing because even if we are not bound by our decision in

⁹ Prior to a 2015 amendment, the SVP Act required the State to file all civil commitment proceedings in Montgomery County. As a result, most of the appeals from civil commitment orders under the SVP Act were decided by the Beaumont Court of Appeals. *See In re Commitment of Bohannan*, 388 S.W.3d 296, 299 (Tex. 2012). When an appeal from a civil commitment order was transferred to another court of appeals, that court decided the appeal based on the Beaumont Court of Appeals’ precedent. *See Stuteville*, 463 S.W.3d at 557 (noting that in Chapter 841 appeals, court was bound by legal precedent of Beaumont Court of Appeals); *see also In re Commitment of Wirtz*, 451 S.W.3d 462, 463 n.1 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (in transferred appeal, transferee court must decide case in accordance with transferor court precedent). After June 17, 2015, the State may file a civil commitment petition “in the court of conviction for the person’s most recent sexually violent offense.” TEX. HEALTH & SAFETY CODE § 841.041(a).

Stuteville, as Farro contends, we are bound by subsequent opinions from this court following *Stuteville*, such as *Talley. Talley*, 522 S.W.3d at 748–49 (citing *Stuteville*).

Farro also argues that, to the extent that we are bound by *Stuteville*, we should overrule that opinion because it allows for the “automatic” admission of foundational evidence, and we should adopt a rule requiring the proponent of the expert’s testimony to demonstrate the reliability of any evidence that the expert relied on in arriving at his opinion before the expert can testify about such information. According to Farro, the “automatic” admission rule is inconsistent with the Texas Supreme Court’s opinion in *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, 443 S.W.3d 820 (Tex. 2014) and the Court of Criminal Appeals’ opinion in *Leonard v. State*, 385 S.W.3d 570 (Tex. Crim. App. 2012), which he argues demonstrate that courts have an obligation to ensure the reliability and trustworthiness of otherwise inadmissible basis evidence before an expert can testify about such evidence.

First, the admission of foundational evidence is not “automatic” under current law because an expert’s disclosure of such evidence is subject to the same relevancy constraints that govern the admission of other kinds of evidence, including Rule 403’s balancing test which prohibits the admission of evidence if its probative value is substantially outweighed by the danger of unfair prejudice. *See Talley*, 522 S.W.3d 742 at 748 (citing to TEX. R. EVID. 403 & 705(d)); *Stuteville*, 463 S.W.3d at 556; *see*

also *In re Commitment of Mares*, 521 S.W.3d 64, 69, 71 (Tex. App.—San Antonio 2017, pet. denied) (rejecting argument that “unreliable hearsay details of his offenses were more prejudicial than probative” and, therefore, inadmissible under Rules 403 and 705(d)).

Second, Farro’s reliance on *Mel Acres* and *Leonard* is misplaced because neither opinion requires a trial court to evaluate the reliability of foundational evidence before an expert may disclose the information at trial. In *Mel Acres*, the Texas Supreme Court held that the evidence supporting the verdict was legally insufficient to support a damage award because the face of the record demonstrated that the only foundational data the expert relied on did not support the expert’s opinion or the assumptions she made in reaching her opinion, and therefore, the expert’s opinion was conclusory and without evidentiary value. *See Mel Acres*, 443 S.W.3d at 838.

In *Leonard*, the State’s expert, a psychotherapist who ran the sex offender treatment program that the defendant had been enrolled in, testified that he unsuccessfully discharged the defendant from the program because he believed that the defendant was not being truthful. The expert explained that he determined that the defendant had been untruthful based solely on the fact that the defendant had failed five polygraph tests. Leonard objected that the foundational basis for the expert’s opinion—the results of the polygraph examinations—were inadmissible

because the Court of Criminal Appeals had previously held that polygraph examinations were unreliable as a matter of law.¹⁰ Unlike the polygraph examinations in *Leonard*, Farro has not directed us to any authority holding that statements given to police or any other record relied on by Dr. Price and Dr. Arambula are unreliable as a matter of law.

Considering these distinguishing factors, we perceive no conflict between *Mel Acres* and *Leonard* and the current state of the law as expressed in *Stuteville* and this court's subsequent opinions. There has been no intervening change in the law by the legislature, a higher court, or this court sitting en banc. Therefore, we decline Farro's invitation to overrule *Stuteville*. See *MobileVision Imaging Servs., L.L.C. v. LifeCare Hosps. of N. Tex., L.P.*, 260 S.W.3d 561, 566 (Tex. App.—Dallas 2008, no pet.) (“We may not overrule a prior panel decision of this Court absent an intervening change in the law by the legislature, a higher court, or this Court sitting en banc.”).

Consistent with *Stuteville*, *Talley*, and this court's other prior decisions, we overrule Farro's first, second, and third issues.

Sufficiency of the Evidence

In his fourth and fifth issues, Farro argues that there is legally and factually insufficient evidence supporting the jury's finding that he suffers from a behavioral

¹⁰ Farro did not argue to the trial court that the foundational basis for Dr. Price's and Dr. Arambula's opinions were unreliable or object to the admission of either expert's opinion that he suffers from a behavioral abnormality.

abnormality that makes him likely to engage in a predatory act of sexual violence because the only evidence supporting this finding consists of Dr. Price's and Dr. Arambula's unreliable expert opinions and testimony. Specifically, Farro argues that Dr. Price's and Dr. Arambula's opinions on this issue are unreliable because some of the evidence they relied upon in formulating their opinions is unreliable. The challenged foundational data includes police reports and witness statements pertaining to: (1) Farro's 1986 conviction for burglary with intent to commit sexual assault; (2) unadjudicated sexual offenses Farro allegedly committed against Cheryl and Sarah; and (3) Farro's recent sexual misconduct disciplinary infraction.

A. Standard of Review and Applicable Law

Proceedings pursuant to the SVP Act are civil in nature, but because the State's burden of proof is the same as in a criminal case, we review verdicts in SVP cases for legal sufficiency of the evidence using the appellate standard of review applied in criminal cases. *See Stuteville*, 463 S.W.3d at 551 (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)); *In re Commitment of Mullens*, 92 S.W.3d 881, 885 (Tex. App.—Beaumont 2002, pet. denied) (same). Under this standard of review, we assess the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could find, beyond a reasonable doubt, the elements required for commitment under the SVP Act. *See Stuteville*, 463 S.W.3d at 551; *see also Mullens*, 92 S.W.3d at 885. "It is the fact

finder's responsibility to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic to ultimate facts." *Stuteville*, 463 S.W.3d at 551; *see Mullens*, 92 S.W.3d at 887 (stating that fact finder may resolve conflicts and contradictions in evidence "by believing all, part, or none of the witnesses' testimony").

Although factual sufficiency review has been abandoned in criminal cases, *see Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010), as an intermediate appellate court with final authority over factual sufficiency challenges in civil cases, we will perform a factual sufficiency review in SVP Act cases when the issue is raised on appeal. *See In re Commitment of Harris*, 541 S.W.3d 322, 327 (Tex. App.—Houston [14th Dist.] 2017, no pet.); *see also Day*, 342 S.W.3d at 206–13.

When reviewing the factual sufficiency of the evidence in a case under the SVP Act, we weigh all the evidence to determine "whether a verdict that is supported by legally sufficient evidence nevertheless reflects a risk of injustice that would compel ordering a new trial." *Stuteville*, 463 S.W.3d at 552 (quoting *Day*, 342 S.W.3d at 213). We view all the evidence in a neutral light to determine whether a jury was rationally justified in finding SVP status beyond a reasonable doubt. *Stuteville*, 463 S.W.3d at 552. We may not substitute our judgment for that of the jury, which is the sole judge of credibility and the weight to be given to witnesses' testimony. *Id.* We will reverse only if, after weighing the evidence, we determine

that “the risk of an injustice remains too great to allow the verdict to stand.” *Id.* (quoting *Day*, 342 S.W.3d at 213).

“When a scientific opinion is admitted in evidence without objection, it may be considered probative evidence even if the basis for the opinion is unreliable.” *City of San Antonio v. Pollock*, 284 S.W.3d 809, 818 (Tex. 2009). However, if no basis for the opinion is offered, or the basis offered provides no support, “the opinion is merely a conclusory statement and cannot be considered probative evidence.” *Id.* To determine whether there is a basis for the opinion, reviewing courts are restricted to the face of the record. *Coastal Transp. Co., Inc. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 233 (Tex. 2004).

B. Analysis

The State’s experts, Dr. Price and Dr. Arambula, each opined that Farro has a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence.

Both testified that when they evaluate someone for a behavioral abnormality, they review any available records on that individual and then meet with the person and perform a face-to-face interview and evaluation. Dr. Price also administers psychological tests to that person, the results of which Dr. Arambula reviews as part of his evaluation. Dr. Price and Dr. Arambula testified that the methodology they

used in Farro's case is the same methodology used by other experts in their respective fields when formulating an opinion in such cases.

Both experts testified that the records they reviewed in this case as part of Farro's evaluation included investigative reports and legal records associated with Farro's criminal history, including convictions and unadjudicated charges, Farro's deposition testimony in the case, as well as his prison administrative records. These are the same types of records relied upon by other experts in their respective fields when conducting evaluations for behavioral abnormalities.

As previously discussed, Dr. Price and Dr. Arambula testified that their respective opinions that Farro suffers from a behavioral abnormality are based in large part on Farro's antisocial personality and his sexual deviance. They also testified that the underlying facts of Farro's convictions and unadjudicated offenses and bad acts that they learned of from the record supported their evaluation. Among other things, Farro denied that he assaulted Cheryl and Valerie, denied committing other offenses, including auto theft, which demonstrates a pattern of denial and refusal to accept responsibility. Farro also initially lied about having sex with Amy, he denied that he had been arrested for assaulting Cheryl, he expressed no remorse for any of his offenses, he denigrated Cheryl, and he rationalized and justified his behavior, including his relationship with fourteen-year-old Amy, which he still considers having been consensual. Farro also reoffended while under supervision

and his new offenses resulted in the revocation of his probation and parole. These facts demonstrate Farro's difficulty obeying the law, difficulty appreciating the consequences of his action, and his difficulty controlling his impulses and sexual urges, all of which are indicative of someone with an antisocial personality.

Dr. Price and Dr. Armabula also testified that Farro's sexual deviance, which is another major risk factor for reoffending, is a part of his behavioral abnormality. Both experts agree that Farro's deviancy primarily consists of his pattern of predatory sexual assaults against vulnerable, underaged girls, which is evident from the details of sexual assaults contained in the record. Farro, who went through the motions in sex offender education, does not understand his deviancy or try to learn how to identify his triggers for reoffending because he does not believe that he has a sexual behavior that needs to be addressed. These are also risk factors for reoffending.

Thus, both experts explained the accepted methodology they employed to formulate their opinions, which is routinely used by experts in their field, they offered a basis for their opinions, namely, their interviews with Farro and their review of the records, and they explained why the information they relied on supports their opinions. Based on the record before us, we conclude that neither Dr. Arambula's nor Dr. Price's expert opinions that Farro suffers from a behavioral abnormality is wholly conclusory, and therefore, both opinions have probative value.

See Pollock, 284 S.W.3d at 818; *see also Day*, 342 S.W.3d at 206 (rejecting argument that expert testimony was wholly conclusory when record reflected that expert offered “a reasoned judgment based upon established research and techniques for his profession[.]”). Even if some of the underlying records that the experts relied on are unreliable, as Farro argues, this does not negate the probative nature of the doctors’ opinions. *See Pollock*, 284 S.W.3d at 818 (“When a scientific opinion is admitted in evidence without objection, it may be considered probative evidence even if the basis for the opinion is unreliable.”).

Viewing the evidence in the light most favorable to the verdict, including Dr. Price’s and Dr. Arambula’s expert opinions and Farro’s convictions for two sexually violent offenses, a rational jury could have found beyond a reasonable doubt that Farro suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. *See Stuteville*, 463 S.W.3d at 551–52. Although Farro’s testimony conflicts with the information contained in some of the records that Dr. Price and Dr. Arambula relied on, and Farro denied most of the sexual allegations against him and offered explanations for his other alleged criminal behavior, it was within the province of the jury to weigh the evidence, judge the credibility of the witnesses, and resolve conflicts in the evidence. *See id.* at 552. Viewing all of the evidence in a neutral light, including the testimony from Farro, Dr. Price, and Dr. Arambula, we conclude that the jury was rationally justified in

making the SVP determination beyond a reasonable doubt, and we cannot say that “the risk of an injustice remains too great to allow the verdict to stand.” *See id.*

We therefore hold that there is legally and factually sufficient evidence supporting the jury’s finding that Farro is a repeat sexually violent offender who suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. *See* TEX. HEALTH & SAFETY CODE § 841.003(a).

We overrule Farro’s fourth and fifth issues.

Conclusion

We affirm the order of civil commitment.

Russell Lloyd
Justice

Panel consists of Justices Keyes, Bland, and Lloyd.