



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00290-CV

IN RE: THE COMMITMENT OF JEFFERY REGAN EDDINGS

On Appeal from the 396th District Court
Tarrant County, Texas
Trial Court No. D396-S-14013-18

Before Sudderth, C.J.; Bassel and Wallach, JJ.
Memorandum Opinion by Justice Bassel

MEMORANDUM OPINION

I. Introduction

Appellant Jeffery Regan Eddings appeals from the judgment finding him to be a sexually violent predator and civilly committing him for treatment. *See* Tex. Health & Safety Code Ann. §§ 841.003, .081. In two issues, Eddings argues that the evidence is legally and factually insufficient to support the sexually violent predator finding. Eddings's sufficiency challenges cannot be sustained because they turn a blind eye to the evidence that supports the judgment; thus, we affirm.

II. Procedural Background

As Eddings neared completion of a ten-year sentence that he received for his conviction on two counts of indecency with a child, the State filed a petition to designate him a sexually violent predator and to commit him “for treatment and supervision to be coordinated by the Texas Civil Commitment Office[] in accordance with Chapter 841 of the Texas Health and Safety Code.” The matter was tried to a jury.

At the trial, Eddings and two psychologists testified. In a unanimous verdict, the jury answered “yes” to the single charge question: “Do you find beyond a reasonable doubt that [Eddings] is a sexually violent predator?”

In accordance with the verdict, the trial court signed a judgment decreeing Eddings to be a sexually violent predator and committing him to supervision and treatment upon his release from prison. The judgment went on to provide that Eddings “shall continue in such commitment until the behavioral abnormality of [Eddings] has

changed to the extent that [Eddings] is no longer likely to engage in a predatory act of sexual violence and is released from commitment.” The trial court also signed an order of commitment that further detailed the terms of Eddings’s civil commitment. Eddings filed a motion for new trial, which was overruled by operation of law, and a notice of appeal.

III. The Law on Civil Commitment

A. The consequences of civil commitment

We recently traced the history of the civil-commitment process and its purpose of placing sexually violent predators under a civil commitment even though they have completed their sentences for their sexually violent offenses. *In re Commitment of Stoddard*, No. 02-17-00364-CV, 2019 WL 2292981, at *1–3 (Tex. App.—Fort Worth May 30, 2019, pet. granted) (mem. op. on reh’g).

The Texas Health and Safety Code details a tiered program of treatment that has the goal of providing a “seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually to release from civil commitment, based on the person’s behavior and progress in treatment.” Tex. Health & Safety Code Ann. § 841.0831. The commitment remains subject to a biennial review of the trial judge. *Id.* §§ 841.101–.102. That review determines whether the requirements imposed on the person committed should be modified or whether “probable cause exists to believe that the person’s behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual

violence.” *Id.* § 841.102(c)(1), (2). A person committed may also file a petition for release with or without the authorization of the State office supervising the commitment. *Id.* §§ 841.121–.122.

B. The process required for the State to seek civil commitment

Generally, when a person serving a sentence for a sexually violent offense reaches a point twenty-four months before the completion of that sentence, the Texas Department of Criminal Justice (TDCJ) gives notice to a multidisciplinary team; the team then assesses whether the person is a repeat sexually violent offender and “whether the person is likely to commit a sexually violent offense after release.” *Id.* §§ 841.021–.022. That team can recommend further assessment. *Id.* § 841.022(c)(3).

Should the multidisciplinary team recommend further assessment, the TDCJ “shall assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence” and use an expert to make that determination. *Id.* § 841.023(a). Should the assessment produce a belief that the person suffers from a behavioral abnormality, the TDCJ gives notice “to the attorney representing the [S]tate for the county in which the person was most recently convicted of a sexually violent offense.” *Id.* § 841.023(b). Within specified time limits, that attorney may file “a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.” *Id.* § 841.041(a).

C. The showings required to obtain civil commitment and the State's burden

At the trial on the State's petition seeking civil commitment, "[t]he judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator." *Id.* § 841.062(a). If a jury determines the issue, its verdict must be unanimous. *Id.* § 841.062(b).

A person is a sexually violent predator if that person "(1) is a repeat sexually violent offender; and (2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence." *Id.* § 841.003(a)(1), (2). In turn, "behavioral abnormality" has a statutory definition: "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).

IV. The Record Before Us

A. A chronology of Eddings's life

Eddings was born in 1962. His own testimony established the chronology of his sexual and nonsexual criminal offenses and incarcerations:

- 1975 –Filed a false police report and set a neighbor's barn on fire.
–Began using marijuana and huffing paint.
–Was sent to juvenile detention in ninth grade for skipping school and dropped out of school.

- 1981 –Arrested for aggravated armed robbery; the charge was subsequently reduced to robbery by threat and he was sentenced to ten years' probation.

–Claimed and then recanted that he had also robbed a 7-Eleven and a Dunkin’ Donuts.

1987 –Failed to complete probation and was sentenced to six years in prison for the robbery conviction.

1988 –Was released on parole.

–Five months after being released on parole, was arrested for two counts of causing injury to a child.

–While jailed for the injury-to-a-child offense, escaped from jail and subsequently surrendered within thirty days.

–Pleaded guilty on injury-to-a-child charges and was sentenced to eight years; parole on prior robbery charge was also revoked.

1988 to 1991

–Served a portion of his sentence and then was released on parole a second time.

1994 –Parole was revoked because of drug use.

1996 –Was released on parole a third time.

1998 –Parole was revoked.

–Allegation was made that Eddings had improperly touched his daughter; he denied the allegation and no charges were filed.

1999 –Was released on parole a fourth time.

–While on parole, married a woman who was confined to a wheelchair.

–Stole ATM card and jewelry from his wife the same month that he was released on parole.

–Parole was revoked as a result of cocaine use.

–Was released on parole a fifth time.

2000 –Parole was revoked for cocaine use, failure to report, and cutting off his leg monitor.

–Was released on parole a sixth time.

–Stole money from his handicapped wife and committed violence against her.

- 2001 –Was arrested for committing injury to a disabled person based on incident in which he stole from his handicapped wife and committed violence against her.
–Pleaded guilty to offense and was sentenced to five years’ confinement.
- 2001 to 2006
–Was incarcerated on the injury-to-a-disabled-person conviction.
- 2006 –Was released from prison after completing his sentence for injury to a disabled person.
–Upon release, became romantically involved with a woman who had twin two-year-old granddaughters.
–Was investigated on claim that he had abused girlfriend’s granddaughters; investigation produced no charges.
- 2007 –Was arrested on a forgery charge based on stealing a check from his employer.
–Was fired from employment for unauthorized use of a company vehicle.
–Was convicted on forgery charge and was sentenced to four years in prison.
- 2009 –Was released on parole a seventh time; resumed relationship with woman who had twin granddaughters, who were then six years old.
- 2010 –Committed indecency with both twins by digitally penetrating their vaginas. (We will detail the facts of these offenses later in this opinion.)
–Began living at a shelter after the twins’ outcry. Was evicted from the shelter after stealing electronic device to sell in order to purchase cocaine.
–Was convicted after pleading guilty to two counts of indecency with a child and was sentenced to ten years in prison.
- 2011 –Was convicted of theft of property by stealing a ring from his father in order to purchase cocaine and was sentenced to fifteen months in state jail.
- 2011 to 2019
–Was incarcerated for his indecency-with-a-child convictions.
–In 2018, the State filed a petition to civilly commit Eddings.

B. Eddings's history of drug use

Eddings admitted that he had continuously abused drugs, except while he was incarcerated. He received drug-abuse treatment in the 1980s and in 1999 but continued to use drugs after treatment. He acknowledged that he had used drugs after being placed on probation and while on parole. He returned to drug use after serving his five-year sentence for injury to a disabled person. He itemized the drugs he had used, listing cocaine, heroin, methamphetamine, marijuana, LSD, and paint. Crack was his preferred drug, and he had used it every day prior to his arrest in 2010 for two counts of indecency with a child. He attributed many of his offenses and his parole and probation violations to drug use. Despite decades of drug use, Eddings contended during trial that he did not think that he would ever go back to using drugs.

C. Eddings's history of sexual offenses and aberrant behavior

Eddings made numerous statements that presented a long and graphic history of sexual abuse that had been committed against him and of abuse that he had committed against others. During his behavioral abnormality evaluation, Eddings sought to be placed in sex-offender treatment or civilly committed because he feared that he would commit sexual abuse when released from prison. At trial and detailed below, he recanted almost the entirety of his prior statements, claiming that he had made false statements to obtain sex-offender treatment and had exaggerated because he did not understand the consequences of civil commitment.

Prior to the recantation, Eddings had detailed a litany of abuse, described other aberrant behaviors, and acknowledged concerns about his future behavior as follows:

- He was sexually abused as child, including being subjected at age three to watching an adult masturbate and to being molested by his father's mother.
- He had tortured an animal.
- He had set his own shoes on fire.
- He had engaged in sexual activity with a cousin from the age of five until thirteen or fourteen.
- His mother had prostituted herself when he was a child.
- He had discovered that his father had molested Eddings's sister.
- He had engaged in sexual relations with a nine-year-old cousin when he was fourteen.
- He had molested a seven-year-old and a nine-year-old when he was sixteen.
- He had groomed children as an adolescent to enable later abuse of the children.
- He had molested children that he had babysat.
- He could not count the number of molestation victims he had as an adolescent.
- He admitted having had seventeen molestation victims as an adult.
- He had masturbated while fantasizing about the abuse he had committed against children and had done so within days of one of the interviews conducted as part of the civil-commitment process.

- He had utilized nonpornographic pictures of children while fantasizing.
- He had looked at photos of women dressed as children while masturbating.
- He admitted being sexually attracted to prepubescent females who were three years old and above.
- He said that he was attracted to adult females but only to those who appeared young and were groomed in a way to appear childlike.
- He had engaged in peeping-tom activities while under the influence of drugs.
- During an interview when he sought to obtain sex-offender treatment, he invoked his Fifth Amendment privilege against self-incrimination when asked what additional victims he had molested.
- While under the influence of drugs, he had exposed himself by walking around naked and shaking his penis.
- During the time that he had been out of prison, he had fifty sexual partners, including twenty-five prostitutes.
- In the description of the facts underlying the two counts of indecency with a child that Eddings was convicted of, the jury heard various iterations of what had occurred:
 - On the night in question, the six-year-old-twin granddaughters of his girlfriend or wife were asleep in the same bed as Eddings. At some point, he digitally penetrated one of the twins and then committed the same act on the other twin.
 - One iteration of the episode included that Eddings had been watching a pornographic movie, and one of the twins
 - looked at the pornographic film and said, “I know what that’s about,” and he was intoxicated at the time and he began fondling her vagina, and her sister woke up and he

said -- what he said was that she began to participate. He said he could tell that they had both, essentially, been molested before. He said they [had] learned it from another place.

- One of the girls had a hole in the crotch of her pants, and this gave Eddings the idea of tearing a hole in the crotch area of the other twin's pants.
- He told the twins not to tell anyone what he had done.
- He spit on one of the twins while molesting her.
- He was under the influence of cocaine at the time he had molested the twins.
- He molested the twins to obtain sexual gratification and was “turned on” while molesting the twins.
- The twins' grandmother was asleep in the same bed as the twins when he molested them.
- The twins' grandmother was available to offer him sexual gratification if he had sought it from her instead of molesting the twins.
- Though Eddings explained that he had made the statements in ignorance of the consequences that they carried and that had made the statements only to obtain treatment, he wrote various letters and made statements during that course of the commitment proceedings that included the following:
 - After he was served with the State's petition seeking civil commitment, he wrote the State's lawyer: “I would like to [waive] my rights to trial by jury. And [I] would like to not fight my commitment for my behavioral abnormality. I will not contest my civil commitment and will allow the 396th District Court [to commit] me.”
 - Roughly a month later, he wrote his counsel: “I am unsafe on the outside[,] and this will give me a place to live out my life.”

- Later, he again wrote to the State’s lawyer in the civil-commitment proceeding: “I am a pi[e]ce of shit[,] and I need life in civil commitment.”
- Eddings had made a request for treatment that stated,

I have sent [a] request for Orchiectomy (surgical castration) on 6-14-18 to RPD SORP. And now have fi[[l]ed an I-127 for the procedure to be done. I have Mental Illness, without a dou[b]t. Because of my crimes and my thinking, I have requested S.O.T.P. FI-18 and Civil Commitment. And denied Parole 3 times because of my fear on recommitting my crime. Please hear me[;] I need help. I am not crazy[,] but I am sick and only wish to not recommit such an act when I get out. Please [h]elp me get needed treatment so to protect children. Please Please Please!”

D. Eddings’ claims that most of his statements about his past sexual offenses were lies

At trial, Eddings recanted all of his statements about sexually abusive conduct except for the acts that he had committed against the twins and against his cousin. He also asserted that he had lied about being sexually abused. He explained that he had made the litany of false claims as a ruse to obtain sex-offender treatment. Eddings summarized the purpose of the charade as follows:

I was looking to try to get into the S-[O]-[T]-P program,^[1] which that’s in all reality what I thought I was being evaluated for the whole time. Because I had put in requests and kept getting, well, we’ll get to that. And I was at the two-year mark, so I was thinking, well, I know I can volunteer

¹Although Eddings testified that he was trying to get into the “S-T-O-P program,” he appears to have switched the middle letters. “SOTP” stands for sex-offender-treatment program.

at the two-year mark. And I wanted a[n] 18-month program because I know what I've done [is] wrong.

He downplayed the statements that he had made in the letters to counsel in the civil-commitment proceeding by saying that he simply had not understood what the civil-commitment process involved.

At trial, when asked about the molestation of the twins, he stated, "I wouldn't ever do it again." He testified about his prior efforts to obtain sex-offender treatment. By the time of the trial, he wanted to undergo treatment in a program called New Name Ministry. Though he had previously told an interviewer that he would have no means of support after his release from prison, he claimed at trial that he had elderly godparents who were willing to pay for him to attend the program.

On cross-examination, Eddings reiterated that he had sought treatment because he was a sex offender but asserted that his request for treatment was not out of a fear of reoffending; his explanation was that he thought "that anybody that[had] ever committed a sex offense need[ed] treatment, yes, ma'am, but not to the fact that [he was] going to reoffend." His purpose was not only to help him "understand" but also to help others.

Though he claimed that his motive in exaggerating his behaviors was to obtain treatment, he also acknowledged that he had previously pleaded the Fifth Amendment when asked to give a list of victims, claiming that he did so because he did not want to make up victims' names. He acknowledged that he had asked for civil commitment but

testified that he did not know what that was. But the following exchange also occurred on cross-examination where it appears that Eddings acknowledged that he had been advised what civil commitment involved and still professed that he was unsafe on the outside:

Q. Do you remember on November 19th writing your attorney saying that you were unsafe on the outside and you needed a place to live your life and, in fact, you referenced the attorney Marc Gault from my office making clear [that] you knew he was an attorney from my office and not your lawyer?

A. Okay. That was after my attorney, yeah. After I found out --

Q. After you were advised about civil commitment, you advised you were not safe on the outside?

A. Right. Is that a later date?

Q. Yes, it is.

A. I wrote a lot of letters, as you know, as you got, trying to get into some type of treatment.

E. Expert testimony on the question of whether Eddings had a behavioral abnormality

Two forensic psychologists testified as experts during the trial: Dr. Darrell Turner, who conducted the assessment of whether the State should seek to civilly commit Eddings, and Dr. Timothy Proctor, who testified as the State's expert. Both described the function of forensic psychology as the application of psychology to a legal question.

1. Dr. Turner

The jury saw Dr. Turner's video deposition. As preliminary matters, Dr. Turner described his professional qualifications, his experience, and his involvement in the commitment proceeding. His role was to opine on whether Eddings had a behavioral abnormality. The legal definition that Dr. Turner had relied on in making that determination was the same as the one that was quoted above: "a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes that person to engage in sexually violent acts such that they become a menace to the health and safety of other people." He interviewed Eddings face to face for two hours.

Dr. Turner described his role to Eddings. Dr. Turner told Eddings that "as part of [his] contract with the Texas Department of Criminal Justice, . . . [he] had been sent to evaluate [Eddings] to determine whether or not he had a behavioral abnormality, and [Dr. Turner] defined 'behavioral abnormality.'" Eddings appeared to understand the explanation. Dr. Turner indicated that he had said nothing to lead Eddings to believe that the interview was to decide whether he could be placed in a sex-offender-treatment program.

Dr. Turner summarized the methodology that he uses to evaluate whether a person has a behavioral abnormality as follows:

It's called a clinically adjusted actuarial approach[,] and it's basically a thorough review of the records, an interview, and an evaluation with the individual where we're considering risk factors, protective factors, and we're applying the definitions laid out in Section 841 of the Texas Health and Safety Code regarding behavioral abnormalities. And -- and then as a

psychologist, there's a -- there's a test that I score, an actuarial, which is the Static-99R. And then I also assess for psychopathy, and to do that, I use the PCL[-]R, which is the Psychopathy Checklist[-]Revised. And then it's just kind of conceptualizing all of that and putting it together and coming up -- coming to an ultimate opinion about the presence of a behavioral abnormality.

During Dr. Turner's interview with Eddings, Eddings cataloged his history of the sexual abuse that he had endured and the sexual abuse that he had perpetrated on others and the fantasies to which he had masturbated. Eddings indicated that he wanted sex-offender treatment because "he felt he needed treatment, you know, and then so that involved him talking about the ongoing fantasies of children that he was having and masturbating to."

Eddings also described to Dr. Turner his plans and concerns regarding his release from prison:

He essentially said that he doesn't have any. He -- he just -- at that point, he just said he wants to -- he wants to go fishing with his children, he wants to go to ballgames with his children, and then he kind of switched and talked about being addicted to pedophilia, is how he put it. He talked about fantasizing about sexual contact with children and talked -- talked about how, if he were released now -- he used a phrase and a quote that's in my report is that there would be another victim. He said he had no support in the outside world, he has no plans to live anywhere, and he continued to talk about needing treatment and a willingness to be civilly committed if that was necessary.

Correspondence in Eddings's file indicated that he had the habit of being manipulative. Dr. Turner expressed a concern that some of what Eddings had said was manipulative and that his story could change should he change his mind about his need for civil commitment. On cross-examination, Dr. Turner elaborated on his concerns

about Eddings's tendency to manipulate and expressed his doubt that all of the behaviors that Eddings had described were true "[b]ecause he's a pathological liar and so I'm sure that there [were] some things that he said that weren't true." Dr. Turner did not sort through the litany of statements to determine which ones he thought were untrue. Dr. Turner did express an opinion that there were other victims:

I think that there are probably -- yes. I think that he has other victims. I don't know if he was being honest about the number, but I think that -- I think that there are other victims, just based on what we know about from research about child molesters and the percentage of discovered victims versus undiscovered victims. So, yep.

In making his determination that Eddings is a pathological liar, Dr. Turner described the PCL-R test that he had mentioned as part of his methodology and explained how that test is scored:

So there are 20 items, and I would say maybe about 60 percent of them are personality traits, how they present themselves, what their emotional content is when they're speaking, their view -- excuse me, their view of themselves, any -- any sense of empathy or taking responsibility for their own actions. And if a person meets -- meets criteria that you learn when you're trained in scoring the PCL[-]R, then they would get a 2 for that item. If they might or maybe do or to some extent, they would get a 1, and if they -- if they don't evidence that item, then they would get a zero. So you have a maximum score of 40, since there's 20 items, and a minimum score of zero.

2. Dr. Proctor

Dr. Proctor testified live, and his testimony consumed approximately 140 pages of the record. Dr. Proctor outlined the nature of forensic psychology and his qualifications as a forensic psychologist, and Eddings does not challenge Dr. Proctor's

qualifications on appeal. Dr. Proctor reiterated the definition of behavioral abnormality given by Dr. Turner and elaborated on the definitions of the words contained in that definition. He also utilized the same adjusted actuarial approach that Dr. Turner had relied on. He detailed the records that he had reviewed in reaching his opinions and stated that he had also relied on Dr. Turner's evaluation. Dr. Proctor's face-to-face interview with Eddings lasted two-and-a-half hours.

After conducting his evaluation in accordance with accepted standards in the field of forensic psychology, Dr. Proctor opined that Eddings had "a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence." Though not required to make specific diagnoses in reaching his opinion about a behavioral abnormality, Dr. Proctor did so in this case and outlined those diagnoses as follows:

The first is a diagnosis of pedophilic disorder, which is specified as nonexclusive, sexually attracted to females. I also diagnosed antisocial personality disorder noting that he has something called a psychopathic personality. Those go hand in hand. And then a cocaine use disorder that is in remission in a controlled environment, which means he doesn't currently have that condition active while he's been in prison where the access to illegal drugs is much less.

He also conducted a risk assessment that he described as "an evaluation that looks at somebody's risk of a certain behavior." In making that assessment, he evaluated risk factors, which indicate an increased risk of the behavior, and protective factors, which indicate a reduced risk of the behavior. The risk factors that he relied on are research based, studied by experts in the field of sexual recidivism, and peer reviewed.

In making his evaluation of risk, Dr. Proctor noted that the two biggest risk factors are sexual deviance in the form of “sexual attraction to sex with non-consenting persons” and antisocial personality disorder in the form of “a history of breaking rules, not following the law, getting in trouble.” Eddings’s sexual-offending history indicated that he was sexually deviant, which was a basis for an opinion that he had a behavioral abnormality. The specific behavior that lent support to those opinions was Eddings’s focus on children, especially prepubescent females. To develop his opinion, Dr. Proctor relied on the details of Eddings’s offending history. He also reviewed the records relating to the offenses in Eddings’s indecency case and the deposition that Eddings gave.

Dr. Proctor detailed the circumstances surrounding Eddings’s convictions for two counts of indecency with a child. The fact that Eddings had claimed that the twins were familiar with pornographic material and sexual acts before he had molested them demonstrated an attempt to shift blame; this was concerning to Dr. Proctor. Another of Dr. Proctor’s concerns was that Eddings had Hepatitis C when he assaulted the twins; Dr. Proctor explained that this demonstrated callousness and lack of empathy.² The fact that Eddings had assaulted the twins after being accused of previous improper conduct toward them indicated “persistence after punishment,” which Dr. Proctor

²Dr. Proctor testified that Hepatitis C is transmitted through blood but can be transmitted through other bodily fluids. As set forth above, Eddings had spit on one of the twins while molesting her.

opined was a significant risk factor. Dr. Proctor was concerned that the twins were not related to Eddings because any history with an unrelated victim increases the risk to reoffend because it provides a larger pool of victims. Added concern came from the facts that he had groomed the girls and that their grandmother was in the bed with them when the molestation had occurred, which showed that Eddings was bold, brazen, and lacked the ability to control his behavior.

To determine whether a person is sexually deviant, Dr. Proctor said that it is also important to consider his unadjudicated offenses. Dr. Proctor outlined Eddings's shifting stories about his number of prior victims and noted that by the time he was interviewed by Dr. Proctor, the number had dropped to three, including the twins. Dr. Proctor believed the high tally that Eddings had given when he was speaking contrary to his interest—during his interview with Dr. Turner—was the most accurate. Dr. Proctor perceived another risk factor from Eddings's early exposure to sex and his sexual activity at a young age. The length of time that Eddings had been offending was also a risk factor, which Dr. Proctor labeled as chronic offending.

In Dr. Proctor's view, Eddings's high sex drive was another risk factor. Though contrary to what Eddings had told Dr. Proctor, the fact that Eddings had admitted to others that he had masturbated while fantasizing about children and visualizing sexual offenses was a definite risk factor and suggested attitudes that condoned sexual violence. Specifically,

masturbating about them in a way where, you know, the person is thinking that . . . is an appropriate or okay way to characterize or think of children. That all goes along with the kind of mindset you see in people who commit sex offenses that in their mind make it okay where they continue to do it.

Again, Dr. Proctor downplayed Eddings's recent recantations by noting that there's a strong record of him saying these things repeatedly, them not seeming to be at all self-serving[,] and I think they, you know, when you take it in total, appear to be an accurate representation of not only how he was feeling then but what appears to be the case.

In Dr. Proctor's view, Eddings's level of deviancy was "[t]owards the top."

With respect to Eddings's attitude when he met with Dr. Proctor, Dr. Proctor said that at that time, Eddings viewed himself as a sex offender only to the extent that he had committed offenses and denied that he was attracted to children.

Dr. Proctor also noted the statement that Eddings had made in the correspondence outlined above. Noting the content and recentness of the letters, Dr. Proctor outlined their importance as follows:

[I]t's indications of him within the last year indicating that he has a mental abnormality, that he's not safe to be on the outside, that he's not wishing to contest that he has a behavioral abnormality, that he's asking for surgical castration, show -- it's pointing to his mental state in recent times within the last year regarding these issues.

Dr. Proctor concluded that Eddings's statements in the letters were also a risk factor.

Dr. Proctor reiterated that Eddings has a pedophilic disorder because he is attracted to prepubescent females. The condition is chronic, and Eddings had admitted it to Dr. Turner. Dr. Proctor augmented his diagnosis based on Eddings's admission

that he was addicted to pedophilia. This diagnosis again indicated that Eddings had met the criteria for a behavioral abnormality.

Dr. Proctor then reiterated the definition of antisocial personality disorder. He opined that both Eddings's sexual and nonsexual criminal history was evidence of this disorder. Dr. Proctor outlined the records that he had reviewed to support that opinion. He pointed out that Eddings's behavior in failing to respond to supervision indicated a risk factor. Dr. Proctor said that Eddings's violent criminal history and repeated incarcerations were also risk factors.

To establish that Eddings is a psychopath, Dr. Proctor noted Eddings's score on the Hare Psychopathy Checklist–Revised (or PCL–R that Dr. Turner had described). Dr. Proctor later augmented Dr. Turner's description of the test by noting that “[i]t tests whether or not someone is a psychopath, which -- so it's, one, telling you if they have that personality. And then that can be relevant in terms of understanding the personality, but it's also relevant in terms of their risk of different kinds of offending including sexual offending.” Dr. Proctor also mentioned a Static-99 score but said that Eddings's score on that test fell in the average range; Dr. Proctor did not elaborate further. Dr. Proctor also indicated that he had administered the Risk of Sexual Violence Protocol (RSVP), which showed that Eddings had a high level of risk for sexual reoffending.

Dr. Proctor then testified about his diagnosis that Eddings had a substance-abuse disorder. He explained Eddings's history of returning to drug use after being

released from prison. Dr. Proctor said that drug use reduces inhibition and increases the risk to reoffend. He noted Eddings's instance of exposing himself as an example of when drug use had disinhibited Eddings's sexual behavior.

Dr. Proctor listed only one protective factor that would reduce Eddings's risk of reoffending. That factor was his age. Dr. Proctor concluded that the risk factors "greatly outweigh[ed] that protective factor."

The State ended its direct examination of Dr. Proctor with the following exchange:

Q. Do you agree that Mr. Eddings needs treatment?

A. Yes.

Q. You're offering the opinion -- you're offering the opinion that Mr. Eddings has this behavioral abnormality that makes him likely to commit a predatory act of sexual violence; is that correct?

A. Yes.

Q. Do you believe that today Mr. Eddings'[s] emotional or volitional capacity is affected?

A. Yes.

Q. Can you explain that?

A. I think that he has an attraction to children and a serious difficulty with controlling his behavior, making decisions, and refraining from that. And he's even said as much. So that speaks to those areas.

Q. Today do you believe that Mr. Eddings is a menace to the health and safety of another person?

A. Yes.

Q. And why do you believe that Mr. Eddings has a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence even though the last time he had sexual contact with a child was almost ten years ago?

A. Because that was -- he's been in prison, so there are no children in prison. And even while in prison he's talked about seeing himself as a risk, being a risk once he gets out, being a very high risk. And he in my opinion is at risk for offending against prepubescent children, specifically females.

V. Eddings's Sufficiency Challenges Fail

In his two issues, Eddings raises both legal- and factual-sufficiency challenges based on a claim that Dr. Proctor's opinions failed to adequately explain certain diagnoses and tests that he had relied on in reaching his opinions and that this rendered the entirety of his testimony conclusory. This argument asks all involved in the determination of whether Eddings is a sexually violent predator—including the jury as the factfinder and this court as the reviewing court—to ignore the elephant in the room: Eddings's own revelations about his thoughts and expressed concerns about his future behavior were a clear signal that he suffers from a condition that “predisposes [him] to commit a sexually violent offense, to the extent that [he] becomes a menace to the health and safety of another person.” By the time of the trial, Eddings wanted to take back almost everything he had said before the trial, and the jury saw him make those efforts. But whether his recantations were credible was a question for the jury to decide and is a determination that we cannot second-guess.

And even if we could ignore the elephant, Eddings’s challenges still fail. Picking at a failure to detail the basis for certain diagnoses and tests mentioned by the expert ignores (1) that the overall detail of the information provided as a basis for the expert’s opinion demonstrates that the testimony is not conclusory and (2) that caselaw establishes that the tests referenced are not the *sine qua non* of an expert’s opinion that a person is a sexually violent predator. Moreover, Eddings’s claim—that his civil commitment is only another punishment for his convictions for indecency with a child—turns a blind eye to his admissions, which the jury could accept as being an accurate portrayal of his state of mind.

A. Standards of review

1. Legal sufficiency

As a starting point, we again note that to civilly commit a person, the State carries the burden to prove its case beyond a reasonable doubt and must show that “the person (1) is a repeat sexually violent offender, and (2) suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence.” *Stoddard*, 2019 WL 2292981, at *10 (citing Tex. Health & Safety Code Ann. § 841.003 (defining “sexually violent predator”), and § 841.062(a) (imposing a “beyond reasonable doubt” burden of proof)).

We apply the same standard of legal-sufficiency review as that applied in criminal cases. *Id.* Thus, “[w]e assess the evidence in the light most favorable to the verdict to

determine whether any rational trier of fact could find the statutory elements required for commitment beyond a reasonable doubt.” *Id.*

2. Factual sufficiency

Unlike in criminal cases, a party may raise factual sufficiency in civil-commitment cases. *See id.* We analyze such issues under the standards applied in civil cases. *Id.* We do not follow the precedent of the criminal law that restricts review only to legal sufficiency because civil commitments “are civil proceedings subject to the jurisdiction of the supreme court, which has not consolidated the legal- and factual-sufficiency review standards as the court of criminal appeals has for criminal cases.” *Id.* Further, we retain factual-sufficiency review because civil commitments involve a severe restraint on liberty and are often decided with evidence relying on “‘soft’ science that calls for the exercise of a considerable amount of intuitive judgment on the part of experts with specialized training.” *Id.* at 11. In view of these dual concerns, we retain a heightened ability to weigh the evidence and, if “the risk of an injustice remains too great to allow the verdict to stand,” to grant a new trial. *Id.*

Thus, when reviewing the factual sufficiency of the evidence to support the civil-commitment order, “we weigh all of the evidence in a neutral light to determine whether the jury’s finding ‘is factually insufficient or is so against the great weight and preponderance as to be manifestly unjust[,] . . . shocks the conscience[,] or clearly demonstrates bias.’” *Id.* “We reverse only if, after weighing the evidence in a neutral light, we determine that the risk of an injustice remains too great to allow the verdict to

stand.” *Id.* But as is universal in a factual-sufficiency review, we may not second-guess the jury’s credibility determinations. *In re Commitment of Williams*, 539 S.W.3d 429, 437 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (“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.”).

B. The law on admitting conclusory expert opinions

Most challenges to an expert’s testimony must be preserved for review by objection. *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 233 (Tex. 2004) (stating that “when a reliability challenge requires the court to evaluate the underlying methodology, technique, or foundational data used by the expert, an objection must be timely made so that the trial court has the opportunity to conduct this analysis”). But an opinion cannot be based merely on the say-so of an expert; a conclusory expert opinion that is offered with no supporting basis is no evidence:

“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. . . .*, 136 S.W.3d [at] 233

In re Commitment of Farro, No. 01-18-00164-CV, 2018 WL 6696567, at *14 (Tex. App.—Houston [1st Dist.] Dec. 20, 2018, pet. denied) (mem. op.).

C. Analysis

1. Eddings's legal-sufficiency challenge

We focus on whether there is legally sufficient evidence to support the second prong of the State's burden to establish that Eddings "suffers from a behavioral abnormality that makes [him] likely to engage in a predatory act of sexual violence."

Eddings argues,

The evidence is insufficient to support the jury's finding that Eddings is a sexually violent predator because Dr. Proctor's opinion amounts to no evidence and, without his misleading, conclusory, and speculative testimony, no rational factfinder could have found, beyond a reasonable doubt, the elements required for commitment under the SVP statute.

The specifics of the attack center primarily on Dr. Proctor's alleged failure to explain certain of the diagnoses and tests that underlie his opinion. Specifically, Eddings claims Dr. Proctor failed to explain (1) why psychopathy is a risk factor, (2) what his determination of Eddings's Static-99 score meant, and (3) what an RSVP test shows or what score Eddings had received.³

Even if we were to accept the validity of these attacks, they do not mean that the entirety of Dr. Proctor's testimony was conclusory. Nor are the test results that

³During the State's direct examination of Dr. Proctor regarding the tests that he had administered, the trial court became irritated with counsel's approach. The State's counsel begged for fifteen minutes to ensure that she had covered all of the bases regarding the test results so that the State would meet its burden. The trial court allowed her seven minutes.

Eddings claims were presented in a flawed fashion so pivotal that the failure to explain deprived Dr. Proctor's testimony of any probative value.

First, Eddings cannot surmount the uphill struggle created by common sense. It is difficult to challenge an expert's opinion that a person is likely to engage in predatory conduct when that person has reported recent fantasies about abusing children and a fear of reoffending if released. Putting that obstacle aside, the fact remains that Dr. Proctor had enumerated risk factor after risk factor—all of which Eddings has omitted from his challenge on appeal. The most troubling is a risk factor that ties directly to his own self-described behaviors and fears of future reoffending—sexual deviance in the form of an attraction to prepubescent females.

We recently rejected a similarly couched legal-sufficiency challenge that tried to knock a few pillars out from under the foundation of an expert's opinion but left most of its structure intact:

As to the second prong, Proctor testified that he [had] diagnosed Stoddard with pedophilia and antisocial and psychopathic “traits[]” and that these diagnoses were part of the basis of his opinion that Stoddard suffered from a behavioral abnormality that made him likely to engage in a predatory act of sexual violence. Stoddard argues that this opinion was conclusory or speculative. We disagree. While some of his testimony was conclusory and perhaps speculative, Proctor testified to his review of relevant records, his interview of Stoddard, his review of Stoddard's deposition, and his use of actuarial tests. He also described the various risk factors that he [had] considered. Because Proctor provided evidence-based support for his opinion, we therefore decline Stoddard's request to exclude all of Proctor's testimony from our consideration based on his contention that it was conclusory or speculative.

Stoddard, 2019 WL 2292981, at *10. Applying that reasoning here, we conclude that Eddings’s selective attack fails because Dr. Proctor relied on similar types of evidence, “described the various risk factors he [had] considered,” and “provided evidence-based support for his opinion.” *See id.*

Eddings’s argument also intimates a need to offer a metric that establishes a percentage risk that a person is likely to reoffend. The Corpus Christi–Edinburg Court of Appeals recently cataloged the cases establishing that an expert need not support his opinion with such a degree of precision:

Several of our sister courts have addressed similar arguments[,] and they have ultimately concluded that the [Sexually Violent Predator] Act does not require the State to present a specific percentage of risk concerning whether an offender is likely to reoffend. *See In re Commitment of Kalati*, 370 S.W.3d 435, 439 (Tex. App.—Beaumont 2012, pet. denied) (“Chapter 841, which employs the term ‘likely,’ does not define it and does not require a numerical or percentage statement of whether a person is ‘likely’ to reoffend.”); *see also In re Commitment of Riojas*, No. 04-17-00082-CV, 2017 WL 4938818, at *4 (Tex. App.—San Antonio Nov. 1, 2017, no pet.) (mem. op.); *In re Commitment of Manuel*, No. 01-18-00650-CV, 2019 WL 2458986, at *5 (Tex. App.—Houston [1st Dist.] June 13, 2019, no pet. []) (mem. op.) (“[T]here is no numeric value or label that can be used to determine whether an offender is ‘likely’ to reoffend.”); *In re Commitment of Brown*, No. 05-16-01178-CV, 2018 WL 947904, at *9 (Tex. App.—Dallas Feb. 20, 2018, no pet.) (mem. op.) (“[U]se of the term ‘likely’ in the Act does not require evidence of a specific percentage of risk, and the term should not be interpreted to mean ‘more likely than not.’”); *In re Commitment of Terry*, No. 09-15-00500-CV, 2016 WL 7323299, at *13 (Tex. App.—Beaumont Dec. 15, 2016, no pet.) (mem. op.) (“[T]his Court has rejected the notion that the term ‘likely’ has a precise definition of the type associated with any certain assigned percentage of risk.”). Thus, regarding the second prong, the State did not need to present specific numeric values associated with the risk of Driggers[’s] reoffending; rather, the State merely needed to show that Driggers suffers from a behavioral

abnormality that makes him “likely to engage” in a predatory act of sexual violence. Tex. Health & Safety Code Ann. § 841.003(a).

In re Commitment of Driggers, No. 13-19-00158-CV, 2019 WL 6769878, at *6 (Tex. App.—Corpus Christi–Edinburg Dec. 12, 2019, no pet.) (mem. op.).

Here, Dr. Proctor’s testimony made the necessary showing that Eddings suffered from the required behavioral abnormality. Indeed, we quoted Dr. Proctor’s summary of his opinion regarding why he had concluded that Eddings suffers from a behavioral abnormality. That testimony highlighted Eddings’s “attraction to children and a serious difficulty with controlling his behavior, making decisions, and refraining from that.” Dr. Proctor continued that “while in prison[, Eddings had] talked about seeing himself as a risk, being a risk once he gets out, being a very high risk.” Again, Eddings leaves these bases for Dr. Proctor’s opinion unchallenged. He cites no authority that suggests a forensic psychologist cannot formulate an opinion based on the admissions and concerns Eddings expressed that went directly to the question of whether he was likely to commit a predatory act of sexual violence. Instead, Eddings’s argument assumes that no matter what he revealed to Dr. Proctor about his likeliness to reoffend, Dr. Proctor’s opinion is still flawed because he failed to adequately explain a testing criteria that quantifies the level of risk. Eddings cites no authority for this proposition,

and *Driggers* cites a litany of cases that demonstrate the law does not support the proposition.⁴ *See id.*

Accordingly, we overrule Eddings’s first issue.

2. Eddings’s factual-sufficiency challenge

Much of Eddings’s factual-sufficiency challenge relies on the same attacks that he made in his legal-sufficiency challenge. Those challenges are no more persuasive in the factual-sufficiency context than they were in the legal-sufficiency context.⁵

Eddings’s factual-sufficiency complaint is at odds with the record. His argument in its entirety follows:

Eddings’[s] criminal history is not slanted toward violent or multiple sexual offense[s]. The offenses that even [come] close to constituting violent offense[s] are his robbery by *threat* and assault by *contact*. In addition, Eddings barely qualifies for civil commitment because, even though he has two prior convictions, they occurred during the same criminal course of conduct and at the same time. Eddings’[s] criminal history does not establish a pattern of violent offenses, whether sexual in nature or not. There is absolutely no evidence of any predatory behavior

⁴We are not holding that a jury may rely on its subjective view of when a person is likely to reoffend. *In re Commitment of Woods*, No. 02-19-00155-CV, slip op. at 25 n.7 (Tex. App.—Fort Worth June 11, 2020, no pet. h.) (mem. op.) (“Nevertheless, our affirmance should not be interpreted as condoning the State’s argument, which suggests that the term ‘likely’ is so malleable as to permit the personal preferences of the jury to render it meaningless.”).

⁵The State’s sole argument in its brief is that Eddings’s waived his factual-sufficiency argument by failing to raise it in a motion for new trial. Eddings’s motion for new trial states that “[t]he evidence is insufficient to support the jury’s finding.” This is adequate to preserve a factual-sufficiency complaint. *See First Nat’l Collection Bureau, Inc. v. Walker*, 348 S.W.3d 329, 344 (Tex. App.—Dallas 2011, pet. denied) (holding that motion for new trial contending that “there [was] insufficient evidence to support the findings of the jury” preserved factual-sufficiency complaint).

or other sexual offenses committed by Eddings before the indecency offenses. When Eddings'[s] criminal history is viewed in light of the weak evidence of other factors considered by Proctor, it is simply not enough to qualify Eddings as the type of sex offender whom these civil commitments are constitutionally permitted to restrain for an indefinite time period.

First, whether he “barely qualifies” or not, there is no question that Eddings is a repeat sexually violent offender, and this fact satisfies the first prong of the State’s burden. Eddings was convicted of two counts of indecency with a child. Eddings committed two acts against two victims. The Health and Safety Code provides that “[a] person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses.” Tex. Health & Safety Code Ann. § 841.003(b). The plain language of the statute “does not indicate that the offenses must have occurred in a certain sequence[] or that they must have occurred on different days.” *In re Commitment of Hall*, No. 09-09-00387-CV, 2010 WL 3910365, at *3 (Tex. App.—Beaumont Oct. 7, 2010, no pet.) (mem. op.); *see also In re Commitment of Smith*, 562 S.W.3d 800, 804–05 (Tex. App.—Amarillo 2018, no pet.) (reiterating holding of *Hall*).

To argue that Eddings’s criminal history does not establish a pattern of violent offenses requires us to consider only his adjudicated offenses and ignore the history of unadjudicated offenses detailed during the testimony. That history belies the statement in his brief that “[t]here is absolutely no evidence of any predatory behavior or other sexual offenses committed by Eddings before the indecency offenses.” Again, in a

factual-sufficiency review, it is not within our ambit to second-guess the jury's credibility determinations. *See Williams*, 539 S.W.3d at 437. Eddings told almost diametrically opposed versions of his offending history and repeatedly stated his fear of reoffending. He made the admissions after being told by Dr. Turner why he was being interviewed and after being served with the State's petition seeking civil commitment. It was within the province of the jury to decide which of the clashing versions to believe. Because the jury apparently accepted a version of Eddings's behavior that he now wants to disown does not make the evidence factually insufficient.

Though he does not articulate it in this fashion, it appears that Eddings wants to use our recent opinion in *Stoddard* as a template to argue that he is being punished twice for his indecency-with-a-child convictions. *See* 2019 WL 2292981, at *12. In *Stoddard* our concern was that “the evidence in this case focused almost entirely on Stoddard's commission of the 2003 offenses—offenses for which he has already served his sentence and has become eligible for parole under the terms of the law.” *Id.* We found that circumstance a concern because

[p]ermitting the State to extend a sex offender's confinement indefinitely based upon not much more than the facts related to the underlying crime for which he was convicted allows a factfinder to succumb to the temptation to lock up sex offenders and throw away the key. It would allow juries to do in civil cases that which cannot be done in criminal cases—punish twice for the same conduct.

Id.

The *Stoddard* template does not fit this case. No matter Eddings's motive or lack of judgment in making the admissions, the record in this case is extraordinary because his own admissions were tailored to subject him to civil commitment. Although one component supporting Dr. Proctor's opinion was Eddings's indecency-with-a-child convictions, the record had far more support for Dr. Proctor's opinion than only those offenses; Eddings's own words provided grounds independent of his indecency convictions to conclude that he was indeed a sexually violent predator.

Accordingly, we overrule Eddings's second issue.

VI. Conclusion

Having overruled Eddings's two issues challenging the sufficiency of the evidence, we affirm the trial court's judgment.

/s/ Dabney Bassel

Dabney Bassel
Justice

Delivered: July 2, 2020