

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1601-21

IN THE MATTER OF THE
CIVIL COMMITMENT OF
G.B., SVP-498-08.

Argued September 12, 2023 – Decided September 28, 2023

Before Judges Whipple, Enright and Paganelli.

On appeal from the Superior Court of New Jersey, Law
Division, Hunterdon County, Docket No. SVP-498-08.

Catherine Reid, Designated Counsel, argued the cause
for appellant G.B. (Joseph E. Krakora, Public Defender,
attorney; Catherine Reid, on the briefs).

Stephen Slocum, Deputy Attorney General, argued the
cause for respondent State of New Jersey (Matthew J.
Platkin, Attorney General, attorney; Melissa H. Raksa,
Assistant Attorney General, of counsel; Stephen
Slocum, on the brief).

PER CURIAM

G.B. appeals from the January 3, 2022 order continuing his involuntary
commitment in the Special Treatment Unit (STU) pursuant to the Sexually

Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38.¹ We affirm, substantially for the reasons stated by the trial court in its December 31, 2021 oral opinion.

I.

The facts leading to G.B.'s initial commitment to the STU are recounted in our 2012 decision, In re Civ. Commitment of G.B., No. A-4763-08 (App. Div. Oct. 12, 2012) (slip op. at 1-6), and specifically include the sexual assaults he committed against his daughter, A.B. We summarize the pertinent facts to provide context for our decision on the instant appeal.

In June 1995, several months after A.B. was born,

G.B.'s wife brought her to the hospital where an examination revealed a total of eleven fractures: a recently fractured left leg, older fractures of the right leg, and partially healed fractures to both arms. The infant also had bite marks on both of her feet and her left hand, as well as a thumbprint bruise on her thigh.

Although G.B. initially claimed that [A.B.'s] injuries resulted from "rough play" and were not inflicted intentionally, he ultimately pleaded guilty to fourth-degree child abuse, N.J.S.A. 9:6-3, and was sentenced

¹ We use initials to refer to appellant and his victim because records pertaining to civil commitment proceedings under the SVPA are deemed confidential under N.J. Super. 30:4-27.27(c) and are excluded from public access pursuant to Rule 1:38-3(f)(2).

to probation for three years. He was ordered to attend . . . counseling, He was further prohibited from contacting his daughter. [However, i]n 1997, the family reunified.

Shortly after reunification, and while still on probation for physically abusing [A.B.], G.B. began sexually abusing his then two-year-old daughter. The child later told police . . . her father touched her vagina with his hand, performed cunnilingus on her and made her perform fellatio on him until he ejaculated in her mouth. The sexual abuse persisted until 2001, when the then six-year-old disclosed the abuse to her mother. Rather than report the abuse to law enforcement, G.B.'s wife asked him to stop. A few months later, G.B. signed himself into a hospital[,] claiming suicidal ideation[,] and admitted to touching his daughter in a sexually inappropriate manner.

G.B. was arrested and charged with ten counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1), five counts of second-degree sexual assault, N.J.S.A. 2C:14-2(b), and three counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a).

Documentation from the [New Jersey State Diagnostic and Treatment Center (ADTC) later] reveal[ed] that, during therapy sessions at the facility, G.B. admitted . . . he "intentionally broke the limbs of his baby" and recounted how he remembered "her screaming [on one occasion] before [the limb] actually snapped." He also revealed . . . he would intentionally compress his daughter's chest until she turned blue, and that he bit her fingertips and heels.

While at the ADTC, G.B. also [disclosed] that he began molesting his two younger half-sisters when he was

between eleven and thirteen-years-old and they were two and four years of age. During his testimony at his [initial] civil commitment hearing, G.B. admitted to rubbing his penis on their vaginas and performing cunnilingus on both. His testimony also revealed incestuous acts with his full sister.

[In] April . . . 2007, G.B.'s case manager at ADTC, Cari-Ann Feiner-Escoto, Psy.D., issued a termination report, in which she opined that G.B. presented "a much higher risk for sexual reoffense than suggested by the actuarials." She noted that "his sexual offending and sadistic assaults overlap[ped] in time and were perpetrated on the same victim" [; she also] remarked on his "seemingly uncontrolled momentary smile" when he discussed his "sadistic arousal" when harming his young daughter. Dr. Feiner-Escoto . . . recommended that G.B. be screened for involuntary civil commitment under the SVPA, "[g]iven his sadistic arousal, obsessive preoccupation with his victim and family, and likely danger he pose[d] to his daughter."

[Two doctors] jointly conducted a screening [in] June . . . 2007, and related their findings in a Psychiatric Termination Report. . . . In their conclusion, the examiners acknowledged the risk that G.B. posed to his daughter and recognized that he would likely continue to have issues with children generally. Nevertheless, they determined that he was not highly likely to sexually reoffend and, thus, did not meet the threshold for involuntary commitment.

G.B. was released from custody [in] October . . . 2007. At the time of his release, he was not referred to the Attorney General for possible commitment under the SVPA.

When the Burlington County Prosecutor's Office contacted Dr. Feiner-Escoto [regarding] Megan's Law tiering² for G.B., she disclosed G.B.'s troubling childhood behaviors, details of his physical and sexual abuse of his daughter, and his persistent attempts while at the ADTC to contact his family[,] despite an institution rule prohibiting contact with his victim. Dr. Feiner-Escoto also expressed concern over G.B.'s "skill at presenting as believably remorseful and sincere while continuing to make attempts to contact [his daughter]" and his "disingenuous presentation." The State hired [another doctor] to conduct a preliminary assessment of G.B. After reviewing the case records, [that doctor] determined . . . G.B. displayed psychopathic tendencies and should be referred for civil commitment.

On the State's motion, G.B. was taken into custody in July 2008 to submit to a psychiatric evaluation to determine if he met the criteria for commitment as a sexually violent predator.

[Id. at 2-6.]

In 2009, the trial court granted the State's petition to civilly commit G.B. under the SVPA. We affirmed that decision in 2012. Id. at 22.

In 2014, following an annual review hearing, the trial court ordered conditional discharge planning for G.B., against the recommendation of the treatment team and the STU. In preparation for his release, G.B. participated in

² G.B. was classified as a Tier Three (high-risk) sex offender pursuant to Megan's Law, N.J.S.A. 2C:7-1 to -11.

twelve furloughs without incident. But during the discharge process, the State learned that for approximately eighteen months, G.B. had been secretly involved in a long-distance relationship with a woman who had a two-year-old son and worked at a daycare center, and he had discussed the possibility of starting a family with this woman. G.B. admitted he purposely did not disclose the relationship because he thought others would negatively react to the news.

In October 2014, G.B.'s discharge planning was halted, and he was removed from the Therapeutic Community (TC) due to his secret keeping; non-communication with treatment staff; negative contracting; negative emotionality; lack of motivation; and poor relapse prevention skills. He returned to the TC in March 2015.

In August 2019, G.B. retained a magazine picture of children in bathing suits. He kept the picture in his locker over the weekend and only turned it over to staff the following Monday afternoon. G.B. admitted it was a "poor decision on [his] part to hold on to" the picture, but he became upset with members of his process group when they challenged him about keeping the picture. He insisted he did not retain the picture for the purpose of arousal.

Four months later, G.B. submitted to a Sexual History polygraph. The exam revealed his discomfort when he was asked if he withheld information about any deviant sexual behaviors.

On October 4 and 12, 2021, the trial court conducted an annual review hearing. During the hearing, the State presented the expert testimony of Dr. Michael Kunz, a psychiatrist, and Dr. Jamie R. Canataro, a psychologist. G.B. presented expert testimony from Dr. Christopher P. Lorah, a psychologist, and testimony from his friend, David Treadwell. Additionally, G.B. testified.

Dr. Kunz reported he diagnosed G.B. with pedophilic disorder with sadistic features, sexually attracted to females, [non-]exclusive; and other specified personality disorder with narcissistic and antisocial traits. Dr. Kunz opined that given the nature of G.B.'s various diagnoses, he had a "higher . . . risk for sexual recidivism."

In describing G.B.'s offensive behavior as a juvenile and an adult, Dr. Kunz stated G.B.'s history "indicate[d] a long-lasting and persistent . . . pedophilic arousal that . . . started early on and . . . [was] associated with an elevated risk of sexual . . . reoffense." The doctor found G.B. "display[ed] a longstanding pattern of maladaptive personality traits[,] such as grandiosity, superficial charm, lack of empathy, . . . callousness, [and] deceitfulness." And

while Dr. Kunz scored G.B. at "one" on the Static-99R actuarial tool, corresponding to the "average" risk group, he concluded G.B. was "at a . . . substantially higher risk than the Static-99R would demonstrate or detect."

Moreover, Dr. Kunz testified, "one gets struck by the . . . extreme physical abuse that [G.B.] subjected his daughter to, which indicates a degree of emotional callousness and detachment, the fact that he was able to continue . . . his abuse despite her screaming and clear experience of pain." Further, the doctor stated G.B.:

revealed in treatment that although at the time of his arrest in 1995, the focus and the formal charges were on physical abuse, [G.B.] did . . . sexual[ly] abuse . . . his infant daughter at that same time, specifically digital penetration of her vagina, also applying ointment on her genitals and anal region and getting sexually aroused by that behavior.

Dr. Kunz also expressed concern that the day after G.B. was released from the ADTC in 2007, he "went to the church where his wife and daughter attended," "even though he was prohibited from attending that church by his parole officer," which "could indicate . . . [he] intended to reconnect and potentially victimize the daughter again."

The doctor opined G.B. had not "had enough treatment," despite the length of time he was civilly committed, and aware G.B. had "taken almost every

module available to him." Dr. Kunz stated G.B. "still [did not] have a full understanding of . . . the nature of his deviant arousal," was "simply unable to explore some of [his] issues in enough depth, and . . . his personality traits [kept] him from acknowledging the connections between the sexual and the physical abuse that he perpetrated, and . . . was aroused to."

Further, the doctor testified G.B. was "not just a risk to his daughter, but also to children outside the family . . . that he may encounter if he [was] released." Dr. Kunz also opined G.B. "would have serious difficulty controlling his sexual offending behavior if released at this time," and "his risk to sexually reoffend in the foreseeable future if not recommitted to the STU for further treatment" was "high."

Dr. Canataro testified she was a member of the Treatment Plan Review Committee that conducted G.B.'s annual evaluation, and she had interviewed G.B. "for a number of years." Thus, she was familiar with "his offending history" and "his criminal background."

Dr. Canataro diagnosed G.B. with pedophilic disorder with sadistic features, sexually attracted to females, non-exclusive type; narcissistic personality disorder with antisocial and sadistic traits; and alcohol use disorder in remission. She concluded that because G.B. was diagnosed with a personality

disorder and pedophilic disorder, "the combination" "create[d] a high level of risk." Further, she opined that based on his diagnoses, "psychopathic personality traits," and "urges for sadistically violent behavior," G.B. was "able to . . . have his sexual needs met with nothing holding him back."

Dr. Canataro, like Dr. Kunz, concluded G.B. scored "a one" on the Static-99R actuarial tool. She explained that his "Static score increased one point" because G.B. was "more open about the sexual abuse" that he committed against A.B., "beginning in her infancy." She also stated, "because . . . those behaviors were sexually motivated, . . . that score of one [was] accurate."

Additionally, Dr. Canataro concurred with Dr. Kunz's opinion that G.B. had not "had enough treatment . . . to adequately be able to control the impulses he [had] from [his] disorders." She stated G.B. was "a highly dangerous individual" who "presente[d] with a mild manner and [could] often dupe professionals in[] his quest for . . . impression management."

Dr. Canataro testified G.B. performed "really well in treatment when . . . giving feedback to other people[,] but "when the feedback [was] . . . turned on him and he [did not] like the feedback[, he] . . . either [became] very frustrated and . . . argumentative, or . . . shut down." She pointed to feedback he received after the August 2019 incident when he kept a magazine picture of children in

bathing suits in his locker over a weekend and "didn't give it to staff until [the following] Monday afternoon." She stated G.B. "became very upset, very defensive in process group when they challenged him with playing with his deviance."

Dr. Canataro concluded G.B. demonstrated a "lack of treatment internalization" and his "risk to sexually reoffend if not recommitted to the STU for further treatment" was "high." Further, she opined G.B. "would have serious difficulty controlling his sexual offending behaviors if released at this time."

On the second day of the review hearing, Treadwell, G.B.'s friend, testified. Treadwell stated he was affiliated with America's Keswick, an entity providing counseling for men. He testified if G.B. was released from the STU to attend a residential program offered by America's Keswick, G.B. could stay at an all-male facility during the four-month program, be "dealt with from a spiritual perspective[,] " receive "personalized counseling," and engage in "work therapy." Treadwell added, "going to work is a big part of a man's recovery." He testified he was "not aware" if America's Keswick "offer[ed] any relapse prevention for sex offenders or arousal reconditioning-type therapy."

When Dr. Lorah testified, he confirmed he diagnosed G.B. with pedophilia disorder, sexually attracted to females, non-exclusive type (which predisposed

him toward sexual violence); other specified personality disorder with narcissistic and borderline traits; and an alcohol-use disorder. Dr. Lorah disagreed with the State's experts regarding G.B.'s score on the Static-99R actuarial tool and testified he "scored [G.B.] at zero."

Dr. Lorah agreed with the State's experts that the relationship G.B. cultivated in 2014 with a woman who worked at a daycare center and had a young son was "ill-advised." He also acknowledged that when G.B. "finally admitted to [the relationship] and started talking about it, . . . [G.B.] admitted he was planning on having more children with this woman and . . . it could be high risk for him because there was a [fifty-fifty] chance the child could be a girl."

When asked on cross-examination if it was problematic that G.B. reported using "chat lines with at least four women," Dr. Lorah stated, "I don't know what he's doing on the chat lines." "[G]oing on these chat lines is a bad idea. . . . I think that the potential for abuse is there." Moreover, he testified, "I don't think it a great idea for anyone at the STU." Although he acknowledged G.B. "made poor decisions in . . . initiating relationships," Dr. Lorah concluded G.B. "demonstrated an ability to not be in a relationship and still function at the STU, . . . and . . . abstain from sexual violence."

Additionally, Dr. Lorah testified it was "essential" that G.B. engage in "sex offender-specific treatment." He conceded that "to [his] knowledge," America's Keswick did not offer "sex-offender specific treatment," but he endorsed G.B.'s attendance at its residential program. Finally, Dr. Lorah opined G.B. was currently "less than highly likely to reoffend with a comprehensive discharge plan."

G.B. was the last witness to testify. He acknowledged he has a paraphilic disorder. He also stated his "deviant sexual arousal is" "to toddler females within [his] family[,] and [his] compulsion [is] to act on that desire and abuse . . . toddlers." G.B. admitted he sexually abused A.B. "at the same time [he was] physically abusing her when she was under a year old." Further, he conceded he resumed sexually abusing her "after the [family's] reunification[,] when she was between [two] and [three] years of age," and that he continued to sexually assault A.B. until she was seven years old. G.B. also testified that after A.B. told her mother he was sexually abusing her, he "lied straight to [his ex-wife's] face," telling her he "never touched [A.B.]" Additionally, he admitted he "lied to manipulate [his] way out of . . . getting in trouble."

G.B. denied that his violent behavior toward A.B. during her infancy "inspire[d] sexual arousal." He also denied trying to contact her or his ex-wife

when he was released from the ADTC and went to the same church his ex-wife had previously attended.

On December 31, 2021, the judge issued a lengthy oral opinion, finding G.B. should "continu[e] to be involuntarily committed as a sexually violent predator." The judge explained that in reaching this conclusion he "relied upon both documentary and testimonial proofs adduced" at the hearing. Further, the judge stated that, to the extent the testifying experts relied on information in documents to assess G.B.'s risk of reoffending and those documents contained hearsay, he found "the experts considered said information in a manner which is similarly utilized by other experts within their respective fields."

Additionally, the judge stated:

unless I particularly indicate I am relying upon some document or piece of information within a document because it comes in under an exception to the hearsay rule[,] . . . [N.J.R.E.] 803, [including] admissions by a party, I am doing so either to support or reject the opinions of any expert that I may find credible or not credible and to explain in part why I may find said expert credible or not credible. I am not relying on the hearsay as fact to support my opinions.

Next, the judge outlined the bases for finding the State met its burden in establishing the need for G.B.'s continued civil commitment, citing the SVPA and our Supreme Court's holding in In re Commitment of W.Z., 173 N.J. 109

(2002). He observed:

there are three prongs that must be proven by the clear and convincing evidence standard by the . . . State. First, that the resident [was] convicted of one or more sexually violent offenses as defined under the SVPA. Second, that the resident continues to presently suffer from a mental abnormality and/or personality disorder which affects their emotional, cognitive and/or volitional functions and capacities such that, [third], they are highly likely in the foreseeable future to sexually reoffend if not continued to be committed to the custody, care, and receiving further treatment at the [STU].

Ultimately, it is the decision of this court that all three prongs have been satisfied by the . . . State by the required clear and convincing evidence standard.

The judge also placed his credibility findings for each witness on the record. He found Dr. Kunz was a "highly credible witness," and accepted his expert opinion "that [G.B.] is presently highly likely to sexually reoffend." Similarly, the judge credited Dr. Canataro's testimony as "very forthright," and agreed with her opinion that G.B. "is presently highly likely to sexually reoffend, and is so predisposed[,] given his various mental health disorders, [that] he's not highly likely to comply with conditions of release in the community."

Additionally, the judge found Treadwell was "a very credible witness" when he described the residential program at America's Keswick, but there were

"limitations with regard to [Treadwell's] knowledge" of the program and "limitations within the program [in terms of] sex offender specific treatment." The judge concluded, "the program doesn't have any traditional qualified sex offender treatment counselors."

Turning to the testimony of G.B.'s expert, the judge stated, "Dr. Lorah's findings, conclusions and recommendations [were] not credible" and he "seem[ed] to be trying to put together a patchwork defense . . . to cobble together some theory of treatment which . . . [was] not well grounded in [G.B.'s] offending history and/or the reality of his treatment." Moreover, the judge found "Dr. Lorah ha[d] not really invested adequate time or thought . . . to [G.B.'s] potential discharge to [America's] Keswick[,] . . . especially when it comes to the sex offender component . . . to his treatment that would be absolutely necessary in the event of discharge."

Finally, in assessing G.B.'s testimony, the judge stated, "[o]verall, [he] did not find [G.B.] to be a credible witness." The judge explained, "[t]here [were] so many holes in his testimony and inconsistencies with regard to his version of events over the years." Additionally, the judge concluded G.B. engaged in "problematic behaviors," including "tempt[ing] fate by going to [his ex-wife's] church" after he was released from the ADTC, despite "the potential for his ex-

wife and daughter to be there." The judge found G.B. provided "an odd, . . . not credible explanation for . . . going there" and it "seem[ed] . . . his narcissistic traits just took over and he was going to do what he wanted to do."

Other "problematic behaviors" cited by the judge included: G.B. keeping an eighteen-month relationship with a woman secret until 2014, when it was inadvertently discovered; G.B.'s participation in "chat lines" with various women "against the advice of his own expert"; and "his express desire . . . fairly recently . . . to conceiv[e] a child in a new relationship, [despite] the potential for that child being a girl . . . that he would abuse sexually." Further, the judge noted that in 2019, G.B. "had to take a floor and talk about his poor judgment and the high-risk nature of" keeping a "photograph of children in bathing suits" in his locker before turning it over to staff days later.

The judge found G.B. "seem[ed] to be less focused on treatment gains now to get himself to the point of having a conditional discharge plan ordered." Additionally, the judge determined G.B. was:

excellent at impression management. But he hasn't drilled down deep enough into his deviant arousal, and the . . . understanding of the physical and sexual abuse of his daughter[,] and also his sisters[,] in a way that meaningfully translates to gains with regard to his overall treatment. He still has a way[] to go before it's going to be appropriate to make a less than highly likely finding and order a conditional discharge plan.

Before concluding his findings, the judge made a passing reference to the fact that, when he made his decision, he "applied the balancing test . . . set forth" in the Court's decision in W.Z. However, he then briefly quoted from a passage in our underlying decision in In re Commitment of W.Z., 339 N.J. Super. 549, 580 (App. Div. 2001),³ stating:

In order to determine if a person is 'likely to engage in acts of sexual violence' a court must find, by clear and convincing evidence, that the person has a propensity, inclination or tendency[] to commit acts of sexual violence and must establish, by clear and convincing evidence, the degree of such a propensity. The court must then weigh the person's degree of propensity against the nature or seriousness of the acts he tends to commit in order to determine the extent he poses a threat to others.

[Ibid.]

Notably, after finding G.B.'s offenses were "at the highest level of horrific," the judge also concluded, consistent with the standards enunciated by the Court in W.Z., that G.B.:

suffers from a mental abnormality or personality disorder that affects him emotionally, cognitively or volitionally to such a degree that he is predisposed to commit acts of sexual violence. If released[,] he would have serious difficulty controlling his sexually violent behavior to such a degree that he would be highly likely

³ The Court affirmed, as modified, our decision in W.Z., 173 N.J. at 133.

within the reasonably foreseeable future to engage in acts of sexual violence. (emphasis added).

. . . .

[T]here's no rational basis or means upon which this court at this juncture could fashion a discharge plan for [G.B.] under the facts of this case that would permit a conditional discharge.

On January 3, 2022, the judge entered a conforming judgment, continuing G.B.'s involuntary commitment.

II.

On appeal, defendant raises the following arguments:

POINT I

THE TRIAL COURT'S APPLICATION OF A BALANCING TEST THAT WAS SUPERSEDED BY THE NEW JERSEY SUPREME COURT COMPROMISED DUE PROCESS AND WAS HIGHLY PREJUDICIAL TO G.B. REQUIRING REVER[S]AL AND REMAND.

POINT II

THE EVIDENCE PRODUCED BY THE STATE WAS INSUFFICIENT TO DEMONSTRATE THAT G.B. POSES A THREAT TO THE HEA[L]TH AND SAFETY OF OTHERS AT THE LEVEL CONSTITUTIONALLY REQUIRED TO WARRANT CONTINUED DEPRIVATION OF LIBERTY.

POINT III

THE EVIDENCE PRODUCED BY THE STATE WAS HEARSAY, STALE, AND OTHERWISE INSUFFICIENT TO SUPPORT A LEGAL CONCLUSION THAT G.B. IS "HIGHLY LIKELY" TO REOFFEND AND CONTINUED CONFINEMENT IS WARRANTED UNDER THE SVPA.

- A. THE 2007 CHURCH VISIT.
- B. THE 2014 RELATIONSHIP.
- C. THE 2019 CHAT CONVERSATIONS.

None of these arguments are persuasive.

The applicable law and our scope of review is well settled. Involuntary civil commitment under the SVPA may occur after a sex offender's completion of a custodial sentence when the offender "suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment." N.J.S.A. 30:4-27.26. The SVPA defines "mental abnormality" as "a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence." Ibid. The mental abnormality or personality disorder "must affect an individual's ability to control [their] sexually harmful conduct." W.Z., 173 N.J. at 127. A

showing of an impaired ability to control sexually dangerous behavior will suffice to prove a mental abnormality. Id. at 129; see also In re Commitment of R.F., 217 N.J. 152, 173 (2014).

At an SVPA commitment hearing, the State has the burden of proving the offender poses a threat:

to the health and safety of others because of the likelihood of [their] engaging in sexually violent acts. . . . [T]he State must prove that threat by demonstrating that the individual has serious difficulty in controlling sexually harmful behavior such that it is highly likely that [they] will not control [their] sexually violent behavior and will reoffend.

[W.Z., 173 N.J. at 132.]

At each review hearing, the trial court must address the committee's "present serious difficulty with control over dangerous sexual behavior." Id. at 132-33. During the hearing, the State must establish by clear and convincing evidence that commitment or continued commitment is warranted because it is highly likely the individual will sexually reoffend within the reasonably foreseeable future. See id. at 133-34; see also R.F., 217 N.J. at 173.

"[C]ommitting judges under the SVPA are specialists in the area," whose "expertise in the subject [is entitled to] special deference." In re Civ. Commitment of R.Z.B., 392 N.J. Super. 22, 36 (App. Div. 2007) (quoting In re

Civ. Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). Accordingly, our review of a commitment decision under the SVPA is "exceedingly narrow." In re Civ. Commitment of W.X.C., 407 N.J. Super. 619, 630 (App. Div. 2009) (citations omitted). A commitment determination will be subject to modification on appeal "only where the record reveals a clear abuse of discretion." Ibid. We also review the evidentiary rulings of the trial judge for an abuse of discretion. Id. at 640.

In an annual review hearing under the SVPA, a judge is not precluded from considering prior evaluations when making a commitment decision. Id. at 639-40 (quoting In re Civ. Commitment of A.E.F., 377 N.J. Super. 473, 492 (App. Div. 2005)). Moreover, in deciding whether the State has met its burden in showing the need for an individual's ongoing civil commitment under the SVPA, a judge may rely upon "the testimony of experts[,] and the risk assessment instruments on which they rely," as they constitute "pivotal proofs on the question [of] whether [an] individual is highly likely to offend again." Matter of P.D., 243 N.J. 553, 568 (2020). Prior expert opinion testimony from the initial commitment hearing also is admissible "[a]s long as the opinion ultimately rendered at the initial commitment hearing is that of the witness based on [their] own evaluation of the committee, prior offenses, and objective test

data. . . ." W.X.C., 407 N.J. Super. at 640 (citing A.E.F., 377 N.J. Super. at 492). But "[t]he ultimate determination [regarding commitment] is 'a legal one, not a medical one, even though it is guided by medical expert testimony.'" R.F., 217 N.J. at 174 (quoting In re D.C., 146 N.J. 31, 59 (1996)).

"While out-of-court statements used to prove the truth of the matter asserted are inadmissible hearsay, . . . an expert who substantially relies on hearsay evidence for [their] opinion may testify at trial as long as the hearsay information was of a 'type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.'" W.X.C., 407 N.J. Super. at 640-41 (quoting N.J.R.E. 703); see also N.J.R.E. 803(c)(6); In re Commitment of A.X.D., 370 N.J. Super. 198, 202 (App. Div. 2004) ("Reports of the STU treatment teams [are] business records, admissible under N.J.R.E. 803(c)(6), which could be considered for their truth insofar as they factually reported [the offender's] statements or refusals to discuss certain issues").

Governed by these standards, we discern no abuse of discretion by the judge. In fact, his conclusion that the testimony of the State's experts clearly and convincingly demonstrated G.B. continues to have mental abnormalities that increase the likelihood that he will sexually reoffend if released from the STU is well supported by the record. Although Dr. Lorah opined G.B. was not highly

likely to sexually reoffend, the judge was "not required to accept all or any part of" this expert's opinion. R.F., 217 N.J. at 174 (quoting D.C., 146 N.J. at 61). In short, the judge had a reasonable basis to credit the testimony of the State's experts over the more positive opinions expressed by Dr. Lorah; thus, his findings command our deference.

We also reject G.B.'s argument that the judge's errant reference to our opinion in W.Z. requires reversal. As the Court in W.Z. observed, we previously viewed the likelihood determination of an individual reoffending "as if comparable to a preponderance, or fifty-one percent chance of probability." W.Z., 173 N.J. at 131 (citing W.Z., 339 N.J. Super. at 578-80). However, after the United States Supreme Court decided Kansas v. Crane, 534 U.S. 407, 413 (2002),⁴ our Court made clear a precise standard for the degree of "lack of control" need not be proven, and instead, "the State must prove by clear and convincing evidence . . . it is highly likely that the person will not control [their] sexually violent behavior and will reoffend." W.Z., 173 N.J. at 133-34. Thus, the Court affirmed, as modified, our underlying decision. Id. at 133.

⁴ Crane was decided while W.Z.'s appeal was pending before our Supreme Court and "held that a state may not civilly commit a sex offender without making a determination about the person's 'lack of control' over [their] sexually violent behavior." W.Z., 173 N.J. at 131 (quoting Crane, 534 U.S. at 411).

Against this backdrop, we are persuaded that here, the judge understood, and ultimately followed, the Court's holding in W.Z. In fact, he expressly referred to the framework announced by the Court in W.Z. and found the State proved by clear and convincing evidence G.B. "suffers from a mental abnormality or personality disorder . . . to such a degree that he is predisposed to commit acts of sexual violence." Further, the judge found "[i]f released, [G.B.] would have serious difficulty controlling his sexually violent behavior . . . [and] would be highly likely within the reasonably foreseeable future to engage in acts of sexual violence." In making these findings, he credited the testimony of the State's experts that G.B. was "presently highly likely to sexually reoffend," (emphasis added), had had "insufficient treatment," and was "not highly likely to comply with conditions of release in the community."

In sum, because we have no principled reason for second-guessing the judge's factual or credibility findings, which are well supported on the record, and his order of continued commitment is legally sound, we decline to disturb the challenged order. G.B.'s remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION