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COURT OF APPEALS
DIVISION II

10 APR 13 PM 12:33

STATE OF WASHINGTON

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NO. 39480-4

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Detention of:

KEVIN TROY DOLICKER,

Appellant,

v.

THE STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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ORIGINAL

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I. ISSUES PRESENTED

- A. Whether there is sufficient evidence in support of Finding of Fact No. 22 entered by the trial court?
- B. Whether there is sufficient evidence that Dollicker is likely to engage in predatory acts of sexual violence if not confined in a secure facility?

II. STATEMENT OF THE CASE

A. Procedural History

On May 7, 2007, the State filed a sexually violent predator (SVP) petition seeking the involuntary civil commitment of Kevin Dollicker pursuant to RCW 71.09. CP 193-94. When the petition was filed, Dollicker was incarcerated in prison and serving his 175 month sentence for child molestation in the first degree. CP 96-97, 101; Supp. CP 197; Ex. 11. On May 10, 2007, the trial court found probable cause to believe Dollicker is an SVP and ordered that he be transported to the Special Commitment Center (SCC) on McNeil Island. CP 85-86. Dollicker was transported to the SCC in May 2007. Ex. 15 at 44.¹ On May 26, 2009, Dollicker's civil commitment trial commenced. Dollicker waived his right to a jury trial. CP 62. On June 1, 2009, the trial court found beyond a

¹ For the Court's convenience, the State will use the Verbatim Report of Proceedings citation system used by Appellant as outlined in Brief of Appellant at page 2, footnote 1. Ex. 15 is the edited transcript of Dollicker's January 23, 2009 video deposition taken by the State. The edited video deposition was admitted at trial as Exhibit 16. RP 5/26/09, 42-43. The transcript was admitted as part of the record for appeal. RP 5/26/09, 42-44.

reasonable doubt that Dollicker is an SVP and entered an order committing him to the care and custody of the Department of Social and Health Services for control, care, and treatment. CP 3; Supp. CP 203-212. The court subsequently entered written Findings of Fact and Conclusions of Law. Supp. CP 196-201.

B. Sexually Violent Predator Trial

1. Prior Sex Offenses

Dollicker has an extensive history of molesting young boys and girls.² In 1988, Dollicker was convicted of two counts of incest in the first degree. Ex. 1; RP 5/26/09, 78. These convictions involved oral copulation with his two younger half-brothers. RP 5/26/09, 78-79; Ex. 15 at 16. The court ordered that Dollicker attend therapy, which Dollicker did for approximately one year. Ex. 15 at 16-17. Dollicker did not tell his therapist or his parents that he continued to babysit children during this time.³ Ex. 15 at 18-19. Dollicker molested some of the children he came into contact with. Ex. 15 at 19. Dollicker groomed and

² Dollicker's extensive history of molesting children is described in detail in Dollicker's own words in numerous exhibits admitted at trial. Ex. 30; Ex. 31; Ex. 33; Ex. 36; Ex. 38.

³ Dollicker was not only babysitting children but also working with children in day care classes at his church. Dollicker "was one of the people who watched the kids while their parents were in the other room." Ex. 15 at 18.

molested the children who he believed would not report the abuse. Ex. 15 at 19-20. Dollicker described his victim selection:

I mostly liked blonde [hair], blue [eyes], kind of a loner.... I was looking for the misfits...the outcasts.... It was mostly girls. But if I could not have a female, I went to male children.... [T]he ones looking for affection, looking for attention. It was easier to manipulate.

Ex. 15 at 20. Dollicker reported that most of his victims were between the ages of six and nine, although he has molested a boy as young as two years old and a girl as young as eighteen months. Ex. 15 at 21; Ex. 33 at 3.

While Dollicker was in court ordered therapy, he continued to molest his youngest half-brother, R.J. Ex. 15 at 22; RP 5/26/09, 79. In 1990, Dollicker was convicted of indecent liberties for this molestation. RP 5/26/09, 79; Ex. 3; Ex. 4. This incident occurred over a 4 or 5 month period and involved oral copulation and Dollicker rubbing his penis on RJ's buttocks. RP 5/26/09, 80-81. Dollicker was sent to a juvenile institution and ordered to do sex offender treatment. Ex. 15 at 23-24.

In March 1992, Dollicker was charged with a sexual offense stemming from a 1986-87 incident involving an 11-year-old girl. Ex. 5; RP 5/26/09, 81. Dollicker pled guilty to indecent liberties and was placed on one year of community supervision. Ex. 6, 7, 8; RP 5/26/09, 81; Ex. 15 at 27-28. One of the conditions of his release was to stay away from

children. Ex. 7, 8; Ex. 15 at 29. Dollicker was released into the community in May 1992 and moved into an apartment. Ex. 15 at 26-27.

Despite knowing that he should not be around children, Dollicker worked as a babysitter during the summer of 1992. RP 5/28/09, 135-36. Dollicker hid this from his community corrections officer (CCO) because he did not want the CCO to know he might have a victim. Ex. 15 at 30-31; RP 5/28/09, 136-37. During this time, Dollicker was grooming a young girl in order to molest her.⁴ Ex. 15 at 31. However, the family moved away before Dollicker was able to molest either of their children. Ex. 15 at 32. This upset Dollicker, who then began actively searching for a new victim:

I was going to places where I knew that – where children were at, the park, the school playground, looking for a victim. I was looking for – that was like on a Friday. I was looking all that day, couldn't find one, and I was -- and I got back to the apartment. I overheard another lady talking with our landlord, saying that she needed a baby-sitter for the following Monday. And I seen her around, so I knew who she was. And my landlord saw me, said, "Oh, he's good with children." And I ended up talking with the mom that Friday. And I talked with her a couple times over the weekend. And then I abused her son the first time on that Monday.

Ex. 15 at 33.

⁴ Dollicker described grooming as getting children to allow physical touches, such as tickling on top of their clothes, in order to be able to eventually molest them. Ex. 15 at 31.

This molestation occurred approximately three months after Dollicker was released into the community. *See* Ex. 15 at 26, 32-33. Dollicker made the two-year-old boy, Adam, perform oral sex on him, and Dollicker orally and anally raped him. Ex. 9; Ex. 15 at 33-34; RP 5/26/09, 83-84. Dollicker removed the boy's diaper, held him down on the ground, and rubbed his penis between the boy's butt cheeks until Dollicker ejaculated. RP 5/29/09, 31. Dollicker selected Adam as a victim because he believed Adam was too young to report the incident. *Id.* However, Adam reported the molestation.⁵ RP 5/26/09, 32.

Immediately after molesting Adam, Dollicker molested a three-year-old boy with Down Syndrome. Ex. 15 at 34-37. In October 1992, Dollicker was arrested and charged with two counts of child molestation in the first degree for the molestation of these two boys. Ex. 9; RP 5/28/09, 136. In February 1993, Dollicker pled guilty to child molestation in the first degree for the offense involving Adam.⁶ Ex. 10; RP 5/26/09, 82-83. The court sentenced Dollicker to 175 months in

⁵ Records indicated that when Adam reported the molestation to his mother, he ran to his room crying and saying, "I'm bad, I'm bad," and that Dollicker had told Adam that Adam's mother would be mad at Adam if he told and Adam wouldn't be able to live with his mom anymore. RP 5/29/09, 32.

⁶ Child molestation in the first degree is a sexually violent offense within the meaning of RCW 71.09.020(17).

prison. Ex. 11. Dollicker was also required to have 24 months of supervision. Ex. 13.

Dollicker has admitted to sexually molesting 53 children and to having approximately one thousand sexual contacts with children over the years. RP 5/26/09, 85-86; Ex. 33; Ex. 15 at 68. His victims have been both males and females between the ages of 2 to 11 years old. RP 5/26/09, 87. Some of his victims have been strangers. RP 5/26/09, 87.

2. Testimony from Dr. Lessell Hutchins / SCC Treatment

Dr. Lessell Hutchins, a psychologist who treats sex offenders at the SCC, testified at trial. RP 5/26/09, 10-12. At the time of the unconditional release trial, Dollicker had been on his caseload for approximately eleven months. RP 5/26/09, 12. Dollicker started the sex offender treatment program in November 2007. Ex. 15 at 44. At the time of trial, Dollicker was in phase two of the SCC's five-phase treatment program. RP 5/26/09, 15; Ex. 15 at 45-46.

Dr. Hutchins testified that the last time Dollicker reported masturbating to a deviant fantasy was in January 2009. RP 5/26/09, 24. Prior to that, when asked about his level of arousal and amount of masturbation, Dollicker would say, "I'm not talking about that." RP 5/26/09, 24-25, 29.

Dr. Hutchins testified that he spoke with Dollicker on multiple occasions about writing an appropriate script for fantasy/masturbation purposes.⁷ RP 5/26/09, 25-26. At the time of trial, Dollicker still had not done this. *See* RP 5/26/09, 26. Dollicker told Dr. Hutchins that it was difficult for him to write such a script without a more extensive history of intimacy.⁸ RP 5/26/09, 27. Dr. Hutchins testified that Dollicker engages in body parting, which is a concern in treatment because he essentially removes the human elements such as facial characteristics or the rest of the body, for purposes of masturbation.⁹ RP 5/26/09, 27-28. This is a negative action that Dollicker needs to work on in treatment. RP 5/26/09, 28. In September 2008, Dollicker reported that he was body parting quite often. RP 5/26/09, 28-29. During this same time, Dollicker also reported that he is sometimes aroused thinking about his victims. RP 5/26/09, 28.

⁷ An "appropriate script" for Dollicker would involve a meeting script, a date script, and an intimate script with a consenting male or female for Dollicker to attempt to fantasize about in order to increase his level of healthy arousal. These scripts would allow them to do sexual arousal management work so Dollicker could learn to walk away from having a deviant fantasy, and at a later time when he is no longer aroused by the deviant fantasy, "he can actually attempt to reach arousal to a more appropriate fantasy." RP 5/26/09, 25-26.

⁸ Dollicker has never had a sexual relationship or sexual contact with an adult male or female. Ex. 15 at 15-16. All of his sexual contacts have been exclusively with children.

⁹ Body parting is when an individual essentially focuses on one or more body parts, usually primary or secondary sex characteristics, for purposes of fantasy and masturbation. RP 5/26/09, 27.

Dollicker also engaged in switching fantasies, where he would masturbate to thoughts of children and then switch over to an adult fantasy.¹⁰ RP 5/26/09, 29. Dr. Hutchins testified that he talked to Dollicker on at least two occasions about this not being a healthy approach due to the possibility that the adult fantasy will be contaminated with residual thoughts of the deviant fantasy. RP 5/26/09, 29-31. One of these conversations took place as recently as November 2008. RP 5/26/09, 30-31.

Dr. Hutchins testified that the primary concern at the senior clinical team meeting in January 2009 was that Dollicker was not keeping a fantasy and masturbation log. RP 5/26/09, 21-22, 31-32. The concern is the lack of transparency over not complying with this treatment component. RP 5/26/09, 18-21, 32. During this senior clinical team meeting, Dollicker reported that he was not having any appropriate fantasies. RP 5/26/09, 33; RP 5/29/09, 44. He also reported that he wants an environment that will slowly let him out. RP 5/26/09, 34; RP 5/29/09, 44.

In January 2009, Dollicker also reported that he was not having adult sexual fantasies and was interested in intervening to stop his

¹⁰ Switching involves engaging in a deviant fantasy up to the point of masturbation and then attempting to replace the fantasy with a healthy adult fantasy. RP 5/26/09, 30.

fantasies to children. RP 5/29/09, 44-45. He reported masturbating two to three times per week. RP 5/29/09, 45. On March 30, 2009, Dollicker reported having unwanted intrusive thoughts of children approximately every other week. RP 5/26/09, 37; RP 5/29/09, 45.

Dr. Hutchins testified that Dollicker could use more social skills training in order to develop healthier adult relationships. RP 5/26/09, 35-36. Dollicker has reported interest in activities not necessarily shared by the majority of adults. RP 5/26/09, 35. The concern is that in individuals who are attracted to children, one of the risks is being released into the community and engaging in activities that younger or vulnerable children engage in. RP 5/26/09, 35-36.

Evidence at trial revealed Dollicker's continuing sexual attraction to children. In February 2008, Dollicker reported continuing sexual fantasies and urges to minor children. RP 5/29/09, 40. In June 2008, Dollicker reported that within the past year he has had to masturbate to thoughts of children in order to get an erection. Ex. 33 at 4. He estimated that he ejaculates to thoughts of children about 70 percent of the time. *Id.*; Ex. 15 at 53-54. In September 2008, Dollicker reported that he was sometimes aroused by thoughts of his victims. RP 5/29/09, 41. At trial, Dollicker testified about a sexual urge he had toward a young girl during

an off island dentist appointment in May 2008. RP 5/28/09, 132-33; *see also* RP 5/26/09, 74, RP 5/28/09, 105. Dollicker stated:

I looked up, straight across, there was a child sitting with their legs up on the seat, using her legs as a – like some kind of board while she was coloring. Straight way, I saw up her skirt. The underwear was tight enough where I saw the outline.... The first thing that crossed my mind, I thought of, oh, she's very nice. I thought about what – area I saw was the crouch.¹¹ [sic] I thought, nice crouch. [sic] I could see everything because how it was bunched up.... I started getting aroused.

RP 5/28/09, 132-33. When asked if the arousal was physical or emotional, Dollicker explained, "Mental. That's why I started saying, wow, this is nice looking. Then it started getting into physical." RP 5/28/09, 133. At trial, Dollicker testified that he currently experiences deviant thoughts approximately two to three times per week. RP 5/28/09, 135.

3. Testimony from Dr. Sreenivasan

a. Qualifications and Expert Report

At trial, the State offered the expert testimony of clinical psychologist, Dr. Shoba Sreenivasan, Ph.D. Dr. Sreenivasan is a licensed

¹¹ This is a spelling error in the transcript, "crouch" should read "crotch." Dollicker testified at trial that he could see her "crotch" and that he thought "nice crotch." Supp. CP __ (See Affidavit from Court Reporter, attached as Appendix A). Dr. Wollert, Dollicker's expert, also testified about Dollicker seeing up this young girl's skirt and getting an erection. RP 5/28/09, 105-10.

psychologist who specializes in sex offender assessments.¹² RP 5/26/09, 48-50. She has extensive experience in the evaluation, diagnosis, and risk assessment of sex offenders. RP 5/26/09, 49-53; Ex. 29. Dr. Sreenivasan started evaluating sex offenders in 1986. RP 5/26/09, 50. She has conducted SVP evaluations since 1996. RP 5/26/09, 50-51. Since that time, she has evaluated approximately 600 individuals to determine if they meet the statutory criteria as an SVP. *Id.*

The State retained Dr. Sreenivasan to determine whether Dollicker met the statutory criteria as an SVP. RP 5/26/09, 55-56. As part of her evaluation of Dollicker, Dr. Sreenivasan reviewed extensive records involving Dollicker, including criminal history records, treatment records, prison records, and police reports. RP 5/26/09, 57-58. She testified that the records she reviewed were the type that mental health professionals in the field commonly rely on in evaluating sex offenders. RP 5/26/09, 59. She also interviewed Dollicker. *Id.* After her interview and review of the records, she wrote an 86-page report in September 2005 outlining Dollicker's history and her opinions in the case. RP 5/26/09, 56-57. Subsequent to writing her report, Dr. Sreenivasan continued to review

¹² Dr. Sreenivasan is licensed in California and has a reciprocal license in Washington via a temporary permit issued yearly based on her California license. RP 5/26/09, 48-49.

additional records involving Dollicker, including SCC records and depositions. RP 5/26/09, 58-59.

b. Pedophilia and personality disorder

Dr. Sreenivasan testified that in her professional opinion, Dollicker currently suffers from a paraphilia known as Pedophilia.¹³ RP 5/26/09, 65, 69, 90-91. She noted that while in the sex offender treatment program at Monroe Correctional Center, Dollicker was sexually aroused seeing children on television or in advertisements and that children were objects of his masturbatory fantasies. RP 5/26/09, 74. She testified that this has been ongoing for Dollicker for a lengthy period of time and that he articulated similar interests since his confinement at the SCC. *Id.* Dollicker has reported periods of time of a nearly daily sexual obsession with children and masturbating to thoughts of children. *See* RP 5/26/09, 88. At the time of Dr. Sreenivasan's interview with Dollicker, he reported that he still had sexual urges and interest in children and that he was continuing to masturbate to his sexual fantasies about children. RP 5/26/09, 76-77, 101-02.

Dr. Sreenivasan testified about the chronic, lifelong, and intense nature of Dollicker's pedophilia:

¹³ Pedophilia is recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with prepubescent children. RP 5/26/09, 71.

[T]he historical facts are such that they show him to be a rather unusually fixated man who -- who's fixated on sexual behaviors with children; has enormous amounts of fantasies about children; has intrusive deviant sexual thoughts about children; these have been repetitive and ongoing and have occurred for a period of many years.

RP 5/26/09, 91-92. She testified that pedophilia is a chronic condition that tends to wax and wane and can reemerge simply because of opportunities.

RP 5/26/09, 91.

Dr. Sreenivasan testified that what characterizes and defines Dollicker has been the intensity and persistence of his sexual interest with children:

[H]e's just been, in essence, obsessed by sex with children, fantasies with children and has led to compulsive behavior related to children, the community, the last instance, getting very obsessed of a child or girl he was grooming he could sexual molest and turning his eyes to the little boy, victim A,¹⁴ and then really focusing on molesting him. And also, in his writings, he talks about how he's searching, searching, searching for a child to molest. So those are the behaviors in the community. But since then, he's articulated numerous fantasies involving sex with children, masturbating to them. And so I think Mr. Dollicker is one of those individuals who has just been so fixated on sex with kids that it's become an obsession and a compulsion.

RP 5/26/09, 94. She testified that the level of Dollicker's fixation and obsession with children makes his pedophilia more difficult to treat

¹⁴ Victim A is Adam, the victim of the child molestation conviction. RP 5/26/09, 114.

because it has been such a big part of his fantasy life and his physical life that he has to relearn how to socially interact with adult sexual partners.

Id. She also noted that Dollicker has never had an adult sexual partner.

Id. Dollicker reported in December 2008 that he was aware of social skills deficits that make it hard for him to relate to adults. RP 5/29/09, 41-43.

Dr. Sreenivasan also testified that Dollicker suffers from Personality Disorder Not Otherwise Specified (NOS) with avoidant and schizoid traits. RP 5/26/09, 66. She testified that both his pedophilia and personality disorder are mental abnormalities. RP 5/26/09, 65-66. She testified that personality disorders are a running thread throughout a person's lifetime and can really impact a person's ability to form relationships with other people. RP 5/26/09, 67-68.

SCC records indicated that Dollicker had recently been isolative and withdrawn. RP 5/26/09, 108. Dollicker's personality characteristics cause interpersonal difficulties for him and appear to be a drive for why children, as opposed to adults, are a comfort zone for him. RP 5/26/09, 109. Dr. Sreenivasan testified that Dollicker's personality disorder increases his risk because his inability to interact effectively with adults, combined with his pedophilia, leads to his finding comfort in children. RP 5/26/09, 109-10. She testified that his pedophilia and personality disorder affect his emotional and volitional capacity in that

Dollicker's sexual interest in children is obsessive and compulsive until he succumbs to his sexually deviant impulses. RP 5/26/09, 110-12. She also testified that these mental disorders cause him significant difficulty controlling his behavior. RP 5/26/09, 111.

c. Penile Plethysmograph Testing

Dr. Sreenivasan testified about the penile plethysmograph (PPG) assessments that Dollicker participated in over the years.¹⁵ RP 5/26/09, 96-99. The results from a PPG administered on April 6, 2004, indicated that Dollicker exhibited sexual attraction to children. RP 5/26/09, 97-98; Ex. 32. Dollicker also admitted that of the 100 sexual fantasies he had immediately prior to his molestation conviction, approximately 80 percent involved minor females and the remaining 20 percent involved minor males. RP 5/26/09, 98; Ex. 32. Dollicker admitted that of his last 100 sexual fantasies, all involved mutual fondling, mutual oral sex, and vaginal intercourse with minor females. Ex. 32 at 3. The results from a PPG administered on July 14, 2008, continued to show that Dollicker is sexually attraction to children.¹⁶

¹⁵ A PPG test is where a small ring is placed at the base of the penis and the person is shown audio and visual stimuli in order to measure the person's level of arousal. RP 5/26/09, 20. If the PPG results indicate an arousal to children, it could be an indicator that the person still suffers from pedophilia. RP 5/26/09, 96.

¹⁶ The raw data from this PPG indicates that Dollicker's two highest recorded sexual arousals, both at 100 percent, were to the audio scenarios depicting consensual sexual activity with a minor female and a minor male. His third highest recorded sexual

RP 5/26/09, 97-99; Ex. 34. Dollicker admitted that his primary current fantasies are 95 percent to girls between the ages of 5 and 8, with the remaining 5 percent of fantasies to boys between the ages of 3 and 9. Ex. 34 at 1. The results from a PPG administered on November 11, 2008, show Dollicker's continuing sexual attraction to children.¹⁷ RP 5/26/09, 97-99; Ex. 35.

d. Actuarial Risk Assessment

Dr. Sreenivasan testified that in her opinion, to a reasonable degree of psychological certainty, Dollicker is likely to commit predatory acts of sexual violence if not confined in a secure facility. RP 5/26/09, 112. She based this opinion on a variety of factors. Actuarial risk assessment is not the only method of assessing risk in SVP cases. Dr. Sreenivasan testified about numerous factors outside of the actuarial instruments that she used to assess Dollicker's likelihood to reoffend. RP 5/26/09, 115-18; RP 5/27/09, 23, 30-39.

Dr. Sreenivasan explained the process she uses to assess a person's likelihood to reoffend, which involves not only an actuarial approach but

arousal, at 95 percent, was to the audio scenario depicting coercive sexual activity with a male child. Dollicker also showed significant sexual arousal to rape of male children. Ex. 34.

¹⁷ The raw data from this PPG indicates that Dollicker's highest recorded arousal, at 100 percent, was to compliant sex with a minor male. His next highest arousal was to nonphysical coercion of a minor female, at 89%. RP 5/26/09, 99; Ex. 35.

also comprehensively evaluating the individual person overall. RP 5/26/09, 115-16. She reviews aggravating factors that place the person at risk, as well as protective factors that may reduce the person's risk. RP 5/26/09, 115. She testified that actuarial instruments represent only one snapshot of who the person is overall, but that there is more to risk assessment than that. RP 5/26/09, 115-16. For example, the record included a great deal of evidence that Dollicker groomed his victims. *See* Ex. 36; RP 5/26/09, 113-14. Dr. Sreenivasan testified that grooming is relevant to risk because it shows that the person has spent a great deal of time engaged in his deviant sexual interests and it widens his victim pool. RP 5/26/09, 113-14.

Dr. Sreenivasan testified in detail about actuarial risk assessment. An actuarial instrument is a rating scale where researchers look at large groups of sex offenders and try to determine what factors are statistically associated with sexual recidivism. RP 5/26/09, 116. Most of the actuarial instruments use static factors, which are historical factors about the person that do not change, such as age, type of victim, or type of offenses. RP 5/26/09, 116-17.

Scoring on an actuarial instrument is generally associated with a certain risk percentage. *See* RP 5/26/09, 116; RP 5/27/09, 26. However, the caveat is that the scores are descriptive of group data, so the risk

percentages only describe the people in the study who scored a particular way. RP 5/26/09, 116. An actuarial risk assessment does not tell the evaluator that the person being evaluated will reoffend at a particular rate. RP 5/26/09, 117. Rather, it tells the evaluator that of the people who scored similarly to the person being evaluated, X percent reoffended within a certain time period.¹⁸ RP 5/26/09, 116-17; RP 5/27/09, 20. Dr. Sreenivasan testified that the generally accepted method of assessing risk is to not only look at actuarial instruments, but also look at other research-based risk factors that are associated with risk. RP 5/26/09, 118.

Dr. Sreenivasan assessed Dollicker's risk using three different actuarial instruments: Static-99, SORAG, and MnSOST-R.¹⁹ RP 5/26/09, 119. All of these instruments are commonly used to assess risk and have moderate predictive accuracy in terms of sexual recidivism. RP 5/26/09, 119-21; RP 5/27/09, 28-29. She testified that she used several different

¹⁸ Dr. Sreenivasan discussing several drawbacks to using actuarial instruments to assess risk, including a potential limited fit between the evaluated person and the group data if the person is not similar to the people studied in the sample. RP 5/26/09, 117-18.

¹⁹ Each instrument measures sexual recidivism slightly differently. The Static-99 largely measures convictions, although the replication studies measure both charges and convictions. RP 5/27/09, 10. The MnSOST-R measures charges and convictions. RP 5/27/09, 24-25. The SORAG included people being returned to a psychiatric facility based on sexual behavior. RP 5/27/09, 26-28. Replication studies are cross validation studies. RP 5/27/09, 10.

actuaries because each one gives her "a little bit of a different window into risk."²⁰ RP 5/26/09, 119.

Dr. Sreenivasan testified that Dollicker received a score of "7" on the Static-99, which places him in the high risk category.²¹ RP 5/27/09, 12, 16. Dr. Sreenivasan testified that based on the original normative data for the Static-99, a score of "7" translates into a 39 percent risk in 5 years, a 45% risk in 10 years, and a 52 percent risk within 15 years.²² RP 5/27/09, 16. However, new norms based on the Static-99 replication studies were released fairly recently before trial, which suggested that the percentages were lower than what were associated with the original data. RP 5/27/09, 16-18. Dr. Sreenivasan discussed studies indicating a 44.8 percent risk within 10 years of release. RP 5/27/09, 18.

Dr. Sreenivasan testified that these numbers simply give the evaluator a base rate or beginning point of looking at a person's risk:

²⁰ For example, the SORAG incorporates PPG data whereas the Static-99 does not. The MnSOST-R incorporates treatment data, whereas the SORAG and Static-99 do not. RP 5/26/09, 119.

²¹ Dr. Wollert, Dollicker's expert, testified that the Static-99 has score categories of low, medium low, and high and that Dollicker's score places him in the high category. Dr. Wollert also testified that the high category is the "highest category" and a person cannot score any higher. RP 5/29/09, 22, 53-54.

²² This means that of the people who scored similarly to Dollicker, 52 percent of those individuals sexually reoffended within 15 years of release. RP 5/26/09, 116-17; RP 5/27/09, 20. Also, Dr. Sreenivasan testified that the 10 year risk percentage was 45 percent, not 42 percent as indicated in Appellant's brief. See Brief of Appellant at 5, 9, 14.

Then you have to look at Mr. Dollicker himself. What are the specific features of Mr. Dollicker that either look like he's at this level of risk or higher or lower than this level of risk. The percentages just give you – they give you a number. But it's really important not to get fixated on the number because it gives you a sense of precision that really isn't there. It's – it's better just to look at this as a qualitative label, which would be probably like a moderate/high risk in five years, and a maybe a high risk at ten years....

RP 5/27/09, 19-20. Dr. Sreenivasan emphasized that the Static-99 should be used cautiously because any conclusion you make about the individual is based on group data and the evaluator still needs to look at the specific characteristics present in the person being evaluated.²³ RP 5/27/09, 21, 23.

Dr. Sreenivasan also scored Dollicker on the MnSOST-R, which includes both static and dynamic (changing) risk factors. RP 5/27/09, 24. Dollicker received a score of "8" on the MnSOST-R, which places him in the higher risk category and translates into a moderate/high risk of sexually reoffending. RP 5/27/09, 25. His score places him in the

²³ Dr. Sreenivasan testified in detail about some of the limitations in using the Static-99: 1) it does not measure sexual deviance; 2) it does not include dynamic risk factors; and 3) it significantly underestimates recidivism if the person you are evaluating has had a lot of victims with minimal detection. She explained how this limitation in Dollicker's case. The Static-99 is based on detected offenses. Dollicker was caught molesting four victims, three of which resulted in conviction. However, he has admitted to molesting 53 children. The Static-99 does not take this extensive sexual offending history into account. RP 5/27/09, 21-23.

83rd percentile, meaning that he scored higher than 83 percent of sex offenders.²⁴ RP 5/27/09, 25.

Dr. Sreenivasan also scored Dollicker on the SORAG. RP 5/27/09, 26-27. Dr. Sreenivasan testified that this instrument measures treatment variables, which the Static-99 does not. RP 5/27/09, 27. It also includes the PPG and psychopathy checklist, which the other two actuarials do not. *Id.* Dollicker received a score of 30 on the SORAG, which puts him in Category 8. *Id.* This category includes risk percentiles for both a 7-year and 10-year period. *Id.* The risk percentiles for this score indicate a 75% sexual recidivism rate within 7 years and an 89 percent sexual recidivism rate within 10 years.²⁵ *See* RP 5/27/09, 27. This means that of the people who scored similarly to Dollicker, 89 percent of those people sexually recidivated within 10 years of release. *Id.* Dr. Sreenivasan testified that this instrument indicates Dollicker is high risk. RP 5/27/09, 29.

²⁴ Dr. Sreenivasan did not testify that Dollicker's score on the MnSOST-R indicated an "83% risk of reoffense after six years of release" as alleged in Appellant's brief. *See* Brief of Appellant at 9, 14-15. She testified that he scored in the "83rd percentile" and that it would not be appropriate at the present time to use "risk percentages" because newer norms are in the process of being developed for this instrument. RP 5/27/09, 25-26. Furthermore, a review of the record indicates no testimony from Dr. Sreenivasan about this risk being "after six years of release" as alleged in Appellant's brief. *See* Brief of Appellant at 9, 15.

²⁵ Dr. Sreenivasan testified that the 10-year sexual recidivism rate was "89%" on the SORAG, not "83%" as indicated in Appellant's brief. RP 5/27/09, 27; *See* Brief of Appellant at 9.

Dr. Sreenivasan testified that it would not be appropriate to take all three actuarial instruments and average the percentages together to come up with one percentage because each instrument is different. *Id.* The numbers give the evaluator a qualitative window. *Id.* She testified that the instruments indicate that Dollicker falls somewhere between a moderate/high to high risk and that he is not a low-risk offender. *Id.*

e. Other research-based risk factors

Dr. Sreenivasan uses the actuarial instruments as a starting point to assess risk. RP 5/27/09, 23. She then looks at additional research-based factors in order to get a comprehensive picture of his risk. RP 5/26/09, 18; RP 5/27/09, 23, 30. In Dollicker's case, Dr. Sreenivasan examined other research variables that are descriptive of Dollicker, including aggravating and mitigating risk factors. RP 5/27/09, 30. These are factors that are not necessarily addressed in the actuarial instruments. *Id.* She testified that reviewing these factors is generally accepted by mental health professionals who conduct risk assessments. RP 5/27/09, 33.

(1) Sexual deviancy variables

Dr. Sreenivasan testified that the research indicates that certain factors have been shown to be singly linked to sexual recidivism. RP 5/27/09, 30. One group of such factors are sexual deviancy variables. RP 5/27/09, 31. Dr. Sreenivasan testified that there are five categories of

sexual deviancy variables and that all five of them are present in Dollicker. *Id.* Each of these variables is singly correlated with sexual recidivism risk, meaning each variable has a statistically significant relationship with sexual recidivism risk. RP 5/27/09, 30-31. She testified that Dollicker has deviant sexual interests and a sexual interest in children. RP 5/27/09, 31. She also testified that Dollicker's paraphilic interests, sexual preoccupations, and the PPG data are each correlated with sexual recidivism risk. *Id.*

(2) Other behavioral factors

Dr. Sreenivasan testified about a variety of other factors that increase Dollicker's risk, including impulsivity, general self-regulation, intimacy deficits, and his emotional identification with children. *See* RP 5/27/09, 31-32. She also testified about Dollicker's low self-esteem, his lack of victim empathy, and his emotionally neglectful and physically abusive childhood. RP 5/27/09, 33. Although these factors are not necessarily statistically associated with risk, they shed light on why Dollicker seeks out children for comfort and might explain precursors to his reoffending. *Id.*

(3) Stable 2000/2007

Dr. Sreenivasan used the Stable-2000 as part of her risk assessment, which is an instrument that looks at dynamic risk factors.²⁶ RP 5/27/09, 33-34. She uses this instrument because it involves factors that change and evaluators should account for any psychological or behavioral change that may have occurred. RP 5/27/09, 34. It has moderate predictive accuracy and is commonly used by experts who conduct risk assessments. RP 5/27/09, 35, 40. This instrument indicates Dollicker's ongoing issues with intimacy deficits and poor sexual self-regulation. RP 5/27/09, 40. These factors are "driving elements" and "aggravating risks" for Dollicker. *Id.*

(4) Sexual Violence Risk-20

Dr. Sreenivasan also used the Sexual Violence Risk-20 (SVR-20) in evaluating Dollicker's risk. RP 5/27/09, 34. This instrument is commonly used by experts who conduct risk assessments. RP 5/27/09, 35. The SVR-20 is a clinical assessment, as opposed to an actuarial instrument, which involves 20 historical items related to sexual offending. RP 5/27/09, 34, 37. Dr. Sreenivasan testified that research has since indicated that only 7 of the 20 items are statistically associated with sexual recidivism risk. RP 5/27/09, 34. However, she testified that all of the

²⁶ When Dr. Sreenivasan first evaluated Dollicker, the instrument was called Stable-2000. At the time of trial, it was called the Stable-2007. RP 5/27/09, 34.

factors are still relevant to a person's clinical presentation and risk. RP 5/27/09, 35. She testified that she used the SVR-20 in order to do a comprehensive risk assessment of Dollicker. RP 5/27/09, 34. The SVR-20 looks at the person's psychosocial adjustment, his sex offense factors, and his future plans. RP 5/27/09, 35.

Dr. Sreenivasan testified that Dollicker has 5 out of the 7 factors that are statistically correlated to sexual offending, including sexual deviance, relationship problems, employment problems, past supervision failure, and multiple types of sex offenses. RP 5/27/09, 37-38. Dr. Sreenivasan testified in detail about Dollicker's wide range of sexually deviant behavior, which is related to sexual recidivism risk. RP 5/27/09, 38.

She testified that Dollicker has both male and female victims, has engaged in sexual behavior with the family pet, and has engaged in sexual acts with children involving urine. RP 5/26/09, 102-03; RP 5/27/09, 38. She testified that Dollicker has a wide range of victims in terms of age and acts. RP 5/27/09, 39. She testified that Dollicker has been interested in children as young as two years old, where Dollicker had to remove the child's diaper in order to sexually molest him. RP 5/27/09, 38. Dr. Sreenivasan testified that the landscape of Dollicker's sexuality is deviant:

There may be other people with a landscape of a sexuality that is largely non-deviant. They've got this little lacunae of deviance, and it's fixed on one kind of victim. Those people, because they've got other options, aren't always deviant in their behavior. That's not Mr. Dollicker. His landscape's been deviant with children, and little children. And he's trying to add, you know, the normality into his sexual landscape, but that hasn't happened.

RP 5/27/09, 39.

(5) Age

Dr. Sreenivasan testified that she also considered Dollicker's age in conducting her risk assessment. RP 5/27/09, 40. She testified that Dollicker's age of 34 still places him in an age range for risk of child molestation. RP 5/27/09, 41. She testified that research indicates that the risk for child molesters seems to continue longer. *Id.* She concluded that neither Dollicker's age nor his health impacts his risk of reoffense in any way. RP 5/27/09, 42.

f. Dollicker's current sexual interest in children

Dollicker's treatment records indicate that he has been having some difficulties regarding journaling and has been struggling to develop a scenario relating to appropriate masturbatory fantasies involving adults. RP 5/27/09, 45. Despite being asked to write an appropriate script, Dollicker has not been able to do that. *Id.*

Dr. Sreenivasan testified that Dollicker has reported having fantasies about sex with children and that these are persistent. RP 5/27/09, 46. Dollicker reported the last time he masturbated to a fantasy about having sex with children was in January 2009. *Id.* Prior to that, Dollicker had been having deviant thoughts about children, particularly when he was lying in bed at night. *Id.* Dr. Sreenivasan testified that Dollicker is still in the very beginning phase of treatment in terms of switching from a long-term sexual interest in children to a sexual interest in adults. RP 5/27/09, 46-47; *see also* RP 5/28/09, 145.

Dr. Sreenivasan testified that during Dollicker's sex offender treatment program in 2004-05, there were multiple problem areas that Dollicker needed to continue to work on. RP 5/27/09, 47. These included: not knowing what gender he wanted as a partner; management of frustration; lack of community support and influences; lack of an approved release address; no family contact or support; no employment lined up in the community with limited experience in the community; and a leisure plan to collect baseball cards, which could become a risk factor for him by potentially putting him in contact with minors. *Id.*

Dr. Sreenivasan testified that based on her review of all the records, nearly all of these areas are still current risk factors for Dollicker that cause her concern. RP 5/27/09, 47-48. In December 2008, Dollicker

was still uncertain of his sexual orientation. RP 5/29/09, 41-43. Dollicker testified at trial that he did not have any support in the community if released. RP 5/28/09, 139. He also testified that stress and feeling overwhelmed is a risk factor for him. RP 5/28/09, 145. When Dollicker is under stress, he turns to deviant thoughts of children. RP 5/26/09, 87-88, 96. Because Dollicker is emotionally drawn to children, his deviant sexuality and attraction to them is a stress reliever for him. RP 5/26/09, 112.

Dr. Sreenivasan testified that when she interviewed Dollicker in late 2005, he made numerous statements about needing a highly structured environment if released into the community:

Just going straight out there is setting me up for failure. I need someone out there like all the time.... I think that civil commitment would be a good idea.... I need a very structured environment. I don't know if they can provide that. I need a roommate to be there, almost like a chaperone who would lead me by the hand for like the first year.... If I go out there, I will re-offend.

RP 5/27/09, 49. Dollicker testified at trial that the conditions he would be required to follow if unconditionally released are the same conditions that would have been in effect in 2005. RP 5/28/09, 143.

Subsequent to this interview, Dollicker continued to make similar statements about needing a highly structured environment. RP 5/27/09, 49-50. Dr. Sreenivasan testified that SCC records indicated that in

August 2007, Dollicker said that he needed to control his impulses and that he has been down so long that he needed a highly structured environment upon release. RP 5/27/09, 50. Dollicker said that the Department of Corrections would not provide that for him. *Id.* At that time, Dollicker admitted to having "a lot" of fantasies and urges:

I do masturbate still. I think about children, first to get an erection. And I've gotten it down a lot. I have deviant fantasies two to three times per week. I switch over to adult females, still working on putting a face to it and not just a body, trying to make it a whole person, instead of just private parts.... I'm not asking for unconditional release. I need a highly structured environment. Just being let out is asking for trouble.... The worst thing that could happen to me is just to be released to the community.

RP 5/27/09, 51.

Subsequent to writing her 2005 report, Dr. Sreenivasan reviewed approximately 1,000 pages of additional records involving Dollicker's updated treatment progress. RP 5/27/09, 51-52. She also reviewed Dollicker's January 2009 deposition. RP 5/27/09, 52. Dr. Sreenivasan testified that despite Dollicker's attempt to engage in the "incredibly difficult task of trying to change [his] sexual interest," it has not reduced his risk:

In terms of reducing his risk, my opinion about – about that is really the same as what I thought in '05 after the SOTP treatment that he engaged in. I don't want to take away from Mr. Dollicker's hard work at SCC. I think it's good.

But in my opinion, at this point, it doesn't – that in itself is not enough to reduce his risk below a likely threshold.

RP 5/27/09, 52-53. Dr. Sreenivasan explained that Dollicker is still in a preliminary stage of trying to curtail his sexual interest in children and develop a sexual interest in adults. RP 5/27/09, 53. She explained that this continues to be a problem for Dollicker:

[A]s recently as March '09, he still had that intrusive picture of a nine-year-old vagina – a nine-year-old girl's vagina coming in. So this is something that he's has [sic] a profound struggle with. It's still current. And he – that piece of it needs to be nailed down much better, meaning he needs to have a very solid ability to form relationships with adults, males or females, and sexual interest in males or females, getting emotional sustenance from adults.

Id.; *see also* RP 5/26/09, 89. Dollicker testified at trial that he was currently "working on trying to get adult sexual fantasies." RP 5/28/09, 144.

In January 2009, Dollicker admitted that he still has sexual urges and thoughts involving children. *See* Ex. 15 at 62-63. He also reported having more deviant dreams at night involving sexual contact with children and waking up with an erection. Ex. 15 at 63-64. Dollicker said that the last time he masturbated to thoughts of sexual contact with a child was in approximately November 2008. *See* Ex. 15 at 64. However, throughout the day, Dollicker finds himself still having fantasies about sexual contact with children:

Mainly is when I have downtime, like I'll go and sleep, I start to catch myself thinking about children.... It usually has not been about – in the last five, six years, it has been about just any particular child. I'd say it's like the blonde, long hair.

Ex. 15 at 64-65. Dollicker also said that he feels that he will always have some type of sexual attraction to children. Ex. 15 at 66.

Dr. Sreenivasan testified that Dollicker's treatment records are replete with evidence about the ongoing nature of his sexual urges and fantasies involving children:

[I]t's been ongoing. His treatment records are just replete with admissions by Mr. Dollicker of a variety of different sexual fantasies involving children, deviant dreams that he's had, waking up with an erection related to dreams about sex with children, scenarios that he's thought about in terms of baby-sitting a child, a mental retarded child and having sexual behavior with the child....

RP 5/26/09, 89. She testified that the records are from 2004 through as recently as 2009. *Id.*

Dr. Sreenivasan testified that in May 2009 she spoke to Dr. Hutchins, Dollicker's current therapist at the SCC, in order to get a synopsis of his progress in treatment. RP 5/27/09, 53-54. She testified that his statements to her were consistent with the SCC records she reviewed and consistent with her opinion that Dollicker is a continuing risk. RP 5/27/09, 54. She also testified that she was familiar with the

probation conditions Dollicker would be required to follow if released into the community and that these conditions were not sufficient to mitigate his risk to below a "likely" threshold. *Id.*

Dr. Sreenivasan noted that Dollicker had similar conditions in effect when he was previously released into the community and that those conditions were insufficient to keep him from offending. *Id.* She testified that "because of the continued presence of [his] sexual psychopathology, I couldn't conclude that those community parameters would be enough to reduce risk below likely for him." RP 5/27/09, 54-55.

Dr. Sreenivasan also testified that Dollicker indicated in his January 2009 deposition that he did not have a release plan, did not have any family or community support, did not have a place to live, and did not have a treatment provider lined up. RP 5/27/09, 55. Dr. Sreenivasan testified that based on her education and experience and her review of all the evidence in this case, it was her opinion to a reasonable degree of psychological certainty, that Dollicker has a mental abnormality that makes him likely to commit predatory acts of sexual violence if he's not confined in a secure facility. RP 5/27/09, 55-56.

III. ARGUMENT

Dollicker argues on appeal that the trial court erred when it committed Dollicker as an SVP because the State failed to prove beyond a

reasonable doubt that he would likely engage in predatory acts of sexual violence. Dollicker also assigns error to Finding of Fact No. 22 entered by the trial court and argues that this finding is not supported by substantial evidence. Dollicker's argument is without merit, as there was substantial evidence presented at trial that Dollicker was likely to engage in predatory acts of sexual violence if not confined in a secure facility. There was also substantial evidence in support of Finding of Fact No. 22. Because of the overwhelming evidence at trial regarding Dollicker's likelihood to reoffend, this Court should affirm his commitment as an SVP.

A. Standard of Review

The criminal standard of review applies to sufficiency of the evidence challenges under the SVP statute. *In re the Detention of Thorell*, 149 Wn.2d 724, 744, 72 P.3d 708 (2003). "Under this approach, the evidence is sufficient if, when viewed in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

In reviewing the sufficiency of the evidence, the reviewing court does not determine whether *it* believes the evidence at trial was proven beyond a reasonable doubt. *State v. Hughes*, 154 Wn.2d 118, 152, 110 P.3d 192 (2005), *overruled on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). This Court must

look at the evidence in the light most favorable to the State and the commitment must be upheld if any rationale trier of fact could have found the essential elements beyond a reasonable doubt. *In re Detention of Audett*, 158 Wn.2d 712, 727-28, 147 P.3d 982 (2006).

In this sufficiency challenge, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against Appellant. *See id.*, at 727. An appellate court should not second guess the credibility determinations of the fact-finder. *In re the Detention of Halgren*, 156 Wn.2d 795, 811, 132 P.3d 714 (2006); *see also In re Davis*, 152 Wn.2d 647, 680, 101 P.3d 1 (2004) ("A trial court's credibility determinations cannot be reviewed on appeal, even to the extent there may be other reasonable interpretations of the evidence.") Appellate courts defer to the trier of fact regarding a witness's credibility, conflicting testimony, and the persuasiveness of the evidence. *In re Detention of Broten*, 130 Wn. App. 326, 335, 122 P.3d 942 (2005). "Determinations of credibility are for the fact finder and are not reviewable on appeal." *Hughes*, 154 Wn.2d at 152.

B. The State presented sufficient evidence that Dollicker meets the definition of a sexually violent predator.

In this case, a review of the record indicates that there was sufficient evidence for the trial court to find, beyond a reasonable doubt,

that Dollicker meets criteria as an SVP. Taken in the light most favorable to the State, the evidence overwhelmingly supported a finding that Dollicker's mental abnormality and personality disorder cause him serious difficulty controlling his behavior and make him likely to engage in predatory acts of sexual violence if not confined in a secure facility.

Dollicker assigns error to Finding of Fact No. 22 and argues that portions of this finding are not supported by substantial evidence.²⁷ See Brief of Appellant at 8-9. Unchallenged findings of fact are verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004); *In re Detention of Anderson*, 166 Wn.2d 543, 549, 211 P.3d 994 (2009). An appellate court will uphold challenged findings of fact and treat the findings as verities on appeal if the findings are supported by substantial evidence. *Jones*, 152 Wn.2d at 8. "Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the findings." *Id.* The party challenging a factual finding bears the burden of proving that it is not supported by substantial evidence in the record. *Davis*, 152 Wn.2d at 680.

²⁷ Dollicker does not dispute that the State proved beyond a reasonable doubt the following facts: 1) that Dollicker has been convicted of a crime of sexual violence; 2) that he was in custody at the time the State filed the SVP petition; and 3) that he has a mental abnormality or personality disorder. See Brief of Appellant at 13-14.

In order to uphold Dollicker's commitment, this Court must find that the fact-finder had sufficient evidence to find the following elements:

1. That the Respondent had been convicted of or charged with a crime of sexual violence; and
2. That the Respondent suffers from a mental abnormality or personality disorder; and
3. That such mental abnormality or personality disorder makes him likely to engage in predatory acts of sexual violence if not confined in a secure facility.

Audett, 158 Wn.2d at 727; RCW 71.09.020(18). Although a separate finding is not required, the third element must be supported by proof beyond a reasonable doubt of serious difficulty controlling one's behavior.

Audett, 158 Wn.2d at 728.

1. **Finding of Fact No. 22 is supported by sufficient evidence.**

Dollicker assigns error to Finding of Fact No. 22 and argues that portions of this finding are not supported by substantial evidence. *See* Brief of Appellant at 8-9. Because there was substantial evidence supporting Finding of Fact No. 22, this Court should affirm Dollicker's commitment.

Finding of Fact No. 22 reads as follows:

22. Dr. Sreenivasan testified that the Respondent's risk level was assessed by using three different actuarial instruments: the Static-99, the SORAG (Sex Offender Risk Appraisal Guide), and the MnSOST-R. The

Respondent's score on the Static-99 was 7, placing him in the highest risk category for sexual recidivism. His score on the SORAG was 30, which is a Category 8, placing him in the high risk category for violent, including sexually violent, recidivism. His score on the MnSOST-R was an 8, placing him in the 83rd percentile and the high risk category for recidivism.

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Dollicker argues that "this finding misrepresents the level of risk that Ms. Sreenivasan²⁸ stated the actuarial assessment tools assigned to Mr. Dollicker." Brief of Appellant at 9. The evidence at trial supported this finding of fact.

Dr. Sreenivasan testified about the three different actuarial instruments she used as a starting point to assess Dollicker's risk. RP 5/26/09, 114-21; RP 5/27/09, 9-30. She testified that Dollicker scored an "8" on the MnSOST-R, which places him in the higher risk category and translates into a moderate/high risk of sexually reoffending. RP 5/27/09, 24-25. She testified that this score places him in the 83rd percentile, meaning that he scored higher than 83% of sex offenders. RP 5/27/09, 25.

²⁸ Appellant refers to Dr. Shoba Sreenivasan as "Ms. Sreenivasan" throughout his brief. Dr. Sreenivasan is a licensed psychologist with a Ph.D in Clinical Psychology and post-doctoral training. Ex. 29; RP 5/26/09, 48-49. Accordingly, she is referred to as Dr. Sreenivasan in the record.

Dr. Sreenivasan testified that Dollicker scored a "30" on the SORAG, which puts him in Category 8. RP 5/27/09, 26-27. She testified that the risk percentiles for this score indicate a 75% sexual recidivism rate within 7 years and an 89% sexual recidivism rate within 10 years. See RP 5/27/09, 27. She testified that this instrument indicates Dollicker is high risk. RP 5/27/09, 29.

Dr. Sreenivasan also testified that Dollicker scored a "7" on the Static-99, which places him in the high risk category. RP 5/27/09, 12, 16. She testified that based on the original normative data for the Static-99, a score of "7" translates into a 39% risk in 5 years, a 45% risk in 10 years, and a 52 percent risk within 15 years. RP 5/27/09, 16. However, she indicated that new norms released fairly recently before trial indicate a 44.8 percent risk within 10 years of release. RP 5/27/09, 16-18.

Dr. Wollert, Dollicker's expert, also scored Dollicker as a "7" on the Static-99. RP 5/29/09, 54. He testified that scores on the Static-99 are divided into different categories of low, medium low, and high. RP 5/29/09, 21-22. He testified that Dollicker's score on this actuarial instrument places him in the "highest category" and that a person cannot score any higher. RP 5/29/09, 22, 53-54. This evidence was not disputed at trial.

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences must be drawn in favor of the State. *Audett*, 158 Wn.2d at 727. Viewing the evidence in the light most favorable to the State, a rational trier of fact could easily have found that Dollicker was in the highest level of risk on the Static-99. The undisputed evidence at trial indicated that Dollicker was in the highest level of risk when scored on the Static-99. Thus, the trial court did not err in entering Finding of Fact No. 22.

2. The trial court properly found that Dollicker is a sexually violent predator and that he is likely to engage in predatory acts of sexual violence unless he is confined in a secure facility.

The only issue Dollicker challenges on appeal is the trial court's ruling that the State proved beyond a reasonable doubt that Dollicker is "likely to engage in predatory acts of sexual violence if not confined in a secure facility."²⁹ See Brief of Appellant at 13-14. Unchallenged findings of fact are verities on appeal. *Jones*, 152 Wn.2d at 8; *Anderson*, 166 Wn.2d at 549. Dollicker's argument that there was insufficient evidence to support the court's finding that he is "likely to engage in

²⁹ Dollicker does not dispute that the State proved beyond a reasonable doubt: 1) that Dollicker has been convicted of a crime of sexual violence; 2) that he was in custody at the time the State filed the SVP petition; and 3) that he has a mental abnormality or personality disorder. Brief of Appellant at 13-14.

predatory acts of sexual violence" is without merit as there was substantial evidence at trial supporting Dollicker's risk.

An SVP is an individual "who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18).³⁰ The definition of mental abnormality is tied directly to present dangerousness. *In re Detention of Henrickson*, 140 Wn.2d 686, 692, 2 P.3d 473 (2000).

This tie to current dangerousness is required because due process requires that an individual be both mentally ill and presently dangerousness before he may be civilly committed. *See In re Young*, 122 Wn.2d 1, 27, 857 P.2d 989 (1993). Due process concerns are satisfied because the SVP statute requires dangerousness as a condition for civil commitment. *Id.* at 31; *See* RCW 71.09.020(18).

The SVP statute inherently applies only to dangerous offenders. *Young*, 122 Wn.2d at 32. When a person is incarcerated prior to the civil commitment trial, the State may rely on the offender's offense history,

³⁰ "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that "the person more probably than not will engage in such acts" if unconditionally released. RCW 71.09.020(7). A mental abnormality is "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others." RCW 71.09.020(8).

mental condition, expert testimony, and other relevant, probative evidence to establish the offender's current dangerousness. *See Froats v. State*, 134 Wn. App. 420, 438-39, 140 P.3d 622 (2006). "The point of *Young* is that an individual's conduct during incarceration is not necessarily probative of current dangerousness given the relative difficulty, if not impossibility, of committing an offense during incarceration." *Froats* at 439.

The Washington Supreme Court has held that by properly finding all the statutory elements are satisfied to commit someone as an SVP, the fact-finder impliedly finds that the person is currently dangerous. *In re Detention of Moore*, 167 Wn.2d 113, 124-25, 216 P.3d 1015 (2009). In Dollicker's case, the trial court entered specific findings as to each and every required statutory element. Supp. CP 196-201.

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences must be drawn in favor of the State. *Audett*, 158 Wn.2d at 727. Dr. Sreenivasan testified in detail about how she assessed Dollicker's risk. *See* RP 5/26/09, 113-21; *see also* RP 5/27/09, 12-42. She testified that in her expert opinion, to a reasonable degree of psychological certainty, Dollicker is likely to commit predatory acts of sexual violence if not confined in a secure facility. RP 5/26/09, 112; RP 5/27/09, 55-56.

Dollicker argues that the State's evidence on this issue "was presented through Ms. Sreenivasan's testimony concerning the three actuarial assessment tools she employed to evaluate Mr. Dollicker's propensity to commit further crimes of sexual violence." Brief of Appellant at 14. While this testimony was *part* of Dr. Sreenivasan's risk assessment, it in no way was reflective of her complete risk assessment. Dr. Sreenivasan testified that actuarial instruments represent only one snapshot of who the person is overall and that there is more to risk assessment than that. RP 5/26/09, 115-16.

Dr. Sreenivasan testified that she used actuarial testing as a starting point in risk assessment and then looked at additional research-based factors related to sexual recidivism in order to get a comprehensive picture of Dollicker's risk. *See* RP 5/26/09, 115-18; RP 5/27/09, 23, 30. She testified about numerous additional factors outside of the actuarial instruments that she used to assess Dollicker's likelihood to reoffend. *See* RP 5/26/09 115-18; *see also* RP 5/27/09, 23, 30-39. Some of these factors included the Stable-2000/2007, the SVR-20, relevant aggravating and mitigating factors affecting risk, and Dollicker's sexual deviancy and ongoing obsession of having sex with children. RP 5/26/09, 94, 115; RP 5/27/09, 30-47.

Dr. Sreenivasan explained some of the limitations in using a strict actuarial approach for risk assessment. Because the scores are based on group data, the risk percentages only describe the people in the study who scored a particular way. RP 5/26/09, 116. Actuarial risk assessment does not tell the evaluator that the person being evaluated, in this case Dollicker, will reoffend at a particular rate. *See* RP 5/26/09, 117. Rather, it only tells the evaluator that of the people who scored similarly to Dollicker, what percentage of those people reoffended within a certain time period. RP 5/26/09, 116-17; RP 5/27/09, 20.

Because of the limitations in a strict actuarial approach, Dr. Sreenivasan looked at numerous other research based factors outside of the actuarials to assess Dollicker's risk. RP 5/26/09, 118. She stressed the importance of looking at the specific features relevant to Dollicker's individual case:

Then you have to look at Mr. Dollicker himself. What are the specific features of Mr. Dollicker that either look like he's at this level of risk or higher or lower than this level of risk. The percentages just give you – they give you a number. But it's really important not to get fixated on the number because it gives you a sense of precision that really isn't there.

RP 5/27/09, 19-20.

Dollicker argues in his brief that the actuarial instruments assigned risk levels that "ran from a low of 39% to a high of 83%" and that this "did

not constitute evidence that proved 'beyond a reasonable doubt' that Mr. Dollicker was 'likely to engage in predatory acts of sexual violence if not confined in a secure facility.'" Brief of Appellant at 15. First, Dr. Sreenivasan's testimony that Dollicker is likely to engage in future acts of sexual violence was not based solely on the actuarial instruments. Second, "likely to engage" in future predatory acts means that the person "more probably than not" will engage in such acts if unconditionally released. RCW 71.09.020(7). This is interpreted to mean more than a 50% chance. *See* RP 5/26/09, 113. Moreover, the actuarial instruments only present risk in terms of a finite period of time, whereas the issue at trial is whether Dollicker is ever likely to engage in a predatory act of sexual violence. *See* RCW 71.09.020(7), (18). Third, each actuarial instrument measures sexual recidivism differently and each one gives "a different window into risk." RP 5/26/09, 119; RP 5/27/09, 10-28. Finally, *all* the actuarial instruments used indicate a risk level of "more likely than not."³¹ *See* RP 5/27/09, 16, 25, 27.

There was substantial evidence in the record indicating that Dollicker is more likely than not to engage in predatory acts of sexual

³¹ It should be noted that Dr. Sreenivasan's testimony regarding the MnSOST-R indicated that Dollicker was in the 83rd percentile, meaning that he scored higher than 83 percent of all sex offenders. RP 5/27/09, 25. She did not testify that his risk of reoffense was 83 percent or that it was within a finite period of six years, as alleged in Appellant's brief. *See* Brief of Appellant at 9, 14-15.

violence. Dr. Sreenivasan testified about Dollicker's history of sex offense convictions. RP 5/26/09, 78-84. There was evidence of his extensive history of molesting young boys and girls, including his admission to molesting 53 children and having one thousand sexual contacts with children. Ex. 15; Ex. 30; Ex. 31; Ex. 33; Ex. 36; Ex. 38; RP 5/26/09, 85-86.

Dr. Sreenivasan testified about the chronic and intense nature of Dollicker's pedophilia and his obsession of having sex with children. RP 5/26/09, 65-77, 88-94, 101-02. She testified that the level of his fixation and obsession with children makes his pedophilia more difficult to treat. RP 5/26/09, 94.

Dollicker's participation in treatment was concerning to his treatment team. Dollicker had not complied with his therapist's request to write an appropriate script for fantasy/masturbation purposes. RP 5/26/09, 25-26; RP 5/27/09, 45. Dollicker was still engaging in body parting "quite often" and was recently still engaging in switching fantasies. RP 5/26/09, 27-31. Eight months prior to trial, Dollicker reported that he was sometimes aroused thinking about his victims. RP 5/26/09, 28. Four months prior to trial, Dollicker was still not keeping a fantasy and masturbation log. RP 5/26/09, 21-22, 31-32. This lack of transparency was a concern for the treatment team. RP 5/26/09, 18-21, 32.

More importantly, Dollicker also reported in January 2009 that he was not having *any* appropriate fantasies. RP 5/26/09, 33; RP 5/29/09, 44. In fact, at that time, he was still masturbating to deviant fantasies of children. RP 5/26/09, 24; *see also* Ex. 15 at 62-63. Prior to that, Dollicker was refusing to discuss his deviant arousals or masturbation with his treatment providers. RP 5/26/09, 24-25, 29.

In May 2008, when Dollicker saw a young girl at a dentist appointment, he looked up her skirt at her vaginal area and thought "nice crotch" and got an erection. RP 5/26/09, 74; RP 5/28/09, 105-08, 132-33.³² In November 2008, Dollicker's PPG results indicated ongoing sexual attraction to children and a 100% recorded arousal. RP 5/26/09, 97-99; Ex. 35. This same year Dollicker admitted that his 100 percent of his sexual fantasies were to children between the ages of 3 and 9. *See* Ex. 34 at 1. Finally, just two months prior to trial, Dollicker reported having unwanted intrusive thoughts of children approximately every other week. RP 5/26/09, 37; RP 5/29/09, 45. Dollicker also wanted an environment that would slowly let him out, which would not have happened had he been unconditionally released. *See* RP 5/26/09, 34; RP 5/29/09, 44. All of these facts are relevant to Dollicker's risk.

³² *See also* Affidavit of court reporter, attached as Appendix A (Supp. CP ____).

Dr. Sreenivasan testified that the Stable-2000/2007 indicated Dollicker still had ongoing issues with intimacy deficits and poor sexual self-regulation and that these were aggravating risks for Dollicker. *See* RP 5/27/09, 40. She also testified that the SVR-20 indicated that Dollicker currently has five out of the seven factors that are statistically correlated to sexual offending. RP 5/27/09, 37-38. Dr. Sreenivasan testified about numerous risk factors that were identified as problem areas for Dollicker during his sex offender treatment program in 2004-05 and how these were still *current* risk factors for Dollicker that caused her concern. RP 5/27/09, 47-48.

Although Dr. Sreenivasan conducted her initial risk assessment of Dollicker in 2005, her testimony at trial was based on Dollicker's *current* status and risk. She reviewed all of Dollicker's treatment records through 2009, reviewed Dollicker's January 2009 deposition, and interviewed Dollicker's current treatment provider in May 2009. RP 5/26/09, 58-59; RP 5/27/09, 51-54. She testified that the statements from Dollicker's treatment provider were consistent with the SCC records she reviewed and consistent with her opinion that Dollicker is a continuing risk. RP 5/27/09, 54.

Dr. Sreenivasan testified that despite Dollicker's attempt to engage in the "incredibly difficult task of trying to change [his] sexual interest," it has not reduced his risk:

In terms of reducing his risk, my opinion about – about that is really the same as what I thought in '05 after the SOTP treatment that he engaged in. I don't want to take away from Mr. Dollicker's hard work at SCC. I think it's good. But in my opinion, at this point, it doesn't – that in itself is not enough to reduce his risk below a likely threshold.

RP 5/27/09, 52-53. Dr. Sreenivasan explained that Dollicker is still in a preliminary stage of trying to curtail his sexual interest in children and develop a sexual interest in adults. RP 5/27/09, 53. She explained that this continues to be a problem for Dollicker:

[A]s recently as March '09, he still had that intrusive picture of a nine-year-old vagina – a nine-year-old girl's vagina coming in. So this is something that he's has [sic] a profound struggle with. It's still current. And he – that piece of it needs to be nailed down much better, meaning he needs to have a very solid ability to form relationships with adults, males or females, and sexual interest in males or females, getting emotional sustenance from adults.

Id.; see also RP 5/26/09, 89. All of this testimony and evidence speaks directly to Dollicker's current risk.

The trial court found that the State proved beyond a reasonable doubt all of the elements necessary to establish that Dollicker is an SVP. Supp. CP 199-200, 208, 212. Appellate courts defer to the trier of fact regarding a witness's credibility, conflicting testimony, and the

persuasiveness of the evidence. *Brotten*, 130 Wn. App. at 335. The trial court clearly found the State's evidence more persuasive, including the testimony of Dr. Sreenivasan. *See* Supp. CP 203-212. In explaining its ruling, the court noted:

I was taken by [Dr. Sreenivasan's] description that [pedophilia] is a chronic disorder; that there is no such concept in her mind as "being in remission", that it's a life-long disorder; that there is no remission available for pedophilia; that it's a permanent condition. That it's difficult for Mr. Dollicker to form adult sexual relationships, consequently; he reverts and would continue to revert to children, and that he was likely to commit predatory acts upon children.

Supp. CP 205. The trial court agreed that Dollicker's risk was still present and that treatment had not reduced his risk to below a likely threshold.

Supp. CP 206. The court noted that while it's commendable that Dollicker entered a sex offender treatment program at Twin Rivers, that it was only 16 months out of a 34 year life span, and that "the mere fact that he has completed that program does not in the estimation of this Court based upon the evidence that was presented establish that all of [a] sudden he's miraculously cured." Supp. CP 208. The court stated:

The pedophilia from which Mr. Dollicker suffers and the relating personality disorder – although I think the personality disorder to a lesser extent – make it clear to me that if Mr. Dollicker is not confined, I would say not only is [he] likely to engage in predatory acts of sexual violence, but it's almost 100 percent certainty given his history of doing so.

Supp. CP 209.

Dr. Sreenivasan testified that in her expert opinion, to a reasonable degree of psychological certainty, Dollicker's mental abnormality and personality disorder cause him to have serious difficulty controlling his behavior and make him likely to commit predatory acts of sexual violence if not confined in a secure facility. RP 5/26/09, 111; RP 5/27/09, 55-56. The trial court agreed. Viewing the evidence in the light most favorable to the State, with all reasonable inferences from the evidence drawn in favor of the State, a rationale trier of fact would have found the State proved beyond a reasonable doubt that Dollicker is an SVP and likely to commit predatory acts of sexual violence if not confined in a secure facility.

IV. CONCLUSION

For the foregoing reasons, the State requests that this Court affirm Dollicker's commitment as a sexually violent predator.

RESPECTFULLY SUBMITTED this 12th day of April, 2010.



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Appendix A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LEWIS

In re the Detention of:
KEVIN TROY DOLLICKER

)
) No. 07-2-00553-4
) COA No.: 39480-4-II

Affidavit

I, Maria I. Ray, certify that I have reviewed my transcription notes in the above case and note the following errors in the transcript of May 28, 2009: At Page 132, Line 24, the word "crouch" appears two times. The word should read "crotch" in both instances.

I also certify that I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof.

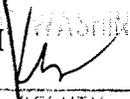
Maria Ray 4/8/10
Maria I. Ray
CCR No. 2033

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COURT OF APPEALS
DIVISION II

NO. 39480-4-II

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WASHINGTON STATE COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON
BY 
FIDELITY

In re the Detention of:

KEVIN TROY DOLLICKER,

Appellant.

DECLARATION OF
SERVICE

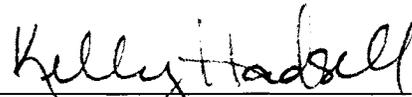
I, Kelly Hadsell, declare as follows:

On April 12, 2010, I deposited in the United States mail true and correct cop(ies) of Brief of Respondent and Declaration of Service, postage affixed, addressed as follows:

John Hays
1402 Broadway
Longview, WA 98632-3714

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 12th day of April, 2010, at Seattle, Washington.


KELLY HADSELL