

IN THE COURT OF APPEALS OF IOWA

No. 18-1372
Filed October 23, 2019

IN RE THE DETENTION OF JAMES DAKE,

JAMES DAKE,
Respondent-Appellant.

Appeal from the Iowa District Court for Appanoose County, Shawn R. Showers, Judge.

James Dake appeals the district court order adjudicating him a sexually violent predator and civilly committing him to the custody of the department of human services. **AFFIRMED.**

Thomas J. Gaul of State Public Defender's Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Tyler J. Buller, Assistant Attorney General, for appellee State.

Considered by Potterfield, P.J., and May and Greer, JJ.

GREER, Judge.

James Dake appeals his commitment as a sexually violent predator under Iowa Code Chapter 229A (2017). He argues the district court erred by concluding beyond a reasonable doubt that he had a mental abnormality that made him more likely than not to engage in predatory acts of sexual violence. On our review, we affirm.

I. Background Facts and Proceedings.

Dake argues the State failed to present sufficient evidence that he posed a present danger to commit sexually violent offenses if not confined in a secure facility. Because the case involves competing experts analyzing Dake's history and diagnosis, we review that evidence. In 1981, when Dake was fifteen years old, he was adjudicated delinquent on one count of sexual abuse in the second degree after he fondled his four- or five-year-old female cousin. The court sentenced him to probation.

Dake's deviant behavior continued after that first sexual crime. In 1994, Dake, then twenty-seven, pleaded guilty to two counts of sexual abuse in the second degree after admitting to having sexual contact with a five-year-old girl and a ten-year-old girl. The sentencing court sentenced him to fifty years in prison.

Because of the nature of his crimes, while in prison, Dake participated in, but never completed, sex offender counseling in 1996 or 1997 and the sex offender treatment program (SOTP) in 2015. His participation in SOTP only lasted for three months until his removal when he "hit a guy in the mouth." Given a second chance to participate in SOTP in 2016, he refused because he "didn't want to be put

through that kind of anguish.” According to Dake, his prison record shows discipline for two incidents of assaultive or aggressive behavior.

With a January 2018 discharge of Dake’s prison sentence on the horizon, in December 2017, the State petitioned to have him adjudicated a sexually violent predator and civilly committed under Iowa Code chapter 229A. Dake remained in custody pending trial on the State’s petition.

During a bench trial, the district court heard testimony from Dake and two competing experts who interviewed him: Dr. William Schmitt for the State and Dr. Luis Rosell for Dake. Both experts diagnosed Dake with antisocial personality disorder. Together with that disorder, Dr. Schmitt also diagnosed Dake with pedophilic disorder. Conceding that Dake exhibited some criteria of pedophilic disorder, Dr. Rosell declined to give Dake a full diagnosis because he could not definitively conclude that Dake’s behaviors had existed for the requisite amount of time.¹

The experts disagreed about whether Dake’s antisocial personality disorder constituted a mental abnormality that made him more likely than not to engage in predatory acts of sexual violence. Dr. Schmitt concluded, “[I]t is my professional opinion, to a reasonable degree of psychological certainty, that Mr. Dake’s lifetime sexually violent recidivism risk exceeds ‘more likely than not.’” Dr. Rosell disagreed, concluding “he does not meet the criteria as a sexually violent predator by Iowa statute.”

¹ Dr. Rosell opined: “Mr. Dake does meet criteria for antisocial personality disorder, but it is not clear if he meets criteria for pedophilic disorder given the first offense occurring when he was under the age of sixteen and then offending for less than a six month period as an adult.”

Dake moved for a directed verdict at the close of the State's evidence and again at the close of all evidence. The court denied both motions. In a written ruling, the district court determined Dake was a sexually violent predator under Iowa Code section 229A.2(12) and ordered civil commitment. Dake appeals.

II. Standard of Review.

"We review a challenge to the sufficiency of evidence for errors at law." *In re Detention of Barnes*, 689 N.W.2d 455, 457 (Iowa 2004). We are bound by the court's findings if the findings are supported by substantial evidence that "a rational trier of fact could conceivably find the defendant [is a sexually violent predator] beyond a reasonable doubt." *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000). "To determine whether the evidence was substantial, we consider the entirety of the evidence presented in a 'light most favorable to the State, including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record.'" *In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003) (quoting *State v. Yeo*, 659 N.W.2d 544, 547 (Iowa 2003)). "We give considerable deference to the trial court's findings regarding the credibility of the witnesses, but are not bound by them." *Barnes*, 689 N.W.2d at 457.

III. Analysis.

The question is whether sufficient evidence existed that Dake would likely commit sexually violent offenses if not confined to a secure facility. It helps to understand the statutory framework in this area. "Sexually violent predator" means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure

facility.” Iowa Code § 229A.2(12). “‘Mental abnormality’ means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.” *Id.* § 229A.2(6). An individual, if presently confined, is “[l]ikely to engage in predatory acts” if “the person more likely than not will engage in acts of a sexually violent manner.” *Id.* § 229A.2(5).

With that statutory language in mind, Dake argues the State failed to prove (1) that he had a mental abnormality and (2) that he was likely to engage in predatory acts. “[A]n antisocial personality disorder can be a mental disorder that predisposes an individual to commit sexually violent offenses to a degree that constitutes a menace to the health and safety of others.” *In re Detention of Altman*, 723 N.W.2d 181, 184 (Iowa 2006); *see also Barnes*, 689 N.W.2d at 458 (“We first reject the notion that antisocial personality disorder cannot serve as the basis for civil commitment under chapter 229A.”). Even with the antisocial personality disorder diagnosis, Dake urges that Dr. Rosell’s diagnosis failed to confirm a mental abnormality that met the requirements of Iowa Code section 229A.2(6). Likewise, Dake asserts the risk to reoffend and the effect of the antisocial disorder decreased because of his age.² Dake relies on his expert’s testimony to support his claim on appeal.

In the battle of experts, Dr. Schmitt noted that aspects of Dake’s offenses mirrored the criteria of antisocial personality disorder, citing: (1) “Failure to conform

² Dake was fifty-two years old at trial.

to social norms,” as seen in his “extensive juvenile and adult offending history,” especially his “sexual contact with the child”; (2) “Deceitfulness,” as seen in his lying and conning others; (3) “Impulsivity,” as seen in his history of criminal activity and short-term employment; (4) “Reckless disregard for safety of self or others,” as seen in “his sexual and non-sexual offenses”; and (5) “Lack of remorse,” as seen in his minimization or outright denial of past sexual offenses and history of assault. At trial, Dr. Schmitt opined Dake “generally minimized his past sexual offenses,” “blamed his victim,” and “denied having any risk of future sexual offending.”³ Struck by these comments, Dr. Schmitt opined Dake made “a great underestimate from his perspective of his own risk assessment.” As a final concern, Dr. Schmitt noted that while Dake attended some sex offender treatment, his participation was minimal.

On the other hand, Dr. Rosell did not believe Dake was denying or minimizing the abuse, or that he showed a lack of empathy and insight. Dr. Rosell found it significant that after Dake committed the sexual abuse of two children underlying his 1994 conviction, he left the home, moved away, and lived in a new city for two years without committing another offense. He believed that Dake’s plan to stay away from children was an effective tool to avoid reoffending.

To determine Dake’s likelihood of reoffending, the experts considered their clinical impressions of Dake as well as his scores on statistical risk assessment tools: the Static-99R and the Violence Risk Scale, Sex Offender Version (VRS-

³ According to Dr. Schmitt’s report, Dake said the five-year-old victim from the 1994 offense “was the instigator, but you can’t say she was at the fault. I got aroused, told her to quit a couple of times. She kept rubbing my thigh.”

SO).⁴ Based on the testing performed by Dr. Schmitt, in his analysis, the test results showed Dake was more likely than not to reoffend. Overall, Dr. Schmitt concluded that Dake had a high level of dynamic risk factors. After considering the clinical impressions with the information gleaned from the testing, Dr. Schmitt concluded, “[I]t is my professional opinion, to a reasonable degree of psychological certainty, that Mr. Dake’s lifetime sexually violent recidivism risk exceeds ‘more likely than not.’”

Disagreeing with the opinion of Dr. Schmitt, Dr. Rosell, criticized the methods used in the calculation of reoffending risk because, in his view, Dr. Schmitt’s approach was too speculative and overestimated the recidivism risk. Dr. Rosell opined that his use of the assessment tools placed Dake at a low risk of re-offense. Using Dr. Rosell’s analysis, Dake’s assessment scores placed him between an eight percent and twenty percent risk to reoffend over a five-year period.

The district court considered both expert opinions and found “Dr. Schmitt’s opinion more credible” on whether Dake’s antisocial personality disorder was a mental abnormality making him more likely than not to reoffend.⁵ Considering Dr. Schmitt’s opinion, Dake’s testimony, and Dake’s history of sex offenses, the court found the State had shown, beyond a reasonable doubt, that Dake has a mental abnormality as defined in Iowa Code section 229A.2(6). The district court also

⁴ These actuarial risk assessment tools test for risk to reoffend and examine a person’s level of dynamic risk factors, including sexual deviance, criminality, treatment responsiveness, and intimacy deficits and emotional control.

⁵ Schmitt concluded: “For Mr. Dake, his Pedophilic Disorder and Antisocial Personality Disorder create an impairment in volitional control that increases his risk for acting out sexually in the future. These abnormalities cause him ‘serious difficulty in controlling his behavior.’”

concluded that Dake was more likely than not to reoffend. Dake blamed his offenses on boredom, anger, loneliness, and stress, which concerned the district court. So too did Dake's inability to successfully complete treatment. The court determined,

[E]vidence beyond a reasonable doubt was presented to indicate [Dake] is likely to commit predatory acts of sexual violence if not confined for treatment, including but not limited to: 1. [Dake's] disturbing lack of insight into his offenses and behaviors; 2. Lack of treatment; and 3. The actuarial and empirical information identified by Dr. Schmitt in his testimony. [Dake] blames his child sex abuse victims for his crimes. If released, the Court is firmly convinced that [Dake] would sexually abuse more children.

On appeal, Dake argues we should give more weight to Dr. Rosell's opinion. Yet the district court considered both expert opinions and found Dr. Schmitt's more credible. A district court is in the best position to weigh the credibility of witnesses, and while we are not bound by its credibility determinations, we give them considerable deference. *Barnes*, 689 N.W.2d at 457. Dr. Schmitt's opinion that Dake met the definition of a sexually violent predator was based on his clinical impressions of Dake, Dake's offending history, and statistical models used to predict recidivism. Dake's testimony, his offending history, and Dr. Schmitt's expert opinion provided substantial evidence upon which a rational trier of fact could find Dake was a sexually violent predator beyond a reasonable doubt.

IV. Disposition.

For these reasons, we affirm the order of the district court adjudicating Dake a sexually violent predator and committing him to the custody of the Iowa Department of Human Services.

AFFIRMED.