

IN THE COURT OF APPEALS OF IOWA

No. 2-798 / 11-1838
Filed October 31, 2012

**IN RE THE DETENTION OF
BRADLEY HUTCHCROFT,**
Respondent,

BRADLEY HUTCHCROFT,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Michael Shubatt,
Judge.

Appellant appeals the district court's order of commitment after a jury
found him to be a sexually violent predator. **AFFIRMED.**

Michael H. Adams, Local Public Defender, and Jason Dunn, Assistant
Public Defender, Special Defense Unit, for appellant.

Thomas J. Miller, Attorney General, John McCormally, Assistant Attorney
General, for appellee State.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

Bradley Hutchcroft appeals the district court's order of commitment following a jury verdict finding him to be a sexually violent predator, as defined by Iowa Code section 229A.2(11) (2011).¹ Hutchcroft asserts the district court erred in denying his motion for a directed verdict as the State failed to offer sufficient evidence to prove he suffered from a recognized mental abnormality or that he was presently dangerous. As we find the State offered sufficient evidence, we affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In May 2002, Hutchcroft pleaded guilty to indecent contact with a child and lascivious acts with a child. In exchange for his guilty plea, six other charges were dropped. All eight offenses involved sexual activity with four different victims, ranging in age from thirteen to fourteen years old. Hutchcroft received a five-year suspended sentence and was placed on probation. Hutchcroft had multiple violations of his probation, culminating in a conviction in 2006 for assault with intent to commit sexual abuse in the third degree. This conviction was based on Hutchcroft admitting he digitally penetrated a thirteen-year-old in June of 2005. Also in June of 2005, Hutchcroft was accused of having sexual intercourse with a fifteen-year-old in Wisconsin. He pleaded guilty to sexual abuse in the fourth degree and was convicted of this offense in April 2008. The Iowa and Wisconsin sentences were ordered to run concurrently. Hutchcroft was

¹ Iowa Code section 229A.2(11) provides: "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."

placed on work release in June of 2009, which was subsequently revoked in August following several rule infractions including accessing pornography at the local library and having contact with a fourteen-year-old.

Prior to his release from prison, the State filed a petition on February 11, 2011, seeking for Hutchcroft to be committed as a sexually violent predator. A jury trial was conducted in November of 2011. During the trial, Hutchcroft testified regarding his prior convictions, his sexual offender treatment, and his current rehabilitation. He admitted that after he reached the age of eighteen, he had thirty-six total sexual contacts with victims under the age of eighteen. The jury found Hutchcroft to be a sexually violent predator, and the district court entered its order of commitment on November 8, 2011, directing Hutchcroft be “committed to the custody of the Director of the Department of Human Services for control, care, and treatment until such time as his mental abnormality has so changed that he is safe to be placed in a transitional release program or discharged.”

II. SCOPE AND STANDARD OF REVIEW.

Our review of a district court’s decision on a motion for a directed verdict is for correction of errors at law. *In re Det. of Hennings*, 744 N.W.2d 333, 340 (Iowa 2008). We view the evidence in the light most favorable to the nonmoving party to determine whether substantial evidence supports each element of the claim. *Id.* “Evidence is substantial if a jury could reasonably infer a fact from the evidence.” *Id.*

III. SUFFICIENCY OF THE EVIDENCE.

Hutchcroft claims the State did not offer sufficient evidence to prove he suffered from a mental abnormality or that he was presently dangerous. At trial the State offered the opinions of Dr. Anna Salter. After interviewing Hutchcroft for four hours and reviewing all of the records, it was Dr. Salter's opinion that Hutchcroft suffered from hebephilia, which is an attraction to barely pubescent adolescents typically in the eleven- to fourteen-year-old range. Dr. Salter also testified Hutchcroft technically meets the definition of pedophilia, but his victims are typically barely pubescent, very young teens. He is not interested in young children; his victims are usually thirteen years old. Thus, Dr. Salter believed hebephilia better captured his diagnosis than pedophilia.

Since the DSM-IV does not have a diagnosis for hebephilia, Dr. Salter diagnosed him as paraphilia not otherwise specified. She testified:

Well, a paraphilia is a sexual abnormality basically. Paraphilia is defined as recurrent, intense sexually arousing fantasies, sexual urges or behaviors generally involving, one, nonhuman subjects; two, the suffering or humiliation of one's self or one's partner; or three, children or other nonconsenting persons that occur over a period of six months. And paraphilia NOS [not otherwise specified] is for those paraphilias, quote, that do not meet the criteria for any of the specific categories.

While hebephilia is not in the DSM-IV, which is typically used in the United States, it is in the ICD-10, which is the international diagnostic classification system. Dr. Salter testified that according to the ICD-10, "hebephilia" is part of pedophilia, which is defined as "arousal to prepubescent or pubescent boys or girls." During her trial testimony, Dr. Salter also discussed a number of peer-reviewed studies identifying and diagnosing hebephilia. It was Dr. Salter's

opinion that her diagnosis of paraphilia not otherwise specified-hebephilia was a mental abnormality and that the mental abnormality made it more likely than not that he would reoffend if not confined.

Hutchcroft offered the opinions of Dr. Luis Rosell, Dr. Allen Frances, and Dr. Stephen Hart. All offered opinions that Hutchcroft did not suffer from a mental abnormality and was not likely to reoffend. In particular, Dr. Frances took issue with Dr. Salter's diagnosis of paraphilia not otherwise specified-hebephilia. Dr. Frances asserted being attracted to pubescent adolescents is not abnormal, and thus, should not be considered a mental disorder. Dr. Frances stated people are expected to have sex when they become sexually mature. While it is a crime to act on the sexual impulse directed at a thirteen-year-old, Dr. Frances opined the impulse itself should not be considered a mental abnormality.

As an author of the DSM-IV, Dr. Frances was concerned about the use of the not-otherwise-specified category in the DSM-IV, as he considered this category to be a wastebasket category, completely unreliable, with no criteria to employ. He testified if he had known the not-otherwise-specified category was ever going to be employed in the courtroom, he would have written a clear caution saying this category is too unreliable to take as expert testimony. He considered the diagnosis to be a misuse and abuse of psychiatric diagnosis.

While Dr. Frances, along with Drs. Hart and Rosell, offered opinions that contradicted the opinions of Dr. Salter, "[i]t was for the jury to decide which of the experts was more credible . . . and whose opinion . . . the jury would accept." See *In re Det. of Altman*, 723 N.W.2d 181, 185 (Iowa 2006). "When the case

evolves into a battle of the experts, we, as the reviewing court, readily defer to the [fact-finder's] judgment as it is in a better position to weigh the credibility of the witnesses.” *State v. Jacobs*, 607 N.W.2d 679, 685 (Iowa 2000). Based on the evidence presented, we find the State offered sufficient evidence to support the jury’s conclusion that Hutchcroft suffered from a mental abnormality and was likely to reoffend if not confined to a secure facility.

Hutchcroft is concerned the court is “opening the door to allow state experts to come into court and testify ‘well I can’t find a valid diagnosis in the DSM-IV but this guy is just weird—you should confine him.’” However, we do not find Dr. Salter’s diagnosis boils down to finding Hutchcroft “just weird.” Dr. Salter was duly qualified to evaluate Hutchcroft and determine whether he suffered from a mental abnormality. She assigned Hutchcroft a diagnosis of paraphilia not otherwise specified, which is valid under the DSM-IV, and supported her diagnosis of hebephilia with valid, peer-reviewed research. The diagnosis of hebephilia is clearly controversial in the psychiatric world, and we believe the jury was in the best position to listen to the opposing views on the issue and make the final determination of whether Hutchcroft was a sexually violent predator as defined in section 229A.2. See *Hennings*, 744 N.W.2d at 335–36, 340 (finding sufficient evidence to support the jury verdict that the defendant was a sexually violent predator where he had been charged with and convicted of sexual offenses against teenagers ranging in age from thirteen to sixteen and diagnosed with paraphilia not otherwise specified, along with other disorders); *State v. Shultz*, 231 N.W.2d 585, 587 (Iowa 1975) (“The trier of fact is not obliged to

accept opinion evidence, even from experts, as conclusive. It may be accepted in whole, in part, or not at all.”).

AFFIRMED.

Vogel, J., concurs; Danilson, J., dissents.

DANILSON, J. (dissents)

I dissent.

The State's expert witness, Dr. Anna Salter, diagnosed Hutchcroft with a mental abnormality of hebephilia. This diagnosis was made notwithstanding the fact that the expert acknowledged that hebephilia is not listed in the DSM IV-TR. Defense expert witness, Dr. Allen Francis, co-author of the DSM-IV, testified that such a diagnosis is a misuse or abuse of psychiatric diagnosis because there are no clear criteria for the diagnosis. One court, after hearing various experts testify on the subject stated:

Given that even the government's experts concede that characterization of hebephilia is a hotly contested issue in the mental health community, the Court finds that it would be inappropriate to predicate civil commitment on a diagnosis that a large number of clinical psychologists believe is not a diagnosis at all, at least for forensic purposes.

United States v. Neuhauser, No. 5:07-HC-2101-BO, 2012 WL 174363, at *2 (E.D.N.C. Jan. 20, 2012). I recognize our supreme court has concluded that under Iowa Code section 229A.2(11) "the types of conditions that can serve to establish a 'mental abnormality' are not limited to certain recognized diagnoses." *In re Det. of Barnes*, 689 N.W.2d 455, 458 (Iowa 2004). But, without criteria to ascertain a diagnosis of hebephilia, we have opened the gates too wide to encompass individuals viewed as dangerous sexual offenders. I would reverse.