IN THE COURT OF APPEALS OF IOWA

No. 6-305 / 05-0739
Filed July 12, 2006

IN RE THE DETENTION OF
EDDIE C. RISDAL,

EDDIE C. RISDAL,
Respondent-Appellant.

Appeal from the Iowa District Court for Story County, William C. Ostlund, Judge.

Eddie C. Risdal appeals his civil commitment as a sexually violent predator. **AFFIRMED.**

Mark Smith, First Assistant Appellate State Defender, and Michael Adams, Assistant Appellate Defender, for appellant.

Eddie Risdal, Cherokee, pro se.

Thomas J. Miller, Attorney General, Darrel Mullins and Andrew Prosser, Assistant Attorneys General, and Stephen Holmes, County Attorney.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Eddie C. Risdal was imprisoned for second and third-degree sexual abuse involving adolescents. Shortly before he was slated to discharge these sentences, the State petitioned to have him adjudicated a sexually violent predator subject to civil commitment. *See* Iowa Code chapter 229A (2003).[1] A jury determined that Risdal was a sexually violent predator.

On appeal, Risdal challenges the sufficiency of the evidence supporting the jury's finding, as well as certain evidentiary rulings and a related jury instruction. We affirm.

I. Sufficiency of the Evidence – Directed Verdict

A "sexually violent predator" is defined as,

> 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(11). "Mental abnormality" is defined as "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*. at § 229A.2(5).

At the close of the State's evidence, Risdal moved for a directed verdict, contending that the State failed to prove he suffered from a mental abnormality. The district court overruled Risdal's motion. Risdal takes issue with this ruling.

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[1] On June 27, 2006, Risdal filed a pro se document containing a new argument about the ex post facto application of chapter 229. We decline to consider this untimely filing on the merits. On July 3, 2006, Risdal filed a motion to appoint new counsel or discipline the district court judge. This motion is denied.

He maintains there was insufficient evidence to establish that he was attracted to adolescent boys "solely because of their chronological ages" or that his attraction was "pathological, disordered, or abnormal."

Our review of challenges to the sufficiency of the evidence is for errors of law, with fact findings binding us if supported by substantial evidence. *See In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003).

The State proffered an expert witness, Dr. Dennis Doren, who opined that Risdal had two mental abnormalities – (1) paraphilia not otherwise specified (NOS), in the form of hebephilia,[2] and (2) personality disorder NOS, with antisocial and narcissistic features, both of which caused Risdal to more likely than not commit sexually violent offenses.

Dr. Doren stated the first abnormality, paraphilia, is a disorder of sexual arousal other than by a consenting adult and hebephilia is a form of paraphilia that involves sexual attraction to adolescents. Dr. Doren diagnosed Risdal with this disorder based on his convictions and charges for sexual abuse with adolescents, Risdal's admission that he had sexual contact with at least one adolescent, and Risdal's formation of a corporation known as Mystery Boy, Inc. with a stated purpose of advocating for reform and repeal of sex abuse laws.

Dr. Doren opined that hebephilia affected Risdal's volitional process by limiting the degree to which he saw the potential consequences of his actions and by impairing his ability to maintain relationships. He testified that Risdal's

[2] The Diagnostic and Statistical Manual (DSM-IV) is the text used by psychiatrists and psychologists to identify certain disorders. The DSM-IV lists eight specific paraphilias: exhibitionism, fetishism, frotteurism, pedophilia, sexual masochism, sexual sadism, transvestic fetishism and voyeurism. Hebephilia is not specifically listed in the DSM-IV, but falls into the category of paraphilia not otherwise specified.

condition affected him so significantly that he had serious difficulty in controlling his sexual behavior with adolescents.

Dr. Doren's second diagnosis of personality disorder with antisocial and narcissistic features was based on Risdal's history of arrests, disciplinary reports in prison, fighting in prison, reckless driving, and a belief that his sexual behavior was not a problem. Narcissistic features were reflected in Risdal's belief that people viewed him as "Mother Teresa," his belief that ninety percent of Story County residents liked him, which made the county sheriff jealous, his belief that people turned to him to fight corruption, and Risdal's description of himself as a professional sexologist with years of sexual study.

The State also elicited testimony directly from Risdal on the "mental abnormality" element. Risdal admitted to sexual contact with a fifteen-year-old boy. He also admitted to what he characterized as consensual activities with other boys as young as eleven years old. He conceded some of these activities may have involved incidental contact of a sexual nature. Risdal additionally provided a detailed exposition of his views on sex abuse and sex abuse laws. The following exchange is illustrative:

> Q….Can I glean from what you said that you don't believe that sex between adults and children is harmful to children? A. Not in all cases it ain't, and that's been factually verified by psychologists, psychiatrists and several professionals.
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> Q. In fact, you believe that sex between children and adults could actually be helpful to them. Don't you? A. Yes, I do. Statistics show that. It's hard for me to seat up – to sum up backing my Mystery Boy Incorporation and what it's discovered in its – I classify myself as a unique expert in scientific, natural scientific study in human sexuality, and I follow the famous sex therapist Simon Foyd [sic], and there's another one there.
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> Q. But, sir, let's focus on that. You actually have done writings. I have got one of them here, where you think that if sex

> between adults and children were allowed that there would be – that you wouldn't have serial killers. Isn't that right? A. Yes. That's right.
> * * *
> Q. So, you are saying that we wouldn't have serial murderers or parents who murder their children if we just allowed sex between kids and adults. Is that right? A. Yes.
> * * *
> Q. (reading from one of Risdal's writings) The point I think you are making, and also that this thing is making, is where it says here at the bottom, starting right here, "Thousands of kids would die yearly from either murder, suicide, physical abuse, neglect, hunger if not for the concerned and caring pedophile." Is that your belief system, sir? A. It is my belief, and that's factually backed up by histography [sic] of government records.

This evidence was sufficient to establish that Risdal had a mental abnormality. *State v. Millsap*, 704 N.W.2d 426, 430 (Iowa 2005).

We reach this conclusion notwithstanding the testimony of defense expert, Dr. Luis Rosell. Dr. Rosell concurred in Dr. Doren's opinion that Risdal suffered from a mental abnormality, but disagreed with the diagnosis of hebephilia. He also stated he did not believe that Risdal's abnormality predisposed him "to commit future acts of sexual violence if he's not confined in a secure facility." On this score, Dr. Rosell's opinion was less than unequivocal. He opined, "I think the issue of his mental disorder needs to be cleared up before we can really make an accurate determination." The jury was free to afford less weight to this opinion than to Dr. Doren's testimony. *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.").

II. Evidentiary Rulings

A. Dismissed Charges

In 1985, the State charged Risdal with four sexual offenses involving juveniles. A jury found him guilty of two. These were the two for which Risdal was serving time when the State petitioned to have him civilly committed. The remaining two sexual abuse charges were dismissed without prejudice. The State's motion to dismiss noted that Risdal had been convicted of second-degree sexual abuse and third-degree sexual abuse, and stated: "Any benefits to the State and protection of its citizens to be gained by seeking further convictions in these cases are outweighed by matters of judicial economy of both time and expense involved in trial of these matters." At trial, the State questioned Risdal about these dismissed charges and introduced certified copies of the trial informations relating to the dismissed charges, all over defense counsel's relevancy objections. The district court overruled the objections to the testimony and received the trial informations subject to the objection.

On appeal, Risdal reiterates that the evidence was not relevant. He also argues "[t]here was no clear proof that Risdal committed the prior bad acts or crimes" and "the prejudicial effect of the evidence far outweighed any probative value of the evidence." We agree with the State that the "clear proof" and "prejudice" arguments were not preserved for our review. *See State v. Mulvany*, 603 N.W.2d 632-33 (Iowa Ct. App. 1999).[3] Therefore, we will only address the relevancy argument.

[3] When the State's expert was asked in deposition about the dismissed charges, defense counsel objected on several grounds. Among the arguments he made was that

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. "If the challenged evidence is relevant to a legitimate issue in dispute, then it is prima facie admissible, regardless of any tendency to also establish a defendant's bad character or propensity for committing bad acts." *State v. Mitchell*, 633 N.W.2d 295, 298 (Iowa 2001).

Chapter 229A defines a sexually violent predator as "a person who has been convicted of or *charged with* a sexually violent offense . . ." Iowa Code § 229A.2(11) (emphasis added). A "sexually violent offense" includes a violation of any provision of chapter 709. *Id*. at § 229A.2(10). Both of the two dismissed charges asserted violations of chapter 709. Therefore, the charges would appear to be relevant to a determination of whether Risdal was a sexually violent predator.

However, the definition of "sexually violent predator" cannot be considered in isolation. *See In re Detention of Huss*, 688 N.W.2d 58, 66 (Iowa 2004). The "charged with" language, in our view, relates to civil commitment petitions against persons who are not presently confined. *See* Iowa Code § 229A.4(2); *Huss*, 688 N.W.2d at 65-66; *In re Detention of Gonzales*, 658 N.W.2d 102, 104-05 (Iowa

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the prejudicial effect of this evidence "far outweighs any probative value they have" and the requirement of "clear proof" was not met. The State responded that these issues were discussed in a motion in limine and overruled. Defense counsel stated it was his understanding that the judge allowed the experts to rely on these dismissed charges but "did not allow it to be introduced into evidence." We have not found a written ruling on defense counsel's motion in limine or a transcription of a verbal ruling. At trial, the videotaped deposition was offered in lieu of live testimony. The parties stipulated to the redaction of the entire discussion concerning defense counsel's objections to the dismissed charges. Therefore, no ruling on these objections was made at the time of trial.

2003). In that type of case, the State would have to allege that the Respondent committed a "recent overt act." The predicate offense may be a charge rather than a conviction. This case, in contrast, was not premised on a recent overt act but on Risdal's present confinement for sexually violent offenses.[4] No recent overt act was alleged. Therefore, the statutory language "charged with" was not sufficient to establish the relevance of the charges.

Having said that, we believe the charges, which were both for sexually violent offenses with a child or adolescent, have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 401; *Cf. In re Detention of Williams,* 628 N.W.2d 447, 456 (Iowa 2001) (finding rebuttal evidence of unprosecuted sex acts relevant to counter testimony that respondent had come to terms with his disorder and to give a complete picture). For this reason, we conclude the district court did not abuse its discretion in admitting evidence of the charges. *Williams*, 628 N.W.2d at 456.

In reaching this conclusion, we have considered the fact that the charges were ultimately dismissed. We believe this fact goes to the issues of "clear proof" and prejudice. Neither of these questions is before us.

Risdal also contends that the district court should not have instructed the jury about the dismissed charges. Our review of this issue is for correction of errors of law. *In re Detention of Crane*, 704 N.W.2d 437, 438 (Iowa 2005).

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[4] In addition to his convictions, the State alleged that Risdal was charged with other sexually violent offenses. However, it is clear that these charges, unsupported by convictions, would not alone have been sufficient to justify the filing of a civil commitment petition, absent other predicate acts. *See* Iowa Code § 229A.4(2)(a), (b), (c).

The district court's instructions to the jury tracked the language of Iowa Code sections 229A.2(11) and 229A.2(10). While we are not convinced that the "charged with" language was a required element of proof in this case, we cannot conclude the inclusion of that language amounted to prejudicial error, as the State presented evidence that Risdal was convicted of sexually violent offenses.

B. Sex Offender Treatment/Absence of Post-Release Supervision

1. Treatment. In assessing Risdal's risk level, one factor Dr. Doren considered was the type of treatment he received. Dr. Doren testified that Risdal did not participate in sex offender treatment because this program was not available to segregated inmates. Dr. Doren then testified that the absence of sex offender treatment did not raise the assessed risk, but it was another reason not to lower it.

On appeal, Risdal argues this evidence is not relevant because it neither increased nor decreased Risdal's risk assessment. We disagree. Dr. Doren specifically cited a "body of research" suggesting that sex offender treatment at correctional centers tended to lower the risk of reoffending. Although he opined that Risdal's failure to complete such a program did not increase his risk of reoffending, he also stated he was "looking for a reason to lower the assessed risk and didn't find it." We conclude this evidence was relevant, and, therefore, admissible. *See* Iowa R. Evid. 5.401.

2. Post-Release Supervision. Dr. Doren testified that he believed Risdal would not be under any mandated community supervision if not civilly committed. Again, he stated this fact did not raise his risk assessment, but also did not provide a reason to lower the risk assessment. This portion of Dr. Doren's

videotaped deposition was redacted, as the court did not want the jury to contemplate "lesser-included opportunities available." At trial, however, the district court allowed the State to question Risdal about his level of supervision following discharge of his prison sentence. Risdal confirmed he would not be on parole, would not be on probation, and would not have to report to anyone. Relevancy objections to all these questions were overruled.

On appeal, Risdal argues that the court's rulings with respect to Dr. Doren's testimony and Risdal's testimony "are conflicting." We find the record insufficient to determine whether there was a conflict between the two rulings.

Risdal next reiterates that this line of questioning was irrelevant and more prejudicial than probative. Risdal did not preserve error on his "prejudice" argument. *Mulvany*, 603 N.W.2d at 632-33. Therefore we will only address his relevancy argument.

The State was required to prove that Risdal's mental abnormality made him likely to engage in predatory acts constituting sexually violent offenses if not confined in a secure facility. The State's questions concerning post-release supervision were relevant to this element. *Cf. Crane*, 704 N.W.2d at 439-40 (finding "nothing erroneous or confusing" about instruction that informed jurors they would have nothing to do with confinement or treatment).

Even if we were to assume that the evidence was not relevant, we conclude the admission of this testimony did not prejudice Risdal. *See State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996). As noted in Part I, substantial other evidence was admitted to support the determination that Risdal was a sexually violent predator.

We conclude the district court did not abuse its discretion in admitting this evidence. *See In re Detention of Palmer*, 691 N.W.2d 413, 416 (Iowa 2005) (reviewing evidentiary rulings for an abuse of discretion).

AFFIRMED.