

IN THE COURT OF APPEALS OF IOWA

No. 6-685 / 05-1766
Filed November 30, 2006

**IN RE THE DETENTION OF
WINSTON C. HALSTEAD**

WINSTON C. HALSTEAD,
Respondent-Appellant.

Appeal from the Iowa District Court for Clay County, Patrick M. Carr,
Judge.

Winston C. Halstead appeals his civil commitment as a sexually violent
predator. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, and Linda Hines, Assistant Attorney
General, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Winston C. Halstead appeals his civil commitment as a sexually violent predator. He argues (1) the State failed to provide sufficient evidence showing he meets the definition of a sexually violent predator as set forth in Iowa Code section 229A.2(11) (2005) and (2) the district court erred in denying his motion for mistrial based on prosecutorial misconduct. We affirm.

I. Background Facts and Proceedings

Halstead has either been convicted of or pleaded guilty to numerous sexual offenses. In 1983 he was convicted of second-degree sexual abuse when he forced his girlfriend's six-year-old son to perform oral and anal sex. He was sentenced to twenty-five years in prison, but was paroled in 1990. In 1991 he pleaded guilty to indecent contact with a child after he inappropriately touched one of his then-girlfriend's nieces. He admitted during his commitment trial to having spent time grooming the girlfriend's nieces and nephews so they would trust him. His parole was revoked, and he was sentenced to two years in prison. Halstead was released from prison again in 1993. He was on supervised probation in 1995 when he was charged with two counts of second-degree sexual abuse. Again, his victims were children, two nieces of another girlfriend on whom Halstead forced oral sex. Pursuant to a plea agreement, he was convicted of two counts of third-degree sexual abuse. He received two ten-year sentences to be served consecutively.

On May 24, 2005, the State filed a petition to have Halstead committed as a sexually violent predator pursuant to Iowa Code chapter 229A. At trial, two experts testified. Both agreed that Halstead suffers from Klinefelter's Syndrome,

a genetic abnormality in which a male is born with an extra X chromosome. Klinefelter's reduces a man's ability to produce testosterone. As a result, Halstead received testosterone treatments beginning in 1979. The treatments ended sometime around 1993. The experts differed, however, on whether Halstead has an abnormality that predisposes him to commit sexually violent offenses. The State's expert diagnosed Halstead with pedophilia and anti-social personality disorder. In his opinion, Halstead has serious difficulty controlling his sexually violent behavior and is more likely than not to reoffend. Halstead's expert, however, testified that Halstead has characteristics of substance abuse disorder, personality disorder, and paraphilia. His opinion was that none of the disorders predisposed Halstead to commit sexually violent offenses and that he was unlikely to reoffend.

The State, during closing arguments, argued as follows:

You know, these proceedings can seem a bit sterile. You know, we both have doctors come up and they have all these credentials and use a lot of big words and these scientific tests and all of these numbers and things like that.

But don't forget what we're talking about. We are talking about whether or not someone is going to sexually molest a child. All right. These names that you've seen of these kids, that's all you've seen is these printed names. You didn't see who they were; you don't know who they are today. They're adults now. You don't know what's happened to their lives. But that's what we're here about, to try to prevent any more children like that—to try to prevent any more children having to endure the pain, the humiliation, the terror that they went through when this happened to them. That's why we're here.

How many more kids does [sic] there have to be for people to find that he is a high risk? We've got six right now. How many more does there have to be? Eight? Ten? Fifteen? What do we need?

The jury found Halstead to be a sexually violent predator, and the court entered an order of commitment. Halstead appeals.

II. Standard of Review

We review a challenge to the sufficiency of the evidence for errors at law. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). We review the court's ruling on a motion for mistrial based on prosecutorial misconduct for abuse of discretion. *State v. Piper*, 663 N.W.2d 894, 901 (Iowa 2003). To the extent Halstead alleges a violation of his due process rights, we review de novo. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003) (noting that prosecutorial misconduct that denies a defendant the right to a fair trial violates due process); *In re Detention of Williams*, 628 N.W.2d 447, 451 (Iowa 2001) (reviewing a constitutional challenge de novo).

III. Merits

A. Sufficiency of the Evidence

Halstead argues the State failed to show he possesses a mental abnormality that makes him likely to engage in sexually violent predatory acts. He also argues that, as a result of his Klinefelter's Syndrome, his testosterone level is so low it is further unlikely he will commit a sexually violent act.¹

This case essentially comes down to a battle of the experts. The State's expert testified that Halstead does suffer from a mental abnormality that predisposes him to commit sexually violent acts. Halstead's expert testified he has no such abnormality. We leave witness credibility determinations up to the

¹ We note that Halstead abused his last two victims after he stopped testosterone treatments.

jury. *In re Detention of Barnes*, 689 N.W.2d 455, 461 (Iowa 2004) (“Because the issue essentially turned on a judgment of credibility of two experts with different opinions, we give weight to the district court’s judgment.”); *State v. Fetters*, 562 N.W.2d 770, 775 (Iowa Ct. App. 1997) (“When the psychiatric testimony is conflicting, the reviewing court will ‘not determine anew the weight to be given trial testimony.’” (citation omitted)). The State’s expert tested Halstead and presented sufficient evidence to believe he suffers from a mental abnormality that predisposes him to commit sexually violent acts. For these reasons, we affirm the district court’s ruling denying Halstead’s motion for directed verdict.

B. Prosecutorial Misconduct

Halstead also argues that the prosecutor engaged in misconduct during her closing argument. He claims the prosecutor’s remarks appealed to the passion and prejudice of the jury. In order to prevail on his claim, Halstead must show not only that the misconduct occurred, but that it prejudiced him to the extent he was denied a fair trial.² *State v. Musser*, 721 N.W.2d 734, 755 (Iowa 2006).

The jury was advised that the statements, arguments, and questions by the attorneys were not evidence and that they could not consider their own emotions or prejudices in rendering their verdict. Though Halstead’s counsel objected during the closing argument, he did not request a specific cautionary or curative instruction. Further, the likelihood that Halstead would commit future sex crimes was specifically at issue. Counsel was responding to Halstead’s

² There is no precedent applying prosecutorial misconduct standards in chapter 229A proceedings. Our application of them here, however, does not require a new trial.

challenge that all the State could show was past crime. Finally, as the district court pointed out in its ruling,

In a Chapter 229A proceeding . . . the focus is on whether “The Respondent [is] likely to engage in predatory acts constituting sexually violent offences if Respondent is not confined in a secure facility.” Community protection is the very purpose of a case under Chapter 229[A]. In the context of the issue to be decided in this case, reminding the jury of its purpose and asking rhetorically how many victims it would take to prove the Respondent’s propensity to engage in future such acts, is within the proof and law.”

(citations omitted). Therefore, the district court’s ruling denying Halstead’s motion for mistrial is affirmed.

AFFIRMED.