

IN THE COURT OF APPEALS OF IOWA

No. 7-196 / 06-0853

Filed April 11, 2007

**IN RE THE DETENTION OF
JACK E. MERRIFIELD,**

JACK E. MERRIFIELD,
Respondent-Appellant.

Appeal from the Iowa District Court for Clarke County, David L. Christensen, Judge.

Jack E. Merrifield appeals an order of civil commitment as a sexually violent predator. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Denise A. Timmins, Assistant Attorney General, and Ronald Wheeler, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Jack E. Merrifield appeals an order of civil commitment as a sexually violent predator. Iowa Code chapter 229A (2005). Merrifield argues the State failed to prove he has a “mental abnormality.”

Chapter 229A defines a “mental abnormality” 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.” Iowa Code § 229A.2(5). Merrifield concedes he has a “congenital or acquired condition,” namely personality disorder not otherwise specified. He contends the State failed to prove that this condition predisposes him to commit sexually violent offenses as opposed to general offenses.

When Merrifield submitted his written arguments, he did not have the benefit of *In re Detention of Altman*, 723 N.W.2d 181 (Iowa 2006). Like Merrifield, Altman maintained that “his antisocial behavior manifested itself almost exclusively through crimes that were nonsexual in nature.” *Altman*, 723 N.W.2d at 184. In evaluating this argument, the Iowa Supreme Court found “no language in section 229A.2(5) that can be interpreted to require a respondent’s risk to others be *primarily* sexual in nature.” *Id.* at 185 (emphasis supplied). The court continued,

If a respondent’s mental abnormality is such that he is likely to commit future sexually violent crimes, the fact that the particular respondent may be even more likely to commit other types of offenses does not detract from his risk as a sexual predator.

Id. *Altman* resolves the lion’s share of Merrifield’s contention.

What remains is the question of whether the evidence in this record supports the district court's finding that Merrifield's mental condition predisposes him to commit sexually violent offenses. "We are bound by the trial court's finding[s] [if the findings are] supported by substantial evidence upon which a 'rational trier of fact could conceivably find the defendant [is a sexually violent predator] beyond a reasonable doubt.'" *In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003) (quoting *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000) (citations omitted)).

The State's expert witness testified that Merrifield "is sexually attracted to post-pubescent females." She continued,

Where the antisocial personality disorder comes in is that he does not care whether the victim is 14 or whether the victim is 17 and doesn't want to have sex with him. His callousness, his not caring about the rights of other people, his egocentricity, his willingness to use other people, his irresponsibility, and his compulsiveness, all characteristics of antisocial personality disorder, mean that he's not going to inhibit his sexual attraction to people based on factors that the rest of us consider: whether the person wants to have sex with him or not, whether they are old enough to consent, whether this is appropriate or not, whether the person is in pain or not, whether she is someone else's girlfriend or not. He's not going to consider these factors, and that's – that is specifically tied to the antisocial personality disorder.

Although the record contains a contrary opinion from Merrifield's expert, the district court as fact finder was free to give more credence to the State's expert opinion. See *In re Detention of Barnes*, 689 N.W.2d 455, 461 (Iowa 2004).

There was substantial evidence to support the district court's finding that Merrifield was a sexually violent predator.

AFFIRMED.