

IN THE COURT OF APPEALS OF IOWA

No. 3-049 / 11-2092
Filed March 27, 2013

**IN RE THE DETENTION OF
ARTHUR BUGLEY III,**

ARTHUR BUGLEY III,
Respondent-Appellant.

Appeal from the Iowa District Court for Crawford County, Jeffrey A. Neary,
Judge.

A respondent appeals the district court's order of commitment following a
bench trial ruling that he is a sexually violent predator. **AFFIRMED.**

Kathy Miller, Local Public Defender, and Matthew S. Sheeley, Assistant
Public Defender, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, John McCormally, and
Rob Sand, Assistant Attorney Generals, for appellee.

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

MULLINS, J.

Arthur Bugley appeals the district court's commitment order following a bench trial wherein he was found to be a sexually violent predator pursuant to Iowa Code chapter 229A (2009). He appeals asserting there is insufficient evidence that he is likely to reoffend if not confined to a secure facility. He specifically challenged the State's expert, Dr. Phenix, on her use and interpretation of the actuarial risk assessment instruments in conjunction with the dynamic risk factors she identified based on her clinical judgment. Specifically, he asserts (1) Dr. Phenix's opinion deserves little weight because she cannot quantify the degree to which the dynamic risk variables increased his risk of reoffending, (2) the actuarial risk assessment instruments only show he is similar to other offenders, (3) the actuarial risk assessment instruments do not link his mental abnormality to his risk of reoffending, and (4) there is no empirically-validated basis for comparing him to the high risk/high needs samples.

Bugley did not offer an expert opinion regarding his risk of reoffending. His expert, Dr. Rypma, did not evaluate Bugley to determine whether he is a sexually violent predator; Dr. Rypma only reviewed Dr. Phenix's report and offered testimony challenging the methodology she used. The district court found that the lack of expert testimony from Dr. Rypma on whether Bugley is at risk of reoffending "leaves the ultimate conclusions essentially unchallenged." The court accepted the opinions of Dr. Phenix as credible and found them to be more credible than those of Dr. Rypma due to Dr. Rypma's lack of an opinion as

to the ultimate issue and the fact he did not consider or evaluate the same information as Dr. Phenix.

While Bugley challenges Dr. Phenix's use of clinical judgment with respect to the empirically supported dynamic risk variables present in Bugley's case, our courts have accepted the use of clinical judgment in these cases. *See In re Det. of Stenzel*, ___ N.W.2d ___, 2013 WL 765319, at *12 (Iowa Mar. 1, 2013). It was for the judge as the fact finder in this case to decide whether or not to accept Dr. Phenix's conclusion that Bugley is likely to reoffend in the future if not confined to a secure facility. *See In re Det. of Altman*, 723 N.W.2d 181, 185 (Iowa 2006). As Dr. Phenix's opinion provides sufficient evidence to support the court's conclusion that Bugley is a sexually violent predator pursuant to Iowa Code section 229A.2(11), we affirm the district court's ruling committing Bugley to the department of human services.

AFFIRMED.