IN THE COURT OF APPEALS OF IOWA

No. 7-572 / 05-2147
Filed November 15, 2007

IN RE THE DETENTION OF
ARTHUR JAMES TRIPLETT, JR.

ARTHUR JAMES TRIPLETT, JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Decatur County, John D. Lloyd, Judge.

Arthur Triplett appeals from his civil commitment as a sexually violent predator. **AFFIRMED.**

Mark Smith, State Appellate Defender, and Greta Truman, Assistant Public Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass and Denise Timmins, Assistant Attorneys General, and Lisa Hynden Jeanes, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

VOGEL, J.

In 1991, Arthur Triplett was convicted of second-degree sexual abuse and lascivious acts with a child and sentenced to consecutive indeterminate terms of twenty-five and five years. On April 28, 2005, the State filed a petition under Iowa Code sections 229A.3 and 229A.4(1) (2005) seeking the commitment of Triplett as a sexually violent predator. The district court later found probable cause to believe that Triplett was a sexually violent predator, and the petition came on for trial on September 12, 2005. Following that trial, the jury found Triplett to be a sexually violent predator. The court denied Triplett's motion for new trial and judgment notwithstanding the verdict, and this appeal followed.

I. Sufficiency of the Evidence.

Triplett first contends the State failed to produce sufficient evidence to prove he is a sexually violent predator. In particular, he asserts the evidence does not support that he is *more likely than not* to commit a predatory offense if not confined in a secured facility. Our review of this claim is for correction of errors at law. *In re Detention of Altman*, 723 N.W.2d 181, 183 (Iowa 2006). We evaluate whether substantial evidence exists to support the State's case. *See id.* "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Id.* In making this determination, we view the evidence in the light most favorable to the nonmoving party. *Id.*

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.

Id. § 229A.2(11). A person is "likely to engage in predatory acts of sexual violence" if "the person more likely than not will engage in acts of a sexually violent nature." *Id.* § 229A.2(4).

At trial, this case could be described as a simple battle of the experts. On behalf of the State, Dr. Caton Roberts testified generally that Triplett was more likely than not to reoffend if not confined and that he meets the statutory definition of a sexually violent predator. On the other hand, Triplett's expert, psychologist Robert Prenky, opined that Triplett was not likely to reoffend. In light of this directly contradictory testimony, we would generally defer to the jury's assessment of those two experts. *See 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.").

However, Triplett argues that Dr. Roberts' conclusion is based on "speculation or conjecture" and not even supported by the studies cited by him. It is true that two of the actuarial instruments employed by Dr. Roberts to assess Triplett's likelihood to reoffend, the Static-99 and the Rapid Risk Assessment of Sex Offender Recidivism (RRASOR), indicated he was a low risk to reoffend. Roberts testified that these tools have predictive validity and are widely used. However, he further testified Triplett possesses additional conditions "that aren't accounted for by the actuarial" tests, and which caused him to elevate Triplett's risk potential beyond that indicated by the two tests. He opined that Triplett

exhibits a sexual deviance along with a psychopathy, and that an individual with both of these personality traits has a high probability of reoffending.

Considered in a light most favorable to the State, we find substantial evidence supports the jury's determination that Triplett is more likely than not to commit a predatory offense if not confined to a secured facility. While the evidence was in conflict and a reasonable juror certainly could have accepted Triplett's evidence, it chose not to. We do not interfere with such decisions.

II. Evidentiary Issues.

Triplett next contends the trial court erred in admitting irrelevant and unfairly prejudicial evidence. Our review is for an abuse of discretion. *In re Detention of Williams*, 628 N.W.2d 447, 456 (Iowa 2001). During the State's examination of Triplett, the prosecutor asked him whether he had been investigated in the late 1980's and early 1990's for sexually abusing a daughter and stepdaughter. Triplett denied knowledge of any such investigation. Triplett's counsel objected to this questioning under Iowa Rules of Evidence 5.402, 5.403, and 5.404(*b*).

Under *In re Detention of Williams*, 628 N.W.2d at 457, evidence of past sexual offenses are relevant and admissible in light of the need of the State to establish Triplett's history and likelihood that he will reoffend. It can also provide a more complete picture of a person unwilling to admit to past behavior. *Id.* However, regardless, in response to the questions here, Triplett denied any knowledge that he had ever been investigated for abusing the two girls. Furthermore, as the jury instructions made clear, the questions of attorneys are not evidence. As such, we cannot find that Triplett suffered any prejudice as a

result of this questioning. *See Hoekstra v. Farm Bureau Ins. Co.*, 382 N.W.2d 100, 110 (Iowa 1986) (stating court assumes jury follows instruction given).

Triplett also asserts the court erred in admitting evidence that he "failed to complete a sex offender treatment and would be unsupervised if not committed . . . ." He claims the fact he did not complete such treatment has no effect on his risk of reoffending. We find the court's ruling on this evidentiary question was well within its discretion. When asked about Triplett's lack of treatment, Dr. Roberts testified that the completion and integration of treatment are factors he uses in assessing the risk of reoffense. Specifically, he testified that research has shown that those individuals who have completed treatment "are at a lower risk than they would be otherwise." In addition, because Triplett had not completed the treatment, Dr. Roberts "could not reduce [Triplett's] risk in [his] mind." Moreover, Dr. Roberts testified that in his risk assessment he looks to "what level of supervision by correctional persons" an individual will have in the future. Because both of these lines of questioning were relevant, the court did not abuse its discretion in allowing them.

III. Jury Instruction.

Finally, Triplett claims the court erred in refusing to submit a requested jury instruction. He had requested that the court instruct that the jury cannot find he is a sexually violent predator simply because he "might benefit from counseling, treatment, or some form of community supervision." The court refused, stating that the remainder of the instructions adequately inform the jury and that the requested instruction "is an unwarranted comment on a very, very small part of the evidence . . . . "

Although our review of this issue is on error,[1] we will not reverse unless "prejudicial error by the trial court has occurred." *Thavenet v. Davis*, 589 N.W.2d 233, 236 (Iowa 1999); *see Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd.*, 606 N.W.2d at 379. The trial court commits prejudicial error when it materially misstates the law. *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd.*, 606 N.W.2d at 379. On the other hand, we consider the instructions in their entirety and will not reverse if the instructions have not misled the jury. *Thavenet*, 589 N.W.2d at 236.

As noted, jury instructions are to be considered as a whole, not in isolation. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 536 (Iowa 1999). In this case, all the instructions when read together properly explained the applicable law to the jury. *See id.* In addition, the instructions considered as a whole did not mislead the jury. *Thavenet v. Davis*, 589 N.W.2d 233, 236 (Iowa 1999). The court did not commit error on this issue.

AFFIRMED.

[1] To the extent Triplett raises this as a constitutional claim, we review it de novo. *State v. Love*, 589 N.W.2d 49, 50 (Iowa 1998).