IN THE COURT OF APPEALS OF IOWA

No. 7-832 / 06-1625
Filed December 28, 2007

IN RE THE DETENTION OF MARK WILSON,

MARK WILSON
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Mark Wilson appeals from his civil commitment as a sexually violent predator. **AFFIRMED.**

Mark C. Smith, First Assistant State Public Defender, Greta Truman, Assistant Public Defender, for appellant.

Thomas J. Miller, Attorney General, and Linda Hines and Denise Timmins, Assistant Attorneys General, for appellee State.

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

VOGEL, P.J.

On June 7, 2006, the State filed a petition under Iowa Code section 229A.4(1) (2005) seeking the commitment of Mark Wilson as a sexually violent predator. At Wilson's civil commitment trial, the State introduced the videotaped testimony of psychologist Dennis Doren, who opined that Wilson suffers from a mental condition that predisposes him to commit sexually violent acts and is more likely than not to reoffend if not confined in a secured facility. Over Wilson's relevancy objection, *see* Iowa R. Evid. 5.401, Doren testified that in classifying Wilson's risk of reoffending he considered, among other things, three actuarial risk assessments.

Specifically, Doren testified that according to the RRASOR test Wilson shared characteristics with others who had a five-year reconviction rate of fifty percent and a ten-year reconviction rate of seventy-three percent. He further noted that according to the Static-99 risk assessment, Wilson's score correlated to a five-year reconviction rate of thirty-seven percent, a ten-year rate of forty-five percent, and a fifteen year rate of fifty-two percent. Finally, he testified that pursuant to the MnSOST-R tool, Wilson's score associated with a six-year rearrest rate of twenty-one percent.

On appeal, Wilson claims these risk assessments were irrelevant and unfairly prejudicial.[1] We review rulings on the admissibility of opinion evidence for an abuse of discretion. *In re Detention of Palmer*, 691 N.W.2d 413, 416 (Iowa

[1] The State asserts error was not preserved as the relevancy objection was not ruled upon by the district court. The objections were made during the deposition and the court was alerted to them at trial. While not directly ruled upon by the district court, it is apparent in the court's finding of facts that the testimony was admitted.

2005). The decision of a trial court concerning the admissibility of evidence will only be overturned upon a showing that discretion was exercised "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Rodriquez*, 636 N.W.2d 234, 245 (Iowa 2001).

In a previous case, we rejected reliability and trustworthiness challenges in finding no abuse of discretion in the admission of these very same risk assessment tools. In *In re Detention of Holtz*, 653 N.W.2d 613, 619 (Iowa Ct. App. 2002), this court determined the evidence concerning these actuarial risk assessment instruments went to the weight the evidence should receive as opposed to the issue of admissibility. However, Wilson's specific challenge to the assessments in this case is not that they are unreliable or not actuarially valid, but rather that they impermissibly measure reoffense rates far into the future. He argues

> [r]isk assessment rates for sex offenders for periods of time five years and longer have no bearing on dangerousness at the time of the commitment. They do not make the existence of any fact that is of consequence to the determination of whether Wilson is a sexually violent predator more or less probable.

We conclude the risk assessments in question were relevant to the essential question of whether Wilson is more likely than not to commit a sexually violent offense if he is not confined in a secured facility. As an initial matter, here, like in *Holtz*, the assessments were merely part of a larger clinical analysis that took into account a variety of other factors. *See Holtz*, 653 N.W.2d at 619 ("The instruments were used in conjunction with a full clinical evaluation and their limitations were clearly made known to the jury."). Doren testified that because the actuarial risk assessments are not "fully comprehensive . . . he looked

beyond them with a combination of risk factors . . . , protective factors, and . . . other clinical considerations."

Furthermore, in *In re Detention of Ewoldt*, 634 N.W.2d 622, 624 (Iowa 2001), the supreme court held that the legislature did not impose a burden upon the State to prove that alleged sexual predators are expected to reoffend *within a specific time period*, particularly a relatively short, one-year time period. It rejected requests that the court place a temporal restriction on the question of when the future acts should be expected to occur. *Ewoldt*, 634 N.W.2d at 624. Also, in *In re Detention of Selby*, 710 N.W.2d 249, 253 (Iowa Ct. App. 2005), this court rejected a claim that chapter 229A is unconstitutional simply because it does not provide an explicit time frame for the adjudication of dangerousness.

We acknowledge that in order to support a civil commitment, an individual "must be both dangerous and possess a mental abnormality that makes the individual likely to engage in sexually violent predatory acts *at the time of commitment*." *Id.* (emphasis added). However, we believe the actuarial instruments, while measuring *future* reconviction rates, assisted in understanding this essential question. Doren's expert testimony made clear that the instruments assisted his understanding of this issue, in conjunction with many other factors, including Wilson's current high degree of psychopathy and sexual deviance.[2]

The evidence of future reconviction rates measured in the challenged instruments compared Wilson to a group of people with shared characteristics or

[2] Doren testified Wilson suffers from, among other things, pedophilia, exhibitionism, and antisocial personality disorder.

who have been rearrested within a specified time period. According to Doren, they informed him of "characteristics that related to risk of the individual" and to his risk of reoffense if not confined in a secured facility. The Code requires the State to prove he "is more likely than not to reoffend . . . ." It would be impossible for the State to present evidence, as Wilson would like, that would assess his risk of reoffending immediately upon release. However, as the State's expert testified, these forward-looking predictors were relevant to his current risk to reoffend. We thus agree their relevancy was established. The court did not abuse its discretion in allowing their admission.

AFFIRMED.