

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 22-1521

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IN RE THE DETENTION OF  
STEWART SHUMAN,

STEWART SCHUMAN,  
RESPONDENT-APPELLEE

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR STORY COUNTY  
THE HONORABLE JAMES C. ELLEFSON, JUDGE

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**APPELLANT'S BRIEF**

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

- I. Because Schuman does not have a RPP approved by the treatment provider as required by Iowa Code section 229A.8A(2)(d), the district court erred in finding he was suitable for placement in the transitional release program.**

**Authorities**

*In re Det. of Anderson*, 895 N.W.2d 131 (Iowa 2017)  
*In re Det. of Shaffer*, No. 12-1815, 2014 WL 1746530  
(Iowa Ct. App. April 30, 2014)  
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Iowa Code § 229A.8A(3) and (4)  
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N.J. Stat. Ann. § 30:4-27.26  
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Iowa Code § 229A.8A(2)(e)  
Wis. Stat. Ann. § 980.01(10)  
Iowa R. App. P. 6.104, 6.108

## **ROUTING STATEMENT**

This case can be decided based on existing legal principles. Transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

The State appeals the district court's order, following a final hearing, finding Schuman, a sexually violent predator (SVP), is suitable for placement in a transitional release program (TRP) pursuant to Iowa Code section 229A.8A.<sup>1</sup> The State contends the district court erred in finding the State failed to prove beyond a reasonable doubt that Schuman did not meet section 229A.8A(2)(d)'s requirement that a "detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person's mental abnormality and sex offending history."

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<sup>1</sup>"Transitional release' means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services." Iowa Code § 229A.2(14).

## **Course of Proceedings**

In 2012, a jury unanimously found Schuman was a sexually violent predator as defined in Iowa Code chapter 229A. He was civilly committed to the Civil Commitment Unit for Sex Offenders (CCUSO), in Cherokee, Iowa. Order (12-13-2012). On February 21, 2022, Schuman filed a motion requesting an annual review hearing. Motion for Annual Review Hearing. The district court set the annual review hearing for March 21, 2022. Order Setting Annual Review Hearing Telephonically (2-21-2022).

Following this hearing, the district court found Schuman had met his burden and was entitled to a final hearing on the issues of whether his mental abnormality remained such that he is unlikely to engage in predatory acts constituting sexually violent offenses if discharged and whether he was suitable for placement in the TRP. Order for Final Hearing (3-21-2022); App. 4-5.

A final hearing was originally scheduled for June 30, 2022, but was continued to July 6, 2022 for good cause. Trial Notice (4-4-2022), Order Continuing Trial (4-5-2022). On July 1, 2022, the district court granted Schuman's motion to conduct the trial by



videoconference. Motion to Conduct Trial by Videoconference (6-230-2022), Order (7-1-2022).

Following the final hearing, the district court found Schuman was suitable for transitional release. Order on Annual Review (8-17-2022); App. 6-30. The State filed a notice of appeal on September 16, 2022. Notice of Appeal; App. 31-32.

### **Facts**

Schuman, age 67 at the time of the July 6, 2022, hearing, testified that at the time of his 2012 civil commitment he was diagnosed with antisocial personality disorder and pedophilic disorder. Hearing Tr. p. 20, lines 14-23. He acknowledged that he is still attracted to boys and girls ages six to fourteen. Hearing Tr. p. 19, lines 1-10, p. 20, lines 22-23.

Schuman further testified he is currently in Phase 3 of the treatment program at CCUSO.<sup>2</sup> Hearing Tr. p. 22, lines 15-19. He had previously progressed to Phase 4 and had prepared a proposed relapse prevention plan (RPP); however, he was demoted to Phase 3

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<sup>2</sup> See *Swanson v. Civil Commitment for Sex Offenders*, 737 N.W.2d 300, 302-303 (Iowa 2007), for a detailed description of the phase system used in treatment at CCUSO.

after failing two polygraphs. Hearing Tr. p. 22, lines 14, p. 23, lines 11-11. p. 36, lines 7-21. Schuman explained that he had presented the proposed RPP to his therapist when he was in Phase 4 but had not presented it to his therapy group. Hearing Tr. p.36, line 7 -p. 37, line 3. Schuman acknowledged that his RPP had not been approved by his CCUSO therapist. Hearing Tr. p. 37, lines 7-10, p. 63, lines 9-25.

The State's expert witness, Dr. Anna Salter, testified that she considered the statutory criteria for release "one at a time" in determining whether Schuman was suitable for transitional release. Hearing Tr. p. 101, lines 1-2. Dr. Salter noted that the criteria of having a detailed RPP is the decision of the "treatment team that knows him best[.]" Hearing Tr. p. 101, lines 1-10. She concluded Schuman "just doesn't have an RPP approved by his treatment team." Hearing Tr. p. 91, lines 1-14.

Dr. Salter explained that "when I read the records it doesn't appear to me that they are – they think he has sufficient interventions to begin with, that he needs more; but in any case, even if he had sufficient interventions, he needs to practice them for a year." Hearing Tr. p. 91, lines 20-24. Dr. Salter reiterated that Schuman's "RPPs have been inadequate to date to --and that's across his

different therapists and a treatment team.” Hearing Tr. p. 100, lines 16-20.

Schuman’s expert witness, Dr. Luis Rosell, testified that Schuman had developed a proposed RPP, but he too acknowledged that it had not been accepted by his treatment provider. He explained he was not “privy to the reasons why it hasn’t been accepted” but it was a “sticking point in his progression.” Hearing Tr. p. 174, lines 1-8. In Dr. Rosell’s opinion, Schuman’s proposed RPP was “worthy of acceptance” and he would have approved the RPP if it has come to him as the treatment provider. Hearing Tr. p. 174, lines 1-8, p. 175, lines 11-13.

The district court noted in its order on annual review that Schuman “specifically testified that he was not seeking a discharge, so the issue is now narrowed to whether the State has shown beyond a reasonable doubt that that he is not suitable for placement in a transitional release program[.]” Order on Annual Review; App. 6-30. It then concluded the State had failed to prove Schuman was not suitable for placement in the TRP. Order on Annual Review; App. 6-30.

Among other things, despite the trial testimony, the district court found that the State had failed to prove Schuman had not develop a detailed RPP approved by the treatment provider. Instead, the district court reasoned that “Dr. Rosell finds that [Schuman’s] treatment work is comprehensive and detailed and that his recent relapse prevention plan covers the necessary areas.” Order on Annual Review, p. 22. It ordered Schuman placed in the TRP. Order, p. 24.

The State appeals the district court’s order. Notice of Appeal; App. 31-32.

## ARGUMENT

- I. **Because Schuman does not have a RPP approved by the treatment provider as required by Iowa Code section 229A.8A(2)(d), the district court erred in finding he was suitable for placement in the transitional release program.**

### **Jurisdiction**

Iowa Code section 229A.8 does not provide a statutory right to appeal from a final hearing on discharge or transitional release.

However, this Court has considered direct appeals in other cases in which transitional release or discharge have been denied or granted following a final hearing. *See, e.g. In re Hutchcroft*, No. 15-1489,

2017 WL 108288 (Iowa Ct. App. Jan. 11, 2017) (appeal of order finding SVP suitable for transitional release but not discharge); *In re Detention of Taft*, No. 15-1732, 2017 WL 1088098 (Iowa Ct. App. March 22, 2017) (respondent appealed jury's verdict finding he was not suitable for discharge or for placement in a TRP); and *In re Detention of Hollins*, No. 13-1137, 2014 WL 3931485 (Iowa Ct. App. Aug. 13, 2014) (state appealed district court's discharge of respondent following final hearing).

If the Court determines another method of review is appropriate, the State requests the Court grant discretionary review based on the arguments herein. Iowa R. App. P. 6.104, 6.108; Iowa Code § 814.5(2)(d) (State may seek discretionary review of "final judgment or order raising a question of law important to the judiciary and the profession."). The question of whether the treatment team at CCUSO must approve a SVP's detailed RRP to satisfy the criteria for transitional release is a recurring one.

### **Preservation of Error**

The State preserved error in the district court by presenting sufficient evidence at the final hearing to prove beyond a reasonable doubt that Schuman did not meet several of the statutory criteria for

transitional release.<sup>3</sup> *In re Det. of Anderson*, 895 N.W.2d 131, 138 (Iowa 2017) (“In order for error to be preserved, the issue must be both raised and decided by the district court.”). Specifically, the State presented evidence that Schuman did not have a detailed RPP that was “developed and accepted by the treatment provider which is appropriate for the committed person’s mental abnormality and sex offending history.” Iowa Code § 229A.8(2)(d).

### **Standard of Review**

“[R]eview of a challenge to the sufficiency of the evidence is for the correction of errors of law.” *In re Detention of Betsworth*, 711 N.W.2d 280, 286 (Iowa 2006). “Evidence is substantial if a jury could reasonably infer a fact from the evidence.” *In re Detention of Hennings*, 744 N.W.2d 333, 340 (Iowa 2008). The entirety of the evidence presented is considered in a “light most favorable to the State, including all legitimate inferences and presumptions which

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<sup>3</sup>The State notes that it agreed Schuman was entitled to a final hearing pursuant to Iowa Code section 229A.8(5)(e)(1). Order for Final Hearing; App. 4-5. However, its agreement, “for purposes of determining whether he was entitled to a final hearing,” did not mean the State agreed that Schuman fulfilled the requirement to show he had developed a detailed RPP approved by the treatment provider. See *In re Det. of Taft*, No. 15-1732, 2017 WL 1088098899, at \*4 (Iowa Ct. App. March 22, 2017).

may be fairly and reasonably deduced from the record.” *In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003).

The appellate court “review[s] the district court’s construction and interpretation of [Iowa Code chapter 229A] for correction of errors at law.” *In re Det. of Anderson*, 895 N.W.2d 131, 137 (Iowa 2017).

### **Merits**

When a person is committed to CCUSO, “a rebuttable presumption exists that the commitment should continue.” Iowa Code Ann. § 229A.8(1). This “presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.” *Id.*

Because Schuman was not seeking discharge from custody at the final hearing, the State had the burden of proving beyond a reasonable doubt that he “is not suitable for placement in a transitional release program pursuant to section 229A.8A.” Iowa Code § 229A.8(6)(d)(2). Pursuant to Iowa Code section 229A.8A(1),

“[t]he department of human services is authorized to establish a transitional release program and provide control, care, and treatment, and supervision of committed persons placed in such a program.”

Iowa Code section 229A.8A(2) provides that “[a] committed person is suitable for placement in the transitional release program if the court finds that *all* of the following apply:”

a. The committed person’s mental abnormality is no longer such that the person is a high risk to reoffend.

b. The committed person has achieved and demonstrated significant insights into the person’s sex offending cycle.

c. The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

*d. A detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person’s mental abnormality and sex offending history.*

e. No major discipline reports have been issued for the committed person for a period of six months.

f. The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.



g. The committed person is not likely to engage in predatory acts constituting sexually violent offenses while in the program.

h. The placement is in the best interest of the committed person.

i. The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

(Emphasis added.) Additionally, “the committed person must agree to the conditions of release and agree to register as a sex offender.” *In re Det. of Shaffer*, No. 12-1815, 2014 WL 1746530, \*3 (Iowa Ct. App. April 30, 2014) (citing Iowa Code § 229A.8A(3) and (4)).

The State disagrees with the district court’s determination that it failed to prove Schuman’s mental abnormality remained such that he is a high risk to reoffend and that he is more likely than not to engage in predatory acts constituting sexually violent offenses while in the program. *See* Iowa Code sections 229A.8A(2)(a) and (g). However, because these findings depend upon the district court’s credibility assessment of the expert witnesses, the State does not challenge them on appeal. *See State v. Jacobs*, 607 N.W.2d 679, 685 (Iowa 2000) (“When the case evolves into a battle of the experts, [. . .] the reviewing court, readily defer[s] to the district court’s judgement as it is in a better position to weigh the credibility of the witnesses.”).

In contrast, the district court's determination that the State failed to prove Schuman had not developed a detailed RPP that had been approved by his treatment provider was based upon its incorrect belief that it could rely upon Dr. Rosell's opinion, or its own, or some combination thereof, to find that Schuman's RPP was satisfactory.

The district court found

that [Schuman's] treatment work is comprehensive and detailed and that his recent relapse prevention plan covers the necessary areas. The court's own review of the RPP attached as Appendix 1 to the Rosell report leads the court to determine that Dr. Rosell's conclusion on this point is sound.

Order on Annual Review, p. 21; App. 26. The district court maintained that "Dr. Salter relies simply on the fact that Schuman was reduced to Phase 3 and RPPs are not accepted until Phase 4[]" and determined that "there was no reasonable reason for the reduction to Phase 3." Order on Annual Review, p. 21; App. 26.

In Iowa Code section 229A.1(3) the legislature found that "the treatment needs of [the SVP] population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for

persons appropriate for commitment under chapter 229.” It explained that the

procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

Iowa Code § 229A.1(4).

Based upon the underlying presumption that an SVP’s treatment will be very long-term, and that the release of a SVP be carefully considered, the legislature used distinct terminology in section 229A.8(A) in describing the criteria for a finding that a SVP was suitable for transitional release.

In *Taft v. Iowa Dist. Ct. ex rel. Linn Cnty.*, 828 N.W.2d 309, 322 (Iowa 2013) the Court found “the plain language of section 229A.8A(2)(e) disqualifies from transitional release any committed person who has received any major disciplinary report during the previous six months.” Similarly, the plain language of the statute disqualifies from transitional release any SVP who has not had a

detailed RPP approved by the committed person's treatment provider.

Although the term "treatment provider" is not specifically defined, the legislature entrusted treatment decisions to the Iowa Department of Human Services (DHS) throughout Iowa Code chapter 229A; DHS operates CCUSO. *Swanson v. Civ. Commitment Unit for Sex Offenders*, 737 N.W.2d 300, 302 (Iowa 2007). For example, when a committed person is released with supervision, section 229A.9A(2) provides that "*the department of human services shall prepare within sixty days of the order of the court a release plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug abuse treatment, sex offender treatment, or any other treatment or supervision necessary.*" (Emphasis added.)

Therefore, the term "treatment provider" necessarily means a person or team responsible for the SVP's treatment at CCUSO. There was no dispute at the final hearing that Schuman's proposed RPP had not been approved by a treatment provider employed at CCUSO. Both expert witnesses understood that a "treatment provider" is a person employed in that capacity by CCUSO. Trial Tr. p. 100, lines

16-20, p. 174, lines 1-8. Both experts indicated in their evaluations that Schuman that he did not have an approved RPP. State's Exhibit 3 (Annual Report of Dr. Salter), Respondent's Exhibit 2; Conf. App. 5-34; Exh. App. 11-23. Schuman's proposed RPP, attached to Dr. Rosell's evaluation of Schuman, is unsigned by a CCUSO treatment therapist. Respondent's Exhibit 2 (Appendix I); Exh. App. 11-23. In fact, even Schuman was aware his proposed RPP was not approved by a treatment provider at CCUSO. Hearing Tr. p. 37, lines 7-10.

As the Kansas Court of Appeals recently explained in *Matter of Saiz*, 492 P.3d 484, 491 (Kan. Ct. App. 2021), "the district court's responsibility under the SVPA [Sexually Violent Predator Act] is not to direct the treatment of committed persons." Rather, "courts should defer to the judgment of mental health professionals on the treatment staff of the SPTP about which treatment methods are appropriate for a particular person." In *Saiz*, the district court ordered that an SVP be discharged from the treatment program as a sanction for the State's alleged failure to follow a previous order requiring him to be placed in a specific phase of treatment. *Saiz*, 492 P.3d at 486-488.

The Kansas Court of Appeals reversed the district court's order releasing the SVP. Finding that the district court abused its discretion in ordering the discharge, the Court explained that the district court's "statutory authority to move a patient into transitional release" could only be exercised by "following a specific procedure."

*Id.* at 489. The Court of Appeals opined

[t]he district court serves a specific role in ordering a committed individual's placement into transitional release, conditional release, or final discharge. In making such a decision it must not only give due regard to the judgment of mental health professionals about the appropriate treatment methods, but it must also follow the procedure adopted by the Legislature.

*Id.* at 491-92.

Similarly, the district court here was required to follow the procedure for transitional release dictated by the legislature. It erred in finding Dr. Rosell's approval of Schuman's proposed RPP was the equivalent of its approval by a CCUSO treatment provider as required in section 229A.8A(2)(d).

Other jurisdictions' SVP statutes support the State's interpretation of section 229A(2)(d) that "treatment provider" means a treating professional at CCUSO. In Wisconsin, the legislature has

defined the term “[t]reating professional” as “a licensed physician, licensed psychologist, licensed social worker, or other mental health professional who provides, or supervises the provision of, sex offender treatment *at a facility described under s. 980.065.*” Wis. Stat. Ann. § 980.01(10) (emphasis added). Similarly, the New Jersey legislature defined “[t]reatment team” to “mean[] the individuals, agencies or firms which provide treatment, supervision or other services *at a facility designated for the custody, care and treatment of sexually violent predators.*” N.J. Stat. Ann. § 30:4-27.26 (emphasis added).

Because the district court erred in finding the State did not prove beyond a reasonable doubt that Schuman had not developed a detailed RPP approved by a treatment provider, it erred in placing Schuman in a TRP. *See* Iowa Code § 229A.8A(2) (to be suitable for transitional release the court must find that all of subsections (a) to (i) apply).

## **CONCLUSION**

For all the reasons set forth above, the State respectfully requests this Court reverse the district court’s order finding Schuman suitable for placement in a TRP.

## REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,273** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: May 15, 2023



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