

IN THE COURT OF APPEALS OF IOWA

No. 3-401 / 12-0798
Filed August 21, 2013

**IN RE THE DETENTION OF
CHAD WILLIAM MAY,**

CHAD WILLIAM MAY,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Dale E. Ruigh,
Judge.

Respondent appeals the determination that he should be civilly committed
as a sexually violent predator. **AFFIRMED.**

Amy Kepes, Assistant Public Defender, Special Defense Unit, and Michael
H. Adams, Local Public Defender, for appellant.

Thomas J. Miller, Attorney General, and Linda J. Hines and John
McCormally, Assistant Attorneys General, for appellee State.

Heard by Doyle, P.J., Bower, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

HUITINK, S.J.**I. Background Facts & Proceedings.**

On July 13, 2011, the State filed a petition alleging Chad May was a sexually violent predator under Iowa Code chapter 229A (2011). In 1998 May was convicted of two counts of lascivious acts with a child and two counts of indecent exposure. In 2010 he was convicted of two counts of child endangerment. The State alleged the 2010 child endangerment offenses were sexually violent offenses within the meaning of section 229A.2(10)(g) based on the facts surrounding those offenses.

The case proceeded to a jury trial. May, who was thirty-two years old, testified he was sexually attracted to children and had sexual fantasies about them. He admitted to sexually abusing other children before his 1998 convictions. He attended sex offender treatment in prison following the 1998 convictions. May was released from prison in 2000.

Concerning the 2010 convictions for child endangerment, May stated he told a mother that Matthew Poe would be a good influence on her two children, although he knew Poe had sexually abused minors in the past.¹ The mother agreed to let the children stay overnight with May and Poe. During the evening, May, who was shirtless, was tied to a chair and duct tape was placed over his mouth. Poe and the children struck him with rubber bands, a belt, and a rope tourniquet. Some of May's chest hair was removed with duct tape. A dildo made from aluminum foil was placed in May's hand and a picture was taken. May

¹ May met Poe while May was in a county jail on a charge of fraudulent practices. May was aware Poe was a registered sex offender and his offenses involved minor males.

denied being sexually aroused by these incidents. That night Poe sexually abused the two children while May was sleeping.

Dr. Amy Phenix, a psychologist, interviewed May for about three hours. She gave the opinion, to a reasonable degree of professional certainty, that May had a mental abnormality, pedophilia, that caused him to commit criminal sexual acts. Dr. Phenix stated she believed May was motivated by his own sexual desires in regard to the 2010 offenses. She also gave the opinion that May had a very high risk of reoffending. May scored in the high risk range on actuarial instruments given to offenders to assess the risk of future sexual offenses. Dr. Phenix gave the opinion that May was more likely than not to engage in predatory acts of a sexually violent nature if not confined in a secure facility.

May presented the testimony of Dr. Luis Rosell, a psychologist, who agreed with the diagnosis of pedophilia, but stated he believed May had the ability to control his behavior. Dr. Rosell pointed out that May was out in the community for ten years without a sexually-related conviction. He also stated that May's risk of reoffending would go down as he got older. Dr. Rosell testified there was a sexual component to May's child endangerment offenses and stated, "[t]here was some sexual motivation there."

The jury returned a verdict finding May was a sexually violent predator. The district court entered a written ruling denying May's motion to dismiss, motion for directed verdict, and motion for judgment notwithstanding the verdict. May was placed in the custody of the Iowa Department of Human Services for

civil commitment. He appeals the district court's decision denying his motion for directed verdict.

II. Standard of Review.

Our review is for the correction of errors at law. *In re Detention of Altman*, 723 N.W.2d 181, 184 (Iowa 2006). We affirm when the jury's verdict is supported by substantial evidence. *Id.* "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Id.* We view the evidence in the light most favorable to the State. *Id.*

III. Sufficiency of the Evidence.

A. In its petition alleging May was a sexually violent predator, the State asserted May's convictions for child endangerment were sexually violent or sexually motivated offenses. May contends there is insufficient evidence these offenses were sexually motivated. He believes that without a finding these offenses were sexually motivated the jury would not have found he was a sexually violent predator.

A person may be subject to civil commitment if a court or jury determines, beyond a reasonable doubt, the person is a sexually violent predator. Iowa Code § 229A.7(5)(a). The term "sexually violent predator" means "a person who has been convicted 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).

The term “sexually violent offense” includes “[a]ny act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.” *Id.* § 229A.2(10)(g). “‘Sexually motivated’ means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.” *Id.* § 229A.2(9).

The Iowa Supreme Court has stated that the “purpose” specified in section 229A.2(9) does not require “instantaneous or contemporaneous sexual reward or consequence for the respondent.” *In re Detention of Blaise*, 830 N.W.2d 310, 321 (Iowa 2013). In considering the phrase “sexual motivation,” the court stated, “we believe our legislature intended the provision to require proof of ‘purpose’ of sexual gratification—a broad, forward-looking term encompassing the concept of intent—instead of proof of a respondent’s achievement of actual or immediate gratification.” *Id.* at 323.

We determine there is substantial evidence in the record to show the 2010 child endangerment offenses were sexually motivated. May’s own testimony showed he was sexually attracted to children and that he lied to the children’s mother to allow himself and Poe unsupervised access to the children. The fact that a dildo, which is “an artificial erect penis, used as a sexual aid,”² was present during May’s interaction with the children supports a finding the interaction was sexually motivated. Also, both of the psychologists who testified at May’s hearing, Dr. Phenix and Dr. Rosell, testified the child endangerment offenses contained a component that was sexually motivated.

² See <http://dictionary/reference.com/browse/dildo> (last visited August 12, 2013).

B. May also contends there is insufficient evidence in the record to show he was likely to engage in sexually violent offenses if not confined to a secure facility. He points out that he was not charged with any sexually-related crimes from the time he was released from prison in 2000 until he was charged with child endangerment in 2010.³ He asserts his diagnosis of pedophilia does not make him more likely than not to reoffend.

As noted above, a determination a person is a sexually violent predator requires a finding that the person is likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility. Iowa Code § 229A.2(11). The statute also provides, “*Likely to engage in predatory acts of sexual violence*” means that the person more likely than not will engage in acts of a sexually violent nature. *Id.* § 229A.2(3). The statute “does not require the State to prove a respondent is more likely than not to reoffend within a particular time frame.” *In re Detention of Pierce*, 748 N.W.2d 509, 512 (Iowa 2008). The State must show a respondent “is presently suffering from a mental abnormality that makes him more likely than not to engage in sexually predatory acts in the future.” *Id.* at 513.

Dr. Phenix conducted an extensive interview with May over a period of about three hours. In addition, she administered some actuarial instruments. “An actuarial assessment provides an ‘empirically measured rate of recidivism among a group of sex offenders who share a set of characteristics with the subject of the evaluation.’” *Id.* (citation omitted). On the Static-99R May scored

³ As noted above, May further disputes that the child endangerment convictions were sexually motivated.

nine out of eleven, which would place him in the high risk category. Dr. Phenix stated, “almost no sex offenders scored higher than he did on this instrument.” May scored a ten on the Static-2002R, which again put him in the high risk range. Dr. Phenix also administered to May the Structured Risk Assessment Forensic Version (SRA-FV). May’s responses on this test showed he would have a high risk of sexually reoffending. Dr. Phenix came to the conclusion that May’s risk was very high to reoffend in the future.

It was for the jury to decide whether or not to accept Dr. Phenix’s opinion. See *In re Detention of Stenzel*, 827 N.W.2d 690, 703 (Iowa 2013). Dr. Phenix could properly rely upon actuarial instruments and her own conversations and observations of May in reaching her opinion. See *id.* at 702-03. “How much weight the evidence should be given is of course up to the fact finder.” *Pierce*, 748 N.W.2d at 514.

We determine there is substantial evidence in the record to support the jury’s finding that May was more likely than not to engage in acts of a sexually violent nature in the future if he were not confined in a secure facility.

We affirm the decision finding May was a sexually violent predator within the meaning of chapter 229A.

AFFIRMED.