

IN THE COURT OF APPEALS OF IOWA

No. 3-824 / 12-1367
Filed September 18, 2013

**IN RE THE DETENTION OF
DANIEL JEROME ROE JR.,**

DANIEL JEROME ROE JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, Michael J. Schilling, Judge.

Daniel Roe appeals the verdict following a jury trial that he is a sexually violent predator, claiming substantial evidence does not support this finding.

AFFIRMED.

Samuel P. Langholz, State Public Defender, and Thomas J. Gaul, Assistant State Public Defender, Special Defense Unit, for appellant.

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

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

VOGEL, P.J.

Daniel Roe appeals the jury's verdict that he is a sexually violent predator. Because we find substantial evidence in the record showing Roe suffers from a mental abnormality that causes him to have difficulty controlling his behavior and is more likely than not to commit a sexually violent offense in the future absent confinement, we affirm the jury's verdict.

Roe was first convicted of second degree sexual assault in 1990, when he was eighteen years old. This offense involved Roe requesting an employee at a lingerie store¹ to model clothes for him, and when she did so, he took out a BB gun and threatened to shoot her unless she performed oral sex. Roe then attempted to perform vaginal and anal intercourse but was unable to maintain an erection. After serving time in prison, his sentence was discharged in 2007. In 2010, Roe pleaded guilty to two counts of assault with intent to commit sexual abuse. In a journal entry written for his sexual offender treatment class, Roe described the encounter in the following manner:

One day, November 13, 2009, to be exact, [the victim] was talking about leaving me and going back with her ex. She was going on about how she was tired about being the other woman, and we just walked around by these public restrooms.

I then grabbed her and forced her into the restroom. I started to hit her repeatedly with my fist. I was bouncing her head off the floor. She broke a tooth and was bleeding pretty good. As she tried to fight back, her pants came down in the back. I knew then that I wanted to penetrate every hole she had.

The victim managed to escape and no sexual act was completed. Additionally, Roe reported another incident in an interview with the State's expert witness, Barry Leavitt, PhD, where, according to Dr. Leavitt:

¹ Roe later acknowledged it was a store front for prostitution.

[Roe] reported a memory of—of beating his girlfriend on one occasion, and on one occasion beating her for no reason at all, I believe were his words, and that during that particular incident he noticed that he became aroused by the sight of blood, and as a result of that, forcibly anally and vaginally raped his girlfriend.

Dr. Leavitt further testified Roe suffers from paraphilia not otherwise specified (NOS), non-consent, as well as alcohol dependence, cannabis dependence, and borderline personality disorder. Dr. Leavitt based his diagnosis on a personal interview with Roe, as well as a review of Roe's medical records. Dr. Leavitt further testified Roe's paraphilia, combined with his alcohol and cannabis addictions, make it very difficult for Roe to control his behavior. Therefore, unless confined to a secure facility, he is more likely than not to commit another sexually violent offense. This opinion was based in part on Roe's own admission that he is afraid, once he is released into the general public that he will continue to drink and use drugs, and thus continue to commit sexually violent crimes.

Dr. Leavitt also employed three actuarial risk assessments to determine whether Roe was likely to reoffend: the Static-99R, the Static-2002R and the MnSOST-R. Each assessment placed Roe in either the high or moderately high risk category to reoffend. Dr. Leavitt further testified there were several aggravating factors that increased Roe's risk to reoffend, that is, Roe's intimacy deficit, resistance to rules, sexual preoccupation, sexualized violence, emotional mismanagement, and compulsiveness.

Roe's own candid testimony also offered evidence that he is likely to reoffend. For example:

Q: You told me a couple weeks ago that if you were released and you started drinking again, chances are good that you would commit another sex offense?

A: Or another crime period, because chances are good. Because that's what I meant by history of [sic] repeating itself. If I get drunk again, I'm repeating my past If I go back, if I touch alcohol again or if I touch the drugs again, or both, okay? What I'm saying is chances are I will fall back into my old patterns. Okay?

And I won't deny that. I won't sit here and try to blow smoke up anybody's ying hang because I ain't going to do that. I got a problem. I got a serious problem. I know I got a serious problem.

Craig Rypma, PhD, and Richard Wollert, PhD, testified on Roe's behalf.

Both stated they disagreed with Dr. Leavitt's diagnosis of paraphilia NOS, non-consent, partially because this diagnosis is not present in the Diagnostic and Statistical Manual of Mental Disorders IV. As such, both opined Roe does not suffer from a mental abnormality, as defined in Iowa Code sections 229A.2(11) and .7(5)(a) (2011). Each testified he did not believe any of the mental disorders with which he diagnosed Roe would cause Roe to commit sexually violent offenses. Drs. Rypma and Wollert further opined they did not believe Roe was more likely than not to commit sexually violent offenses in the future if not confined to a secure facility.

At both the close of the State's evidence and before the case was submitted to the jury, Roe moved for a directed verdict. The district court denied the motion, allowing the jury to weigh the testimony. The jury returned a verdict finding Roe "suffers from a mental abnormality," and because of that abnormality is "likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility."

Roe now appeals the district court's denial of his motion for a directed verdict, claiming substantial evidence does not support the jury's verdict. Specifically, he relies on the fact he did not commit any crimes between 2001 and 2004, that is, the time he was not in prison, to show he does not pose a present danger. Additionally, to contest the jury's finding he has a mental abnormality rendering him more likely than not to reoffend, he cites the testimony of Drs. Rypma and Wollert, who opined Roe does not suffer from a mental abnormality as defined in Iowa Code sections 229A.2(11) and .7(5)(a).

In the context of a civil commitment case, we review the grant or denial of a motion for a directed verdict for correction of errors at law. *In re Altman*, 723 N.W.2d 181, 184 (Iowa 2006). We evaluate whether substantial evidence exists to support the jury's finding. *Id.* "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). In making this determination, we view the evidence in the light most favorable to the nonmoving party, that is, the State. *Altman*, 723 N.W.2d at 184.

For the State to be able to commit Roe civilly, the jury must find beyond a reasonable doubt Roe has a mental abnormality causing him serious difficulty controlling his behavior. See Iowa Code §§ 229A.2(11), .7(5)(a); *In re Stenzel*, 827 N.W.2d 690, 701 (Iowa 2013). The jury must also find beyond a reasonable doubt Roe is more likely than not to commit a sexually violent offense in the future, unless he is confined to a secure facility. See *Stenzel*, 827 N.W.2d at 701; Iowa Code § 229A.2(4). When determining whether substantial evidence supports the jury's verdict, we must consider all evidence admitted during trial,

including evidence that may have been erroneously admitted. *Stenzel*, 827 N.W.2d at 701.

Upon review of the record, we find substantial evidence supports the verdict. At trial, the State presented statistical, clinical, and anecdotal evidence from which a reasonable jury could conclude Roe has difficulty controlling his behavior due to a mental abnormality; furthermore, his mental disorders make it more likely than not he will reoffend, unless confined to a secure facility. Specifically, Dr. Leavitt's testimony regarding Roe's mental disorders and test results from the actuarial risk assessments establishes a sufficient basis for a reasonable jury to conclude Roe has a mental abnormality, which renders him likely to reoffend in the future. See *id.* (holding a diagnosis of an antisocial personality disorder affecting a defendant's ability to control his behavior can support a jury finding that he is a sexually violent predator); accord *Altman*, 723 N.W.2d at 185–86. The conflicting testimony of two other experts does not negate the opinion of Dr. Leavitt, and the jury is free to accept the State's expert's testimony over that of Roe's witnesses. See *id.* at 185 (the fact finder is free to accept the testimony of the State's expert over the contrary opinion of the defense's expert); accord *In re Barnes*, 689 N.W.2d 455, 461 (Iowa 2004).

Additionally, the fact Roe did not commit an offense between 2001 and 2004 is irrelevant, considering he was confined for a sexually violent offense at the time the State filed its petition. See *In re Gonzales*, 658 N.W.2d 102, 105 (Iowa 2003) (holding when a person is confined for a sexually violent offense at the time the State brings its petition, the "recent overt act" requirement is satisfied).

Finding substantial evidence in the record, we affirm the jury's finding Roe is a sexually violent predator.

AFFIRMED.