IN THE COURT OF APPEALS OF IOWA

No. 6-557 / 05-1675
Filed August 23, 2006

IN RE THE DETENTION OF MICHAEL MILLSAP,

MICHAEL MILLSAP,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge.

Michael Millsap appeals after he was found to be a sexually violent predator by a jury and the district court entered an order of commitment. **AFFIRMED.**

Mark Smith, First Assistant State Public Defender, and Jennifer Larson, Assistant Public Defender, for appellant.

Thomas J. Miller, Attorney General, and Darrel Mullins, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

SACKETT, C.J.

Michael Millsap appeals the jury verdict finding him to be a sexually violent predator under Iowa Code chapter 229A (2003). He argues that (1) the evidence was insufficient to support the jury's verdict because the evidence did not show he was likely to engage in future predatory sexually violent offenses and (2) the district court erred in instructing the jury. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Millsap has long history of sexually abusing minor children. In 1979 Millsap sexually abused a paperboy and was adjudicated a delinquent for that offense. In 1981 Millsap entered an elementary school and sexually abused a young boy in the bathroom. He pled guilty to third-degree sexual abuse for that offense. While on parole following that conviction, Millsap attempted to sexually abuse another boy, which led to the revocation of his parole. In 1988 Millsap pled guilty to the crime of indecent contact with a child in connection with abuse he perpetrated on his four-year-old cousin. In 1992 Millsap pled guilty to the crime of second-degree sexual abuse for pulling a fifteen-year-old boy into a bathroom at a church and sexually abusing him.

Prior to Millsap's release from prison for the 1992 conviction, the State filed a petition to have Millsap civilly committed as a sexually violent predator pursuant to Iowa Code chapter 229A. A jury trial commenced on September 19, 2005. The jury found Millsap to be a sexually violent predator and the district court subsequently ordered commitment. Millsap appeals from that order arguing (1) the evidence was insufficient to find him to be a sexually violent

predator beyond a reasonable doubt, and (2) the district court erred in its instructions to the jury.

II. SCOPE OF REVIEW.

We review challenges to the sufficiency of the evidence for correction of errors at law. *In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003). We review the challenge to jury instructions for correction of errors at law. *In re Detention of Crane*, 704 N.W.2d 437, 438 (Iowa 2005).

III. ANALYSIS.

Sufficiency of the Evidence. Millsap argues the evidence was insufficient to support the jury's verdict that he was a sexually violent predator because his past offenses were not "predatory," as defined by Iowa Code section 229A.2(6). Relevantly, a "sexually violent predator" is a person "who suffers from a mental abnormality which makes the person likely to engage in *predatory* acts constituting sexually violent offenses." Iowa Code § 229A.2(11) (emphasis added). The term "predatory" is defined as "acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization." Iowa Code § 229A.2(6). Millsap argues there was not sufficient evidence to show he would engage in future predatory acts because the evidence failed to show that he forms "relationships with the victims of his sexual offenses."

The argument made by Millsap was addressed in *In re Detention of Betsworth*, 711 N.W.2d 280, 287-88 (Iowa 2006). In *Betsworth*, the appellant made the same argument as Millsap; that he was not likely to commit future "predatory acts" because he did not form a relationship with his victims.

Betsworth, 711 N.W.2d at 287. The court held the definition of the term relationship "has no temporal requirement with respect to the length of the relations or dealings between the offender and his victim or with respect to the quality or quantity of interaction necessary to create a 'relationship.'" *Id.* The legislature simply used the term to refer to an offender's engagement or dealing with the other person. *Id.* With this broad interpretation of the term "relationship" in mind, we conclude there was sufficient evidence upon which a reasonable fact-finder could have found Millsap was a sexually violent predator.

Jury Instructions. Millsap next argues the district court erred in not giving his requested jury instructions. Millsap asked that the jury be given the following two instructions:

> INSTRUCTION NO. ___
>
> **Confinement.** It is your duty as jurors to determine if the Respondent Michael B. Millsap, should be confined in a secure facility as a sexually violent predator.
>
> In the event of a verdict that the Respondent should be confined as a sexually violent predator, the Court must order that he be confined in a secure facility.

> INSTRUCTION NO. ___
>
> **Treatment.** You cannot adjudicate Michael B. Millsap as a sexually violent predator simply because you believe he may benefit from counseling, treatment or some form of community supervision. Your verdict must be based on a determination that his risk to commit predatory acts constituting sexually violent offenses is so great that he must be confined.

Millsap requested the "confinement" instruction due to the State asking Millsap and the State's expert witness, Dr. Anna Salter, about the supervision Millsap would be under if he were released. Both testified that Millsap would not be in a supervised situation after his release. Dr. Salter further opined that the lack of supervision could negatively impact Millsap's likelihood to reoffend.

Millsap argues that the testimony regarding the lack of supervision over him, if he were to be released, gave the jury the impression that if they were to find he should be committed there was a possible lesser restrictive alternative than confinement. Thus, Millsap argues his proposed "confinement" instruction was necessary to make it clear to the jury that commitment would result in confinement. We disagree with Millsap's position that the State implied a lesser restrictive alternative than confinement was possible. Most importantly, the instruction actually given by the district court was correct a statement of the law. The district court gave general marshaling instruction, which required the jury to find the following beyond a reasonable doubt:

> 1) The Respondent has been convicted of, or charged with, a sexually violent offense.
> 2) The Respondent suffers from a mental abnormality
> 3) That mental abnormality makes the Respondent likely to engage in predatory acts constituting sexually violent offenses if Respondent is not confined in a secure facility.

The marshaling instruction properly informed the jury of their duty to determine whether Millsap was a sexually violent predator. *Crane*, 704 N.W.2d at 439-40. No further instruction was necessary. *See id.*

Millsap further argues that his proposed "treatment" instruction was necessary due to Dr. Salter's testimony regarding the treatment program he participated in while incarcerated. Millsap points to testimony where Dr. Salter indicated she performed a test to determine whether Millsap "really got a lot out of treatment." Also, Dr. Salter testified, "In general [Millsap] didn't remember what he got in treatment and he didn't have any kind of relapse plan that would help keep him from offending in the future." This testimony does not require giving the proposed "treatment" instruction. The testimony of Dr. Salter did not

suggest to the jury that Millsap should be committed simply because more treatment was in his best interest. *See B.A.A. v. Chief Medical Officer*, 421 N.W.2d 118, 126 (Iowa 1988). The district court did not abuse its discretion in declining to give the "treatment" instruction requested by Millsap.

AFFIRMED.