IN THE COURT OF APPEALS OF IOWA

No. 8-521 / 07-1376
Filed September 17, 2008

IN RE THE DETENTION OF
DEREK E. BLAISE,

DEREK E. BLAISE,
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, Annette Scieszinski, Judge.

The respondent appeals from the district court's order committing him as a sexually violent predator. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Steven L. Addington, Assistant Public Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglas, Assistant Attorney General, Mark Tremmel, County Attorney, and Robert Glaser, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Derek Blaise appeals the jury verdict finding him to be a sexually violent predator under Iowa Code section 229A.2(11) (2007). We affirm.

I. Background Facts and Proceedings

Blaise was convicted of assault with intent to commit sexual abuse in 2002, and indecent exposure in 1999. He was imprisoned in 2002. In 2005, while he was still incarcerated, the State petitioned to have Blaise adjudicated a sexually violent predator subject to civil commitment. *See* Iowa Code § 229A. In 2007, after a trial, the jury determined that Blaise was a sexually violent predator, and the court committed him to the custody of the Iowa Department of Human Services (DHS). On appeal, Blaise challenges the sufficiency of the evidence supporting the jury's finding.

II. Scope and Standards of Review

We review a challenge to the sufficiency of the evidence for errors at law. *In re Detention of Betsworth*, 711 N.W.2d 280, 286 (Iowa 2006). If there is substantial evidence upon which a rational trier of fact could find the respondent to be a sexually violent predator beyond a reasonable doubt, we are bound by the jury's finding. *Id*. To determine whether the evidence was substantial, we consider the entirety of the evidence presented in a light most favorable to the State, including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record. *In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003); *State v. Yeo*, 659 N.W.2d 544, 547 (Iowa 2003). Evidence is not substantial if it raises only suspicion, speculation, or conjecture. *Betsworth*, 711 N.W.2d at 287.

III. Sufficiency of the Evidence

Iowa Code section 229A.2(11) defines a "sexually violent predator" as a person "who has been convicted of 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, in not confined in a secure facility." A "mental abnormality" is defined as "a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others." *Id*. at § 229A.2(5).

Blaise contends there in not sufficient evidence in the record to show he has a mental abnormality. At trial, Blaise testified to committing a variety of sexual offenses and to having nearly one hundred victims, and stated that he has not taken his treatment seriously. Blaise further testified about committing forced vaginal sex, threatening a victim not to tell after he raped her, bribing young girls for oral sex and more. In his brief on appeal, Blaise admits the record shows that he has repeatedly chosen to engage in criminal sexual behavior.

The State proffered an expert witness, Dr. Anna Salter, who opined that Blaise had two mental abnormalities: (1) paraphilia not otherwise specified (NOS); and (2) personality disorder NOS. According to Dr. Salter, both these mental abnormalities predispose Blaise to commit sexually violent offenses. With regard to the first abnormality, Dr. Salter stated the paraphilia NOS with which Blaise is afflicted involves sexual attraction to force and an attraction to specifically targeted adolescents. Dr. Salter's diagnosis was supported by

Blaise's "history of using force, forcing kids to have sex with him." As Dr. Salter explained at trial:

> So I think if you look at his history and you look at what he says, he admits that he is specifically attracted, particularly to these young and mid-age adolescent kids. And that's what qualifies him for a diagnosis of Paraphilia Not Otherwise Specified, because those two kinds of deviant sexual interests, an attraction to adolescent[s] and an attraction to force, are clinically and widely accepted.

With regard to the second abnormality, Dr. Salter stated the personality disorder NOS with which Blaise is afflicted involves callousness, lack of remorse, lack of guilt, violence and hostility toward his victims. Dr. Salter's diagnosis was supported by the fact that Blaise spent time setting up and planning his crimes, which included lying, hiding his age, and driving around to pick up adolescent girls. Dr. Salter opined that Blaise's mental abnormalities predispose him to commit sexually-violent crimes:

> Especially when you put two conditions like this together, they particularly affect somebody's volitional and emotional capacity. Paraphilia is like a hunger. It's like something people are driven to do. Now, people can have different levels of Paraphilia. There are probably people in this country who are particularly sexually attracted to adolescents, find them more attractive than any other age group, but they never act on it. They don't think it's the right thing to do. They've got an ability to control themselves, and they're just not going to go out there and hurt people.
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> So in those cases, you wouldn't necessarily say that that had affected their volitional control, because they do have good control. But if the hunger is intense enough and the person's controls are weak enough, then you get a situation where it does impact their volitional control. If they didn't have that hunger, they wouldn't be out doing these things. The stronger the desire or the hunger, the harder it is to resist, the more people start making excuses for what they're doing. Instead of admitting and facing up to and trying to control what they're doing.
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> [Blaise's] mental abnormalities in this case are serious enough and at a high enough level and strong enough that they do impact his

> volitional and emotional control and they predispose him to commit future sexual offenses.

Dr. Salter also discussed the risk assessment of Blaise. Dr. Salter employed three actuarial assessments in which Blaise scored in the highest-risk category on two and in the moderate-risk category on the third. Dr. Salter noted the treatment Blaise had been receiving had not been successful in lowering the risk of another offense. Dr. Salter further noted Blaise did not have an adequate relapse prevention plan, nor did he plan to change his way of living to avoid sexually reoffending. Based upon all these factors, Dr. Salter opined that Blaise was at a high risk to reoffend. We determine Dr. Salter's opinion provides substantial evidence to show Blaise has a mental abnormality.

We reach this conclusion notwithstanding the testimony of defense expert, Dr. Luis Rosell. Dr. Rosell disagreed with Dr. Salter that Blaise suffered from a mental abnormality. Rather, he opined that Blaise had committed numerous sex offenses because "his poor judgment came out, his anger, and it was just his inappropriate manner of engaging with individuals, his impulsivity and his failure to consider the consequences." Dr. Rosell, however, did not conduct any tests on Blaise. The jury was free to afford less weight to this opinion than to Dr. Salter's testimony, and the court instructed the jury accordingly. *State v. Shultz*, 231 N.W.2d 585, 587 (Iowa 1975) ("The trier of fact is not obliged to accept opinion evidence, even from experts, as conclusive. It may be accepted in whole, in part, or not at all."); *In re L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App. 1995).

After having reviewed the record, we conclude the evidence was sufficient to support the jury's finding that Blaise has a mental abnormality. We find the district court did not err in interpreting and applying chapter 229A. Consequently, we affirm the district court.

AFFIRMED.