

IN THE COURT OF APPEALS OF IOWA

No. 2-254/ 11-0653
Filed May 23, 2012

**IN RE THE DETENTION OF
DANIEL JOSEPH SCOTT**

DANIEL JOSEPH SCOTT,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Marsha Bergan,
Judge.

Daniel Joseph Scott appeals from the jury's verdict finding he is not
suitable for discharge from civil commitment pursuant to Iowa Code chapter
229A (2011). **AFFIRMED.**

Thomas J. Gaul, Assistant Public Defender, Special Defense Unit, for
appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall and Andrew B.
Prosser, Assistant Attorneys General, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Daniel Joseph Scott appeals from the jury's verdict finding he is not suitable for discharge from civil commitment pursuant to Iowa Code chapter 229A (2011). He contends there is insufficient evidence to show he is likely to engage in predatory acts of sexual violence if discharged from civil commitment.

Viewing the evidence in the light most favorable to the State, we find substantial evidence supports the jury's verdict finding Scott's civil commitment should continue.

I. Background Facts and Proceedings.

In 2006, Scott was found to be a sexually violent predator under chapter 229A and was civilly committed. His sexually violent offenses include two convictions for assault with intent to commit sexual abuse and two convictions for third-degree sexual abuse. Scott was confined to the Civil Commitment Unit for Sexual Offenders to undergo multi-phase treatment.

Following the filing of an annual report in May 2009, the district court granted Scott's request for a final hearing on whether he was eligible for discharge. The hearing was held before a jury in March 2011. At the close of the State's evidence, Scott made a motion for directed verdict, which was denied. The jury returned a verdict finding Scott's mental abnormality remained such that he was likely to engage in predatory acts constituting sexually violent offenses. Scott appeals.

II. Scope and Standard of Review.

We review Scott's challenge to the sufficiency of the evidence for the correction of errors at law. See *In re Det. of Betsworth*, 711 N.W.2d 280, 286 (Iowa 2006). If there is substantial evidence upon which a trier of fact could find the respondent to be a sexually violent predator beyond a reasonable doubt, we are bound by the jury's findings. *Id.* In determining whether evidence is substantial, we consider all the evidence presented in a light most favorable to the State, including all legitimate inferences and presumptions that can be fairly and reasonably deduced from the record. *Id.* Evidence that only raises suspicion, speculation, or conjecture is not substantial. *Id.*

III. Analysis.

Iowa Code chapter 229A allows for the commitment of sexually violent predators in order "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. Section 229A.8 permits a committed person to challenge his commitment each year; the committed person is entitled to an annual review in which he may request a final hearing to determine whether he is eligible for release or transitional release. It provides:

Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The 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.

Iowa Code § 229A.8(1). At the final hearing, the burden of proof is on the State to prove beyond a reasonable doubt that “[t]he committed person’s mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged.” *Id.* § 229A.8(6)(d)(1).

Scott contends there is insufficient evidence that he would likely commit sexually violent offenses if discharged. He cites the treatment he has received in the sexually violent predator program since 2006, his age, and his physical health as factors that make it unlikely he would reoffend. Scott was fifty-four years old at the time of the hearing. Both of his legs have been amputated. He has diabetes and heart problems—having suffered two major heart attacks—suffers from acute kidney disorder, and wears a catheter. Scott’s medical problems are severe enough that he was unable to make progress in his treatment.

Three experts testified at Scott’s hearing regarding his likelihood to reoffend. Dr. Michael Ryan, the clinical director of the Civil Commitment Unit for Sex Offenders, testified Scott’s risk of reoffending has not been lowered to a level that would warrant his discharge. In contrast, two clinical forensic psychologists testified for Scott: Dr. Craig Rypma opined Scott was suitable for release based upon his progress with treatment, his age, and his medical condition and Dr. Luis Rosell testified Scott’s declining health would diminish his

risk of committing sexually violent offenses. Dr. Rosell assessed Scott's risk of reoffending at between twenty and thirty-five percent.

We find substantial evidence supports the jury's verdict finding Scott is likely to engage in predatory acts if discharged. Of the four sex offenses Scott was convicted of that led him to being adjudicated as a sexually violent predator, only one of those offenses involved sexual intercourse or attempted intercourse; the rest involved fondling. Two of those offenses were committed when Scott only had one leg and was suffering from diabetes and hypertension.

Scott still has the ability to commit sexual assault on the female staff members who must come into contact with him on a regular basis due to his medical conditions. He demonstrated hostility toward the staff assigned to treat his medical conditions by threatening to use a metal bar to assault people and throwing feces. He also leaned against a female staff member to get contact with her and would defecate in order to force young, female nurses to help him clean up.

Despite his claim he has gained insight through treatment, at the hearing Scott downplayed or denied the accusations that the victims of those crimes made against him and claimed he could not remember one of the women. Dr. Ryan described Scott as "extremely manipulative" and "extremely impulsive." Dr. Ryan testified there is no evidence Scott's mental abnormality has changed.

Viewing the record in the light most favorable to the State, we conclude the State has shown Scott's mental abnormality remains such that he is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

Accordingly, we affirm the verdict finding Scott's civil commitment should continue.

AFFIRMED.