

**IN THE COURT OF APPEALS OF IOWA**

No. 9-139 / 07-1601  
Filed April 22, 2009

**IN RE THE DETENTION OF  
CLAY M. SPEARS,**

**STATE OF IOWA,**  
Petitioner-Appellant/Cross-Appellee

**CLAY M. SPEARS,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,  
Judge.

The State appeals from the district court's order granting Clay M. Spears a  
new trial, and Spears cross-appeals from his civil commitment as a sexually  
violent predator. **AFFIRMED.**

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney  
General, and Becky Goettsch, Assistant Attorney General, for appellant/cross-  
appellee State.

Mark C. Smith, State Appellate Defender, and Greta Truman, Assistant  
Public Defender, for appellee/cross-appellant.

Considered by Vaitheswaran, P.J., and Doyle and Mansfield, JJ.

**DOYLE, J.**

The State appeals from the district court's order granting a new trial. Clay Morgan Spears cross-appeals from his civil commitment as a sexually violent predator. Upon our review, we affirm the grant of a new trial.

***I. Background Facts and Proceedings.***

Clay Spears has been in and out of prison since he was first convicted of burglary at age nineteen. Over the last thirty years, he has been convicted of a variety of offenses, including attempted murder, robbery, burglary, and assault with attempt to commit sexual abuse. While incarcerated, he received numerous disciplinary reports based on sexual misconduct.

On July 18, 2006, some months after his latest release from jail, Spears met a couple in a Davenport park. Spears got into a fight with the man and then was witnessed sexually assaulting the man's girlfriend. Spears pleaded guilty to assault causing bodily injury and assault while displaying a dangerous weapon. He was sentenced to a two-year term and a one-year term of imprisonment, with the terms to run concurrently.

While Spears was serving his sentence for this latest offense, the State filed a petition alleging he was a sexually violent predator under Iowa Code chapter 229A (2007). The district court found probable cause, and a trial to a jury began on Monday, September 10, 2007.

At trial, the State's expert witness was psychologist Joseph Belanger, Ph.D. At the time of trial Dr. Belanger was employed by the North Dakota Department of Human Services as a forensic psychologist. His work consisted predominantly of performing evaluations for "sexually dangerous individuals,"

North Dakota's equivalent to "sexually violent predators." He was also self-employed doing business as Psychological Services. He had focused his work on sexually dangerous individuals since 1997, after North Dakota passed a law similar to Iowa's sexually violent predator law. At the time of trial, he had evaluated about seventy-five to eighty sex offenders in North Dakota and five to seven in Iowa. Dr. Belanger testified Spears had a mental abnormality he diagnosed as antisocial personality disorder. He concluded Spears was more likely than not to commit sexually violent offenses if not confined to a secured facility.

Spears intended to present an expert witness, Dr. Steven Hart, from Canada. However, the State concluded its case on Tuesday, and Dr. Hart was apparently not available to testify until Thursday. The court denied Spears's request to continue or suspend the trial until Dr. Hart was available. The trial was concluded on Wednesday without Hart's testimony.

On September 12, 2007, the jury found Spears to be a sexually violent predator, and the district court entered an order of commitment. Spears filed his notice of appeal on September 19, 2007. He filed a motion for new trial the next day, claiming the trial court erred in failing to suspend the trial for a day to allow his expert to testify, in failing to suppress certain statements, and in failing to submit a requested jury instruction.

Sometime after Spears was committed, Dr. Belanger quit his job with the state of North Dakota. This occurred after the Department of Homeland Security seized Dr. Belanger's home computer, upon which he had downloaded child pornography. On November 27, 2007, Dr. Belanger wrote a letter to the North

Dakota Board of Psychologist Examiners. In the letter he disclosed that he had survived some “horrific” abuse in his childhood. He said his melancholic depressions and anxiety attacks became worse as he started to do evaluations of sexually dangerous individuals. He admitted that in retrospect that because of his own issues he should have told his supervisor immediately and let somebody else do the work. He also stated: “I found [my work] appalling and frightening.” He admitted that he was ill but he did not know how ill. The letter was disclosed to the North Dakota Attorney General, and then apparently to the Iowa Attorney General in early December 2007. It is believed the office of the Iowa Attorney General then disclosed the letter to counsel for Spears, and Spears thereafter filed another motion for new trial, attaching the letter and a December 8, 2007 newspaper article which detailed the contents of the letter.

On December 14, 2007, Spears filed a motion for limited remand and to stay appellate proceedings. On December 18 he filed another motion for new trial based on newly discovered evidence. He alleged the State’s expert was “an admitted mentally ill pedophile with serious difficulty controlling his behavior.” His amended motion for new trial was filed January 7, 2008. On January 17, 2008, the Iowa Supreme Court granted the motion for limited remand. Spears then filed an amended motion and a petition for new trial. The State resisted Spears’s motions.

On June 11, 2008, the district court ruled on all grounds raised in Spears’s motions for new trial. The court denied a new trial on the grounds raised in Spears’s original motion, but granted a new trial on the ground of newly

discovered evidence raised in Spears's later motions. The State filed a notice of appeal from the district court's ruling on June 20, 2008.

In its appeal, the State claims the district court erred in granting a new trial. In his cross-appeal, Spears raises only the claim that the district court erred in refusing to grant a continuance to allow his expert to testify at trial.

## ***II. Merits.***

Generally, trial courts have broad but not unlimited discretion in ruling on motions for new trials. *Benson v. Richardson*, 537 N.W.2d 748, 762 (Iowa 1995). A district court is given "unusually broad discretion" in ruling on a motion for new trial that is on the basis of newly discovered evidence. *State v. Miles*, 490 N.W.2d 798, 799 (Iowa 1992) (citation omitted).

This broad discretion is particularly appropriate. It is important to distinguish between the unavoidable, legitimate claims and those proposed in desperation by a disappointed litigant. From its closer vantage point the presiding trial court has a clearer view of this crucial question, and we generally yield to its determination.

*Id.* Nevertheless, motions for new trial based on newly discovered evidence are not favored. *Benson*, 537 N.W.2d at 762. A trial court's ruling will not be disturbed unless the evidence clearly shows the court has abused its discretion.

*Id.* We will find an abuse of discretion if the trial court clearly exercised its discretion on untenable grounds or acted unreasonably. *Id.* This court is slower to interfere with a grant of a new trial than with its denial. Iowa R. App. P. 6.14(6)(d).

In order for Spears to prevail on his petition for new trial based on a claim of newly-discovered evidence, he must show that: (1) the evidence is newly discovered and could not, in the exercise of due diligence, have been discovered

prior to the conclusion of the trial; (2) the evidence is material to the issues in the case and not merely cumulative or impeaching; and (3) the evidence will probably change the result if a new trial is granted. *Benson*, 537 N.W.2d at 762. Under Iowa law, “newly discovered evidence” sufficient to merit a new trial is evidence which existed at the time of trial, but which, for excusable reasons, the party was unable to produce at the time. *Id.* at 762-63.

***A. Newly Discovered Evidence.***

Spears’s motions for new trial were considered by the district court on the pleadings, without additional testimony or a hearing. On June 11, 2008, Spears filed two documents in support of his amended motion and petition for new trial. The first document was an affidavit by Dr. Craig Rypma, a clinical and forensic psychologist, and the second was Dr. Rypma’s curriculum vitae. In the affidavit, Dr. Rypma states that Dr. Belanger’s letter raises significant concerns about Dr. Belanger’s evaluation of persons considered for civil commitment. Dr. Rypma opined that a professional psychologist doing an evaluation must always maintain a professional distance when evaluating a candidate for commitment. In Dr. Rypma’s opinion, if an evaluator has issues that are not dealt with, there would be a tendency for the evaluator to see the pathology as being more severe in some than indeed might actually be.

Dr. Belanger’s letter would not, in and of itself, qualify as “newly discovered evidence” since it did not exist at the time of trial. The parties did not agree as to whether Dr. Belanger’s problems, as revealed in the letter and the newspaper article, existed at the time of trial. The State argued in its resistance to the petition for new trial, and on appeal, that there was no evidence that

Dr. Belanger's "issues" existed at the time of trial. Although Dr. Belanger does not set forth at what period of time he should have started letting others do his work because of his "own issues" stemming from "horrific" childhood abuse, a review of the record leads to the logical conclusion that Dr. Belanger was suffering from his condition at the time he was evaluating Spears. He stated in his letter that his melancholic depressions and anxiety attacks became worse as he started evaluations of sexually dangerous individuals. He testified that he started doing those evaluations in 1997. Additionally, he testified that he had evaluated seventy-five to eighty sex offenders in North Dakota and five to seven in Iowa prior to Spears's trial. This evidence, coupled with Dr. Belanger's self-disclosure that he should have asked others to do the evaluations and his statement that he found these evaluations to be appalling and frightening, is sufficient to establish that the evidence of Dr. Belanger's illness existed at the time of trial, notwithstanding Spears's failure to establish the precise time frame for all of the newly discovered evidence. The district court was "satisfied that the evidence of Dr. Belanger's deviate behavior [was] certainly newly discovered evidence that could not, with reasonable diligence, have been discovered and produced at trial." We agree.

***B. Materiality.***

The district court also concluded the evidence of Dr. Belanger's deviate behavior was "material to the extent that if it would have been available it would probably have been proper impeachment to ask him." "Evidence is material when there is a 'reasonable probability' that disclosure would have changed the result of the proceeding." *State v. Piper*, 663 N.W.2d 894, 905 (Iowa 2003)

(quoting *State v. Veal*, 564 N.W.2d 797, 810 (Iowa 1997)). Evidence which is merely impeaching is generally not considered material, but evidence may be both material and also “incidentally impeach” a witness and may properly serve as the basis for a new trial. *Dobberstein v. Emmett County*, 176 Iowa 96, 104-05, 155 N.W. 815, 818-19 (1916). The trial court recognized there is supporting legal authority that some of the evidence is impeaching, but the court found that if the evidence would have been available, it would have been proper impeachment to ask Dr. Belanger about it. We agree.

**C. Change in Result.**

Lastly, it must be shown that the evidence will probably change the result if a new trial is granted. *Benson*, 537 N.W.2d at 762. Put another way, “[i]f it can be said that in all probability the newly discovered evidence will not affect the result in case of a second trial, then the motion should be denied.” *Henderson v. Edwards*, 191 Iowa 871, 873, 183 N.W. 583, 584 (1921). To be sure, this rule is speculative, but nevertheless is a reasonably safe guide. *Id.* In finding the evidence was material, the court necessarily found that the evidence would change the result if a new trial was granted. We agree that if this evidence was presented to a jury, the trial results would probably be different.

Additionally, the trial court stated:

It is not possible to determine on any rational, reasonable basis whether the psychological problems and deviate behavior acknowledged by Dr. Belanger affected his ability to objectively assess whether [Spears] suffered from a mental abnormality such that he is likely to engage in predatory acts constituting sexually violent offenses if not confined in a secure facility. The disturbing nature of Dr. Belanger’s own deviate behavior, however, is sufficiently large to undermine the court’s confidence in the jury verdict that may be largely based on that testimony. Presumably,



on the grant of a new trial, the State will be able to secure a new evaluation of [Spears] by an expert not burdened with the same problems Dr. Belanger has.

Further, the court noted, “[w]e should not be required to rely on testimony from a witness who may be as mentally ill as the subjects he treats.” We agree.

Our conclusions might be different had Dr. Belanger’s expertise been in a different area, such as accident reconstruction and his testimony limited to that field. Under those circumstances, his illness and deviate behavior, being unrelated to the subject matter of his testimony, would probably have no impact on his credibility or bias concerning the subject matter of his testimony. But in this case, Dr. Belanger’s illness and deviate behavior directly parallels that of the very subjects he was entrusted to evaluate and strikes at the very heart of the subject matter of his testimony. Under these circumstances, we, like the trial court, have serious concerns as to whether Dr. Belanger could maintain a professional distance when evaluating a candidate, such as Spears, for commitment.

In enacting chapter 229A, the legislature recognized the necessity to establish a civil commitment procedure for the long-term care and treatment of sexually violent predators, procedures that reflect legitimate public safety concerns, while at the same time, provide treatment services designed to benefit sexually violent predators. Iowa Code § 229A.1. As important as the State’s interest is in protecting the public and victims from sexually violent predators, that interest cannot outweigh the fundamental right to a fair trial. Involuntary commitment “for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425, 99

S. Ct. 1804, 1809, 60 L. Ed. 2d 323, 330-31 (1979) (citations omitted). Where the significant deprivation of a person's liberty is at stake, as here, we think it is more prudent to err on the side of caution. The disturbing nature of Dr. Belanger's own illness and deviate behavior that mirrors the mental illnesses of the very subjects he evaluated, including Spears, is sufficient to undermine the court's confidence in a jury verdict based largely on his testimony. A new trial is therefore warranted.

***III. Conclusion.***

Because we conclude a new trial is warranted, we need not and do not address the issue raised by Spears in his cross-appeal. For all the above reasons, we find the newly discovered evidence warrants a new trial, and we affirm the trial court's grant of a new trial.

**AFFIRMED.**