

IN THE COURT OF APPEALS OF IOWA

No. 2-566 / 11-1299
Filed August 8, 2012

**IN RE THE DETENTION OF
KEVIN STEVENSON,**

KEVIN STEVENSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

Appellant appeals the district court's order of commitment following a jury
verdict finding him to be a sexually violent predator. **AFFIRMED.**

Michael H. Adams, Local Public Defender, and Thomas J. Gaul, Assistant
Public Defender, for appellant.

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

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

VOGEL, P.J.

Kevin Stevenson appeals the order of commitment entered by the district court following the jury verdict finding him to be a sexually violent predator, as defined by Iowa Code section 229A.2(11) (2009). Stevenson asserts the district court erred in denying his motion for a directed verdict as he asserts there was insufficient evidence to prove he suffers from a mental abnormality or is likely to reoffend. For the reasons stated herein, we affirm.

In 1995, Stevenson was convicted of two counts of third-degree sexual abuse and three counts of indecent contact with a child. Among his victims were his twelve-year-old daughter, and his eleven-year-old stepdaughter. He was sentenced to a total of twelve years in prison but was released in December of 2001. A few months later he reoffended, sexually abusing his sixteen-year-old stepdaughter. He was convicted in 2004 for this offense and sentenced to a term of incarceration not to exceed fifteen years as he was found to be an habitual offender. Before he discharged this sentence in May of 2010, the State filed a petition seeking to have Stevenson committed as a sexually violent predator under Iowa Code chapter 229A.

The case proceeded to a jury trial in July of 2011. Stevenson testified at trial and admitted to his prior offenses. The State offered the opinions of Dr. Richard W. Elwood in support of its case. Dr. Elwood testified Stevenson has several mental abnormalities that predispose him to commit acts of sexual violence, including: paraphilia not otherwise specified with features of pedophilia and hebephilia, alcohol abuse, amphetamine abuse, opiate abuse, and antisocial

personality disorder.¹ Dr. Elwood also opined Stevenson's "risk of committing another act of sexual violence is more likely than not if he were released from incarceration and given the opportunity."

In his defense, Stevenson offered the opinions of Dr. Richard Wollert. Dr. Wollert diagnosed Stevenson with substance abuse problems, antisocial personality disorder, and intermittent explosive disorder; however, it was Dr. Wollert's belief that none of these diagnoses fit the definition of mental abnormality applicable in this case. Dr. Wollert also opined Stevenson was unlikely to reoffend; and thus, he concluded Stevenson does not fit the criteria of a sexually violent predator under Iowa law.

During trial, Stevenson made two motions for a directed verdict asserting the State had failed to prove he suffers from a mental abnormality or that he is likely to "sexually recidivate" if not confined in a secure facility. The district court denied the motions and submitted the case to the jury, which found Stevenson to be a sexually violent predator. The district court committed Stevenson "to the custody of the Director of the Department of Human Services for control, care, and treatment until such time as his mental abnormality has so changed that he is safe to be placed in a transitional release program or discharged."

Stevenson appeals challenging again the sufficiency of the evidence to support the finding that he suffers from a mental abnormality or that he is likely to reoffend. He asserts the evidence showed he had been free from 2001 to 2004

¹ Dr. Elwood also diagnosed Stevenson with "bipolar I disorder, most recent episode mixed, in partial remission," though it was Dr. Elwood's opinion that this diagnosis would not necessarily affect Stevenson's sexual offending.

and had not committed a sexually violent offense, he had no diagnosis that fit the definition of a mental abnormality, and he is not likely to reoffend.

We review a district court's decision on a motion for a directed verdict for correction of errors at law. *In re Det. of Hennings*, 744 N.W.2d 333, 340 (Iowa 2008). We view the evidence in the light most favorable to the opposing party and will find the evidence substantial if a jury could reasonably infer a fact from the evidence. *Id.*

In this case, based on Dr. Elwood's testimony detailed herein, we find the evidence sufficient to support the jury's conclusion that Stevenson has a mental abnormality under Iowa law and is likely to reoffend if not confined in a secure facility. While Dr. Wollert offered opinions contrary to Dr. Elwood, "[i]t was for the jury to decide which of the experts was more credible . . . and whose opinion . . . the jury would accept." See *In re Det. of Altman*, 723 N.W.2d 181, 185 (Iowa 2006) (citation omitted). Stevenson claims on appeal that he had not committed a sexually violent offense from 2001 to 2004. This contention is not supported in the record. Stevenson admitted to being released from prison on December 31, 2001, and admitted to sexually assaulting his stepdaughter only a few months later in the spring of 2002. While he was not convicted of this offense until 2004, this does not mean he had not committed a sexually violent offense during that time. In addition, as the State points out, the "recent overt act" requirement is satisfied if the act for which the person is presently confined, when the commitment petition is filed, is a sexually violent act. *In re Det. of Willis*, 691 N.W.2d 726, 729 (Iowa 2005) ("The absence of sexually predatory acts in a setting of secure confinement does not paint the same picture as the absence of

such acts in a normal life situation.”) Stevenson was confined for a sexually violent offense, sexual abuse in the third degree, when the State filed its petition; therefore, the recent overt act requirement is satisfied in this case.

We affirm the district court’s denial of Stevenson’s motion for a directed verdict, and thereby affirm Stevenson’s commitment under chapter 229A.

AFFIRMED.