

IN THE COURT OF APPEALS OF IOWA

No. 6-378 / 05-1390
Filed June 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY ALAN HARTSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler,
Judge.

Defendant-appellant, Troy Alan Hartson, appeals his conviction of second-degree sexual abuse and lascivious action with a child. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Theresa R. Wilson,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Harold Denton, County Attorney, and Susan Nehring, Assistant County Attorney, for appellee.

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

SACKETT, C.J.

Defendant-appellant, Troy Alan Hartson, was convicted of second-degree sexual abuse, in violation of Iowa Code sections 709.1 and 709.3(2) (2003), and lascivious action with a child, in violation of section 709.8, following a bench trial. On appeal, defendant argues he was not competent to stand trial and, thus, the district court erred in finding him competent. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

On December 23, 2004, a trial information was filed charging defendant with second-degree sexual abuse. Defendant was accused of abusing his eleven-year-old cousin. Defendant was living with his cousin's family at the time. The trial information was amended on July 12, 2005 to add the charge of lascivious acts with a child, due to defendant's alleged conduct with another child who visited the home.

Prior to trial defendant filed a motion to determine competency and suspend proceedings. The motion alleged that defendant suffered from mental retardation and psychiatric illness. Defendant cited the evaluation and conclusions of Dr. Dan L. Rogers as supportive of his claim of incompetence to stand trial. The district court granted the State an opportunity to conduct a competency evaluation of defendant.

On June 1, 2005, the district court held a competency hearing. The defense presented the expert testimony of Dr. Rogers. Dr. Rogers concluded that defendant had a mental based deficit in executive functioning, social reasoning, and verbal reasoning. Additionally, Dr. Rogers' testing revealed

defendant had a low IQ. Ultimately, Dr. Rogers concluded defendant was not competent to participate in his own defense or assist his attorney.

Defendant was also evaluated by three medical professionals at the Iowa Medical and Classification Center. During his evaluation with Dr. Curtis Fredrickson, defendant stated that he faked a lot of things with Dr. Rogers, including intentionally trying to do poorly on the IQ test. Dr. Fredrickson found defendant was "well oriented to time, place, and person, and was fully alert," and "[h]is thinking was fully coherent."

Dr. Leonard Welsh further evaluated defendant. Dr. Welsh concluded that his testing indicated defendant fell in the "upper part of the mild mental retardation to the lower part of the borderline intellectual functioning range." However, he noted defendant had no trouble in following instructions when he chose to cooperate and defendant seemed to understand his legal dilemma.

Dr. Tracy D. Gunter also evaluated defendant. Dr. Gunter noted that defendant correctly stated the charges he faced and the possible sentence if convicted. He was also familiar with plea bargaining and the lesser included charges. Defendant was able to define the roles of defense counsel, the prosecutor, and the judge. He was also familiar with the process of putting on evidence and calling witnesses at trial. Defendant understood that his competence to stand trial was being examined. He responded to a question asking him to define competence to stand trial by stating, "To see if I understand what I'm facing at trial." Ultimately, Dr. Gunter concluded it was the opinion of the Iowa Medical and Classification Center that defendant was competent to stand trial. He possessed both a rational and factual understanding of the

charges and proceedings pending against him, with sufficient present ability to assist an attorney in preparation of a defense, if he so chose.

The district court found defendant was competent to stand trial. Defendant waived his right to a jury trial. A trial to the bench was conducted based on the minutes of testimony. The district court found defendant guilty of second-degree sexual abuse and lascivious acts with a child. Defendant appeals, arguing the district court erred in finding him competent to stand trial.

II. SCOPE OF REVIEW AND ERROR PRESERVATION.

Our scope of review is for correction of errors at law. Iowa R. App. P. 6.4. We are bound by the district court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 6.14. Where the district court has determined the competency of the defendant we do not review the evidence de novo. *State v. Rieflin*, 558 N.W.2d 149, 151-52 (Iowa 1996). Thus, we limit our inquiry to whether there is support in the record for the competency finding. *Id.* at 152.

III. ANALYSIS.

The criminal trial of an incompetent defendant violates due process. *Id.* The basic test for determining if a defendant is competent to stand trial is "whether the defendant has the present ability to understand the charges against him or her and communicate effectively with defense counsel." *Id.* Under this standard, there is a two-step inquiry that must be conducted: "(1) whether the defendant is sufficiently coherent to provide his counsel with information necessary or relevant to constructing a defense; and (2) whether he is able to comprehend the significance of the trial and his relation to it." *State v. Rhode*,

503 N.W.2d 27, 35 (Iowa Ct. App. 1993). A defendant is presumed competent to stand trial. *Rieflin*, 558 N.W.2d at 152.

The State's experts concluded defendant was capable of assisting his attorney. The State's experts found that, although defendant did suffer from some level of mental retardation, his mental retardation was not so severe as to prevent him from providing assistance to his defense counsel. While Dr. Rogers theorized that defendant has a depressive illness that would remove his desire to assist his attorney, the State's experts disagreed with the depression diagnosis. The State's experts also noted that defendant was able to follow instructions and coherently and relevantly answer questions. Furthermore, while defendant articulated to the doctors that he was having trouble with his attorney because of differing opinions as to how the case should be handled, he was able to describe to Dr. Gunter the actions he could take to effectively resolve the difficulties. Thus, there is substantial evidence in the record indicating defendant had the present ability to assist his attorney at the time of trial.

The State's experts concluded defendant understood the charges and proceedings pending against him. At the competency hearing Dr. Welsh testified that defendant told him that he was "charged with sex abuse second," and he knew the penalty was twenty-five years imprisonment if convicted. Defendant further said he would like to reach a plea bargain and plead guilty to lascivious acts, which he knew carried a five-year sentence. Defendant was also able to describe the difference between pleading guilty or innocent. Defendant told Dr. Welsh that he was aware that he had a public defender appointed to be his attorney and that the county attorney would be on the other side. Defendant

stated the judge would be in charge of the proceedings and would decide on the punishment if the jury decided he was guilty. Defendant was able to describe the role of the witnesses in the proceedings. Dr. Gunter also indicated that defendant understood the charges and proceedings. Dr. Gunter noted that defendant knew what was presently going on with his case. Defendant stated that no plea agreement had been reached, his attorney was trying to get his confession thrown out, and the case against him appeared to be strong. Dr. Gunter also testified that defendant correctly described the roles of various parties in the proceedings, including the defense attorney, the county attorney, the judge, and the jury.

Based upon the evidence offered at the competency hearing we conclude there is substantial evidence in the record to support the district court's finding that defendant was competent to stand trial. There is substantial evidence in the record to support the district court's findings that defendant had the present ability to effectively assist in his defense, appreciate the charges, and understand the proceedings and his relation to the proceedings.

AFFIRMED.