IN THE COURT OF APPEALS OF IOWA

No. 8-214 / 07-0024
Filed May 14, 2008

IN RE THE DETENTION OF
ROBERT ALLEN MEYERS,

ROBERT ALLEN MEYERS,
Respondent-Appellant.

Appeal from the Iowa District Court for Winnebago County, Bryan H. McKinley, 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 Greta Truman, Civil Commitment Unit, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Robert P. Cooper, County Attorney, and Rebecca Goettsch, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

Robert Meyers appeals the district court's order for civil commitment following a jury trial, finding him to be a sexually violent predator and placing him in the custody of the Iowa Department of Human Services (DHS). We affirm.

I. Background Facts and Proceedings.

Meyers, who has been diagnosed with antisocial personality disorder, has a long history of sexual assault across four different states. He began window peeping at age sixteen, after being sent to a Minnesota juvenile home by his father due to his delinquent behaviors. Window peeping led to sexual fantasies, which Meyer first acted on by age nineteen when he raped a woman alone in her California home. Meyers admits that in the past he has acted on his rape fantasies when he "hits rock bottom" and has no job, no personal relationships, no stable living situation, no money, and has been drinking excessively. After the California offense for which he was neither arrested nor prosecuted, Meyers returned to Minnesota. He was twice convicted and imprisoned in Minnesota for three separate sexually violent crimes. Although he attended two sex offender treatment courses while in Minnesota prisons, Meyers refused to participate and the programs did not prevent him from reoffending.

Following his release in Minnesota, Meyers moved to Montana and continued offending. He broke into a woman's apartment and attempted to rape her, while acting on another rape fantasy after hitting rock bottom. He described his living situation at the time of the crime as without money, sleeping on his brother's apartment floor, and drinking excessively. After his release from a Montana prison, Meyers returned to Minnesota. At some point, he began a

relationship with Carol, an Iowa woman, and eventually moved in with her and her two teenage daughters. Meyers acted on his attraction to teenage girls one night in 2003 when he became intoxicated with friends, returned to Carol's home, and molested her fifteen-year-old daughter. He was convicted of assault with intent to commit sexual abuse and lascivious acts with a minor, his sixth and seventh convictions for sexual crimes, and sent to prison at Mount Pleasant.

Near his release date, the State filed a petition under Iowa Code chapter 229A to have Meyers committed as a sexually violent predator. The State's psychologist, Dr. Caton Roberts, evaluated Meyers and determined he scored as "high risk" on two actuarial risk assessment instruments, the Static-99 and Rapid Risk Assessment of Sex Offender Recidivism (RRASOR). In addition, Dr. Roberts was unable to lower his estimate of Meyers's risk due to Meyers's failure to complete sex offender treatment at Mt. Pleasant. He also considered Meyers's plans, structure, and support upon release. These considerations, along with Meyers's diagnosis of antisocial personality disorder, led Roberts to believe Meyers is dangerous and more likely than not to commit a sexually violent offense if released. Meyers's expert, psychologist Dr. Craig Rypma, testified that in his opinion Meyers does not have a mental abnormality predisposing him to commit sexually violent offenses and is not more likely than not to commit such offense if not confined. Following jury deliberation, Meyers was declared a sexually violent predator and committed to the care of DHS. He appeals.

II. Issues on Appeal.

A. Jury Demand.

Meyers claims the district court erred in denying his motion to strike the State's jury demand in violation of his due process and equal protection rights of the Iowa and United States Constitutions. We review a constitutional challenge de novo. *In re Detention of Williams*, 628 N.W.2d 447, 451 (Iowa 2001). Upon filing its petition, the State requested a jury trial pursuant to Iowa Code section 229A.7(4) (2005). Meyers objected to the State's request for a jury trial, claiming section 229A.7(4) was unconstitutional on due process and equal protection grounds, which the district court denied. A jury returned a verdict finding Meyers was a sexually violent predator under chapter 229A. We affirm the decision of the district court based on a recent decision of the supreme court upholding section 229A.7(4) against due process and equal protection challenges. See *In re Detention of Hennings*, 744 N.W.2d 333, 337-40 (Iowa 2008).

B. Sufficiency of the Evidence.

We review a challenge to the sufficiency of the evidence for errors at law. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). We view the evidence in the light most favorable to the party opposing the motion for directed verdict. *Hennings*, 744 N.W.2d at 340. We review the district court's ruling to determine whether the State presented substantial evidence on each element of the claim. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 391 (Iowa 2001). Evidence is substantial if a jury could reasonably infer a fact from the evidence. *Balmer v. Hawkeye Steel*, 604 N.W.2d 639, 640 (Iowa 2000).

Meyers argues, based upon language in *In re Detention of Selby*, 710 N.W.2d 249, 253 (Iowa Ct. App. 2005), that the State failed to prove a temporal aspect of his classification under the statute, particularly whether he is "both dangerous and possess[es] a mental abnormality that makes [him] likely to engage in sexually violent predatory acts *at the time of commitment*." *Id*. (emphasis added). A "sexually violent predator" is defined 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, if not confined in a secure facility.

Iowa Code § 229A.2(11). A person is "likely to engage in predatory acts of sexual violence" if "the person more likely than not will engage in acts of a sexually violent nature." *Id.* § 229A.2(4). Section 229A.2 requires the State to prove the respondent is "more likely than not [to] engage in acts of a sexually violent nature," but does not include a time frame as to when the acts should be expected to occur. *Id.* § 229A.2(3), (9) (2005). Our supreme court has held that chapter 229A does not impose a burden upon the State to prove an alleged sexual predator is expected to reoffend within a specific time period, *In re Detention of Pierce*, ___ N.W.2d ___, ___ (Iowa 2008), and in *In re Detention of Ewoldt*, 634 N.W.2d 622, 624 (Iowa 2001), specifically rejected any required proof of reoffense in a short time period of one year. Nowhere does chapter 229A provide an explicit time frame for the adjudication of reoffense. Although the language in *Selby* appears at first glance to indicate otherwise, it does not impose a temporal requirement for reoffense, but reiterates that a respondent must be presently dangerous and suffering from a mental abnormality at the time

of commitment that makes him more likely than not to engage in sexually violent predatory acts:

> For example, a sexually violent person is defined as one who "*suffers* from a mental abnormality which *makes* the person likely to engage" in sexually predatory acts. Iowa Code § 229A.2(11) (emphasis added). A mental abnormality is defined as a "condition *affecting* the emotional or volitional capacity of a person. . . ." *Id.* § 229A.2(5) (emphasis added). Based on this language, a person must currently be suffering from a mental abnormality that makes the person likely to engage in sexually violent predatory acts.

Selby, 710 N.W.2d at 253.

We therefore conclude the district court did not err in overruling Meyers's request for a directed verdict, as there is no temporal element required under chapter 229A. We affirm on this issue.

C. Evidentiary Issues.

Meyers next contends the trial court erred in admitting irrelevant and unfairly prejudicial evidence by way of expert testimony and actuarial risk assessment as to his projected risk to reoffend five, ten, and fifteen years into the future. Our review is for an abuse of discretion. *In re Detention of Palmer,* 691 N.W.2d 413, 416 (Iowa 2005). The decision of a trial court concerning the admissibility of evidence will only be overturned upon a showing that discretion was exercised "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Rodriquez,* 636 N.W.2d 234, 245 (Iowa 2001). Error was preserved when Meyers's counsel objected to the evidence under Iowa Rules of Evidence 5.402, 5.403, and 5.404(*b*).

We have previously addressed evidentiary issues of risk assessment tools. *See In re Detention of Holtz*, 653 N.W.2d 613, 619 (Iowa Ct. App. 2002)

(holding evidence concerning these actuarial risk assessment instruments went to the weight the evidence should receive as opposed to the issue of admissibility on a challenge of reliability and trustworthiness). However, Meyers's specific challenge to the assessments in this case is not that they are unreliable or not actuarially valid, but rather that they impermissibly measure reoffense rates far into the future. He asserts that evidence from risk assessment rates for periods of time five years and longer have no bearing on dangerousness at the time of the commitment. We conclude the risk assessments in question were relevant to the essential question of whether Meyers is more likely than not to commit a sexually violent offense if he is not confined in a secured facility. We believe the actuarial instruments, while measuring *future* reconviction rates, assisted in understanding this essential question. These assessments are part of a larger clinical analysis that took into account a variety of other factors. *See Holtz*, 653 N.W.2d at 619 (stating, "The instruments were used in conjunction with a full clinical evaluation and their limitations were clearly made known to the jury.")

Testimony revealed a combination of risk factors specific to Meyers, protective factors, and other clinical considerations which were relied upon by Roberts to arrive at his conclusions. Dr. Roberts's expert testimony made clear that the instruments assisted his understanding of this issue, in conjunction with many other factors, including Meyers's history of alcohol abuse, the concurrence of his sexually violent offenses with alcohol abuse and lack of support or structure, the lack of structure and support if Meyers was released and Meyers's refusal to complete sex offender treatment. Meyers acknowledged at trial that he would live in a homeless shelter, had no job lined up or prospects, had no

offender treatment arranged, and would be unsupervised by the corrections system and unsupported by family members, most of whom had severed ties with him. For these reasons, as well as noting our above discussion that no temporal requirement exists in chapter 229A proceedings, we affirm admission of this evidence.

D. Jury Instructions.

Finally, Meyers alleges error when the district court refused to submit several jury instructions that indicated a temporal aspect of his chapter 229A commitment. Although our review of this issue is on error, we will not reverse unless "prejudicial error by the trial court has occurred." *Thavenet v. Davis,* 589 N.W.2d 233, 236 (Iowa 1999). The trial court commits prejudicial error if the instruction materially misstates the law, confuses or misleads the jury, or is unduly emphasized. *Anderson v. Webster City Cmty. Sch. Dist.*, 620 N.W.2d 263, 268 (Iowa 2003). On the other hand, we consider the instructions in their entirety and will not reverse if the instructions have not misled the jury. *Thavenet,* 589 N.W.2d at 236.

As noted, jury instructions are to be considered as a whole, not in isolation. *Leaf v. Goodyear Tire & Rubber Co.,* 590 N.W.2d 525, 536 (Iowa 1999). In this case, all the instructions when read together properly explained the applicable law to the jury. *See id.* In addition, the instructions considered as a whole did not mislead the jury. *Thavenet,* 589 N.W.2d at 236. We reiterate that there is no temporal requirement for the State to prove in this proceeding, the court did not commit error on this issue, and we affirm.

AFFIRMED.