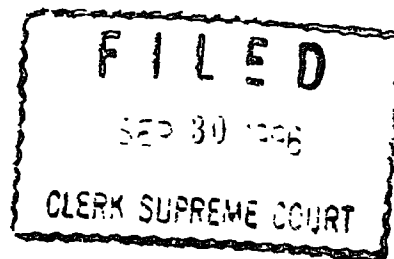


IN THE COURT OF APPEALS OF IOWA

No. 6-457 / 95-1234



STATE OF IOWA,

Appellee.

vs.

BRIAN M. ANDERSON,

Appellant.

Appeal from the Iowa District Court for Muscatine County, David H. Sivright, Jr., Judge.

Brian Anderson appeals his convictions and sentences for assault with intent to commit sexual abuse, second-degree burglary, second-degree sexual assault, two counts of false imprisonment, and three counts of assault while participating in a felony. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Richard R. Phillips, County Attorney, and Dana E. Christensen, Assistant Attorney General, for appellee.

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

HUITINK, J.

Defendant Brian M. Anderson appeals his conviction and sentence for Sexual Abuse in the Second Degree, in violation of Iowa Code section 709.3 (1993); Burglary in the Second Degree, in violation of Iowa Code section 713.5 (1993); Assault with Intent to Commit Sexual Abuse, in violation of Iowa Code section 709.11 (1993); two counts of False Imprisonment, in violation of Iowa Code section 710.7 (1993); and three counts of Assault While Participating in a Felony, in violation of Iowa Code section 708.3 (1993). We affirm.

Anderson was convicted of these offenses based on evidence indicating he broke into a home in Muscatine and raped its female owner at gunpoint. The record also indicates Anderson confronted two other men with a shotgun and locked them in a small room in this house after they interrupted Anderson in the course of these events.

Prior to trial, Anderson filed notice of his intention to rely on a defense of diminished responsibility. He maintained that at the time of the incident he was under the influence of drugs and therefore had no recollection of what took place. Anderson submitted a proposed instruction on the consequences of a verdict of not guilty by reason of diminished responsibility.¹ He argues that such information was necessary

¹ Requested Instruction of Defendant:

The duty of the jury is to determine if the defendants are guilty or not guilty.

In the event of a guilty verdict, you have nothing to do with the

in order for the jury to distinguish such a verdict from an acquittal. The court denied the request but reserved ruling on the instruction. At the close of the evidence, Anderson renewed his request and it was denied.

On appeal, Anderson challenges the trial court's instruction to the jury regarding his diminished responsibility defense. Our scope of review is for the correction of errors of law. Iowa R. App. P. 4.

We reject Anderson's proposed instruction in its entirety noting prior caselaw expressly rejected a similar claim regarding an insanity defense. In *State v. Hamann*, 285 N.W.2d 180 (Iowa 1979), the Iowa Supreme Court held in accordance with the majority rule in the United States and found that the refusal of such an instruction is not error. *Id.* at 186; *see also State v. Oppelt*, 329 N.W.2d 17, 21 (Iowa 1983). The court reasoned that an instruction to the jury regarding the post-trial disposition of a defendant found not guilty by reason of insanity is "irrelevant to the jury's proper function", that is, the determination of the insanity issue. *Hamann*, 286 N.W.2d at 186. Furthermore, the information would invite a compromise verdict. *Id.*

punishment.

In the event that you render a not guilty verdict on any count, by reason of diminished responsibility, you are advised that it still remains with the Court to determine what other actions are undertaken in regard to the defendant as to those counts. The law of Iowa provides means for the Court to order confinement, testing and evaluation of a defendant who is found not guilty by reason of diminished responsibility

Anderson attempts to distinguish *Hamann* by emphasizing the changes in criminal procedure that have since been adopted regarding the disposition of defendants found not guilty by reason of insanity or diminished responsibility. *See* Iowa R. Crim. P. 21(8). He asserts that unlike the prior version of the rule, the updated version does not provide the trial court with any discretion with regard to a defendant's commitment to a mental health facility. Rather, the disposition of a defendant for a complete psychiatric evaluation is mandatory.² Under the new rule, Anderson argues the jury now "has a right to know" the distinction between the consequences of an acquittal and an acquittal by reason of diminished responsibility. We find no merit in this argument. Regardless of the discretion now accorded to the district court by the rule, the current version designates the disposition of defendants found not guilty by reason of insanity to be a matter for the court, not the jury, to determine. Iowa R. Crim. P. 21(8)(b); *Hamann*, 285 N.W.2d at 186. Accordingly, the rationale for declining to inform the jury of the consequences of such a verdict survives the change in the rule.

We find no error and affirm the district court.

AFFIRMED.

² *See* Iowa R. Crim. P. 21(8) ("Upon a verdict of not guilty by reason of insanity or diminished responsibility, the court shall immediately order the defendant committed to a state mental institute or other appropriate facility for a complete psychiatric evaluation . . . ")