

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

State of New Hampshire

v.

Amuri Dirole

Docket No. 216-2022-CV-00501

ORDER

The defendant, Amuri Dirole, was charged in 216-2021-CR-690 with four counts of Aggravated Felonious Sexual Assault ("AFSA"), four counts of Criminal Threatening, and one count each of First Degree and Second Degree Assault. The Court found the defendant not competent to stand trial, not reasonably likely to be restored to competency within 12 months, and dangerous. By Order issued on July 11, 2022, the defendant was detained for up to 90 days to allow the State to seek a civil commitment. On July 25, 2022, the State filed a petition to have the defendant certified as a sexually violent predator under RSA chapter 135-E. Pursuant to RSA 135-E:5, the Court held a hearing on September 20 and 21, 2022, to determine if the defendant committed the charged AFSA. For the reasons that follow, the Court finds that the State has proven, beyond a reasonable doubt, that the defendant committed the charged AFSA.

Under RSA 135-E:5, before a person charged with a sexually violent offense who has been found incompetent to stand trial can be deemed a sexually violent predator, "[t]he [C]ourt shall first hear evidence and determine whether the person did commit the act or acts charged." RSA 135-E:5, II. After the Court hears the evidence, "the [C]ourt

shall make specific findings on whether the person did commit the act or acts charged beyond a reasonable doubt.” Id. In making this determination,

the [C]ourt shall consider the extent to which the person’s incompetence or developmental disability affected the outcome of the hearing, including the person’s ability to assist his or her counsel by recounting the facts, identifying witnesses, testifying in his or her own defense, or providing other relevant information or assistance to counsel or the [C]ourt. If the person’s incompetence substantially interferes with the person’s ability to assist his or her counsel, the [C]ourt shall not find the person committed the act or acts charged unless the [C]ourt can conclude beyond a reasonable doubt that the acts occurred, and that the strength of the state’s case, including physical evidence, eyewitness testimony, and corroborating evidence, is such that the person’s limitations could not have had a substantial impact on the proceedings.

Id. The Court will first determine whether or not the evidence presented relative to the sexual acts preliminarily supports a finding that the defendant committed one or more AFSAs before turning to the question as to the effect of the defendant’s incompetence on the hearing.

I. Findings and Rulings as to Commission of AFSA

a. Findings of Fact

At the hearing, the Court heard testimony from C.G., the complainant. The Court also heard testimony from Manchester Police Sergeant Benjamin Foster,¹ who responded to the scene following C.G.’s call to 911; Detective Amanda Smith, who took photographs and collected evidence at the scene; and Detective Kevin O’Meara, who executed a body warrant on the defendant. The Court was provided with photographs of the scene and of the defendant, a knife found at the scene, a recording of C.G.’s 911 call, Sergeant Foster’s body-worn camera footage, and C.G.’s medical examination

¹ Sergeant Foster was an officer at the time of the incident.

report and rape kit inventory form. Based on the evidence presented, the Court finds as follows.

Early in the afternoon of April 29, 2021, C.G. walked to the Don Quijote restaurant on Union Street in Manchester to place a takeout order. Before she was able to enter the restaurant to place an order, the defendant walked across the street and approached her. The defendant, with whom she was unfamiliar, asked C.G. if she wanted heroin. She told him no, but asked if he had marijuana.² The defendant told her that he did and then lit up a “blunt” (i.e., a marijuana cigar). She went into the restaurant and placed an order. After exiting the restaurant, she and the defendant began walking towards a park that was approximately 200 feet from the restaurant in order to smoke the blunt. Surveillance camera footage from Union Street show the two walking together. The park, which is adjacent to a cemetery, has a paved U-shaped pathway, which the two began to walk. As they walked, C.G. took a couple of hits from the blunt.

At some point, either while they were walking on the U-shaped path or in the cemetery, C.G. noticed that the defendant had an unsheathed knife in the pocket of his sweatshirt.³ She was able to see the handle and part of the blade. She became fearful for her safety, and told the defendant abruptly that she had to leave. The defendant then grabbed her and dragged her by her hair with the knife to her throat to the rear side

² She told a medical evaluator at Catholic Medical Center that the defendant “asked her if she wanted a blunt.” (Def.’s Ex. A.) She testified that the medical report stating this was incorrect because she was the one who asked him about marijuana.

³ C.G. initially testified that this occurred while they were walking on the path. However, a report from Catholic Medical Center reflects that she told her medical evaluator that she followed the defendant into the cemetery. (See Def.’s Ex. A.)

of a mausoleum in the cemetery.⁴ She tried to fight him off. He punched her in her face several times and tore off her pants and underwear. He pinned her down and continued striking her. He forcibly inserted his penis into her vagina. At first, she tried to fight him off and begged him to let her go, but then decided to wait until he had exhausted himself and then try to escape and outrun him.

After he had been assaulting her for some time, he paused. She pushed him, he fell away from her, and she began to run towards the entrance to the cemetery, losing one sandal in the process. Before she was able to exit the cemetery, the defendant caught up to her. They resumed fighting and fell to the ground. He struck her head against a stone post near the cemetery entrance, causing her to lose consciousness. She awoke in the same part of the mausoleum as before, with her legs pushed towards her head, and the defendant sexually assaulting her as before.

At some point, he paused and told her that she was going to perform fellatio on him. She told him she would not do so, that her mouth was dry, and that she needed water. She said that she had a bottle of water in her purse, which was located nearby. The defendant let her go so that she could get the bottle of water. She instead retrieved her cellphone from her purse. The defendant pushed her down and again forcibly penetrated her vagina with his penis. She managed to call 911 and speak into it while it was positioned near her face. She told the dispatcher that she was in the cemetery and was at that very moment being sexually assaulted. She said that the defendant had a weapon. She was crying out in pain as she spoke and begging the defendant to stop.

⁴ It is unclear to the Court whether the defendant placed the knife to her throat at this point, or later on after she tried to run away and he caught up to her.

It appeared that the defendant either did not hear the telephone conversation or was indifferent to it. (See State's Ex. 1.)

Multiple Manchester Police units were dispatched to the cemetery. Sergeant Foster arrived shortly before five p.m., which was several minutes after C.G. placed the call. He began walking towards the mausoleum and spotted C.G. lying down on the mausoleum's rear side. By this point, another officer was standing in front of the mausoleum. Sergeant Foster called out to C.G., asking her if she was alright. She answered in the negative and ran towards the front of the mausoleum where the other officer was standing. She began to run past him, but that officer stopped her. Sergeant Foster caught up to them and led C.G. away from the mausoleum towards a police vehicle. Sergeant Foster saw that there was blood on her palms and around her ankles. As is clear from Sergeant Foster's body-worn camera footage, C.G. had on a sweatshirt but was naked from the waist down. She was crying and appeared distraught. She was disheveled and wet from the rain. She told him that the defendant had assaulted her for two hours at the rear of the mausoleum, would not let her leave, and had knocked her out. (See State's Ex. 2.)

C.G. was taken to Catholic Medical Center, where she presented with neck pain, abrasions, headache, and loss of consciousness. (See Def.'s Ex. A.) While some parts of a rape kit were completed—specifically, "Oral Swabs and Smear" and "DNA Sample/ Buccal Swabs" were collected—the remaining parts of the rape kit were not completed. For example, neither a blood toxicology sample nor vaginal or cervical swabs were collected. (See Def.'s Ex. C.) It was C.G.'s recollection that the sexual assault examination was ended by the examiner due to C.G.'s movement, and the examiner

indicated that she had enough. C.G. did not recall if there were visible injuries to her face at the time, and none were noted by Sergeant Foster, but in the days that followed, she noticed bruising.

While Sergeant Foster was tending to C.G. in the cemetery, a different officer apprehended the defendant near the rear of the mausoleum. Detective O'Meara told the officer who was holding the defendant to take him into custody while they waited for a body warrant, which they later obtained. The defendant was brought to the police station. Detective O'Meara placed the defendant into an interview room and read him his rights. Detective O'Meara executed the body warrant. This involved taking approximately 20 swabs from the defendant, photographing him, and taking his clothing. Detective O'Meara found and photographed what he believed to be blood on the defendant's underwear, which is apparent in the photographs. (See State's Exs. 9, 10, 11.) He logged all of this as evidence.

At the cemetery, Detective Smith took photographs of the scene. She found and photographed an unsheathed knife on the rear side of the mausoleum. (See State's Ex. 7.) She sealed the knife in an evidence box, which she later logged at the police station.⁵ She found and photographed what appeared to be blood on one of the rear mausoleum pillars. (See State's Ex. 6.) She collected samples of the substance, which she placed into envelopes and later logged.⁶ She found and photographed a single sandal on one of the north-facing platforms of the mausoleum. (See State's Ex. 4.)

⁵ Detective Smith did not know whether the knife had been forensically tested. However, she testified that it may have gone to the State laboratory to be tested, which she said would explain why the box had been opened at some point prior to the hearing.

⁶ Detective Smith testified that she did not know if the swabs were forensically tested.

She also found a pair of yoga pants, a pair of women's underwear, a jacket, broken jewelry, a backpack, and the matching sandal on the west side of the mausoleum.

b. Rulings of Law

Under RSA chapter 135-E, a sexually violent predator is someone who has committed a sexually violent offense and suffers from a mental or personality disorder that makes that person "likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." RSA 135-E:2, XII. Pursuant to RSA 135-E:2, III, a person has been "[c]onvicted of a sexually violent offense" if that person has been "[f]ound incompetent to stand trial on a charge of a sexually violent offense and the [C]ourt makes the finding required pursuant to RSA 135-E:5." RSA 135-E:2, III(c).

Relevant here, an AFSA in violation of RSA 632-A:2 constitutes a sexually violent offense. See RSA 135-E:2, XI(c). A person has committed AFSA by engaging in sexual penetration with another by "overcom[ing] the victim through the actual application of physical force, physical violence or superior physical strength." RSA 632-A:2, I(a). Under RSA 135-E:5, at the hearing to determine whether a person charged with a sexually violent offense who has been found incompetent to stand trial committed the charged offense, the Court "shall make specific findings on whether the person did commit the act or acts charged beyond a reasonable doubt." RSA 135-E:5, II.

Setting aside for a moment the impact of the defendant's incompetency, the Court finds the proof extremely compelling that the defendant committed at least three episodes of forced non-consensual sexual penetration on C.G. that would satisfy the elements of RSA 632-A:2.

First, the Court found all of the State's witnesses to be credible. C.G. provided a highly detailed, consistent, and logical account of the assault. Importantly, her account was corroborated by other evidence. For example, she testified that the defendant ripped off her clothes such that she was naked from the waist down. Sergeant Foster's body-worn camera footage showed that when he found C.G., she was wearing a sweatshirt but nothing else. (See State's Ex. 2.) In addition, Detective Smith found a pair of yoga pants and women's underwear on the side of the mausoleum. C.G. also testified that she had blood all over her as a result of the assault. Sergeant Foster saw blood on her palms and ankles, and the medical report noted abrasions. (See Def.'s Ex. A.) Further, C.G. testified that she called 911 while the assault was in progress. The recording of this 911 call plainly demonstrates that she told the dispatcher that she was being assaulted at that very moment. The recording confirms that she was crying and in pain at the time, indicating that she was in fact being assaulted. (See State's Ex. 1.) Sergeant Foster's body-worn camera footage also shows that, immediately following the assault, C.G. was disheveled, wet from the rain, distraught and crying. (See State's Ex. 2.) Furthermore, C.G. had no apparent motive to fabricate. The defendant and C.G. were strangers. She had no secondary gain from a false report. C.G. is the one who called the police to the scene, admitting the use of drugs and subjecting herself to the embarrassment of being found half naked in a public place by male officers.

The Court also has no doubt that the defendant was the person who assaulted C.G. First, there was blood on his underwear. (See State's Exs. 9, 10, 11.) Second, the evidence clearly shows that the officers who arrived at the cemetery in response to

the 911 call quickly located the defendant close to the mausoleum where C.G. reported the assault had occurred and the location from which she ran. The Court heard no evidence to suggest that there was anyone else in the area around the mausoleum at the time. C.G. and the defendant were recorded walking together close to the scene of the sexual assault, which further supports the conclusion that the defendant attacked her. In the courtroom, C.G. unequivocally identified the defendant as the man who had sexually assaulted her.

The Court acknowledges the few inconsistencies between C.G.'s testimony and statements recorded in the medical records. For example, she testified that she asked the defendant if he had marijuana, while the medical report states that she reported to her medical evaluator that the defendant had asked her if she wanted marijuana. (See Def.'s Ex. A.) C.G. also testified that the defendant dragged her into the cemetery while the medical report states that she said she had followed him into the cemetery. (See id.) However, these inconsistencies are minor and do not undermine the weight of her testimony given the trauma of the assault and C.G.'s loss of consciousness from the defendant bashing her head against stone. Finally, C.G. denied the inconsistent statements and the author of the medical reports did not testify.

The defense makes much of the fact that heroin was found in C.G.'s possession, a fact she could not explain, and none was found on the defendant. C.G. admitted past misuse of oxycodone, but testified that at the time of the assault she had been "clean" for eight years. She denied she was then a heroin user. No evidence was presented to counter her assertions via criminal record, treatment record, or other witness testimony. Nor was there any evidence from police observations or lab tests to support the defense

theory that she was high and nodding off at the time of the sexual penetration. Nor is it inconceivable that the heroin was in fact from the defendant or was hers and she was not truthful about her possession and its source. However, one lie, even if it occurred, does not mean that the entire tale is untrue. And, it would remain unexplained why she would call the police and feign an ongoing rape with the defendant present while in possession of heroin.

In short, C.G.'s account that the defendant sexually assaulted her was substantially corroborated by the recording of the 911 call, her report to Sergeant Foster and to her medical evaluator immediately following the assault, and the physical evidence. Accordingly, the Court finds preliminarily that the State has proven beyond a reasonable doubt that the defendant committed at least three incidents of AFSA. See RSA 135-E:5, II.

II. Findings and Rulings as to Competence

a. Findings of Fact

Pursuant to RSA 135-E:5, in determining whether the defendant committed the charged acts beyond a reasonable doubt, the Court must also consider the impact of his incompetence on the outcome of the hearing. To help the Court make this determination, the Court was presented with the testimony of Dr. James Bomersbach. Dr. Bomersbach performed two competency evaluations of the defendant: one in 2019 in connection with unrelated charges of second degree assault, simple assault and falsifying physical evidence; and one related to the 2021 AFSA charges. Dr. Bomersbach opined both times that the defendant was competent to stand trial. In doing so, he considered a competency evaluation conducted in 2018 by a different

forensic examiner, who reached the same conclusions as he, and the evaluations by Dr. Mathilde Pelaprat in 2019 and 2021, who reached contrary conclusions.⁷ Dr. Bomersbach observed both times that the defendant's thought processes were consistently logical and goal-oriented, he did not suffer from psychosis, and he had average cognitive functioning. In addition, Dr. Bomersbach concluded both times that the defendant showed a sufficient understanding of the charges against him and of the criminal justice system.

In reaching his conclusions on the defendant's competency as to the 2021 charges, Dr. Bomersbach reviewed the defendant's school, medical, and jail records. His school records showed that he had some disciplinary issues and received mixed grades. There was no record of the defendant having an individualized education program ("IEP"). Dr. Bomersbach reviewed the records generated after the defendant presented at the Elliot Hospital emergency room at ages 19 and 24, where he was seen by providers from Greater Manchester Mental Health Center ("GMMHC"). On one occasion he was admitted for a brief time to the Cypress Center, which is connected to the Elliot Hospital. Although there were notes of his report of auditory hallucinations, odd statements, and disorganized behavior, he was discharged in short time after his

⁷ The State requested the Court consider the record of the competency hearing in the related criminal case. The defense objected. The defense did not request that the Court consider the testimony and opinions of Dr. Pelaprat in the first instance, but only requested the evidence be considered if the Court overruled its objection to the State's request. The Court denied the State's request and relied only on the evidence presented in the sexually violent predator proceeding. The Court notes, however, as expressed in its competency Order, that it found Dr. Bomersbach's testimony credible, as it did Dr. Pelaprat's, but could not reconcile the difference in their description of the defendant's presentation. Because the State bore the burden of proof, the Court's ruling was in the defendant's favor. It was a very close call. In the sexually violent predator hearing, without Dr. Pelaprat's information to consider, the Court relies on the credible testimony of Dr. Bomersbach.

symptoms abated. In short, the defendant does not have a significant history of mental health treatment or diagnosis of a mental illness.

The defendant's jail records showed that his behavior while detained was generally unremarkable. He was sometimes uncooperative with staff but he did not display acute psychiatric symptoms. He was not placed on medication. In March 2020, he was discovered to have containers of urine in his cell. He told staff that he was fermenting the urine to produce alcohol to drink, which although unpalatable, is goal oriented and not illogical given his misuse of substances in the community. At one point, jail staff filed a petition for involuntary commitment based on concerns the defendant might harm himself or others, but he was found not to meet the criteria.

In the 2019 and 2021 interviews, Dr. Bomersbach performed testing. In 2019, he administered the Montreal Cognitive Assessment ("MoCA") which tested the defendant's cognition. In 2021, Dr. Bomersbach administered the Competence Assessment for Standing Trial for Defendants with Mental Retardation ("CAST-MR"), although he had no concern about the defendant's intellectual capabilities. He utilized it as a structured tool to help him assess the defendant's factual understanding of the legal process and the charges against him and the possibility of malingering or efforts not to answer questions directly. Although the defendant scored 68%, which Dr. Bomersbach deemed to be a fair performance, the interaction and the answers provided supported Dr. Bomersbach's conclusion that the defendant had a rational understanding of the proceedings and possessed the ability to consult with his attorneys and assist in his own defense.

Most significantly, the defendant demonstrated skills that would help him assist his lawyers in crafting a defense and addressing the State's evidence. He was able to express his understanding that the evaluation was court-ordered and that the conversation with Dr. Bomersbach was not private. Despite limited effort, he was able to recall some information Dr. Bomersbach provided. For example, he remembered that his attorney would get a copy of Dr. Bomersbach's report, but not who else would. He understood the nature of the charges and was able to communicate his view that the accusations were untrue. He was able to narrate his version of the incident in a way that was somewhat consistent with the allegations, such as the fact that the woman was scared by a knife and ran. When pressed by Dr. Bomersbach with additional details from the police report, the defendant tried to explain how the police got it wrong. The defendant's version was understandable. His defensiveness and irritability with Dr. Bomersbach was logically related to discussions about the sexual assault and the accusations.

Even the defendant's negative behaviors were goal-oriented and reality-based. He appeared at times to be posturing and showed his irritation with the questioning, which demonstrated that the defendant wished to end the interview. He appeared focused on their conversation, which indicated average cognitive functioning. Three times during the interview, the defendant said that he did not want to speak with Dr. Bomersbach, so was able to effectively communicate his desires. On the first two occasions, after consulting with his attorney, the defendant agreed to continue. However, after the third such interruption, Dr. Bomersbach ended the interview because

he did not believe he would get additional information from the defendant and believed he had enough to reach a sound opinion.

The Court observed the defendant throughout the hearing. Although he was not terribly engaged, at times he put pen to paper even while his hands were cuffed. His lawyer requested he be uncuffed so he could more easily communicate in writing with them. A number of times he communicated in whispers with one of his lawyers. He appeared to be listening and attentive. His affect was appropriate. Overall, his behavior was unremarkable throughout the two days of hearing with one exception. On the second day, the defendant dozed off. His lawyer made an effort to wake him, but he fell asleep again. The Court took a break to allow the defendant to regain alertness, which following the break, he managed to do. This evidenced his ability to understand and conform his behavior with the advice of counsel.

b. Rulings of Law

Under RSA 135-E:5, the Court must consider the extent to which the defendant's incompetence impacted the outcome of the hearing, including considerations of his ability to assist his counsel in "recounting the facts, identifying witnesses, testifying in his . . . own defense, [and] providing other relevant information or assistance to counsel or the [C]ourt." RSA 135-E:5, II.

While the Court found the State had not met its burden to prove the defendant was competent to face criminal charges, such a finding does not necessitate a finding that his incompetence affected the outcome of the hearing. To the contrary, the Court finds that the defendant's incompetence did not greatly impact the outcome of the hearing. His conduct during the proceedings was acceptable. Based on Dr.

Bomersbach's testimony about his interactions with and testing of the defendant and his review of the records combined with the Court's observations, the Court concludes that the defendant has the ability to assist his lawyers in his defense. He was able to cogently narrate what occurred on April 29, 2021, with consideration and understanding of what C.G reported. He is able, although perhaps unwilling, to have a dialogue and assimilate and respond to information. He was able to communicate with his attorney during the evaluation and apparently took direction to continue. He appeared able during the hearing to communicate and take direction from his lawyers without hostility or irritability. His behavior in large part was appropriate for the setting, and the Court observed nothing that could be characterized as odd behavior.

The Court is concerned that the defendant would be limited in his ability to testify given his defensive and irritable conduct with Dr. Bomersbach and his affect during the hearing. The Court would describe him as generally unengaged and without much focus on the witness testimony. His irritability likely would affect his performance and communication, particularly during cross-examination. However, given the nature of the case and the strength of the evidence against the defendant, his testimony undoubtedly would not be beneficial.

Even if the Court had concluded that the defendant's lack of competence substantially interfered with his ability to assist his counsel and testify, the Court would still conclude beyond a reasonable doubt that the sexual misdeeds occurred. The State's case is very strong, as discussed above. It is supported by physical evidence found at the scene, eyewitness testimony and recordings of the aftermath, and a contemporaneous and powerful recording of the rape in progress. The defendant was

found at the scene minutes after the 911 call was made. It was a rainy day limiting the use of the park and the cemetery. There was no one else around. Moreover, the Court heard no evidence to ascribe a motive to C.G. to lie.

Furthermore, the Court cannot think of how the defendant could have assisted his attorneys in any meaningful way in this case, except to point out what he believed was inaccurate, which he was able to do. C.G. and the defendant were strangers, so he could provide no information about their history or about C.G. for his lawyers to tailor their investigation or cross-examination. There were no witnesses to the attack, which is confirmed by the lack of intervention or calls to the police. The assault in large part took place in a secluded spot behind the mausoleum that cannot be seen from the road. With regard to the defendant's personal history to perhaps develop mitigation evidence, the lawyers were able to effectively obtain education and mental health records likely from the defendant's self-report.

To the extent the defendant might have argued that C.G. and he had consensual sex, as was noticed as a defense, the success of such a defense would be extremely unlikely given the contrary evidence discussed above that supports a finding that this was a brutal stranger rape accomplished by superior physical force.

In sum, the Court concludes that the defendant's incompetence did not substantially interfere with his ability to assist in his defense. In any event, even if one could conclude that it had, the evidence put forth by the State was overwhelmingly in its favor and carried the day.

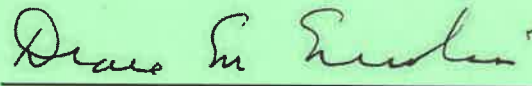
Conclusion

In conclusion, the Court finds beyond a reasonable doubt that the defendant did commit at least three separate incidents of Aggravated Felonious Sexual Assault, including those crimes alleged in 216-2021-CR-690 at CIDs 1987572c and 1987570c.

Mr. Dirole shall remain detained pending appeal and/or evaluation by the multidisciplinary team consistent with the timeframes delineated in RSA 135:5, II-IV, including filing a new or amended petition within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team alleging facts sufficient to support the allegation, per RSA 135-E:4, III.

SO ORDERED.

Date: September 27, 2022

A handwritten signature in dark ink, appearing to read "Diane M. Nicolosi", is written over a horizontal line.

Diane M. Nicolosi, Presiding Judge