

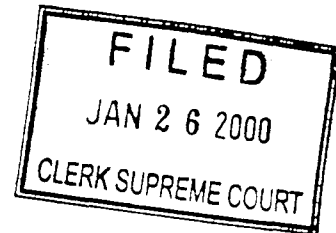
IN THE COURT OF APPEALS OF IOWA

No. 1999-408 (9-661) / 99-148
Filed January 26, 2000

IN THE INTEREST OF G.C., a Minor Child,

G.C., Minor Child,

Appellant.



Appeal from the Iowa District Court for Floyd County, Gerald W. Magee,
Associate Juvenile, Judge.

Minor child appeals from an order adjudicating him a delinquent child for the delinquent act of sexual abuse in the second degree pursuant to Iowa Code sections 232.47, 709.1(3) and 709.3(2) (1997). **AFFIRMED.**

Cynthia Schuknecht of Noah, Smith & Schuknecht, P.L.C., Charles City, for appellant-child.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Kimberly Birch, Assistant County Attorney, for appellee-State.

~~Considered~~ by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ

VAITHESWARAN, J.

A ~~juvenile~~ court concluded Gerald committed the delinquent act of second degree sexual abuse. On appeal, Gerald contends the State failed to satisfy its burden of proving him a delinquent. We affirm.

I. Background Facts and Proceedings

Gerald babysat his neighbor's children during 1996 and 1997. One of those children, Korissa, was six and seven at the time. In the spring or summer of 1998, Korissa told her mother that Gerald sexually abused her on two occasions. The Department of Human Services investigated and issued a confirmed report of sexual abuse against Gerald. The State filed a petition requesting that the court adjudicate Gerald a delinquent child. Following a hearing, the juvenile court concluded Gerald committed the delinquent act of second degree sexual abuse and the court adjudicated him a delinquent. This appeal followed.

II. Evidentiary Support

We review juvenile court proceedings de novo. *In re T.V.*, 563 N.W.2d 612, 613 (Iowa 1997). We give weight to a trial court's fact findings, especially credibility determinations, but are not bound by them. *In re C.T.*, 521 N.W.2d 754, 756-57 (Iowa 1994).

To prove second degree sexual abuse, the state must establish beyond a reasonable doubt that a sex act occurred between two people, one of whom was a child under the age of twelve. Iowa Code §§ 232.47(1), (10), 709.1(3), .3(2) (1997). A sex act includes "any sexual contact between two or more persons by: [1] penetration of the penis into the vagina or anus; [2] contact between the mouth and genitalia; [3] contact between the genitalia of one person and the genitalia or anus of another person. . . ." *Id.* § 702.17.

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~~Gerald contends~~ the State did not sustain its burden of proof because: (1) ~~Korissa's testimony was~~ not corroborated; (2) Korissa was not credible; (3) there was no physical evidence of abuse; and (4) Gerald did not confess to the crime. We disagree.

Korissa testified that, on one occasion, while Gerald was babysitting her, she and Gerald went upstairs to her bedroom. They both took their clothes off, and he convinced her to put "his thing he goes to the bathroom with" into her "front private," then her back bottom, and finally her mouth. Korissa testified that on another occasion, while Gerald was babysitting her, they went into a downstairs bathroom, took their clothes off, and Gerald "put his thing inside of me. . . . [i]n my front part." He asked her if it was in. He also kissed her and "put his thing inside of me on my bottom." Both times, Korissa testified Gerald told her not to tell anybody about it. Korissa testified she began having nightmares and ultimately told her mother because she had a "guilty conscience."

Although Korissa's testimony was not corroborated by physical evidence or other testimony, the juvenile court correctly noted that corroboration of a victim's testimony is not required. See Iowa R. Crim. P. 20.3. The Department worker also testified the absence of corroborating physical evidence does not rule out sexual abuse but only deep penetration.

We additionally are not persuaded that *State v. Smith* mandates a different result. *State v. Smith*, 508 N.W.2d 101, 103 (Iowa App. 1993) (concluding in sex abuse case that girls' statements of abuse are "inconsistent, self-contradictory, lacking in experiential detail, and, at times, border on the absurd"). One of the girls in that case could not remember whether the defendant removed her underwear, whether he

touched her on her clothes or on her skin, or whether the touch was brief or lengthy. The court ~~also~~ noted that the defendant's wife and two other step daughters were sleeping in the same room as this child but did not hear anything. Here, in contrast, Korissa did not waver on key details of her testimony. As the juvenile court noted:

K.H. has told her story at least three times-by videotape interview, in deposition and in Court. Each time she was embarrassed to talk about sex acts she claims Gerald perpetrated upon her. Despite that, her story has been the same, to wit: that Gerald put his "thing", which she defined as "what he goes to the bathroom with", in her in three different places-her "front part" (vagina), "her back or butt" (anus) and her mouth. That testimony has never varied nor has her testimony about how many times it occurred. Counsel for Gerald argues that her such testimony was contradictory in that she says it happened "a long time ago" or four months, or one year or two years ago and variously in the fall, summer or Christmas vacation. The Court **FINDS** said contradictions not atypical for young children who have difficulty in gauging time and do not discredit her testimony.

We agree with and adopt this reasoning. For these reasons, we give weight to the court's finding that the testimony of Korissa "was very consistent, very credible, and had much probative value." We also give weight to the court's finding that Gerald's denial and particularly his statement that he was never alone with Korissa for more than "half a minute" lacked credibility. We conclude on our de novo review of the record that the State proved beyond a reasonable doubt Gerald committed the delinquent act of second degree sexual abuse.

AFFIRMED.