IN THE COURT OF APPEALS OF IOWA

No. 1999-438 (9-695) / 98-1255
Filed March 29, 2000

FILED
MAR 29 2000
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRYAN GAYLE JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge.

Defendant-appellant, Bryan Gayle Johnson, was convicted after a jury trial of child endangerment in violation of Iowa Code section 726.6 (1997), and second-degree sexual abuse in violation of Iowa Code section 709.3 (1997). He contends there was not sufficient evidence to support his conviction of sexual abuse in the second degree. We affirm. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Andrew B. Prosser, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, J.J.

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SACKETT, C.J.

Defendant-appellant, Bryan Gayle Johnson, was convicted after a jury trial of child endangerment in violation of Iowa Code section 726.6 (1997), and second-degree sexual abuse in violation of Iowa Code section 709.3 (1997). He contends there was not sufficient evidence to support his conviction of sexual abuse in the second degree. We affirm.

Defendant was charged with abusing H.S., a young boy born on August 5, 1996. Defendant lived with the child's mother and watched him every day from 2:30 in the afternoon until about 10:30 in the evening while his mother worked.

From the evidence introduced at trial the jury could have found the following facts. On March 2, 1998, the child's mother left for work at 2:20 in the afternoon and returned at 3 a.m. the next morning to find defendant asleep on the couch and H.S. asleep in his room. On March 3, 1998, she woke at eleven in the morning to find the defendant had the child "ready to go." She left for work at 2:20 in the afternoon leaving H.S. in defendant's care.

At about eight thirty that evening a report was made to the Burlington Police Department that a small child had been left unattended in a parking lot. Two officers went to the car, found the car door unlocked and took the child to a nearby police station. The license plate of the car where the child was found was checked. The car was found to belong to the child's mother. Defendant was located in a nearby bar.

A juvenile liaison officer changed the child's diaper at the police station. She found the child's penis was swollen and red and purple. She observed two bruises on both of the child's thighs. H.S. was taken to a Burlington hospital. On

March 4, 1998, he was transferred to St. Luke's Child Protection Center in Cedar Rapids. There he was examined by Dr. Jolynne Glanzer. Dr. Glanzer was to testify she examined H.S. on March 4, 1998, and found bruises that were consistent with the possibility of sexual molestation. She was asked to testify as to the mechanism that was likely to have caused the child's bruised penis. She said it would have to have been something circular because the bruising went entirely around the head of the penis. She further said it had to be some type of a circular motion or something tied around the penis to get circular bruising. She also said it could be suction because she could see petechiae down lower on the scrotum. She described petechiae as very tiny, small bruises that are the kind one can get with a suction type of injury. Though the doctor was unable to state with absolute certainty the injuries to H.S.'s penis and thighs were the result of sexual abuse, she testified she found sexual abuse the most likely scenario.

The child's mother testified she last changed the child's diaper on March 2, 1998. She testified from that time until he was found in the car the next evening only she and defendant were with the child. She said she and defendant were the only people with access to H.S. in the forty-eight to seventy-two hours before his injuries were discovered.

Defendant argues there was no eyewitness to any abuse, and Dr. Glanzer's testimony only said the injuries were consistent with the possibility of sexual molestation. Defendant contends he hit the child in the groin and then kissed his penis because he had hurt him. He contends the injuries the child received are consistent with his version of what happened.

The State contends there is substantial evidence to infer defendant placed his mouth on H.S.'s penis in a sexual manner.

A jury's finding of guilt is binding on us unless we conclude there was no substantial evidence in the record to support such a finding. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). In determining whether there was substantial evidence, we review the record in the light most favorable to the State. *Id.* Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). We consider all the evidence and not just the evidence supporting the verdict. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994). Both direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

Considering the evidence in light of these directives, we find it was substantial in that it would convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *See State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984).

Defendant also argues if the jury believed his testimony he kissed H.S. on the penis that the evidence is not sufficient to show the contact was sexual in nature. There are no challenges to the jury instructions. They provided the contact must be "sexual in nature. . . ." The jury is never required to believe the defendant's versions of the facts. *State v. Wilkens*, 346 N.W.2d 16, 20 (Iowa

1984). It is apparent the jury rejected the defendant's version of his conduct. His argument on this issue has no basis. We affirm.

AFFIRMED.