



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
)
Plaintiff-Appellee,)
)
vs.)
)
WALLACE EDWARD HIPSHUR,)
)
Defendant-Appellant.)

Filed November 24, 1981

1-369
65994

Appeal from Humboldt District Court - Russell J. Hill, Judge.

Defendant appeals from his conviction of the offense of lascivious acts with a child in violation of section 709.8, The Code. **AFFIRMED.**

Davis J. Lawler, Fort Dodge, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction of the offense of lascivious acts with a child in violation of section 709.8, The Code. He argues that evidence of his age, a necessary element of the crime, was obtained in violation of his right against self-incrimination, that the verdict was not supported by the evidence, and that the complaining witness was not competent to testify. We affirm.

The defendant, Wallace Edward Hipshur, was arrested March 30, 1980, and charged with lascivious acts with a child in violation of section 709.8, The Code. At the time of the incident in question, defendant was living with a woman and her three daughters. One of these daughters, Roberta, aged nine, was the alleged victim of the sexual fondling upon which the county attorney's information is based.

I. Defendant first asserts that his right not to incriminate himself was violated when the State was able to have the booking sheet showing his age received into evidence over his objection. He contends that, although Miranda warnings were read to him at the time of his arrest and again before questioning, he was not advised at the time of booking that any answers he gave to the officer's apparently routine questions could be used against him at trial. We find defendant's argument to be without merit for two reasons. First, the giving of the Miranda warnings is designed to alert a person to his rights and help him to exercise those rights by choice rather than as a result of any coercion that may be intrinsic to the setting of custodial interrogations. The obtaining of incidental identifying information from one in custody is simply not the type of interrogation which Miranda seeks to avoid. "Despite the breadth of the language used in Miranda, the Supreme Court was concerned with protecting the suspect against interrogation of an investigative nature rather than the obtaining of basic identifying data required for booking and arraignment." United States ex rel. Hines v. LaVallee, 521 F.2d 1109, 1112-13 (2nd Cir. 1975), quoted with approval in State v. Beatty, 305 N.W.2d 496, 498 (Iowa 1981). Secondly, the court has previously upheld the admission of statements made by defendants when no Miranda warnings have been given. See, e.g., State v. Matlock, 289 N.W.2d 625, 628 (Iowa 1980) (statements were not the product of interrogation and were therefore voluntary); and State v. Beatty, 305 N.W.2d 496, 498 (Iowa 1981) (only interrogation of defendant was to determine name, address, and telephone number; no violation of his rights by eliciting such information despite Miranda warnings not having been given).

In the present case defendant had been advised of his rights. The information he gave to the booking officer was routine identifying data, and the setting in which he gave it was not the kind of custodial interrogation the Miranda warnings were intended to protect. The warnings were not even required to be given at this point in the arrest proceedings. However, because this argument by the defendant raises an issue of constitutional proportions, we have reviewed it *de novo* and made an independent evaluation of the totality of the circumstances. State v. Matlock at 627. In so doing, we find no basis for reversal.

II. Defendant next argues that the verdict was not supported by the evidence. He contends that the testimony of the complaining witness was inconsistent at trial, she told different versions of the story on other occasions, and she had a motive to lie in that she was jealous of the defendant and wanted him out of the house. Defendant also contends that the verdict was the result of passion and prejudice aroused in the jury by the repugnant and emotional nature of the crime charged.

Sufficiency of the evidence claims require the reviewing court to assess all the evidence in the light most favorable to the State without regard to contradiction or inconsistencies, and to make all reasonable inferences therefrom. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). If there is substantial support for the verdict in the record, the jury verdict is conclusive. State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978). Evidence is "substantial" when a reasonable mind would accept it as adequate to reach a conclusion. General Telephone Co. v. Midwest v. Iowa State Commerce Commission, 275 N.W.2d 364, 370 (Iowa 1979). The evidence against the defendant in the present case is essentially the testimony of Roberta. "The Anglo-Saxon tradition of criminal justice . . . makes jurors the judge of the credibility of testimony offered by witnesses." United States v. Bailey, 444 U.S. 396, 414, 100 S. Ct. 624, 636, 62 L. Ed. 2d 575, 593 (1980). The defendant here testified in his own defense and denied the allegations of Roberta. We may infer that the jury found the testimony given by Roberta to be more credible than that given by defendant. Determination of the credibility of witnesses and the weight of that evidence is the function of the factfinder. State v. Herndon, 257 N.W.2d 19, 22 (Iowa 1977). We therefore conclude that on this record a rational factfinder could find guilt beyond a reasonable doubt, and that there was sufficient evidence to support such a finding.

Defendant also claims that the verdict was the result of passion and prejudice. His proof of this contention, however, is only the fact of his having been found guilty on

this record. Since we have already determined that the record before us can support a determination of guilt, then his assertion as to passion or prejudice because of no evidence of guilt is without foundation and therefore without merit.

III. Defendant next argues that it was error to allow Roberta to testify at all because there was no showing that she understood the obligation of an oath or was otherwise competent to testify. Defendant maintains that Roberta indicated, by her answers, that she did not comprehend the reality of right and wrong or perceive that any ill would befall her should she not tell the truth.

The trial court has a wide latitude of discretion in determining the competency of witnesses; its determination as to competency will be reversed on appeal only on a showing of abuse of discretion. State v. Paulsen, 265 N.W.2d 581, 586 (Iowa 1978); State v. Swanson, 228 N.W.2d 101, 103 (Iowa 1975). In the case before us, the court carefully questioned Roberta before she testified. The county attorney, through further preliminary questions, demonstrated her understanding of the proceedings and her duty towards them. Any testimonial inconsistency goes more to the weight to be accorded Roberta's evidence than to refutation of her competency. See State v. Cartee, 202 N.W.2d 93, 96 (Iowa 1972). The trial court found that Roberta was competent to testify, and we find no abuse of discretion on the part of the court in so concluding.

We have considered all of the defendant's arguments and find no basis for reversal. His conviction is affirmed.

AFFIRMED.