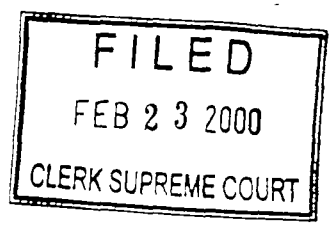
IN THE COURT OF APPEALS OF IOWA

No. 1999-356 (9-609) / 98-1855
Filed February 23, 2000



STATE OF IOWA,

Appellee,

vs.

STEVEN REX COUSINS,

Appellant.

Appeal from the Iowa District Court for Muscatine County, David E. Schoenthaler, Judge.

Steven Cousins appeals the judgment and sentence entered upon a jury verdict finding him guilty of third-degree sexual abuse in violation of Iowa Code sections 709.4(1) and 709.1 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

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

Considered by Streit, P.J., and Vogel, and Vaitheswaran, JJ.

VAITHESWARAN, J.

Steven Cousins appeals his conviction for sexual abuse in the third degree, in violation of Iowa Code sections 709.1 and 709.4(1) (1997). He claims the State presented insufficient evidence of a sex act or that any sex acts were performed against the victim's will. We affirm on appeal.

On June 16, 1998, Diane was home with her three children. After the children were in bed, a friend, Deanne, stopped by. Later, Cousins knocked at Diane's window. Cousins was a neighbor and acquaintance of Diane. When Diane opened the door, Cousins pushed her up against a wall and started kissing her. Diane said, "no," and asked Cousins to leave. Cousins appeared intoxicated. He continued kissing Diane and left a bruise on her neck. Deanne felt Diane could take care of herself and she left.

Cousins took Diane over to a couch. He asked her to undress and she did. She was afraid for her children's safety and decided not to physically fight off Cousins's advances. Cousins engaged in vaginal and anal penetration with Diane. Diane's children woke up and began crying. Cousins then left the home.

The next morning, as soon as she was able to leave the children with a babysitter, Diane had a physical examination at an emergency room. She cooperated with the collection of evidence with a "rape kit." No physical evidence of sexual abuse was found, other than the bruise on Diane's neck. That same morning, Diane gave a statement concerning the incident to police officers.

Cousins was arrested and charged with burglary in the second degree and sexual abuse in the third degree. At the time of his arrest, Cousins admitted to a sexual encounter with Diane, but stated it was consensual.

The case was tried to a jury. After the State presented its evidence, the district court granted defendant's motion for directed verdict on the burglary charge. The case proceeded on the sexual abuse charge. At the trial, Cousins testified Diane had been flirting with him for about two weeks before he went to her home on the night of June 16, 1998. He stated Deanne was not present that night. Cousins testified Diane wanted to have sex, but he was unable to have an erection. He admitted there may have been genital to genital or hand to genital touching. He stated, after a while Diane asked him to leave, and he did.

The jury found Cousins guilty of sexual abuse in the third degree. The court denied defendant's motion for a new trial. Cousins was sentenced to a term of imprisonment not to exceed ten years. He appealed, claiming the State presented insufficient evidence of a sex act or that any sex acts were performed against the victim's will.

I. SCOPE OF REVIEW

Our review of a sufficiency of the evidence claim is on error. *State v. Boleyn*, 547 N.W.2d 202, 204 (Iowa 1996). We are bound by the fact-finder's decision unless the verdict is not supported by substantial evidence. *State v. Walker*, 574 N.W.2d 280, 284 (Iowa 1998). In making this determination, we must consider all the evidence in the light most favorable to the State. *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). Evidence is substantial if it could

convince a rational fact-finder that the defendant is guilty beyond a reasonable doubt. *State v. Sanborn*, 564 N.W.2d 813, 816 (Iowa 1997).

II. SUFFICIENCY OF THE EVIDENCE

A. SEX ACT

Sexual abuse in the third degree is defined as follows:

> A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:
>
> 1. The act is done by force or against the will of the other participant, whether or not the other participant is the person's spouse or is cohabiting with the person.

Iowa Code § 709.4(1).

The definition of a "sex act" includes not only penetration of the penis into the vagina or anus, but also contact between the genitalia of one person and the genitalia of another person, and contact between the genitalia of one person and the hand of another person. Iowa Code § 702.17. See also *State v. Martens*, 569 N.W.2d 482, 486-87 (Iowa 1997) (discussing the definition of "sex act").

We find the State presented sufficient evidence of a sex act. Diane testified Cousins engaged in vaginal and anal penetration. Cousins admitted there may have been genital to genital or hand to genital touching. Under either Diane or Cousins's version of events, a "sex act" occurred, as defined by Iowa law.

B. BY FORCE OR AGAINST THE WILL

There is conflicting evidence in the record regarding whether Cousins engaged in a sex act by force or against the victim's will. As noted above, Cousins testified he engaged in a consensual sexual encounter with Diane.

Deanne testified that while she heard Diane say, "no," she believed Diane was acting as if she agreed to Cousins's advances.

Diane testified she repeatedly told Cousins, "no," and asked him to leave. She stated she was not interested in entering into a sexual relationship with Cousins. Deanne corroborated the fact Diane told Cousins, "no." Deanne admitted her perception Diane was actually agreeing to Cousins's actions may have been clouded by prescription medications.

Although there is conflicting evidence in the record regarding whether Cousins engaged in a sex act by force or against the victim's will, the jury was in the best position to determine credibility. See *State v. Knox,* 536 N.W.2d 735, 742 (Iowa 1995) (citing *State v. Hulbert,* 481 N.W.2d 329, 332 (Iowa 1992)). Generally, "it is for the jury and not the court to decide questions of fact and determine the credibility of witnesses." *State v. Gray,* 216 N.W.2d 306, 308 (Iowa 1974). The jury may give to the evidence the weight it should receive. *State v. Simpson,* 528 N.W.2d 627, 632 (Iowa 1995).

Here, the jury could have disbelieved Cousins's testimony due to discrepancies between his testimony and that of other witnesses and inconsistencies in his statements. Cousins testified Deanne was not present when he arrived at Diane's home on the evening of June 16, 1998, but both Diane and Deanne testified Deanne was there when he arrived. Also, at the time of his arrest Cousins admitted to a sexual encounter with Diane. During his testimony at the trial, he first admitted there may have been genital to genital or

hand to genital contact, but later stated he did not actually have any genital contact with his hand or penis.

By finding Cousins guilty, the jury must have found Diane's testimony credible. Diane reported the incident to several people the following morning. She cooperated with the collection of evidence by a "rape kit." Her testimony at trial was reasonably consistent with the statement she gave police officers on the day after the event. We determine there is substantial evidence in the record to show Cousins engaged in a sex act by force or against the victim's will.

We affirm defendant's conviction for sexual abuse in the third degree.

AFFIRMED.