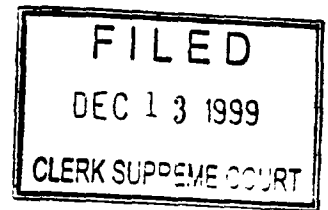


IN THE COURT OF APPEALS OF IOWA

No. 9-475 / 98-835
Filed December 13, 1999



STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN CASTANEDA,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul (motions), Michael S. Walsh (motions and first trial), and Phillip S. Dandos (second trial and sentencing), Judges.

John Castaneda appeals from the judgment and sentence entered after a jury convicted him of the crime of second-degree sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Paul E. Kittredge, Jr., Assistant County Attorney, for appellee.

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

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STREIT, P.J.

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The tender bond between parent and child may be unmendably snapped by the by the weight of sexual abuse. John Castaneda's daughter made such an allegation of abuse, and her descriptive words were memorialized on videotape. Castaneda was convicted of sexual abuse and now appeals, claiming the trial court erred in (1) admitting into evidence the videotaped statement of his daughter contrary to Iowa Rules of Evidence 803(24), 804(b)(5), 403, and 404, as well as his constitutional rights under the Sixth and Fourteenth Amendments; (2) admitting the testimony of his ex-wife; and (3) not granting his motions for judgment of acquittal and new trial. Finding no merit to his claims, we affirm.

1. Background Facts & Proceedings.

On June 3, 1996, the State filed a four-count trial information charging John Castaneda with three counts of sexual abuse in the second degree and one count of indecent contact with a child. A videotaped interview between the victim, Castaneda's adopted daughter Sara, and a social worker with the Child Protection Center in Sioux City supported the charges. During the course of the interview, the social worker asked numerous questions designed to ensure Sara's ability to discern between true and false statements and to recognize the consequences for lying. The social worker also stressed the need for honesty no matter the subject matter. Sara detailed a number of individual instances of sexual abuse perpetrated by Castaneda.

The State sought admission of the videotaped statement under Iowa Rules of Evidence 803(24) and 804(b)(5) and Iowa Code section 910A.14(3) (1997). The

court ruled the videotape admissible under rule 804(b)(5), if Sara was unavailable for trial. Immediately before trial the court ruled Sara unavailable based on a doctor's report finding Sara suffered from posttraumatic stress disorder, that forcing her to testify would exacerbate her condition thus causing further psychological harm, and her current mental condition would prevent her from communicating the events surrounding the abuse. The trial ended with a hung jury, and the court granted a mistrial.

Prior to the second trial Castaneda renewed his challenge regarding Sara's availability and additionally challenged the testimony of his ex-wife, Patricia Johnson. Johnson was to testify that on two separate instances she had performed oral sex on Castaneda while he watched children play on a school playground. The State, offering the testimony as evidence of Castaneda's intent, linked this behavior to the alleged criminal conduct through expert testimony. The State's expert testified sex offenders often begin by fantasizing and then progress toward physically acting on their desires. The court continued to find Sara unavailable based on updated medical documentation and ruled Johnson's testimony, based on the expert's testimonial foundation, relevant as to intent. Castaneda's trial counsel affirmatively stated there was no objection to the videotape at trial but did renew his objection regarding Johnson's testimony. The jury convicted Castaneda on one count of second-degree sexual abuse and acquitted him of all other charges. The court sentenced Castaneda to a term of imprisonment not to exceed twenty-five years.

Castaneda appeals contending the trial court erred in (1) admitting into evidence the videotaped statement of Sara contrary to Iowa Rules of Evidence 803(24), 804(b)(5), 403, and 404, as well as his constitutional rights under the Sixth and Fourteenth Amendments; (2) admitting the testimony of Patricia Johnson; and (3) not granting his motions for judgment of acquittal and new trial. He further contends ineffective assistance of trial counsel if error was not preserved as to any issue.

II. Admissibility of the Videotape.

Castaneda claims admission of the videotape was contrary to Iowa Rules of Evidence 803(24), 804(b)(5), 403, and 404, as well as his constitutional rights under the Sixth and Fourteenth Amendments.¹

A. Error Preservation.

Castaneda objected to the admission of the videotape numerous times throughout the course of both proceedings. Normally, "an adverse ruling on a pretrial suppression motion will suffice to preserve error for appellate review even though there is no attendant trial objection to the controverted material when offered in evidence." *State v. Wright*, 441 N.W.2d 364, 366 (Iowa 1989). Castaneda, however, did not simply fail to renew his pretrial objection at the second trial; his counsel affirmatively stated there was "no objection" to the videotape. An affirmative

¹ Iowa Rules of Evidence 803(24) and 804(b)(5) mimic one another in content with the exception that rule 804(b)(5) requires the out-of-court declarant be unavailable. For the sake of ease and clarity, we collapse the rule 803(24) analysis into our examination of rule 804(b)(5).

statement claiming no objection to evidence previously litigated in pretrial hearings waives all prior objections. *State v. Terry*, 569 N.W.2d 364, 368-69 (Iowa 1997); *State v. Schmidt*, 312 N.W.2d 517, 517-18 (Iowa 1981). Castaneda's claims of evidentiary and constitutional error are not preserved for review strictly on the merits. We nevertheless consider his evidentiary and constitutional arguments under the rubric of ineffective assistance of trial counsel. *State v. Johnson*, 534 N.W.2d 118, 127 (Iowa App. 1995).

B. Ineffective Assistance of Counsel.

1. Standard of Review.

Normally, “we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct.” *State v. Query*, 594 N.W.2d 438, 444 (Iowa App. 1999). Claims of ineffective assistance of counsel may be resolved on direct appeal “when the record is adequate to decide the issue.” *Id.* We review claims of ineffective assistance of counsel de novo. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).²

2. The Prejudice Prong under Ineffective Assistance of Counsel.

Our ultimate concern in claims of ineffective assistance is with the “fundamental fairness of the proceeding whose result is being challenged.” *State*

² Castaneda's evidentiary claims would normally be reviewed for errors at law, but because Castaneda waived his pretrial objections, the trial court was stripped of the opportunity to make a decision regarding the admissibility of the evidence. The admission of the videotape must be reviewed anew as to all claims of error.

v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 696 (1984)). The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Risdal*, 404 N.W.2d at 131-32. An ineffective assistance of counsel claim may be disposed of if the defendant fails to prove either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997). Therefore, we may affirm Castaneda's conviction based on his failure to prove prejudice without deciding whether his counsel failed to perform an essential duty. See *State v. Hoeck*, 547 N.W.2d 852, 863 (Iowa App. 1996). The test for prejudice is whether counsel's failure worked to the defendant's actual and substantial disadvantage to the extent a reasonable probability exists that but for the trial attorney's unprofessional errors, the resulting conviction would have been different. *Johnson*, 534 N.W.2d at 128. A reasonable probability is one sufficient to undermine confidence in the outcome. *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996).

3. *Castaneda Suffered No Prejudice as the Videotape Was Admissible under Iowa Rule of Evidence 804(b)(5).*

For Castaneda to establish prejudice on hearsay grounds, he must show the trial court would have ruled the videotape inadmissible had trial counsel not remained silent or renewed the objection. Because the evidence was admissible under the residual hearsay exception prescribed in Iowa Rule of Evidence 804(b)(5), Castaneda cannot, by a preponderance of the evidence, carry his burden of proving prejudice.

Hearsay is an inadmissible statement, other than one made by the declarant while testifying at trial or a hearing, offered to prove the truth of the matter asserted. Iowa R. Evid. 801 & 802. Iowa Rule of Evidence 804(b)(5) provides for an exception to the general rule of inadmissibility if the declarant is unavailable; no other hearsay exception applies; and the out-of-court statement is trustworthy, material, necessary, serves the interests of justice, and offered only after affording the defense sufficient notice of its use.³ Iowa R. Evid. 804(b)(5); *State v. Rojas*, 524 N.W.2d 659, 662-63 (Iowa 1994). Iowa Code section 910A.14(3) (1997) expressly permits the use of the residual hearsay exception to admit recorded statements of a child “describing sexual contact performed with or on” that child.

a. Sara was unavailable under Iowa Rule of Evidence 804(a)(4). Turning to the first element of the 804(b)(5) analysis, Sara must have been unavailable to testify at trial. Under Iowa Rule of Evidence 804(a)(4), witnesses are unavailable if due to a then-existing mental illness or infirmity they are unable to testify. Iowa R. Evid. 804(a)(4). “Mental illness” includes degenerative mental diseases associated with advanced age. See *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). Other jurisdictions apply the term to encompass all psychological illnesses that (1) virtually prevent the witness from testifying and (2) would expose the witness to further psychological trauma if forced to testify. See *Nelson v. Farrey*, 874 F.2d 1222 (7th Cir. 1989); *State v. Robinson*, 735 P.2d 801 (Ariz. 1987); *People v. Gomez*, 26 Cal.

³ It is uncontroverted that no other exception applied and sufficient notice was given.

App. 3d 225 (Cal. Court. App. 1972); *Warren v. United States*, 436 A.2d 821 (D.C. 1981); *State v. Kuone*, 757 P.2d 289 (Kan. 1988); *State v. Plant*, 461 N.W.2d 253 (Neb. 1990); *People v. Lombardi*, 332 N.Y.S.2d 749 (N.Y. App. Div. 1972); *Commonwealth v. Campion*, 672 A.2d 1328 (Pa. Super. Court. 1996); *State v. Drusch*, 407 N.W.2d 328 (Wis. Court. App. 1987). The Iowa Supreme Court in *State v. Gregg* tacitly recognized the notion of psychological unavailability but ruled the facts of that specific case did not support its adoption. *State v. Gregg*, 464 N.W.2d 431, 434 (Iowa 1990).

The first component in determining psychological unavailability demands the mental illness virtually prevents the witness from testifying as opposed to it being merely distasteful or inconvenient. *People v. Gomez*, 26 Cal. App. 3d at 230. The witness must be able to respond both to direct and cross-examination. To rule otherwise would expose a defendant to the very real possibility of a witness psychologically shutting down or becoming less than forthcoming immediately prior to or during cross-examination. If such an event were to occur, no curative instruction could hope to retract the witness's just-uttered denunciation.

Although somewhat temporally removed from the second trial, Sara's deposition is the strongest indicia of her inability to testify. In her deposition Sara clearly exhibited her refusal and inability to testify. She artfully dodged questions; flatly refused to answer questions; verbally attacked counsel; made unresponsive comments regarding her personal dislike for Castaneda; and made a number of

dissociative comments about her dying, being in hell, and not being able to go to heaven. Expert documentation from Sara's treating therapist confirms Sara would be unable to communicate about the offenses in trial given her then-current mental condition. The therapist also noted Sara's perpetual refusal to discuss the events even in counseling sessions. Even the broad mention of the word sex would evoke refusal. Sara's mental condition made testifying a practical impossibility, thus meeting the first element for psychological unavailability.

The second component necessitates the psychological illness be of comparative severity as to expose the witness to further psychological trauma if forced to testify *People v. Lombardi*, 332 N.Y.S.2d at 750-51; *State v. Drusch*, 260 N.W.2d at 319-20. The relative harm or trauma likely to ensue must be greater than that suffered by the average victim or witness. *See Warren v. United States*, 436 A.2d at 829. Sara was diagnosed with posttraumatic stress disorder. Her therapist unequivocally stated additional physiological and psychological harm would befall Sara if forced to testify. Sara's condition constituted the extreme circumstances necessary to employ the protections of psychological unavailability. Given Sara's condition at the time of trial, the likelihood of permanent psychological injury if forced to testify was great. No child should suffer permanent and disabling psychological pain to satisfy legal constructs that can be sufficiently satisfied by alternative means. Sara was unavailable under Iowa Rule of Evidence 804(a)(4) due to her then-existing mental infirmity.

b. Sara's videotaped statement was trustworthy. The videotaped statement contained numerous identifiable guarantees of trustworthiness, thus alleviating the legitimate distrust inherent in any out-of-court statement. First, the interviewer asked open-ended, nonleading questions. *See State v. Rojas*, 524 N.W.2d at 663 (ruling open-ended questions guarantee trustworthiness). The interviewer's questions did not supply or implant information with which the child could draw in forming her responses. They were completely open-ended, allowing Sara to respond in her own words and approach the subject in a manner she found comfortable. Second, Sara's statement contained detailed descriptions of the circumstances surrounding the abuse including weather conditions and her attire at the time of abuse. *See id.* (ruling detailed descriptions of events surrounding the allegations a guarantee of trustworthiness). Third, Sara's statement was consistent. *See State v. Robinson*, 735 P.2d at 811 (finding consistency in describing the events a guarantee of trustworthiness). The interviewer revisited previous questions to ensure Sara's descriptions remained consistent. Sara consistently characterized the events in an identical manner. Fourth, Sara's detailed descriptions of normal sexual functions were beyond the experience of a normal ten-year-old. *See State v. Rojas*, 524 N.W.2d at 663 (ruling sexual knowledge beyond that of an average child a guarantee of trustworthiness). She described seminal fluid on the bed, on the blankets, and on her jeans. Finally, the interviewer spoke at length regarding the need for Sara to tell the truth. She communicated that consequences followed for those who did not tell the

truth and even initiated a little exercise designed to evaluate Sara's ability to discern true statements from false ones. This exercise and accompanying explanation rivaled those techniques used in court proceedings to qualify a child witness as competent and provided further indicia of trustworthiness. Sara's videotaped statement provides overwhelming circumstantial evidence of veracity.

c. The statement was material, necessary, and in the interest of justice. The videotaped statement was material. The State offered the videotape to establish the elements of the charged offenses. The victim described in detail and from firsthand experience the criminal acts of Castaneda. "[I]t is difficult to imagine more probative evidence." *State v. Robinson*, 735 P.2d at 812. With regard to necessity, Castaneda argues Sara's deposition eliminated the need for admitting the videotape. However, the evasive and tortured responses of Sara in her deposition are of little probative value. Her deposition was void of detail, and she continually referred defense counsel to her videotaped statement for answers to his queries. The videotaped statement was the best direct evidence implicating Castaneda; it was the most probative evidence linking him to the crime. *See State v. Rojas*, 524 N.W.2d at 663. The admission of the statement also served the interests of justice. "The appropriate showing of reliability and necessity were made, and admitting the evidence advances the goal of truthseeking expressed in Iowa Rule of Evidence 102." *Id.*

d. Castaneda suffered no prejudice—the evidence was admissible. To bring the analysis full circle, Castaneda's claim of ineffective assistance of counsel must

fail with regard to Iowa Rule of Evidence 804(b)(5). Because the evidence could have been properly admitted under the residual hearsay exception regardless of trial counsel's silence, objection, or affirmative response, Castaneda suffered no prejudice as to rule 804(b)(5).

4. Because Admission of the Videotape Did Not Violate the Confrontation Clause of the Sixth Amendment, Castaneda Suffered No Prejudice.

For Castaneda to establish prejudice on constitutional grounds, he must show his Sixth Amendment right to confrontation was violated. Because admission of the statement did not violate the Confrontation Clause, Castaneda cannot, by a preponderance of the evidence, carry his burden of proving prejudice.

Under the Sixth Amendment, "the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. Although the Confrontation Clause appears bold on its face, it "does not necessarily prohibit the admission of hearsay statements against a criminal defendant." *Idaho v. Wright*, 497 U.S. 805, 813 (1990). The United States Supreme Court in *Ohio v. Roberts* set forth a two-tiered test for determining when evidence admissible under a hearsay exception does not run afoul of the Confrontation Clause. *Ohio v. Roberts*, 448 U.S. 56, 65 (1980). First the State must "demonstrate the unavailability of the declarant whose statement it wishes to use against the defendant." *Id.* Second, the evidence must bear some indicia of reliability. *Id.* at 66. Where the evidence is admitted under a firmly rooted hearsay exception, reliability can be inferred. *Idaho v. Wright*, 497 U.S. at 815. In other cases, the State must demonstrate particularized guarantees of

trustworthiness. *Id.* Because residual hearsay exceptions are not afforded the status of firm rootedness, evidence offered under such exceptions must possess particularized guarantees of trustworthiness. *Id.* at 817. Assessing whether the quantum of trustworthy guarantees tips the scale in favor reliability is not a mechanical process. *Id.* at 822. Rather, a totality of the circumstances test is to be applied. *Id.* at 819-20.

The videotaped statement in the present case satisfies both tiers of the *Roberts* analysis. As previously discussed, Sara was unavailable for trial under Iowa Rule of Evidence 803(a)(4), thus fulfilling the first element. Likewise, the statement bore significant guarantees of trustworthiness. First, the posited questions were open-ended and allowed Sara to respond free from inferences supplied by the interviewer. Second, her responses contained significant detail regarding the alleged criminal conduct as well as superfluous facts surrounding the abuse. Third, Sara's responses remained consistent even when subjected to questioning by the interviewer. Fourth, she described sexual functions beyond the knowledge of a child her age. Finally, Sara was admonished to tell the truth. This quantum of evidence tips the scales of reliability. The admission of the evidence did not violate Castaneda's right to confrontation. Castaneda's claim of ineffective assistance of counsel fails with regard to the alleged constitutional violation. Because the victim was unavailable and the admitted hearsay statement bore sufficient guarantees of trustworthiness, Castaneda suffered no prejudice.

5. Castaneda Suffered No Prejudice as the Videotape Did Not Violate Iowa Rule of Evidence 404; Nor Was it Overly Prejudicial under Iowa Rule of Evidence 403.

For Castaneda to establish prejudice on grounds of improper evidence of prior bad acts related by the child, he must show the trial court would have ruled the videotape inadmissible had trial counsel not remained silent or renewed the objection.⁴ Because the evidence falls under the exception articulated in rule 404(b) and is more probative than prejudicial under rule 403, Castaneda cannot, by a preponderance of the evidence, carry his burden of proving prejudice.

Evidence of prior bad acts is not admissible to show a general propensity to commit crime. *State v. Haskins*, 573 N.W.2d 39, 45 (Iowa App. 1997). Evidence of prior bad acts may be admitted, however, for one or more of the nonexclusive purposes listed in Iowa Rule of Evidence 404(b). *Id.* Iowa Rule of Evidence 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The explanative list provided in rule 404(b) is not exhaustive. *State v. Brown*, 569 N.W.2d 113, 116 (Iowa 1997). Rather, the court employs a tiered analysis in reviewing admission of prior bad acts. *State v. Uthe*, 542 N.W.2d 810, 814 (Iowa

⁴ The alleged bad acts encompassed in the videotape include: (1) Castaneda was a mean person, (2) Castaneda did not pay attention to Sara's homework, (3) Castaneda hired a poor attorney, and (4) Castaneda asked Sara to view pornographic films with him.

1996). **The first tier requires the evidence be relevant for a purpose other than to show the general propensity of the defendant to commit crime. *Id.* If the evidence clears the relevancy hurdle, the court must then turn to the second tier of analysis: whether the probative value of the evidence “is substantially outweighed by the danger of prejudice.” Iowa R. Evid. 403.**

Evidence is relevant when it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Iowa R. Evid. 401. The balance between the probative value of the evidence and its prejudicial nature is tipped in favor of being unduly prejudicial when it:

appeals to the jury’s sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action [which] may cause a jury to base its decision on something other than the established propositions in the case.

State v. Plaster, 424 N.W.2d 226, 231 (Iowa 1988). Evidence immediately surrounding the offense is admissible to show the complete story of a crime, even it involves the commission of another crime. *State v. Veal*, 564 N.W.2d 797, 812 (Iowa 1997).

The extraneous comments in the videotape were relevant. The initial comments were necessary to establish the identity of the victim as well as her relationship to Castaneda. They were also necessary to display a complete recitation of the crime and to demonstrate the interaction between Sara and the interviewer. The slighting comments made about Castaneda’s character were not so inflammatory as

to **arouse the jury's sense of horror. The possibility of unfair prejudice did not outweigh the probative value of the evidence.**

Sara's later comments about watching an adult video with Castaneda were also relevant. Evidence that Castaneda touched Sara with the specific intent to arouse or satisfy his or Sara's sexual desires was one of the elements needed to support the charge of indecent contact with a child. Inducing a child to watch pornographic videos is evidence of specific intent. The evidence combats the allegation that the touching was accidental or in the course of normal parenting. The evidence was relevant. Furthermore, the evidence was not unfairly prejudicial. Evidence is often legitimately prejudicial; this simple fact does not bar its admission. The evidence supported a statutory element of the charge, and any prejudice was legitimate.

Castaneda's claim of ineffective assistance of counsel fails with regard to Iowa Rules of Evidence 404 and 403. Because the evidence was relevant and its probative value outweighed any unfair prejudice, Castaneda suffered no prejudice.

III. The Testimony of Castaneda's Ex-Wife.

Castaneda further claims the trial court erred in allowing testimony from his ex-wife, Patricia Johnson, that on two occasions she performed oral sex on him while he watched children playing on a school playground. Castaneda claims the evidence was improper character evidence under Iowa Rule of Evidence 404.

A. Standard of Review.

We review Castaneda's evidentiary claim for an abuse of discretion. *State v. Sallis*, 574 N.W.2d 15, 16 (Iowa 1998).

B. The Trial Court Did Not Abuse its Discretion in Finding the Evidence Relevant as to Intent.

The judicial standards for admitting evidence of prior bad acts under Iowa Rule of Evidence 404(b) was previously discussed in Part II.B.5 of this opinion. The facts relevant to this specific claim will be applied in accordance to the previously articulated method of analysis.

The evidence of Castaneda's prior "oral" transgressions were relevant of his intent. The State charged Castaneda with indecent contact with a child. The specific intent element of that crime demands the touching occur with the intent to stir sexual arousal in either party involved in the incident. The State offered expert testimony outside the presence of the jury linking an offender's sexual fantasies regarding children to that offender later acting on those fantasies. The causal nexus established by the expert testimony anchored the evidence in founded behavioral theory. Failing to present that behavioral link to the jury stretches the relevance rather thin and may have produced fertile ground for the weed of unfair prejudice to grow, yet Castaneda specifically objected to the State's expert testifying in open court. Castaneda cannot now claim the evidence irrelevant or unfairly prejudicial. The trial court did not abuse its discretion in permitting the testimony.

IV. Motion for Acquittal & Motion for New Trial.

Lastly, Castaneda claims the trial court erred in denying his motion for acquittal and motion for new trial.

A. Standard of Review.

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding.⁵ *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

B. The Evidence Supports Castaneda's Conviction.

Substantial evidence supports Castaneda's conviction. Viewing the evidence in the light most favorable to the State, a rational trier of fact could find Castaneda

⁵ The trial court assessed both motions under the sufficiency-of-the-evidence standard. The supreme court subsequently changed the appropriate legal standard for granting a motion for new trial in *State v. Ellis*, 578 N.W.2d 655 (Iowa 1998). The new standard became effective on May 23, 1998. The court entertained Castaneda's motion for new trial on April 9, 1998. Because the new standard was not yet pronounced, we will examine Castaneda's claim under the sufficiency-of-the-evidence standard.

guilty beyond a reasonable doubt. Sara's videotaped statement has been subjected to tests of trustworthiness under Iowa's procedural rules of evidence and the more rigorous constitutional demands of the Confrontation Clause under the Sixth Amendment. Her statement survived both attacks. Sara's statement rings of veracity and is accompanied by all the judicially recognized guarantees of trustworthiness. The trial court properly denied Castaneda's motion for acquittal as well as his motion for new trial. Castaneda's conviction is affirmed.

AFFIRMED.