

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

JOHN G. HOVE,)

Defendant-Appellant.)

Filed November 20, 1984

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4-420
83-1660

Appeal from the Iowa District Court for Mills County - Glen McGee, Judge.

Defendant appeals from his conviction of sexual abuse in the third degree in violation of Iowa Code section 709.4(3). AFFIRMED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Pamela S. Greenman, Assistant Attorney General, for plaintiff-appellee.

Considered by Snell, P.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

Defendant appeals from his conviction of sexual abuse in the third degree in violation of Iowa Code section 709.4(3). He asserts that there was insufficient evidence presented at trial to support the jury verdict of guilty.

Our review of criminal proceedings is ordinarily on assigned error. State v. Cuevas, 322 N.W.2d 910, 911 (Iowa Ct. App. 1982). In reviewing a claim that the evidence was insufficient to support the verdict, we consider all of the evidence in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). If the record provides substantial support, the jury verdict is conclusive. Id. at 338. Substantial evidence is evidence that would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Blair, 347 N.W.2d 416, 419 (Iowa 1984).

Defendant argues that the evidence was insufficient because no rational jury could have accepted the victim's story and the other State's witnesses offered only "opinions" and "speculation." We conclude that there was sufficient evidence and, therefore, affirm the conviction.

Michael Parkinson, who was fourteen years old at the time of trial, testified that in the fall of 1982 he lived in a trailer with his mother, two sisters, and defendant. Defendant and Michael's mother, Pamala Parkinson, were romantically involved. Michael testified that in October and November of that year defendant sexually abused him on seven different occasions while his mother and sisters were either at the grocery store or visiting his grandmother. Michael stated that these incidents occurred before Rod Neighbors and Lori Hanson moved into the trailer with them. He also stated that he had been beaten by defendant twice and had confided in his friend, Ronny Eisenhaur, about the beatings. Michael testified he was afraid to tell anyone about the sexual abuse because he thought defendant would beat him. Michael finally told his mother in December after defendant had moved out of the trailer. Michael's insistence on the truth of his story resulted in

a rift between him and his mother. At the time of trial he was living with his friend, Ronny, and his family.

On cross-examination Michael admitted that he did not remember exact dates and times of the incidents and that he might be confused as to what sex acts took place in each incident. However, he maintained that the acts had taken place. Michael also admitted that he had told his mother on one occasion that he had made up the story. He explained that he only said that because he thought he could return home if he did so. It was also brought out that Michael had been charged with burglary in juvenile court.

Michael's friend, Ronny Eisenhaur, testified that he had observed bruises on Michael's face and back. He also identified a note he had received from Michael showing Michael's fear of defendant.

Michael's mother, Pamala, testified on behalf of defendant. She said that Hanson and Neighbors had moved in early in October and stayed through the end of November. Pamala maintained that to the best of her knowledge Michael was never left alone in the trailer with defendant. Pamala stated that she did not believe Michael's allegations but admitted testifying in a juvenile court proceeding that she did believe him. She explained that she made the prior statement only because her former lawyer told her she would lose custody of her children if she said she did not believe his story. She also admitted seeing bruises on Michael after defendant disciplined him.

Lori Hanson testified that while she lived in the trailer Michael and defendant were never alone together at home. On cross-examination she admitted there were times she left the trailer and, therefore, did not know what happened. She also testified she had never seen defendant beat Michael and that Michael never acted afraid of defendant.

Michael's sisters, Christine and Stacy, each testified that defendant and Michael were never home alone and that they never saw defendant beat Michael.

Christine additionally testified that Michael had admitted to her that defendant did not sexually abuse him.

Chuck and Jane Havener each testified they were familiar with the parties to the case and that defendant and Michael had a good relationship.

On rebuttal Judy Redden, Ronny's mother, testified that she had not had any problems with Michael since he had moved into her house. She stated that Michael had consistently maintained to her that his allegations of sexual abuse were true. She testified that Michael had been constantly upset about it and that she believed him wholeheartedly.

The school nurse who investigated Michael's story testified that she had investigated several sexual abuse cases. She said that Michael had cried during the interview. She also stated that she always impressed upon the children the importance of telling the truth.

The issue in this case is basically one of credibility. It is for the jury to determine the credibility of a witness. State v. Blair, 347 N.W.2d at 420. It is only when witnesses so contradict themselves to destroy entirely the probative value of their testimony that credibility can be decided as a matter of law. State v. Still, 208 N.W.2d 887, 891 (Iowa 1973). Defendant argues that the evidence shows Michael made up the story out of jealousy over defendant's relationship with his mother. Michael's account of the sexual abuse was not incredible as a matter of law. A rational jury, in weighing credibility, could decide that the defense witnesses were less credible. Pamala Parkinson testified she was in love with defendant and intended to marry him. Christine and Stacy were under Pamala's control. Lori Hanson was a good friend of defendant's.

Considering all of the evidence in the light most favorable to the State, there was substantial evidence to support the jury verdict. Therefore, defendant's conviction is affirmed.

AFFIRMED.