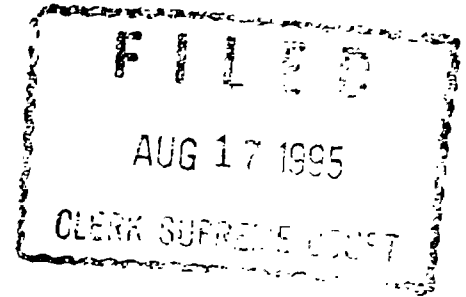


IN THE COURT OF APPEALS OF IOWA

No. 5-348 / 94-1386



STATE OF IOWA,

Appellee.

vs.

DALE LEE SPAULDING,

Appellant.

Appeal from the Iowa District Court for Pocahontas County, Ronald H. Schechtman, Judge.

Spaulding appeals judgment and sentences, following jury trial, entered upon his convictions of assault, assault with intent to commit sexual abuse while in possession of a firearm, and being a felon in possession of a firearm. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor and Charles Thoman, Assistant Attorneys General, and Ann Beneke, County Attorney, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ. Sackett, J., takes no part.

HUITINK, J.

Dale Spaulding appeals his conviction of assault with intent to commit sexual abuse. We affirm.

Spaulding was charged with several offenses including kidnapping in the first degree, sexual abuse in the second degree, terrorism, and felon in possession of a firearm. Following a bench trial, Spaulding was acquitted of kidnapping, second-degree sexual abuse, and terrorism. The court, however, found Spaulding guilty of assault with intent to commit sexual abuse as a lesser-included offense of kidnapping, simple assault as a lesser-included offense of terrorism, and felon in possession of a firearm.

Spaulding was charged with these offenses following a violent altercation with Lyn Rice. Spaulding's relationship with Rice began in January 1994. Their relationship was described as tempestuous, involving both sexual intimacy and abusive and sometimes violent altercations.

The events leading up to these charges occurred on March 2 and 3, 1994. Spaulding and Rice had been arguing about Rice's involvement with other men and Spaulding's accusation that Rice was a drug informant.

At approximately 2 a.m. on March 3 Spaulding woke Rice at her home and asked her to attend a party at the home of a mutual friend. Rice acquiesced, and the two left for the party in Spaulding's car. While en route to the party, Spaulding repeated his

earlier allegations. Rice denied them and fell asleep before they arrived at their friend's home. She was awakened when Spaulding fired a pistol outside the car's window.

Once inside their friend's home, the argument turned violent. Spaulding hit Rice across the face. When she attempted to escape to another room, Spaulding grabbed her and pulled her back. Spaulding then slammed Rice's head against a wall. He also placed his hands around her throat applying enough pressure to cause minor bruising. Spaulding repeatedly displayed the gun he was carrying while calling Rice a narc and a snitch. He threatened to kill her and feed her to the pigs.

Rice testified Spaulding called her a bitch and a slut while she was being beaten. She also testified about Spaulding's allegations that she slept with other men and younger boys.

At some point after Rice was beaten, Spaulding summoned Rice into a bedroom where Rice found Spaulding sitting on a bed with his pants down. Spaulding unsuccessfully tried to force his penis into Rice's mouth. Spaulding then told Rice to get undressed. She complied by removing her pants and shoes. Spaulding, according to Rice's testimony, tore her underwear off. The two then engaged in sexual intercourse. Rice maintains she was forced to engage in these sex acts. Spaulding contends they were consensual.

The district court concluded the State failed to prove that these sex acts were nonconsensual and acquitted Spaulding on the sexual abuse charge. In reaching this

conclusion, the court cited Rice's conflicting versions of these events and the couple's prior history of abusive altercations followed by consensual sex. The court, however, found, based on Spaulding's statements and conduct, that he had the intent to sexually abuse Rice at the time he assaulted her.

On appeal Spaulding contends his conviction of assault with intent to commit sexual abuse lacks sufficient evidentiary support. He cites his acquittal of sexual abuse and the absence of any sexual oriented conduct or remarks associated with his admitted assault.

The State argues Spaulding failed to preserve error on this issue and that the requisite intent necessary to convict was circumstantially established. We pass on the error preservation issue and proceed to consider the merits of Spaulding's contentions.

Our standard of review is well established. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as would convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences **and** presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all of the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). Evidence which merely raises suspicion, speculation.

or conjecture is not substantial. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). Direct and circumstantial evidence are equally probative. *Id.*

In order to convict Spaulding of assault with intent to commit sexual abuse the State was required to prove Spaulding assaulted Rice, that he had the specific intent to commit sexual abuse, and Rice suffered bodily injury. Iowa Code § 709.11 (1993). The elements of assault and bodily injury are not disputed.

Specific intent may be established by circumstantial evidence, and by inferences drawn from the conduct of the defendant in light of human behavior and experience. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992). Intent to commit sexual abuse may be inferred from the statements made by the defendant and nature of his actions. *State v. Radeke*, 444 N.W.2d 476, 478 (Iowa 1989) (citations omitted). Evidence supporting this inference includes sexual comments made to the victim, touching in a sexual way, the removal or request to remove clothing or some other act during the commission of the crime that showed a desire to engage in sexual activity. *Casady*, 491 N.W.2d at 787.

We, after our limited review, find sufficient evidentiary support for the district court's conclusion that Spaulding intended to engage in a sex act with Rice. Rice was subjected to a brutal beating during which Spaulding called her sexually demeaning names such as slut and bitch. Rice's clothing, including her panties, was torn. Spaulding removed his pants and attempted to place his penis in Rice's mouth.

We do not believe the district court's inability to find sexual intercourse was performed by force is necessarily irreconcilable with our conclusion. Spaulding's intent at the time of the assault, and Rice's consent to subsequent intercourse, are separate and distinct considerations. Each requires an assessment of the state of mind of different persons based on the facts and circumstances disclosed by the evidence. The district court cited substantial evidence supporting its respective conclusions on these issues. Spaulding's conviction is accordingly affirmed.

AFFIRMED.