

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

508 CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

RICHARD E. RANDELL,

)

Defendant-Appellant.

)

Filed August 29, 1985

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5-369
84-1348

Appeal from the Iowa District Court for Polk County - Gene L. Needles,
Judge.

Defendant appeals from his conviction for second-degree sexual abuse
in violation of Iowa Code sections 709.1 and 709.3(2). **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and John P. Messina, Assis-
tant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant
Attorney General, for plaintiff-appellee.

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

HAYDEN, J.

Defendant appeals from his conviction for second-degree sexual abuse in violation of Iowa Code sections 709.1 and 709.3(2). He asserts that there was insufficient evidence to support the conviction. We affirm.

Richard Randell was charged by trial information with second-degree sexual abuse. The information alleged that on or about November 1983 Randell sexually abused his daughter, who was seven years of age at the time.

At trial, the victim testified as to alleged sexual abuse occurring during the summer of 1983 and during November of 1983. The victim's testimony was at times unclear and imprecise regarding the alleged sexual abuse that took place. At the close of the victim's testimony, the State amended the charge to allege that the sex act occurred during the summer of 1983 rather than during November 1983. Defendant's motion for judgment of acquittal was denied at the close of the State's case.

Defendant presented medical testimony concerning a medical exam taken from the alleged victim on December 1, 1983. The testimony indicated that the alleged victim's genital and rectal areas were normal in all respects and without evidence of trauma. Defendant renewed his motion for judgment of acquittal and ruling was reserved by the court.

The jury found Randell guilty as charged. The court then denied defendant's motion for acquittal. At sentencing, his motion for new trial based upon insufficiency of the evidence was also denied. Randell has appealed.

Randell's sole claim on appeal is that evidence is insufficient to support a finding that a sex act occurred.

In considering this claim, we view the evidence in a light most favorable to the state, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Nunn, 356 N.W.2d

601, 603 (Iowa Ct. App. 1984). A verdict of guilty is binding unless there is no substantial evidence in the record to support it. Substantial evidence is that which could convince a rational trier of fact beyond a reasonable doubt that the defendant is guilty of the crime charged. Id. In light of these principles, we conclude that sufficient evidence exists to support a conviction.

Iowa Code section 702.17 defines the term "sex act" as: 1) penetration of the penis into the vagina or anus; 2) contact between the genitalia of one person and the genitalia or anus of another person; or 3) contact with the genitalia or anus by use of artificial sex organs or substitutes.

At trial, the victim testified that during the summer of 1983 the defendant put his "thing" on the side of her body. She also testified that he had not put it between her legs or by her bottom. However, upon further questioning, she stated that he put his "thing" in her bottom and it hurt. The following interchange then took place:

Q. These people need to know the truth. Was it just on your side or was it in your bottom? A. My bottom.

Q. Can you say that out loud one more time? A. In my bottom.

Q. Did it hurt when he did that? A. Yes.

Q. When you told me earlier when we were talking about the time over at your grandpa's house outside, did Richard put it in your bottom that time, too? A. (Witness nodded.) Yes.

Q. How come you told these people today that he put it just on your side? A. I—(crying).

Q. Are you telling the truth when you tell us that he put it in your bottom? A. (Witness nodded.) Yes.

Q. Okay. That's all that we ask. Now, are there any other times that Richard did this to you? A. I don't — (Witness nodded.) Yes. I don't want to tell them.

In light of this testimony, we believe it was reasonable to conclude that a sex act occurred within the meaning of section 702.17. It was apparent that

the victim was reluctant to testify concerning the alleged abuse and some inconsistencies are evident. However, this does not render the testimony unreliable as a matter of law. Our courts have recognized that the trier of fact is at liberty to believe part of a witness's testimony and disbelieve another part. State v. Metcalf, 260 N.W.2d 857, 870 (Iowa 1977); State v. McCullough, 226 N.W.2d 216, 217 (Iowa 1975) ("the very function of the jury is to sort out the evidence and place credibility where it belongs.")

Randell argues, however, that her testimony is not sufficient to sustain a conviction because her language was too imprecise. We cannot agree. The victim's testimony should not be discredited merely because she referred to the defendant's "thing" and her "bottom." As the State indicates, one cannot expect a seven- or eight-year-old child to know correct anatomical terms. The jury could infer from the victim's testimony that the defendant's "thing" was his penis and that the defendant placed his penis on or in the victim's anus. This would constitute a sex act.

The defendant also argues that the victim's testimony cannot be believed because she stated that both she and the defendant had their clothes on during the sex act. We are unpersuaded by this argument. It is evident to this court that the abuse could have occurred even though Randell did not completely disrobe himself or the victim.

The defendant also points to the fact that a medical examination of the victim failed to reveal any visible evidence of injury. However, we cannot say that this necessarily leads to the conclusion that the abuse did not occur. Nor does it indicate that the victim is not a credible witness. The record reflects that the physician merely performed a visual examination. Furthermore, the examination occurred four to six months after the sexual abuse.

We have considered defendant's arguments and conclude that the conviction should be sustained. Viewing the evidence in a light most favorable to the State, it is apparent that a rational trier of fact could conclude that the defendant was guilty.

Finding no error, we affirm.

AFFIRMED.