IN THE COURT OF APPEALS OF IOWA

No. 1-167 / 90-367

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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

ELASANDRO TYRONE TAYLOR,

Appellant.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Defendant appeals his jury conviction on the charge of second-degree sexual abuse, contending he was entitled to directed verdict of acquittal and that proffered testimony of his character was improperly excluded. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson, Assistant Attorney General, Denver D. Dillard, County Attorney, and Harold Denton, Assistant County Attorney, for appellee.

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

SCHLEGEL, J.

Defendant E. Tyrone Taylor appeals his jury conviction on the charge of second-degree sexual abuse. See Iowa Code § 709.1, 709.3(2) (1989). Taylor contends the trial court erred in refusing to direct a verdict of acquittal and refusing to permit proffered testimony of defendant's character. We affirm.

(1)

In September 1989, while visiting his sister-in-law's home, Taylor was alone with seven children, including the alleged victim, J.T. According to eight-year-old J.T., she had been watching television when Taylor rubbed her vaginal area with his hand. Later the same day, while J.T. was in the kitchen, Taylor unzipped J.T.'s pants and penetrated her vagina with his finger.

On cross-examination, the defense brought out an apparently inconsistent statement in which J.T. could not remember whether Taylor had touched her "in the front or the back." This vague reference by defense counsel apparently is to the child's anatomy. The eight-year-old, however, was unequivocal in recounting events; in stating that she had been touched, penetrated, and hurt; and in naming Taylor as the perpetrator.

Three witnesses testified for Taylor to present character evidence consistent with Iowa Rule of Evidence 404(a)(1). These witnesses generally testified that they

had employed Taylor as a baby-sitter, that he had a good reputation, and that they were unaware of any complaints about his baby-sitting. The defense sought also to introduce evidence that none of the witnesses' children had complained about Taylor's having touched them in a sexual manner. The trial court, however, sustained the State's hearsay objections.

Taylor testified that he had done nothing. He stated that he had been watching television when J.T. sat on a stool near him. He further testified that he had noticed J.T.'s pants zipper was down and that he had zipped it for her. Taylor denied having touched J.T. inappropriately.

The jury returned a guilty verdict. The district court sentenced Taylor to a maximum of twenty-five years in prison for the class "B" felony of sexual abuse in the second degree. Iowa Code § 709.3(2). Taylor appeals, challenging the trial court's refusal to direct a verdict of acquittal and its refusal to allow evidence that no other child had complained of sexual contact by defendant.

(2)

Our standard of review when a defendant challenges the sufficiency of the evidence to convict is well settled. 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 could convince a rational trier of fact that the defendant

is guilty beyond a reasonable doubt of the crime charged. 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 the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

In spite of defendant's contentions, the victim's testimony appears quite consistent and her answers appropriate. The victim's mother testified that J.T. had told her the same story. Expert medical testimony established that the appearance of J.T.'s vagina was consistent with digital penetration. Based upon this evidence and all of the other evidence introduced at trial, we conclude that a rational trier of fact could find Taylor guilty beyond a reasonable doubt. The trial court did not err in refusing to direct a verdict of acquittal.

(3)

Defendant presented witnesses who testified as to defendant's good character and reputation. He contends that the trial court erred by refusing to permit his witnesses from stating whether or not the witnesses' children had ever complained about defendant's baby-sitting or about defendant having touched them in a sexual manner. The trial court sustained objections on hearsay grounds.

On defendant's direct examination of the first witness, there was this exchange:

> **Q:** Have you ever heard any complaints about his babysitting? **A:** No.
> **[PROSECUTOR]:** I think I'm going to object on relevancy. This has nothing to do with this case.
> **[DEFENSE COUNSEL]:** Your Honor, I think this goes to the reputation of the Defendant and that's the purpose of this witness, and I think we have qualified her.
> **THE COURT:** Overruled. The answer is in.
> * * *
> **Q:** . . . [H]ave your children ever had any complaints about Mr. Taylor touching them in a sexual manner?
> **[PROSECUTOR]:** I'm going to object to that to [sic] because that's irrelevant, and it would be essentially hearsay.
> **THE COURT:** Sustained.
> **[DEFENSE COUNSEL]:** Nothing further.

This was defendant's witness, and it was incumbent upon him to make an offer of proof of what any testimony would be in answer to objections which were sustained. State v. Hahn, 259 N.W.2d 753, 759 (Iowa 1977) (citing State v. Ritchison, 223, N.W.2d 207, 213 (Iowa 1974)).

On defendant's direct examination of the second witness, there was a similar exchange:

> **Q:** Have your children ever complained to you about his babysitting? **A:** No.
> **[PROSECUTOR]:** I object because again it would be hearsay, and I object to relevancy.
> **THE COURT:** Sustained as to hearsay.

Again this was defendant's witness, and again the defendant failed to make an offer of proof. Id. Additionally, as with the first witness, an answer came into the record before an objection was made. In fact, the testimony which defendant complains was excluded was never stricken from