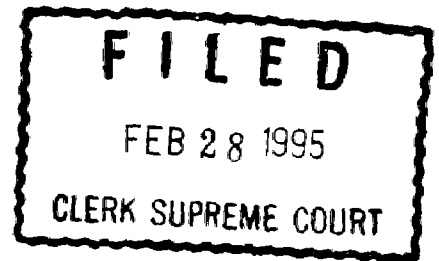


IN THE COURT OF APPEALS OF IOWA

No. 4-591 / 94-367



STATE OF IOWA,

Appellee,

vs.

JOHN LELAND PARKER,

Appellant.

Appeal from the Iowa District Court for Johnson County,
Larry J. Conmeyer, Judge.

Defendant appeals from judgment and sentence, following jury trial, entered upon his convictions of two counts of second-degree sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John F. Fatino, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, J. Patrick White, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

HUITINK, J.

John Parker appeals from his conviction of two counts of sexual abuse in the second degree in violation of Iowa Code sections 709.1(3), 709.3(2), and 702.19 (1993). We affirm.

Parker was charged based on allegations made by S.L., the ten-year-old daughter of his girlfriend, Sharon. S.L. first revealed her experiences with Parker during an interview with a social worker nearly two years after the events underlying these charges occurred. The social worker was treating S.L. for sexual abuse by persons other than Parker. Although S.L. had forgotten about these incidents, she had flashbacks of her experiences that she had with Parker.

S.L. testified that Parker touched her private part once while she was home sick from school and again when Parker placed his hand in her underwear, touching her vagina. S.L. also testified that she did not tell her mother even though her mother discovered Parker lying in S.L.'s bed at the time of the second incident. There is also evidence that S.L. disliked Parker and resented her mother's affections for him.

Parker has steadfastly denied touching S.L. as she claims. He acknowledges caring for S.L. at the time of the first incident and his presence in S.L.'s bed at the time of the second incident. Parker explained his presence in S.L.'s bed as an innocent desire to find a place to sleep following an argument with Sharon.

Sharon testified that she discovered Parker in S.L.'s bed and ordered him to leave S.L.'s bedroom. Her testimony about this incident conflicted with her earlier statement to police that she did not recall Parker's presence in S.L.'s room. She also testified that Parker cared for S.L. at the time of the first incident while S.L. was home sick from school.

The record also contains expert testimony by professionals who examined and treated S.L. A pediatrician testified that her examination of S.L. revealed no abnormalities or any physical evidence of sexual abuse. A social worker testified that S.L. was treated for sexual abuse by others and that S.L.'s allegations about Parker were similar to the abuse she experienced by others.

A video tape of S.L.'s interview by a social worker was introduced into evidence. In this video S.L. identifies Parker as a person that abused her. S.L. is also shown making a conflicting statement about her brother's presence in her bed during the second incident.

On appeal Parker argues that his convictions are not supported by substantial evidence. He argues that S.L.'s versions of these incidents are not worthy of belief because of the delay in reporting the incidents, the absence of physical evidence, and the suggestive circumstances in which they were revealed. He also identifies contradictions in S.L.'s testimony and the similarity of the alleged abuse that S.L. experienced by others. We disagree.

Our standard of review 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 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 the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

We believe there is substantial evidence in the record to support the jury's verdict. S.L.'s testimony combined with the testimony of Parker and others confirming incidental details of the abuse were sufficient to convict Parker of sexual abuse. We acknowledge the flaws in the State's case and the questions raised about S.L.'s credibility. However, the resolution of conflicting evidence and matters of witnesses' credibility are ordinarily left to the jury. State v. Schrier, 300 N.W.2d 305, 309 (Iowa 1981). We will only intervene when a witness's testimony is so impossible or absurd that it should be deemed a nullity. State v. Smith, 508 N.W.2d 101, 103 (Iowa App. 1993).

This case is a far cry from the circumstances found in Smith, and we find no reason to interfere with the jury's assessment of S.L.'s credibility or its resolution of conflicting testimony. The district court is therefore affirmed on this issue.

Parker also claims his trial counsel was ineffective in numerous respects. Both parties argue the record on appeal is inadequate to resolve these issues. We agree and preserve Parker's claims of ineffective assistance of counsel for postconviction proceedings. See State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984).

AFFIRMED.