FILED
MAR 23 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed March 23, 1982
vs.) 565
RICHARD KEITH NELSON,) 2-11/66222
Defendant-Appellant.)

Appeal from Polk District Court - Dale S. Missildine, Judge.

Defendant appeals from his conviction and sentence for two counts of lascivious acts with a child in violation of section 709.8, The Code 1979, asserting: (1) that his confession was the result of coercion, intimidation, and promises of leniency and was therefore involuntary; (2) that his confession was not adequately corroborated as required by Iowa R. Crim. P. 20(4); (3) that the imposition of concurrent prison terms not to exceed five years constituted an abuse of discretion; and (4) that the court did not adequately state on the record its reason for the sentence imposed. AFFIRMED.

James Cleary, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

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Generally, our review of criminal proceedings is at law for correction of errors only, and not de novo. Iowa R. App. P. 4. However, when a constitutional issue is presented, the evidence relevant to that issue is reviewed de novo. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975).

I.

The victim in this case, a nine-year-old boy, testified that defendant was a friend of the victim's babysitter. He testified that defendant took the victim to defendant's apartment on two separate occasions and that, on both occasions, defendant and the victim undressed, each rubbed lotion on the stomach and genitals of the other, and defendant ejaculated. The victim recounted these events to his mother's boyfriend, who informed the victim's mother. The victim and his mother subsequently went to the Urbandale police station shortly after midnight on June 2, 1980. Defendant arrived a few minutes later. Police officers took defendant to a separate interview room when he arrived at the station. They had talked to the victim's mother for a few minutes before defendant arrived and were aware of the victim's version of the events in question. Defendant was informed of his Miranda rights and signed a written waiver of those rights at 1:00 a.m., June 2, 1980. Defendant first told police that he took the victim to his

[defendant's] home and that defendant took his clothes off and freshened up in the bathroom, that the victim asked if he could also remove his clothes and that the victim asked to use some hand lotion. Officer Douglas Hobart, who was conducting the interview, then asked defendant if he had left something out, because the victim had told a different version of the facts. Defendant then admitted that the incident occurred as the victim had described. Defendant also admitted that a similar incident had occurred the previous day. Defendant was then informed that he would be charged with Lascivious Acts with a Child. Defendant admitted to police that he had experienced a similar "problem" in the past and asked whether the charges might be dropped if he were to seek psychiatric help. Defendant was informed that charges would be filed but that there were ways for him to get help. Defendant agreed to have a taped interview with Officer Mark Nagel. Officer Nagel testified that Nelson acknowledged his waiver of Miranda rights at the outset of the interview. He further testified that the tape recorder malfunctioned during the second interview attempt, but that a third interview was successfully recorded. Defendant made substantially the same admissions in the taped interview with Officer Nagel that he had made in the initial interview with Officer Hobart.

II.

Defendant contends that his confession was involuntary because it was induced by intimidation and promises of leniency and help during the course of the interview process. We disagree.

The State bears the burden of proving by a preponderance of the evidence that the defendant had full knowledge of his constitutional rights and knowingly, intelligently, and voluntarily relinquished them. State v. Jump, 269 N.W.2d 417, 424 (Iowa 1978). Our de novo review of the totality of circumstances surrounding defendant's inculpatory statements demonstrate that the statements were given

voluntarily. Defendant came to the police station voluntarily and after being properly informed of his Miranda rights he signed a written waiver. Defendant was not under arrest at the time of the first interview. During the course of the interviews, defendant was described as being polite, sincere, and cooperative, but somewhat embarrassed and nervous. The total interview period lasted for only one hour and twenty minutes, from 1:00 a.m. to 2:20 a.m.

The record in this case does not paint the picture of a defendant who was intimidated to confess either by the coercive atmosphere surrounding a custodial interrogation or by promises of leniency. In fact, the alleged promise to secure psychiatric help for defendant, which defendant asserts induced him to confess, was initiated and induced, if at all, by the defendant. The police officers made no indication that charges would be dropped or that defendant would receive lenient treatment if he sought psychiatric help. In fact, defendant was specifically told that charges would be filed despite his willingness to seek psychiatric help. We find that the trial court properly admitted defendant's confession as evidence.

III.

Defendant next asserts that his conviction is invalid because he was adjudged guilty on the basis of his confession without other proof that defendant committed the offense as required by Iowa R. Crim. P. 20(4). We find that this assertion is without merit. It is very clear from the trial court's Findings of Fact and Verdict, entered on November 12, 1980, that the trial court considered both the defendant's confession and the testimony of the victim. The trial court did not, therefore, rely only on the defendant's confession. The victim's testimony offered the "other proof that the defendant committed the offense" as required by Iowa R. Crim. P. 20(4). See State v. Hobson, 284 N.W.2d 239, 243 (Iowa 1979).

IV.

Defendant's final assertion is that the trial court abused its discretion by

imposing concurrent prison terms not to exceed five years and by failing to adequately state on the record its reason for the sentence imposed. The pertinent parts of the trial court's sentencing order are as follows:

> In determining the sentence to be imposed the Court has taken into consideration the facts of the crime, the history of the Defendant and the maximum sentence allowed by the Code.
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> * * *
>
> I think the Court should say parenthetically, that the Court has to be concerned with the welfare of society as well as the welfare of this Defendant, and I have listened respectfully about treatment possibilities. The Court has to weigh this against the welfare of these children.

We find that the trial court's sentencing order was in substantial compliance with Iowa R. Crim. P. 22(3)(4) and that the trial court did not, therefore, abuse its discretion in sentencing the defendant.

AFFIRMED.