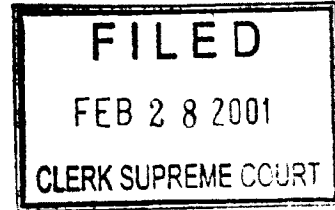


IN THE COURT OF APPEALS OF IOWA

No. 0-808 / 00-270
Filed February 28, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAWN PATRICK HUMPHREY,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, William C. Ostlund, Judge.

Shawn Humphrey appeals his conviction for sexual abuse in the third degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Ron Robertsen, County Attorney, and Ricki Williamson, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

Shawn Humphrey appeals his conviction for sexual abuse in the third degree. We affirm.

I. Background Facts and Proceedings.

Humphrey was charged based on allegations he forced B.G. to engage in sexual intercourse with him while they were overnight guests at a Fort Dodge residence on May 30, 1998. At trial B.G. testified that despite her protestations, Humphrey removed her clothing and forced her to engage in a sex act. B.G. also acknowledged that her initial statements to others the next day indicated she had been drinking and was not sure whether she had been sexually abused.

A physician who examined B.G. eighteen and one-half hours after she was allegedly abused testified that B.G.'s genitalia showed some erythema or redness but no semen was detected. State pathologists who microscopically examined vaginal scrapings obtained during this examination testified that they observed sperm cells in these scrapings. These findings were disputed by Humphrey's expert witness, who testified that the State's pathologists had misidentified the microorganisms observed in the vaginal scrapings.

A Fort Dodge police officer testified concerning an interview with Humphrey on May 31, 1998. When asked whether he had sexual intercourse with B.G., Humphrey reportedly said, "Not to my knowledge I didn't." Humphrey also declined to say B.G.'s contrary claim was a lie.

A jury found Humphrey guilty as charged. The district court denied Humphrey's posttrial motions challenging the sufficiency of the evidence supporting the verdict and entered judgment and sentence accordingly.

On appeal Humphrey challenges the sufficiency of the evidence supporting his convictions. He raises no other issues.

II. Sufficiency of the Evidence.

Our standard of review on this issue is for errors at law. *State v. Phams*, 342 N.W.2d 792, 795 (Iowa 1983). A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). 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. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

Humphrey's argument is premised on the inconsistencies between B.G.'s initial and testimonial version of events. He argues these inconsistencies render B.G.'s testimony insufficient to support his conviction as a matter of law. See *State v. Smith*, 508 N.W.2d 101, 103 (Iowa Ct. App. 1993) (testimony that is self-

contradictory, inconsistent, and lacking in experiential detail is insufficient as a matter of law to support sexual abuse conviction). We disagree.

Humphrey's argument misconstrues *Smith* and ignores other evidence supporting inferences of guilt. Unlike *Smith*, the State's case against Humphrey was not solely based on testimony by a complaining witness. Although conflicting, the record includes medical evidence from which the jury could find the occurrence of a sex act. The permissible inference of guilt resulting from Humphrey's evasive statement concerning sexual intercourse with B.G. provides additional support for the verdict. See *State v. Crowley*, 309 N.W.2d 523, 524 (Iowa Ct. App. 1981) (citing *State v. Schrier*, 300 N.W.2d 305, 309 (Iowa 1981)). Lastly, Humphrey overstates the significance of B.G.'s inconsistent statement. A statement of reservation or uncertainty is a far cry from the factual inconsistencies and incredible claims made by the complaining witnesses in *Smith*.

It is true there was conflicting testimony in the record regarding the complainant's credibility. However, the jury was in the best position to determine credibility and was at liberty to believe or disbelieve the testimony of witnesses as it saw fit. *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984). We reject Humphrey's claim that B.G.'s testimony was unbelievable as a matter of law and find there was substantial evidence which could convince a rational trier of fact defendant was guilty of the crime charged beyond a reasonable doubt.

The judgment of the district court is affirmed.

AFFIRMED.