

IN THE COURT OF APPEALS OF IOWA

No. 7-127 / 96-0119

000457

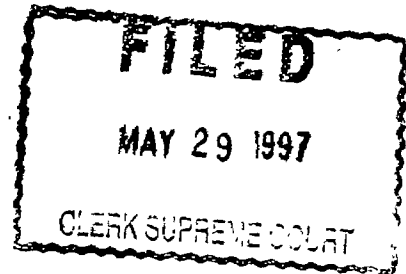
STATE OF IOWA,

Appellee,

vs.

STANLEY STEPHEN TAYLOR,

Appellant.



Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals his convictions of second degree sexual abuse and lascivious acts with a child. **AFFIRMED.**

William L. Kutmus of Kutmus & Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County Attorney, for appellee.

Considered by Habhab, C.J., and Sackett and Cady, JJ.

PER CURIAM.

Defendant appeals his convictions of sexual abuse in the second degree, Iowa Code section 709.3 (1995), and lascivious acts with a child, *id.* section 709.8. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Defendant challenges the sufficiency of the evidence supporting his convictions and asks that we preserve his claim for ineffective assistance of counsel for postconviction relief proceedings.

I. Our review for sufficiency of evidence is on assigned error, *State v. Phams*, 342 N.W.2d 792, 795 (Iowa 1983), not de novo. *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984).

We are bound by the jury verdict unless it does not have substantial evidence for support. *Allen*, 348 N.W.2d at 247. We must consider all the evidence, whether favorable to Defendant or not, *id.*, view the evidence in the light most favorable to the State " 'without regard to contradiction or inconsistencies and assisted by all reasonable inferences,' " *Fryer v. State*, 325 N.W.2d 400, 405 (Iowa 1982) (quoting *State v. Robinson*, 288 N.W.2d 337, 338 (Iowa 1980)), and ask whether the evidence could convince a rational trier of fact that the defendant is guilty of the crimes charged beyond a reasonable doubt. *State v. Arnold*, 543 N.W.2d 600, 602 (Iowa 1996).

We find substantial evidence supports the convictions. C.H. confided to her grandmother that Defendant had touched her in an improper manner. Her statement led a detective to contact S.J., who also revealed that Defendant had touched her improperly. Both C.H. and S.J. made videotaped statements and testified at trial, giving sufficient detail in both to substantiate a finding that Defendant touched them in a way that violated the elements of the two crimes charged. A third child, who had awoken from a nap, observed Defendant touch C.H. and S.J. "where he shouldn't have." This child testified that C.H. and S.J. were naked from the waist down, and described where and how Defendant touched them. Defendant's theory that the parents of C.H. were trying to frame him for the death that occurred while Defendant was caring for C.H.'s sister was fully presented to the jury.

II. Defendant claims his trial counsel was ineffective for not pursuing an independent psychological examination of C.H. and S.J. Although ineffective-assistance-of-counsel claims are usually reserved for postconviction proceedings, *State v. Wade*, 467 N.W.2d 283, 286 (Iowa 1991), we may address them when the record is sufficient to resolve the issues involved. *State v. McCurry*, 544 N.W.2d 444, 448 (Iowa 1996). We believe the record in this case provides a sufficient basis upon which to determine the effectiveness of Defendant's trial counsel, so we address this issue and find Defendant's claim to be without merit.

To review this claim, we must independently evaluate the totality of the circumstances in what is equivalent to de novo review. *Taylor v. State*, 352 N.W.2d

683, 684 (Iowa 1984). Defendant's claim fails because he cannot show that his trial counsel's performance fell below an objective standard of reasonableness or that he was prejudiced. *McCurry*, 544 N.W.2d at 448.

In *State v. Gabrielson*, 464 N.W.2d 434, 438 (Iowa 1990), the supreme court held that trial courts do not have the authority to order psychiatric evaluations of nonparty witnesses to assess credibility. Because any request by Defendant's counsel for an evaluation of C.H. and S.J. could not prevail, counsel's performance did not fall below an objective standard of reasonableness and Defendant was not prejudiced.

AFFIRMED.