IN THE COURT OF APPEALS OF IOWA

No. 3-416 / 92-1356

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES L. BROCKWAY,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

James Brockway appeals the judgment and sentence entered, following a jury trial, upon his convictions for three counts of sexual abuse in the second degree in violation of Iowa Code section 709.3(2) (1989). **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Julie Halligan Brown, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Carol J. Chase, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ. Donielson, J., takes no part.

OXBERGER, C.J.

On February 26, 1992, the State charged James Brockway with three counts of sexual abuse in the second degree. The State alleged Brockway sexually abused T.R., the daughter of his live-in girlfriend, on three separate occasions. The alleged abuse occurred between February 1989 and December 1990. T.R. was seven and eight at the time. A trial was held and a jury found Brockway guilty as charged. The court entered judgment on the conviction and sentenced Brockway. Brockway has appealed.

I. Admissibility of Expert Testimony

Brockway first contends the trial court abused its discretion in admitting the testimony of experts Dr. Richard Budensieck and social worker Katie Boley. He makes relevancy and improper impeachment objections to their testimony.

During trial, T.R. testified Brockway touched her "butt" with his penis. T.R. expressly testified Brockway did not touch her vagina. However, Dr. Richard Budensieck testified he found evidence of vaginal penetration during his examination of T.R. Brockway argues Dr. Budensieck's testimony concerning a vaginal injury was irrelevant since T.R. claimed Brockway did not touch her vagina.

Admissibility of expert testimony is within the sound discretion of the trial court. State v. Myers, 382 N.W.2d 91, 93 (Iowa 1986)..We reverse only upon the showing of an

abuse of discretion. Id. Furthermore, determinations of relevance of evidence rests within the sound discretion of the trial court and will be reversed only upon a showing that such discretion has been abused. State v. Gordon, 354 N.W.2d 783, 784 (Iowa 1984).

Iowa Rule of Evidence 401, in pertinent part, provides:

> [R]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Brockway was on trial for three counts of second degree sexual abuse. The chief witness was the eight-year-old victim. We find evidence of injuries which likely resulted from sexual abuse relevant to a determination regarding that sexual abuse. The fact that Dr. Budensiek's testimony regarding the victim's injuries differed from her own report of the abuse is not sufficient to warrant a finding of abuse of discretion on the part of the trial court for admitting the testimony. We affirm the district court.

Brockway next contends the testimony of Katie Boley and Dr. Budensiek constituted improper impeachment testimony.

When a party seeks to exclude evidence, the specific ground of objection needs to be indicated to the trial court so as to alert the judge to the question raised and further to enable opposing counsel to take remedial steps to cure the alleged defect. Iowa R. Evid. 103(a)(1); see also State v. Pelelo, 247 N.W.2d 221 (Iowa 1976); Carter v. Wiese Corp., 360 N.W.2d 122, 132 (Iowa App. 1984).

At trial, counsel lodged the following objection:

> [I] [redacted] going -- My first objection is to the testimony in general that has been proposed. Beyond that, I suppose I can make specific objections as the testimony goes along.

Throughout Boley's testimony, Brockway made no objections regarding improper impeachment testimony. We find Brockway's objections did not clearly alert the trial court to this issue. Accordingly, we find error was not preserved on this issue.

II. Sufficiency of the Evidence

Finally, Brockway argues there is insufficient evidence to support his convictions for sexual abuse in the second degree. Specifically, Brockway claims the State failed to prove he committed a sex act with the alleged victim.

Our scope of review is on assigned error only. Iowa R. App. P. 4 The standard of review in challenging the sufficiency of the evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record. State v. Bass, 349 N.W.2d 498,

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500 (Iowa 1984); State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985). Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). It is necessary to consider all the evidence in the record, and not just the evidence supporting the verdict, to determine whether there is substantial evidence to support the charge. Bass, 349 N.W.2d at 500; Hall, 371 N.W.2d at 188. Substantial evidence means evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984); Hall, 371 N.W.2d at 188.

Iowa Code section 702.12 (1991), in pertinent part, provides:

> The term "sex act" or "sexual activity" means any sexual contact between two or more persons by:
> . . . contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person . . .

We find the victim's testimony that Brockway moved his penis up and down in the crease in her buttocks and touched his penis to her hand sufficient evidence to support the jury's verdict. We affirm the trial court's refusal to grant Brockway's motion for judgment of acquittal.

AFFIRMED.