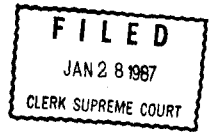


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed January 28, 1987

vs.

)

126

JOHN A. BURTON,

)

6-454
86-707

Defendant-Appellant.

)

Appeal from the Iowa District Court for Scott County (122491-01) - Edward B. de Silva, Jr., Judge.

Defendant appeals his conviction, following a jury trial, of sexual abuse in the second degree. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Michael J. Laughlin, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Elizabeth E. Ciebell, Assistant Attorney General, for the plaintiff-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.**127**

The defendant appeals his conviction, following a jury trial, of sexual abuse in the second degree. We affirm.

On November 14, 1985, the alleged victim, Ms. Theresa Bridges, departed from a Rock Island, Illinois, bar with the defendant and his companion, Mr. Michael Harris. All of them had been smoking marijuana, and the two men had been "snorting" heroin. With Mr. Harris driving, the defendant and Ms. Bridges engaged in aborted acts of oral sex and sexual intercourse. The two men then switched places, with the defendant driving while Mr. Harris and Ms. Bridges performed sex acts. When the defendant stopped at a Davenport, Iowa, convenience store to get gas, Ms. Bridges left the car and informed the clerk that she had been raped. According to Ms. Bridges, the sexual acts were performed against her will after the defendant had told Mr. Harris to "get the .357 ready."

The defendant was charged with sexual abuse in the second degree. After the trial court refused to accept a plea agreement, the defendant's trial began on April 7, 1986. The jury found the defendant guilty as charged, and the trial court sentenced him to an indeterminate prison term, not to exceed 25 years.

On appeal, the defendant contends that the trial court lacked subject matter jurisdiction because the State failed to produce sufficient evidence to warrant a finding that the claimed abuse took place in whole or in part in Iowa. The defendant further argues that the State failed to present sufficient evidence on the issues of whether the sexual activity was nonconsensual, under threat of force, or aided and abetted by another.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. When considering a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and the verdict

will be upheld if there is substantial evidence to support the charge. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Id.

I.

At the end of the State's evidence and in his posttrial motions, defendant challenged the sufficiency of the evidence presented by the State to prove that the alleged crime took place in Iowa. In criminal trials, the State is required to negate certain defenses by the "beyond a reasonable doubt" standard. State v. Thomas, 219 N.W.2d 3, 5 (Iowa 1974). The State must meet a challenge to the territorial jurisdiction of the court by showing that the alleged crime satisfied the jurisdictional requirements of Iowa Code section 803.1 (1985) beyond a reasonable doubt. See State v. Allen, 293 N.W.2d 16, 20 (Iowa 1980). See also Annot., 67 A.L.R.3d 988 §§ 8, 9 (1975).

We believe that the evidence presented by the State was sufficient for the jury to find that the alleged crime did take place in Iowa. The victim testified that at least part of the sexual activity took place in Iowa. The victim showed the police officers the areas driven over and she described going over a bridge. A detective testified that, from this information, he could conclude that the sexual activity took place in Iowa. Witnesses at the 7-11 store in Davenport, Iowa, testified that they saw one of the defendants pulling up his pants and the victim also getting dressed in the store's parking lot and furthermore, that one of the defendants grabbed the victim from behind while the victim was screaming. From this evidence, a rational trier of fact could conclude that, beyond a reasonable doubt, all or part of the alleged offense took place in Iowa. Jury Instruction number 19 included this language: "You must find the defendant not guilty of sexual abuse in the second degree unless the State proves by evidence beyond a reasonable doubt that ... on or about November 15, 1985, in Scott

County, Iowa, the defendant performed a sexual act with Teresa A. Bridges." The jury found there was evidence beyond a reasonable doubt proving this element of the crime. We do not disturb that finding.

II.

The defendant next contends that there was insufficient evidence presented to support the verdict of guilty of sexual abuse in the second degree. He asserts that there was insufficient evidence to show that he displayed a dangerous weapon or that he used or threatened to use force that created a substantial right of death or serious injury to the victim. The victim testified that the defendant told his friend to get the .357 ready, apparently referring to a gun. She also testified that the doors were locked and she was not free to leave. She testified she felt she had to do what she was told to do. Witnesses at the 7-11 also testified to the demeanor and actions of the parties involved. All of the circumstances surrounding the commission of the act may be considered in determining whether the act was done by force or against the will of the other. State v. Bauer, 324 N.W.2d 320, 321-22 (Iowa 1982). The jury is at liberty to believe or disbelieve the testimony of witnesses as it chooses. State v. Schrier, 300 N.W.2d 305, 309 (Iowa 1981). The jury chose to believe the testimony which supported the contention that the victim was forced to engage in sexual activity against her will and that the threat to use force created a substantial risk of death or harm to the victim. There was sufficient evidence to support such a finding.

Likewise, we think there was sufficient evidence presented that defendant was aided or abetted by another person in committing the sexual acts. The record must contain substantial evidence to show that another person assented to or countenanced and approved the criminal act either by active participation in the crime or in some manner encouraging the crime prior to or at the time of its commission. State v. Miles, 346 N.W.2d 517, 520 (Iowa 1984). The evidence

provided an adequate basis to support the jury's findings on this issue. The testimony of the witnesses provided an ample basis from which a rational factfinder could conclude that the defendant was aided and abetted by another.

For the foregoing reasons, we affirm the defendant's conviction for sexual abuse in the second degree.

AFFIRMED.