IN THE COURT OF APPEALS OF IOWA

No. 5-657 / 94-1857

001241

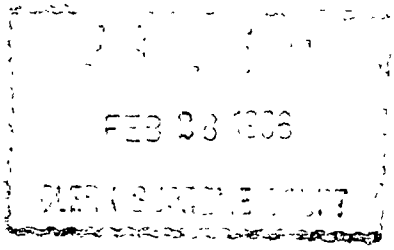
STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROBIN GERALD TWIFORD,

Defendant-Appellant.



Appeal from the Iowa District Court for Plymouth County, Robert J. Dull, Judge.

Robin Twiford appeals his conviction and sentence for assault with intent to commit sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Ann Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and John C. Beekman, County Attorney, for appellee.

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

SACKETT, P.J.

Defendant-appellant Robin Gerald Twiford appeals his conviction and sentence for assault with intent to commit sexual abuse. Defendant contends: (1) the record contains insufficient evidence to support his conviction; and (2) the district court abused its discretion in sentencing him to a two-year term of imprisonment. We affirm.

On April 17, 1992, Kerri Oltmanns left her place of work between 1:30 a.m. and 2:00 a.m. to drive home in a pickup truck. On a county road, a car behind her flashed its lights. Oltmanns pulled over to the shoulder and switched on her parking lights. A man, later identified as defendant, got out of the other vehicle and walked to Oltmanns's truck, opened the driver door, pushed her over, and punched her in the face.

Defendant was arrested and charged with assault with intent to commit sexual abuse causing bodily injury in violation to Iowa Code section 709.11 (1993). The charge was reduced to assault with intent to commit sexual abuse without bodily injury. Defendant was tried to the court.

Oltmanns testified she pulled to the side of the road because she assumed the flashing lights were from a friend. Oltmanns said defendant punched her in the face and attempted to kiss her. She testified defendant told her to "sit still" or he would kill her. Oltmanns further testified defendant put his hands under her shirt and fondled her breasts through her bra and rubbed her vaginal area through her blue

jeans. She claimed defendant also threatened the lives of her husband and child, telling her he knew who they were and where they lived. Oltmanns stated she was afraid and asked him to leave her alone. She testified, when other headlights approached, defendant threatened her one last time and left in his car. Oltmanns was positive of her identification of defendant because she knew him. She claimed defendant had raped her at knife point in 1990 in Jackson, Nebraska.

Mark Oltmanns, Kerri's husband, testified Kerri came home at 3:45 a.m. crying and hysterical. Mark testified Kerri stated to him, "[h]e did it again," but did not elaborate. Mark corroborated Kerri's testimony regarding the 1990 rape and testified Kerri quit Iowa Western Technical College when she saw defendant at the college.

The State introduced evidence of photographs taken immediately following the incident showing Kerri had the beginnings of a black eye.

Defendant argued Oltmanns had a motive to fabricate the assault because of an incident involving them several years earlier. Defendant also claimed his brother was an informant on a case that lead to the arrest of Kerri's former boyfriend. He pointed out Kerri did not immediately identify him as her assailant but, rather, identified him from a photographic array over one year later.

The district court found defendant guilty as charged and sentenced defendant to a two-year term of imprisonment. Defendant has appealed.

Defendant contends there is not sufficient evidence in the record to support his conviction. He maintains there are discrepancies in Kerri's testimony, and she did not

positively identify him as the assailant until one year after the incident. Defendant points out Kerri did not report the alleged rape in 1990, but did report a later alleged assault, further weakening her credibility.

Our scope of review is clearly established. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). 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. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

There is substantial evidence to support the conviction. The argument made by defendant goes to the credibility of the evidence. The trial court made the factual determinations and the credibility assessment. While we recognize the inconsistencies in Kerri's testimony, there also were explanations for the inconsistencies that could be believed. We affirm the trial court on this issue.

Defendant next contends the trial court abused its discretion in sentencing him to a two-year term of imprisonment. He asserts the district court should have granted him probation since his record had been clean since 1987, and no reoccurrence of

001245

violence had occurred since the alleged assault. Defendant requests the case be remanded for resentencing.

We review for an abuse of discretion and will not interfere with the sentencing court's decision unless clearly unreasonable. *See State v. Sumpter*, 438 N.W.2d 6, 10 (Iowa 1989); *State v. Morrison*, 323 N.W.2d 254, 256 (Iowa 1982). We find no abuse of discretion.

AFFIRMED.