FILED
JUN 28 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed June 28, 1983
vs.	)	3-74 / 68171
ROBERT WILLIAM SIROVY,	)	
Defendant-Appellant.	)	

Appeal from Polk District Court, Ray Hanrahan, Judge.

Defendant appeals his conviction of second-degree sexual abuse, a violation of Iowa Code sections 709.1 and 709.3(1)(1983). AFFIRMED.

Douglas F. Staskal and Raymond E. Rogers, Assistant Appellate Defenders, for defendant-appellant.

Thomas J. Miller, Attorney General, and Michael K. Jordan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J., takes no part.

PER CURIAM

Defendant appeals his conviction of second-degree sexual abuse, a violation of Iowa Code sections 709.1 and 709.3(1)(1983). We affirm.

In February 1982, following trial to a jury, defendant was found guilty of second-degree sexual abuse as charged, and was subsequently sentenced to an indeterminate twenty-five year term of imprisonment. Testimony and evidence at trial indicated that defendant was working for a contractor doing roofing work at the prosecutrix's house when she let him in to use the telephone. The prosecutrix testified that defendant then raped her at knife point. Defendant admitted having intercourse with the woman but claimed that she consented. After the alleged rape, the prosecturix called her husband home from work, went with him to her parents' house, and finally sought treatment at a local hospital more than seven hours later.

During the trial, the court first allowed the prosecutrix, and later her husband, to testify, over defendant's relevancy and materiality objections, about behavioral changes and emotional problems suffered by the prosecutrix since the alleged sexual assault. On appeal defendant asserts that this testimony was not relevant to the issue of consent. The trial court also allowed a doctor and a nurse who had examined and treated the prosecutrix at the hospital to testify, over defendant's hearsay objections, about statements regarding the circumstances of the alleged sexual assault which the prosecutrix had related to them while giving a medical history.

On appeal defendant asserts that the trial court erred by: (1) allowing the prosecutrix and her husband to testify, over defendant's relevancy objections, about behavioral changes and emotional problems experienced by the prosecutrix after the alleged sexual assault; and (2) allowing medical personnel who treated the prosecutrix to testify, over defendant's hearsay objections, about statements

the prosecutrix made to them regarding the circumstances of the alleged sexual assault. Our scope of review is on assigned error. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975).

The testimony regarding the prosecutrix's behavioral changes and emotional problems was offered to prove the use of "force creating a substantial risk of death or serious injury" element of second-degree sexual abuse. See Iowa Code § 709.3(1). We believe it was relevant for that purpose, because it "render[ed] the desirable inference more probable than it would be without such evidence." State v. Sheffey, 250 N.W.2d 51, 55 (Iowa 1977); State v. Sparks, 238 N.W.2d 777, 779 (Iowa 1976). The trial court has a considerable amount of discretion in making a determination of relevancy, State v. Mark, 286 N.W.2d 396, 411 (Iowa 1979), and that determination will be overruled on appeal only if it abused its discretion. State v. Zaehringer, 280 N.W.2d 416, 419-20 (Iowa 1979). We cannot conclude that such an abuse occurred here.

Nor are we persuaded by defendant's argument that the trial court erred in admitting the "hearsay" testimony of medical personnal who treated the prosecutrix. These statements clearly came within the "statements for purposes of medical diagnosis or treatment" exception of the hearsay rule. See State v. Pilcher, 158 N.W.2d 631, 637 (Iowa 1968); Fed. R. Evid. 803(4). In Pilcher, the attending physician:

> was called soon after the alleged rape to examine and treat the prosecuting witness. He testified to cuts, scratches, abrasions and other bodily conditions which he observed. He also stated she was suffering from hysteria and was disoriented. She was, in his words,"a sobbing and hysterical woman." He further stated he took a history from the prosecuting witness and that such history was necessary to his diagnosis and treatment. Its purpose was to help "evaluate her complaint and provide necessary therapy later on." The history taken included details of the assault upon her, the use of force, including the gun, and many of the circumstances under which she was defiled by defendant.

Id. With regard to the admissibility of the testimony in light of the hearsay rule, the court concluded:

> Many of these circumstances tended to explain the prosecuting witness' hysteria. Obviously the attending physician would be anxious to discover the cause for such a condition before attempting to determine the treatment indicated.
>
> A mere statement by a physician that a certain history is necessary to his diagnosis and treatment does not make it so. The history must bear some substantial relation to the patient's condition and the treatment to be rendered. Here the trial court found such relationship existed and we agree.
>
> Perhaps it would have been well to give an instruction explaining to the jury that this medical testimony was not for the purpose of proving the truth of the assertions made by the prosecuting witness but merely to show the basis for his opinion and to offer corroboration of her physical and mental condition immediately after the alleged attack. However, failure to give such instruction in the absence of a request therefor is not reversible error.

Id. We find this reasoning appliable in the instant case as well, and accordingly conclude that the evidence was properly admitted as an exception to the hearsay rule. The theory behind the exception is that it is presumed that an individual will not falsify statements made to a person from whom he expects to receive medical treatment. Shell Oil Co. v. Industrial Commission, 2 Ill. 2d 590, 119 N.E.2d 224 (1954). Notwithstanding defendant's argument to the contrary, the presumption is no less applicable when the medical personnel is a nurse rather than a doctor. See In re Estate of Poulos, 229 N.W.2d 721, 728 (Iowa 1975).

The decision is hereby affirmed.

AFFIRMED.