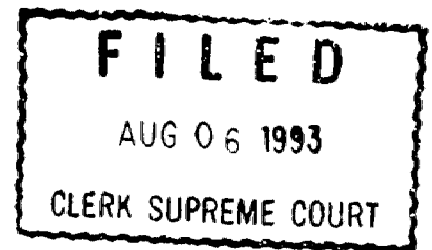


IN THE COURT OF APPEALS OF IOWA

No. 3-233 / 92-694



STATE OF IOWA,

Appellee,

000945

vs.

NANCY LEA SKIPTON,

Appellant.

Appeal from the Iowa District Court for Henry County,
John C. Miller, Judge.

The defendant appeals her conviction for child endangerment causing serious injury in violation of Iowa Code sections 726.6(1) and 726.6(2) (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Elizabeth E. Quinlan, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Julie Halligan Brown, Assistant Attorney General, and Michael A. Riepe, County Attorney, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J. 000946

The defendant, Nancy Lea Skipton, appeals her conviction, following a jury trial, of child endangerment causing serious injury. Skipton contends the district court abused its discretion in (1) permitting evidence of the bruising of other parts of the three-year-old victim's body other than the child's head injury and (2) admitting a treating physician's opinion that the child's injuries were inconsistent with the history given by Skipton.

Skipton was charged by trial information with child endangerment causing serious injury in violation of Iowa Code sections 726.6(1) and 726.6(2) (1991). The charge stemmed from a head injury of a three-year-old boy in the defendant's care. The injury involved the bruising and swelling of the left temporal area and included hematoma.

A local physician determined the boy's condition was a serious and life-threatening one, requiring treatment at the University of Iowa Hospitals. Skipton told the local treating physician and the treating physician at University Hospitals that the child started to act unusual while Skipton was reading the child a story and stated she (Skipton) was not aware of any head injury. On the child's admission sheet to University Hospitals the treating physician made reference to other bruises on the child's body, including a statement that the bruises to the child's head were more severe than the explanation given by the defendant and that child abuse was suspected.

000947

During the course of the prosecution, Skipton objected to evidence regarding other bruises on the child's body unrelated to the head injury. The district court sustained the defendant's objection to the admissibility of photographic exhibits taken of bruises appearing on the child's back, side, and buttocks, ruling the photographs were cumulative, unnecessary, and unfairly prejudicial. However, over the defendant's objections, the court permitted testimonial evidence of these other bruises, concluding the jury was entitled to know the entire condition of the child under State v. Hilleshiem, 305 N.W.2d 710 (Iowa 1981).

Specifically, the defendant objected that the probative value of testimony concerning the bruises was substantially outweighed by the danger of unfair prejudice and argued the testimony constituted a violation of Iowa Rule of Evidence 404. The court permitted a University Hospitals' treating physician to testify regarding the other bruises on the child's body which were unrelated to the head injury.

The local treating physician was also permitted to testify about the other bruises and was allowed to testify that the defendant's history of the events was inconsistent with the child's head injury. The defendant objected to this testimony, arguing that such testimony involved an improper opinion concerning the defendant's credibility. The admission sheet was also admitted into evidence over the defendant's objections that the sheet made reference to

000348

other bruises on the child's body, the sheet indicated the bruising to his head was more severe than the explanation given by the defendant, and the sheet indicated that child abuse was suspected.

A jury returned a guilty verdict against the defendant, and Skipton was sentenced to an indeterminate prison term not to exceed ten years. Skipton appeals, and we affirm.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting Weeks v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

The defendant first contends the district court abused its discretion by admitting evidence of the bruises which were unrelated to the head injury. Evidence of these other bruises was adduced through witness testimony and medical reports, and the defendant argues such evidence was irrelevant and unfairly prejudicial. We find these contentions to be without merit. The Iowa Supreme Court has addressed this issue in State v. Hilleshiem, 305 N.W.2d 710, (Iowa 1981). In Hilleshiem, the defendant was charged with murdering his girl friend's two-year-old daughter. The evidence established the victim died from multiple severe blows to the head or by violent and repeated shaking of the child's head. Id. at 715-16. The defendant argued the child injured herself when the child fell down a

000949

stairway. Id. at 715. On appeal, the defendant argued that several bruises on the child's body which were not linked by evidence either to the defendant or to the cause of death were inadmissible. The supreme court held the evidence was relevant and was not a violation of Iowa Rule of Evidence 404, stating:

Defendant's principal objection to evidence of preexisting bruises concerned its relevancy. The evidence, however, was plainly relevant on the issue of Jennifer's condition at the time she was seen at the hospital on November 14. Determining her condition was essential for diagnosis and treatment. Her condition upon admission was also highly relevant in subsequently fixing the cause of death. In weighing the physicians' testimony, the jury was entitled to know Jennifer's entire condition, not merely the part of her condition which the physicians believed was directly related to her death. Otherwise the jury would have an incomplete and artificial view of her actual condition.

Defendant asserts the State offered the evidence in an effort to persuade the jury he was responsible for the preexisting injuries, but we do not find the evidence inadmissible as an improper attempt to adduce proof of other crimes. The prior injuries were circumstantial evidence bearing on the defendant's relationship with Jennifer and the credibility of his version of the occurrence which led to her death. Even though Sue Mathis and defendant asserted the prior injuries were accidental, the jury was not required to take their testimony as a verity. It was entitled to weigh that evidence in deciding whether the fatal injuries were also accidental. (Citations omitted.)

Id. at 714.

Accordingly, evidence of the child's bruises in the present case is relevant to the issue of his entire condition at the time he was seen at the hospital. An assessment of his entire condition was necessary in

diagnosing and treating the child, and evidence at trial concerning the child's entire condition at the time of the examination demonstrated the child had been thoroughly examined. In this way, such evidence is probative on the issue of the weight and credibility to be afforded the varying testimony at trial.

Furthermore, based on the court's holding in Hilleshiem, we conclude the probative value of this evidence was clearly not substantially outweighed by the danger of unfair prejudice. For these reasons, the district court did not abuse its discretion in admitting the testimony or the admission sheet filled out by Dr. Oyos (State's Exhibit 8) when the child was admitted to University Hospitals.

Secondly, the defendant argues the district court abused its discretion by admitting expert testimony that the history of events given by the child's father and by the defendant at the time of the child's admission into the hospital was inconsistent with the child's head injury. The defendant also contends the court erred by admitting State's Exhibit 8 which contained a similar entry. Defendant contends the evidence constitutes an improper opinion regarding the truthfulness of the defendant's testimony and is an improper subject for expert testimony. We disagree.

In State v. Myers, 382 N.W.2d 91 (Iowa 1986), the court stated, "We are generally committed to a liberal rule which

000951

allows opinion testimony if it will aid the jury in screening the properly admitted evidence to ascertain the truth." Id. at 93. The court continued:

[W]e generally will not admit expert opinion testimony that essentially passes on the guilt or innocence of the defendant. These inadmissible opinions go a step beyond merely aiding the fact finder in understanding the evidence and actually invade the exclusive domain of the jury, that is, the determination of the guilt or innocence of the accused. Additionally, expert opinions on the truthfulness of a witness should generally be excluded because weighing the truthfulness of a witness is a matter reserved exclusively to the fact finder.

Id. at 95.

Under the facts of the instant case, the expert neither passed on the guilt or innocence of the defendant, nor did the expert comment directly on the truthfulness or credibility of the defendant. Instead, the expert testified that quantifiable facts within the expert's field of expertise were inconsistent with the defendant's explanation of the events giving rise to the child's injuries. In this regard, the testimony of Dr. Oyos, if believed, clearly casts doubt on the defendant's defense.¹ However, Dr. Oyos did not express an opinion as to whether the defendant or any other witness was lying or telling the truth. Consequently, Dr. Oyos's testimony did not infringe upon the jury's function of weighing competing evidence, of

1. Although the defendant did not testify at trial, Dr. Oyos's testimony, if believed, casts doubt on the defendant's earlier out-of-court statements which were heard by the jury.

000952

determining the credibility of witnesses, or of determining whether the defendant was responsible for the child's injuries.

Having found the defendant's arguments to be without merit, we affirm the district court's evidentiary rulings.

AFFIRMED.