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CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed May 26, 1981
vs.	)	
ROGER LEE CROSS,	)	<u>1-43</u>
Defendant-Appellant.	)	64055

Appeal from Pottawattamie District Court - Paul E. Sulhoff, Judge.

Defendant appeals from his conviction for sexual abuse in the third degree in violation of section 709.41(1), The Code 1979. **AFFIRMED.**

A. W. Tauke of Porter, Lash, Reilly & Tauke, Council Bluffs, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant Roger Cross appeals from his conviction for sexual abuse in the third degree in violation of section 709.4(1), The Code 1979. He contends that the evidence was insufficient to support the jury's verdict of guilty and that he was denied effective assistance of counsel because his trial counsel did not depose the victim concerning her prior sexual conduct. We affirm the conviction.

I.

Most of the basic facts involved in this appeal are undisputed. Although the defendant was a stranger to her, the victim accepted his offer to drive her home from work. After stopping for a short time at the victim's home, where the defendant met one of her roommates, they went out to eat, bought some beer, and then went to an apartment (where either the defendant or the defendant's sister lived) to watch television. Later they drove around for awhile and parked in an isolated spot to do some drinking. They then went and parked in the alley behind the home of the defendant's parents. The victim testified that the defendant then threatened her, raped her, and forced her to have oral sex. Defendant testified that she consented to intercourse and denied having threatened her or engaged in oral sex. A doctor who examined the victim that night testified that she had had intercourse within the previous twelve hours and that she was neither bruised nor injured, although she was crying a great deal and appeared to be very upset. Another witness testified that the victim was very upset when she came to the witness' house for help after being let out of the defendant's car.

II.

We find no merit to the defendant's contention that the evidence was insufficient to support a guilty verdict. The applicable standard on review is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). We find that that standard has been satisfied in the instant case. The defendant's version of the story is somewhat vague and often lacking in credibility. For example, he testified that he was in a hurry to go see his sick mother that night and wanted to take the victim home at various points in the evening; when asked why he did not do so if he was so anxious to see his mother, he testified that the victim said each time that she didn't want to go home and that he continued to drive her around and drink with her "to be a nice guy." When asked at trial

what motive the victim could have in falsely charging him, a complete stranger, with sexual abuse, the defendant speculated that the victim had made up her story about the rape because he had refused to take her to a drive-in movie or to buy her more to drink. However, several witnesses testified that the victim was extremely upset following the alleged attack; such reactions could hardly be expected from a woman who is falsely accusing someone of sexual abuse because he wouldn't take her to a movie or buy her more to drink. Having viewed all the evidence in the light most favorable to the verdict, we think that a rational factfinder could have found the defendant's guilt established beyond a reasonable doubt; his conviction is therefore affirmed.

III.

Defendant also contends that he was denied effective assistance of counsel because his attorney failed to depose the victim concerning her prior sexual conduct. Review of this allegation requires that we determine whether, considering all the circumstances, counsel's performance was within the range of normal competency in the profession. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980); State v. Hicks, 277 N.W.2d 889, 896 (Iowa 1979); State v. Killpack, 276 N.W.2d 368, 372 (Iowa 1979); State v. Veverka, 271 N.W.2d 744, 750 (Iowa 1978) (quoting State v. Rand, 268 N.W.2d 642, 648 (Iowa 1978)). To make such determination, however, we must be supplied with an adequate record. State v. Kellogg, 263 N.W.2d 539, 544 (Iowa 1978). Because the record before us does not permit an informed resolution of this issue, we conclude that an evidentiary hearing is required on the question of competency. See State v. Smith, 282 N.W.2d 138, 143-44 (Iowa 1979). We therefore affirm the conviction without adjudicating the issue of trial counsel's competency; defendant's right to raise that issue in postconviction proceedings pursuant to chapter 663A, The Code 1979, is preserved. O'Connell, 275 N.W.2d at 206; Kellogg, 263 N.W.2d at 544.

AFFIRMED.