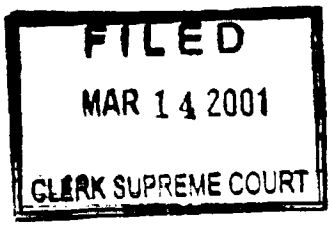
IN THE COURT OF APPEALS OF IOWA

No. 1-033 / 00-0716
Filed March 14, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAUN MITCHELL HAMMER,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, William J. Pattinson, Judge.

Defendant appeals from the judgment and sentence entered upon jury verdicts finding him guilty of child endangerment in violation of Iowa Code section 726.6(2) and assault causing bodily injury in violation of section 708.2. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller and Virginia Barchman, Assistant Attorneys General, and Jim Robbins, County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

Shaun Hammer appeals from the judgment and sentence entered upon jury verdicts finding him guilty of child endangerment in violation of Iowa Code section 726.6(2) (1997) and assault causing bodily injury in violation of section 708.2. He contends the district court abused its discretion in refusing to allow certain relevant evidence. We affirm.

I. Factual Background and Proceedings. Miranda Waugh[1] was the mother of two daughters, Sierra (born October 20, 1995) and Lexie (born December 23, 1996). Hammer met Miranda while he was working temporarily in Kentucky in 1997. At that time, Miranda was married to Christopher Ball, but she concealed this fact from Hammer when she began an intimate relationship with him. When the employment project ended in Kentucky, Hammer returned to his home in Boone County, Iowa. Shortly thereafter in August of 1997, Miranda abandoned her husband and children in Kentucky and established a residence with Hammer in Iowa.

In early 1998, Miranda brought Sierra and Lexie to Iowa. Hammer, who worked days, and Miranda, who worked nights, jointly provided care for the children. Shortly after mid-day on May 30, 1998, while under the care of Hammer, Sierra collapsed and was taken to the Boone County Hospital. At the local hospital, her treating physician discovered she had sustained a severe brain injury. The child was transported by air to Des Moines for a surgical procedure

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[1] Miranda Waugh was also referred to as Miranda Stacy and Miranda Ball in the record.

that saved her life but left her with substantial permanent physical and mental deficits including partial paralysis.

Law enforcement officers interviewed Hammer at the hospital on May 31, 1998. The officers testified during the interview, Hammer admitted he shook Sierra shortly before she collapsed. During his trial testimony, Hammer denied making the admission and testified he was exhausted and emotionally distraught during the interview. He denied he had caused Sierra's severe injury. The State presented expert testimony at trial indicating Sierra's injuries were inflicted during a short period of time before she collapsed. The State further presented evidence Hammer was Sierra's sole care provider during the estimated time of injury. Hammer presented expert testimony tending to prove the injury might not have been inflicted while Sierra was under his care on May 30, 1998. Defense expert witness, Dr. Peter Stephens, testified the injury could have been inflicted as long as two weeks earlier. In furtherance of his defense theory Miranda caused Sierra's injury, Hammer offered testimony of Miranda, Christopher Ball (Miranda's ex-husband), and Joel Hall tending to prove Miranda is an aggressive, angry, controlling, and dishonest person. However, the district court sustained the State's evidentiary objections to certain portions of the testimony of these witnesses. On appeal Hammer challenges the district court's evidentiary rulings.

II. Standard of Review. A trial court's rulings on the admissibility of evidence are discretionary. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992). We reverse evidentiary rulings only when the trial court is shown to have "abused its discretion in balancing the probative force of the challenged evidence against

the danger of undue prejudice or influence." *State v. Alvey*, 458 N.W.2d 850, 852 (Iowa 1990).

III. The Merits.

A. Testimony of Christopher Ball. Hammer contends the district court erred in excluding certain "clearly relevant evidence. . . . that Miranda is a controlling, angry, and aggressive person who certainly could, and did do the shaking." He does not, however, identify the specific answers given by Ball that should have been admitted into evidence. Instead, he merely cites to thirty-one pages of the appendix in support of his claim of error. Among those pages, we find sixteen evidentiary objections interposed by the State and sustained by the district court. Hammer fails in his brief to present argument as to which of the objections were without merit and which of the district court's rulings constituted an abuse of discretion. Although trial counsel made an offer of proof during the examination of Ball, Hammer's brief on appeal does not present an argument explaining why the offer of proof is relevant to any issue in the case or how he was prejudiced by the exclusion of the evidence. Accordingly, we affirm the district court on this issue.

B. Testimony of Miranda Waugh. Hammer contends the district court erred in rejecting his offer of proof as to the testimony of Miranda Waugh. In his brief, he contends only the offer spanning approximately twelve pages of transcript was relevant to prove "that Waugh does not tell the truth." He fails to present an argument explaining either how the proffered testimony tends to

prove Waugh's dishonesty or how he was prejudiced by its exclusion. Thus, we affirm the district court on this issue.

C. Testimony of Joel Hall. During cross-examination, Miranda admitted she had engaged in an argument with a member of her ex-husband's family in the lobby of Iowa Methodist Hospital during Sierra's hospitalization in May of 1998. Miranda admitted "everybody was upset" at the time, but denied she lost her temper or lunged at anyone during the argument. Hammer then sought to call Joel Hall, a security officer at Iowa Methodist Medical Center, to testify he had restrained Miranda after she made "an aggressive move" toward a person with whom she was arguing at the hospital. The district court ruled Hall's proposed testimony constituted an attempt by Hammer to impeach Miranda on a collateral matter.

In an offer of proof, Hall testified he was dispatched to the main lobby of the hospital on May 31, 1998, to respond to a domestic disturbance; and he restrained Miranda when she "made an aggressive move" toward a person with whom she was arguing. Hammer challenges the district court's ruling on the ground Hall's testimony was "relevant to show Miranda Waugh's aggressiveness."[2] We are not persuaded the incident described in the proffer of Hall's testimony is probative of a propensity on the part of Miranda to cause physical harm to her child. The participants involved in the verbal dispute described in Hall's offer of proof were obviously filled with emotions naturally experienced by family members of a severely injured child. The testimony of

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[2] He does not contend Hall's testimony should have been admitted to impeach Miranda's testimony.

Miranda and the offer of proof suggest recriminations with regard to responsibility for Sierra's abuse were a subject of the dispute. Even if we were to assume Miranda's claimed aggressive conduct directed at someone other than Sierra after Sierra's injury was relevant to an issue in the case, we find Hammer has not shown sufficient prejudice resulting from the exclusion of the evidence to support a reversal of the district court's evidentiary ruling. Accordingly, we affirm on this issue.

AFFIRMED.