

IN THE COURT OF APPEALS OF IOWA

No. 23-0854
Filed February 21, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID DUANE BOLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Appanoose County, Greg Milani,
Judge.

David Duane Boley appeals his convictions and sentences. **CONVICTION
AFFIRMED, SENTENCE VACATED IN PART, AND REMANDED FOR
RESENTENCING.**

Martha J. Lucey, State Appellate Defender, and Shellie L. Knipfer, Assistant
Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Joseph D. Ferrentino, Assistant
Attorney General, for appellee.

Considered by Bower, C.J., and Greer and Chicchelly, JJ.

CHICHELLY, Judge.

David Duane Boley appeals his convictions and sentences on charges of sexual abuse and incest. He contends there is insufficient evidence supporting his convictions and the trial court abused its discretion when sentencing. Because substantial evidence supports the verdict, we affirm his convictions. But because the trial court abused its discretion when imposing fines, we vacate this portion of the sentence and remand for limited resentencing on this issue.

I. Background Facts and Proceedings.

C.B. made a report to the Appanoose County Sheriff's Office in early 2022. In it, she alleged Boley sexually abused her from the age of eleven years old. Every month, "anywhere between once a week to multiple times a week," Boley would force C.B. to engage in oral or penetrative intercourse. These instances occurred while her mother worked overnight shifts until C.B. moved out of the home at seventeen.

Based on the report, Boley was charged with: Count I, second-degree sexual abuse; Counts II, III, and IV, third-degree sexual abuse; and Count V, incest. After a bench trial, he was convicted as charged and sentenced. He appeals, arguing insufficient evidence supports the verdicts and the sentencing court abused its discretion.

II. Sufficiency of the Evidence.

Boley contends there is insufficient evidence supporting his convictions because C.B. is not credible. We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Crawford*, 972 N.W.2d 189, 202 (Iowa 2022). The verdict is binding on our court if "supported by substantial evidence." *Id.*

(quoting *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017)). To determine if a verdict is supported by substantial evidence, “we view the evidence in the light most favorable to the State, including all ‘legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.’” *Id.* (quoting *Tipton*, 897 N.W.2d at 692). But we do not make credibility determinations, as this is reserved for the trial court. *State v. Frake*, 450 N.W.2d 817, 818–19 (Iowa 1990).

Boley nonetheless argues that C.B.’s lack of credibility results in insufficient evidence and he did not admit guilt. The trial court here was free to “weigh the evidence and determine the credibility of the witnesses.” *Id.* at 818. “When determining the credibility of the testimony of witnesses, the trial court may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness’s appearance, conduct, memory and knowledge of the facts, and the witness’s interest in the trial.” *Id.* at 819. The trial court clearly found C.B. credible, and we give deference to that determination. *See id.* In its ruling, the court concluded:

[C.B.’s] recollections at trial, deposition and during her initial report to [the Deputy] lacked exact repetitive detail but were overall consistent. . . . [C.B.] also credibly testified that multiple instances of sexual abuse occurred at the trailer, sometimes when she was alone with [Boley], and other times when her brothers were sleeping, but at no time when her mother, who was employed and worked evenings or overnight shifts, was present.

....

In addition to the Court’s observations that [C.B.] was traumatized, the Court observed [C.B.] to be doing her best to recall events and not exaggerate or guess. [C.B.’s] admissions that she did not recall are consistent with trying to be honest and relay to the Court what she knew had happened, and doing her best to give details and not speculate. [C.B.’s] recall of the events in her initial report to [the Deputy], at deposition, and at trial were much more consistent than inconsistent.

....

In sum, the Court found the State's witnesses far more credible than those offered by the Defendant. While [C.B.] struggled at times to remember exact details, her demeanor indicated a desire to be honest and her testimony had remained largely consistent through these proceedings. In comparison, the Defendant's witnesses have major credibility and memory issues, and clearly have a bias and desire to support the Defendant.

While Boley argues he never admitted guilt,¹ this again speaks to assessing credibility. The trial court was free to disregard the testimony of witnesses offered by Boley in favor of those offered by the State if it found those more credible. *Id.* (“[T]he finder of fact may reject the testimony if found not to be credible.”). The State's key evidence included C.B.'s substantial testimonies, pretrial and at trial, and those of an expert—a forensic interviewer. Based on the substantial testimony of multiple witnesses, we find sufficient evidence supports the verdicts and we affirm.

III. Sentencing Discretion.

Boley next argues the sentencing court abused its discretion by imposing the respective fines for each conviction. “[W]e reverse a sentence only if there was an abuse of discretion or defect in the sentencing procedure.” *State v. Gay*, No. 19-1354, 2021 WL 4889239, at *3 (Iowa Ct. App. Oct. 20, 2021). “A district court's failure to exercise sentencing discretion requires resentencing” and is considered an abuse of discretion. *Id.* at *3–4. In determining if a court exercised

¹ One of the State's exhibits includes a video call between Boley, his wife, and children, where he questions his wife about a time he previously asked her what would happen if he woke up and “[C.B.] was sucking my dick?” He then states, “That's happened twice.” While the State offered this as evidence of Boley admitting guilt, Boley counterargues that this is reflective of his version of the events, where he woke up to C.B. performing oral sex on him. But we leave this credibility determination to “the trier of fact, who is in a better position to evaluate it.” *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000).

such discretion, we consider “whether the court knew of its discretion” under the applicable code sections. *Id.* at *4.

During sentencing, the court stated: “In regard to fines, on Count I, the fine—there is no fine on Count I. Count II, the fine is \$1,370; Count III, the fine is \$1,370; Count IV, the fine is \$1,370, and Count V, the fine is \$1,025.” The minimum fine for Counts II, III, and IV, third-degree sexual abuse, a class “C” felony, increased from \$1000 to \$1370 on July 15, 2020. 2020 Iowa Acts ch. 1074 § 45(d) (codified at Iowa Code § 902.9(1)(d) (2021)); *id.* § 93. Similarly, the minimum fine for Count V, incest, a class “D” felony, increased from \$750 to \$1025. *Id.* § 45(e) (codified at Iowa Code § 902.9(1)(e)). To prevent violations of constitutional principles, we apply the statute in effect at the time of the offense. See *State v. Lopez*, 907 N.W.2d 112, 122–23 (Iowa 2018) (finding a violation of the United States and Iowa Constitutions when imposing a surcharge that became effective after the offense was committed). Boley committed the acts described in Counts I, III, and IV before the fines changed. The acts described in Counts II and V span the period of the change. The trial court has the discretion to impose a higher fine than the minimum, but its explanation does not reflect an exercise of discretion. Instead, it shows a misstatement that the minimum fines were \$1370 and \$1025. We therefore vacate the fine portion of the sentence and remand it for resentencing on this issue. See *State v. Ayers*, 590 N.W.2d 25, 27 (Iowa 1999).

IV. Disposition.

Because sufficient evidence supports the verdict, we affirm Boley’s conviction. But because the sentencing court abused its discretion when imposing

the accompanying fines, we vacate that portion of his sentence and remand for resentencing.

**CONVICTION AFFIRMED, SENTENCE VACATED IN PART, AND
REMANDED FOR RESENTENCING.**