

IN THE COURT OF APPEALS OF IOWA

No. 6-604 / 04-1783
Filed January 18, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM LEE CARR,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

William Carr appeals from his convictions for first-degree murder and first-degree sexual abuse. **CONDITIONALLY AFFIRMED; REMANDED WITH DIRECTIONS.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano and Jeffrey Noble, Assistant County Attorneys, for appellee.

Heard by Huitink, P.J., and Miller, J., and Nelson, S.J.*

Decided by Huitink, P.J., and Vogel and Miller, JJ., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

PER CURIAM

William Carr appeals from his convictions for first-degree murder and first-degree sexual abuse in violation of Iowa Code sections 770.1, 707.2(1), 707.2(2), 707.2(5), 709.1 and 709.2 (1997). We conclude sufficient evidence supports the convictions; however, we are unable to determine whether the court applied the correct standard in analyzing Carr's motion for new trial. We therefore conditionally affirm and remand for consideration of that motion under the correct standard.

Background Facts and Proceedings.

On June 6, 2000, thirteen-year old Linda Williamson, a mentally retarded girl, was found dead lying in the Des Moines River near a Target store in Des Moines. Her body was found by a fisherman, Danny Griffin, who spotted the body floating in the river and called 911 from a nearby phone. Griffin did not wait for authorities to arrive due to his outstanding "warrants . . . for traffic violations" He was eventually cleared as a suspect.

Detective Jeffrey Shannon of the Des Moines Police Department responded to the 911 call. After he arrived at the Target store, he walked down a trail toward the river and observed a mattress with a shoe near it. He then saw Williamson's body, which was clothed from the waist up but naked from the waist down, floating near a cement slab that was resting in the water. He also observed large abrasions on her buttocks and an apparent drag path from the mattress down to the water where Williamson's body was floating. Shannon found a pair of jeans, black underpants, and a sock in the water near the slab, as well as another un-matching sock and a sanitary napkin on the riverbank.

Dr. Francis Garrity later performed an autopsy on Williamson. He noted a “subarachnoid” injury to the back of her head, which he opined had been caused by an “alarming” force. He further determined that the cause of death was asphyxia due to drowning, and that the head trauma contributed to her death. Erica Ng, a DNA analyst for the Department of Criminal Investigations examined the biological materials found during the administration of a sexual assault examination performed on Williamson. She found sperm cells and determined that those cells matched the DNA profile created for Carr. Ng also determined that fewer than one out of one hundred billion individuals would have matched this DNA profile.

The State thereafter charged Carr with first-degree murder and first-degree sexual abuse. Following a trial, the jury found him guilty as charged. After the court denied his motion for new trial, it imposed a sentence of life imprisonment. Carr now appeals, challenging the court’s denial of his motions for judgment of acquittal and for new trial.

Sufficiency of the Evidence.

The standards governing our review of claims of insufficient evidence are well established:

We review a sufficiency-of-the-evidence ruling for correction of errors of law. If the verdict is supported by substantial evidence, we will uphold a finding of guilt. “‘Substantial evidence’ is that upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” In conducting our review, we consider all the evidence, that which detracts from the verdict, as well as that supporting the verdict. We view the evidence in the light most favorable to the State.

State v. Hagedorn, 679 N.W.2d 666, 668-69 (Iowa 2004) (citations omitted).

On appeal, Carr admits that the presence of his DNA inside Williamson's body is sufficient evidence to support a third-degree sexual abuse conviction. However, he asserts there was no additional evidence from which the jury could have found that he murdered her or caused her "serious injury"¹ and that the court should have granted his motion for judgment of acquittal on both the first-degree murder and the first-degree sexual abuse charge. We disagree.

Most significantly, Carr admitted the jury reasonably could have concluded he sexually abused Williamson.² The evidence, including the fact that Carr's semen was found in Williamson's dead body, clearly supports this. Keeping this in mind, we believe the jury reasonably could have concluded that Williamson was killed by the same person that sexually abused her. This conclusion is supported by forensic evidence that Williamson likely was thrown into the river, while still alive, shortly after the sexual assault. She was unclothed from the waist down and a mattress, from which her body apparently was dragged, was located close to the body. Moreover, Erica Ng testified that in examining the vaginal swab taken from Williamson, she observed sperm cells with the tails intact, explaining that when a sperm cell begins to degrade the spermatozoa will first lose its tail. This indicated to Ng that the sex act had taken place "not too long ago." Accordingly, because the evidence indicates a likelihood that Williamson's sexual abuser was also her murderer, sufficient evidence supports the jury's findings of guilt.

¹ The jury was instructed that in order to find him guilty of first-degree sexual assault, it had to find that during the commission of sexual abuse Carr caused Williamson "serious injury."

² Defense counsel stated in his opening statement that the jury would "only find him guilty of sex abuse in the third degree."

Motion for New Trial.

In denying Carr's motion for new trial, the court stated the following:

With respect to paragraph 2 of the motion for new trial, that the verdicts rendered were contrary to the evidence, the Court is of the belief that the verdicts are fully supported by the evidence and that there is sufficient evidence in the record to support all of them adequately. So that aspect of the motion for new trial will be denied

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Carr now asserts the court erred in applying the wrong legal standard in ruling on his motion for new trial. The State counters that the phrase "fully supported by the evidence" evinces a comparable legal standard to that espoused in the motion for new trial rule.

Iowa Rule of Criminal Procedure 2.24(2)(b)(6) provides that the court may grant a new trial when the verdict is contrary to law or the evidence. Our supreme court has interpreted "contrary to . . . the evidence" as meaning "contrary to the weight of the evidence." *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). "The 'weight of the evidence' refers to 'a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other.'" *Id.* at 658 (quoting *Tibbs v. Florida*, 457 U.S. 31, 37-38, 1025 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982)). The court made it clear in *Ellis* that the contrary to the weight of the evidence standard was not the same as the sufficiency of the evidence standard. *Id.* at 659.

Because it is not clear that the district court's term "fully supported by the evidence" is legally equivalent to the "weight of the evidence," we conclude the part of the trial court's ruling denying Carr's motion for new trial must be reversed. However, we further conclude it is not necessary to reverse his

conviction because the trial court, on remand and applying the proper legal standard, could find the verdict is not contrary to the weight of the evidence. We therefore conditionally affirm Carr's conviction, reverse the portion of the trial court's ruling on the motion for new trial that purports to rule on Carr's claim the verdict is contrary to the weight of the evidence, and remand to the district court to make that determination anew on the basis of the existing record. If it denies Carr's motion, our affirmance of his conviction shall stand. If it does not, it must set Carr's conviction aside and order a new trial. We do not retain jurisdiction.

CONDITIONALLY AFFIRMED; REMANDED WITH DIRECTIONS.