IN THE COURT OF APPEALS OF IOWA

No. 7-257 / 06-0262
Filed September 6, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RALPH DARIN SAGER,
Defendant-Appellant.

Appeal from the Iowa District Court for Davis County, Annette J. Scieszinski, Judge.

The defendant appeals from his convictions of sexual abuse. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, and Rick Lynch, County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury found Ralph Darin Sager guilty of fourteen counts of third-degree sexual abuse and three counts of second-degree sexual abuse. The district court ordered Sager to serve consecutive sentences.

On appeal, Sager challenges (1) the sufficiency of the evidence supporting the jury's findings of guilt, (2) certain evidentiary rulings, and (3) the district court's reasons for imposing consecutive sentences.

I. Sufficiency of the Evidence

Sager preserved his challenge to the sufficiency of the evidence in a motion for judgment of acquittal.[1] He maintains the district court should have granted the motion because, in his view, the complaining witness, C.O., "was living in a fantasy world" and had a reputation for untruthfulness. He also complains that the testimony concerning abuse was not corroborated by medical evidence. Our review is for errors of law. *State v. Leckington*, 713 N.W.2d 218, 221 (Iowa 2006).

The jury was instructed that the State would have to prove the following elements of second-degree sexual abuse:

> 1. On or about [date, county name], the defendant performed a sex act with [C.O.].
> 2. The sex act was done by force or against the will of [C.O.].
> 3. At the time, Ralph Darin Sager was aided or abetted by [C.T.].

The jury was further instructed that the State would have to prove the following elements of third-degree sexual abuse:

[1] The State concedes error was preserved. Therefore, we need not address this claim under an ineffective-assistance-of-counsel rubric, as Sager alternately urges.

> 1. On or about [date, county name] the defendant performed a sex act with [C.O.].
> 2. At the time, Ralph Darin Sager and [C.O.] were not husband and wife.
> 3. At the time, [C.O.] was 14 or 15 years of age, and Ralph Darin Sager was:
>
> A. a member of the same household as [C.O.],
> B. in a position of authority over [C.O.] and used that authority to coerce her to submit; or
> C. four or more years older than [C.O].

A jury could have found the following facts. C.O., born in 1989, lived with her mother, younger brother, and Sager, who was her mother's adult companion. For approximately three to four times a week over a thirteen-month period in 2003 and 2004, Sager performed various sex acts on C.O. and demanded she perform sex acts on him. C.O. testified that Sager made her do this "to be able to go to school events, to be able to go to dances, to be able to go out with friends." She stated she was scared, but did not attempt to get away because she was "dependent" on Sager and Sager told her that if she "ever told anybody," he would kill her parents and little brother, make her watch, and then kill her.

Another minor, C.T., was involved in some of the sex acts between C.O. and Sager. He corroborated significant portions of C.O.'s testimony concerning the sex acts.

Other witnesses also corroborated C.O.'s testimony. One friend testified that C.O. told her Sager had molested her. Another friend testified that C.O. told her Sager "was sleeping with her and doing sexual things." A third friend testified that C.O. told him Sager "was making her let him do sexual favors to her–for her to get to do things."

A jury reasonably could have found from this evidence that C.O.'s testimony was not "fantasy" and Sager was guilty of the seventeen second- and third-degree sexual abuse crimes with which he was charged.[2]

We recognize there is evidence that could have been viewed as weakening the State's case. As Sager points out, several witnesses testified that C.O. did not have a reputation for truthfulness concerning her relationships with men. However, C.O. provided an explanation for this perceived lack of credibility. The jury was free to credit this explanation. *State v. Maring*, 619 N.W.2d 393, 395 (Iowa 2000) ("It is the function of the jury to sort out the evidence presented and place credibility where it belongs.").

As for the medical evidence, Sager is correct that a physician examined C.O. and did not find physical signs of sexual activity. However, the physician testified that the types of sex acts described by C.O. would not necessarily have left physical signs. A jury could reasonably have found no inconsistency between C.O.'s testimony and the absence of medical evidence of sexual activity. *Id.*

For these reasons, we affirm the district court's denial of Sager's motion for judgment of acquittal.

II. Evidentiary Rulings

A. Hearsay

Sager challenges several rulings that admitted evidence over hearsay objections. We review hearsay rulings for prejudicial error. *State v. Musser*, 721

[2] Certain other charges were severed.

N.W.2d 734, 751 (Iowa 2006). We presume prejudice and reverse unless the record affirmatively establishes otherwise. *Id.*

1. Sager complains that C.O.'s mother and brother were allowed to testify to a statement C.O. made. Specifically, in earshot of her brother, C.O. told her mother that Sager had been making her give him blow jobs.

Notwithstanding the presumption of prejudice, evidence will not be considered prejudicial if "substantially the same evidence is properly in the record." *State v. Newell,* 710 N.W.2d 6, 19 (Iowa 2006) (citing *State v. Hildreth,* 582 N.W.2d 167, 170 (Iowa 1998)). The challenged testimony of C.O.'s mother and brother is cumulative of C.O's and C.T.'s testimony. Therefore, it is not prejudicial.

2. C.O. testified that, at one point, she and her brother moved to Texas with their father. At the time of the move, she heard Sager tell her father "to take us and shove 'em up his butt and never return or see him again or my mother."

Sager argues this is hearsay. In his view, the statement is an "out of court statement by C.O. about anal sex with Sager." In fact, the statement does not refer to anal sex. If it did, we are convinced the statement would be non-prejudicial, as "the evidence in support of the defendant's guilt is overwhelming." *Id.*

B. Relevancy Objections

Sager next challenges two evidentiary rulings on relevancy grounds. It is established that irrelevant evidence is inadmissible. *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005). The erroneous admission of irrelevant evidence does not require reversal unless the admission is prejudicial. *State v. Sullivan*, 679

N.W.2d 19, 30 (2004). "[W]e presume prejudice—that is, a substantial right of the defendant is affected—and *reverse* unless the record affirmatively establishes otherwise." *Id.*

1. Sager's friend, Ronald Rime, testified that when C.O. was ten years old, Sager told Rime that he would like to "fuck" C.O. Assuming this evidence was irrelevant and, therefore, inadmissible, we nevertheless conclude the admission of the evidence was non-prejudicial, as the properly admitted evidence was overwhelming. *Id.*

2. Sager's former cell mate, Shawn Glidewell, testified that Sager made threats against law enforcement personnel and asked Glidewell if he knew where to get a rifle off the black market. Glidewell also testified that Sager asked him to pressure witnesses into recanting. Again, assuming this evidence was irrelevant and inadmissible, we conclude the admission of the evidence was non-prejudicial.

III. Sentencing

Sager argues the district court did not provide adequate reasons for imposing consecutive sentences. *See State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). He maintains

> [t]his generic record does not indicate how each of the 17 counts of which Sager was convicted is a separate crime from all others. There was the same victim [C.O.] and same crime committed in violation of the same specific code section for 14 of the 17 counts. This is not a situation with multiple victims of child abuse.

The district court was not obligated to identify the nature of each of the counts on which the jury entered findings of guilt. The court was simply obligated to provide a short explanation for the consecutive sentences. *See id.* (stating

even "cursory" explanation may be sufficient). The court did so, pointing to (1) Sager's age, (2) Sager's prior convictions, (3) Sager's past employment circumstances, (4) Sager's family situation, (5) the nature of the offenses and the evidence supporting the findings of guilt, (6) the need for a controlled and structured environment to support rehabilitation and protection of the public, and (7) Sager's "egregious behavior," including a failure to exercise insight as to the consequences of his actions. We discern no abuse of discretion.

AFFIRMED.