

IN THE COURT OF APPEALS OF IOWA

No. 8-1012 / 07-1674
Filed March 26, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN EDWARD COWLES,
Defendant-Appellant.

Appeal from the Iowa District Court for Davis County, Daniel P. Wilson,
Judge.

Appellant appeals from a conviction of sexual abuse in the third degree.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Stephan Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, Rick Lynch, County Attorney, and A. Patricia Houlihan, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

John Cowles appeals from his conviction for the offense of sexual abuse in the third degree, asserting the district court erred in overruling his motions for judgment of acquittal and for a new trial. He claims, (1) the State presented insufficient evidence to prove the elements of the offense, (2) the verdict was contrary to the weight of the evidence, and (3) the district court erred in failing to grant a continuance to discover as well as admit medical records of the victim. He also makes a general claim of ineffective assistance of counsel. We affirm.

L.D. worked as a milker for Cowles's dairy in the spring of 2002, when she was thirteen years old. On one occasion when she was alone in the dairy parlor, she claimed that Cowles sexually abused her. L.D. did not tell anyone of the alleged incident until June 2005, when she revealed to a friend what had occurred. L.D.'s mother was then informed and she in turn reported the crime to the police. Cowles was charged and convicted in a bench trial of sexual abuse in the third degree pursuant to Iowa Code sections 709.4(1) and (2)(b) (2001). He appeals.

We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law. *State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002). We review a motion for a new trial for an abuse of discretion. *State v. Ellis*, 578 N.W. 2d 655, 659 (Iowa 1998). The district court may grant a new trial when "the verdict is contrary to law or evidence." Iowa R. Crim. P. 2.24(2)(b)(6). Appellate review is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence. *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003).

To convict Cowles of sexual abuse in the third degree, the State had the burden of proving among other things, that “in April or May of 2002,” Cowles performed a sex act with L.D. The district court found that the evidence established that the abuse occurred “on or about May 20, 2002.” Cowles contends that the State did not present sufficient evidence to prove that this was the date in question. We disagree. Under Iowa law, the State does not have to prove a date certain in order to prove sex acts, such as incest, statutory rape or adultery, as the exact time of the act is not material. *State v. Rankin*, 181 N.W.2d 169, 171 (Iowa 1970). While L.D. could not remember the exact date when the alleged abuse occurred, she was able to discern an approximate time period. The date was based upon several pieces of evidence, including L.D.’s recollection of her grade level, the time of year coinciding with the sport she was involved in, specific journal entries she made, and her changed behavior after the incident, as testified to by her mother. The district court found that although there were some inconsistencies in the evidence presented, L.D. was consistent in her memory of key facts, many of which were corroborated by other evidence admitted. Further, while Cowles’s defense included an assertion that he was out of the state when the alleged abuse occurred, he admitted on cross examination that he was in the area during this specified time period. Therefore the district court did not err in failing to grant Cowles’s motion for judgment of acquittal, as there was sufficient evidence to sustain the verdict. We also find no abuse of discretion in the district court’s decision that the verdict was not against the weight of the evidence. Therefore Cowles is not entitled to a new trial.

Cowles next asserts that the district court erred in failing to grant a continuance in order to discover L.D.'s medical records and that the records which had been produced were relevant and should have been admitted into evidence. We review cases involving a ruling on discovery for an abuse of discretion. *State v. Gates*, 306 N.W.2d 720, 725 (Iowa 1981). The district court, acting as the fact-finder, conducted an in-camera review of the medical records which had been produced. In finding that the records were not relevant and therefore inadmissible, the court also determined no continuance should be granted to attempt to secure additional records. Without an initial finding of relevance, there can be no showing of an abuse of discretion in the exclusion of evidence. Iowa Ct. R. 5.402 (stating that evidence which is not relevant is not admissible.). Although Cowles asserts the medical records would shed light on L.D.'s credibility, the district court specifically found to the contrary. With no relevancy of the medical records shown, we find there can be no abuse of discretion in denying the admission of L.D.'s medical records into evidence or in denying the motion for continuance to secure additional records.

Cowles further claims that his constitutional rights "concerning counsel, compulsory process, confrontation, and due process" were compromised. First of all, he made no such argument before the district court and as such, error has not been preserved. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Furthermore, "[n]o constitutional violation occurs in excluding evidence unless such evidence is relevant." *State v. Mitchell*, 568 N.W.2d 493, 499 (Iowa 1997).

Because the medical records were found not relevant, no constitutional violation occurred.

Finally, Cowles raises a vague assertion that his trial counsel was ineffective. The applicant must state the specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Without pointing to any specific breach of duty, we cannot address or preserve this claim.

AFFIRMED.