

IN THE COURT OF APPEALS OF IOWA

No. 1-496 / 10-1554
Filed July 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER JOHN SIMPSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Thomas J. Bice,
Judge.

Christopher Simpson appeals his conviction and sentence for sexual
abuse in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, Ricki N. Osborn, County Attorney, and Cori Coleman, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

Christopher Simpson appeals his conviction and sentence for four counts of sexual abuse in the third degree in violation of Iowa Code sections 709.1 and 709.4 (2009). Simpson asserts the district court erred in allowing admission of a text message without sufficient foundation. He also asserts insufficient evidence was presented to establish he was the same person who had been convicted of a 1991 sexual offense, which enhanced his current sentence.

I. Background Facts and Proceedings

V.W. and D.V. were fourteen and fifteen years old at the time of the alleged sexual abuse. V.W.'s mother and Simpson were close friends; Simpson spent time with the family and "developed a father-son type relationship" with V.W. Together with his friend, D.V., the boys spent time at Simpson's house playing video games, riding bikes, and swimming, and sometimes spending the night. Additionally, they were exposed to various activities with a sexual content. While playing on Simpson's computer, they had access to a web cam site that showed actions of a sexual nature. V.W. and D.V. testified that Simpson showed them a video of his roommate, Kenny, when he was younger and engaging in a sexual act with a minor. Simpson's other roommate, Richard, worked in a pornography shop, and V.W. and D.V. found sex toys in Simpson's bathroom closet. D.V. testified Simpson showed them how to use the toys and the boys admitted to playing with them.

V.W. and D.V. also found pornographic videos, and watched them in the living room. The boys testified that they masturbated while watching the videos, and claimed that Simpson walked in on them, sat on the couch, and did the

same; this became a “normal thing.” V.W. further testified that while watching the videos, Simpson put his hand on V.W.’s penis. He later did the same thing to D.V., and “masturbated him,” before D.V. pushed him away. V.W. and D.V. also testified that Simpson offered to buy them an online game membership in exchange for being allowed to perform oral sex on them; they agreed, and D.V. testified that Simpson “put his lips around our penises.” When the boys spent the night, D.V. claimed that Simpson would sometimes lay on him, yell his name, and grab his penis.

On August 6, 2009, V.W. told his girlfriend, T.D., about the sexual contact, and she in turn, convinced him to tell his mother, who called the police. V.W. worried about the consequences Simpson would face, and the two exchanged text messages that evening. V.W. did not initially recognize the cell phone number from the text message, so Simpson informed V.W. that he had a new phone. The text came from “K. Simpson” and read, “If she goes to the police and i [sic] am investigated i will lose everything i caant [sic] do that.” It was sent on August 6, 2009, at 8:16 p.m. Officer Jason Bahr took a photograph of the text.

Simpson was charged with four counts of sexual abuse in the third degree in violation of Iowa Code sections 709.1(3), 709.4(2), 902.14, and two counts of sexual abuse in the second degree in violation of Iowa Code sections 709.1(3), 709.3(2), and 902.14. Following a jury trial, he was convicted of four counts of sexual abuse in the third degree; in a second trial, he was found to be the same person who was convicted of sexual abuse in the third degree in 1991, thus subjecting him to enhanced sentences. He was subsequently sentenced to be

committed to the custody of the Director of the Iowa Department of Corrections for the rest of his life. Simpson appeals.

II. Standard of Review

Generally, rulings on the admission of evidence, such as whether proper foundation was established, are reviewed for an abuse of discretion. See *State v. Dullard*, 668 N.W.2d 585, 589 (Iowa 2003). We review challenges to the sufficiency of evidence for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997).

III. Foundation

Simpson asserts there was a lack of foundation for the admission of a text message from “K. Simpson” into evidence, arguing the evidence was insufficient to prove he was the person who wrote this text. At trial, the court admitted the text message into evidence that read:

From: K.¹ Simpson

If she goes to the police and i [sic] am investigated i will lose everything i caant [sic] do that.

August 6, 8:16 p.m.

For evidence to be admissible, it must satisfy foundational requirements: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Iowa R. Evid. 5.901(a). Here, a review of the text message reveals that it was sent on August 6, 2009, the same date the police were contacted regarding allegations of sexual abuse, and very near

¹ Although Simpson’s first name is Christopher, he goes by the nickname “Kit.”

the time V.W. claims he spoke to Simpson. T.D. testified to being present when V.W. received this text message from Simpson. At trial, V.W. was shown a photo of the text, and confirmed the content was what he had earlier received and read. The substance in the text message was consistent to V.W.'s recollection of the events of the evening. Upon our review of the record, we agree with the district court that sufficient foundation was laid such that the text message was properly admitted into evidence.²

Regardless, even if the text was not properly admitted, we conclude Simpson was not prejudiced. Other evidence supporting Simpson's convictions was overwhelming. Both victims testified in great detail as to the multiple occasions Simpson sexually abused them such that the outcome of the trial would not have changed. *State v. Rodriguez*, 636 N.W.2d 234, 244 (Iowa 2001) ("Reversal is not required for the erroneous admission of evidence unless prejudice results. . . . To establish prejudice, [the defendant] must show a reasonable probability that but for the error the outcome of the trial would have been different."). The evidence apart from the text message was overwhelming and we affirm the district court.

IV. Previous Conviction

Simpson was charged with the various counts of sexual abuse, enhanced for having a prior sexual abuse conviction on April 29, 1991. He asserts insufficient evidence was presented to establish he was the same "Christopher John Simpson" convicted of the 1991 sexual offense.

² We also agree with the State, the text was not hearsay as it was an admission by a party-opponent as defined under Iowa R. Evidence 5.801(d)(2)(A).

Following the conviction, a second jury trial was held for the enhancement phase. *State v. Kukowski*, 704 N.W.2d 687, 691 (Iowa 2005). When a defendant faces a charge that imposes an enhanced penalty for prior convictions, our law imposes a two-stage trial. *Id.* If found guilty of the current offense, the defendant is then entitled to a second trial “on the issue of the identity with the person previously convicted.” Iowa R. Crim. P. 2.19(9); *Kukowski*, 704 N.W.2d at 691. Generally, the State must prove the prior convictions beyond a reasonable doubt by introducing certified records of the convictions, along with evidence that the defendant is the same person named in the convictions. *Kukowski*, 704 N.W.2d at 691.

The State introduced evidence of a 1991 judgment entry against a Christopher John Simpson for sexual abuse in the third degree, number CR225-1290. The jury heard testimony from Russ Goebel, a probation officer, who “back in the early 90s” was assigned to monitor Christopher John Simpson, case number CR225-1290. He identified Simpson as the same Christopher John Simpson he monitored. He testified that he particularly remembered Simpson because he was difficult in the sex offender group he was facilitating. He had also “seen Mr. Simpson around town several times” since 1991. Based on retained records, Goebel stated that the birthday of the Christopher John Simpson he monitored was the same birth date Simpson stated during his testimony.

The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive, and the jury determined Goebel’s testimony was accurate in his identification of

Simpson. See *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). We agree and find substantial evidence exists to show that Christopher John Simpson of this current appeal was the same Christopher John Simpson named in the prior 1991 judgment. Not only is the full name the same, but the birth date is the same, and the judgment entry number matched the case number of the person identified as Christopher John Simpson by his 1991 probation officer. See *State v. Jordan*, 663 N.W.2d 877, 881–82 (Iowa 2003) (explaining that beyond the identity of a name, there must be additional evidence such as a social security number or a birth date showing the defendant is the same person named in the judgment of conviction).

Moreover, the unredacted text message presented to the jury only in this second phase of the trial read, “If she goes to the police and i [sic] am investigated i will lose everything i caant [sic] do that *again*.” (emphasis added). The implication the jury was free to make was that this was not Simpson’s first criminal act.

We conclude the trial record contained sufficient evidence to support a finding by the jury that Simpson was previously convicted of sexual abuse in the third degree, providing the requisite basis to enhance his current sentence.

We affirm Simpson’s convictions and sentence.

AFFIRMED.