IN THE COURT OF APPEALS OF IOWA

No. 1-200 / 10-0858
Filed May 11, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALLEN KILLINGS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

The defendant appeals his judgment and sentence for four counts of second-degree sexual abuse and one count of first-degree robbery. **AFFIRMED.**

Amanda M. Demichelis of Demichelis Law Firm, P.C., Chariton, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino and Jeffrey Noble, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

Allen Killings appeals his judgment and sentence for four counts of second-degree sexual abuse and one count of first-degree robbery. He challenges (1) the sufficiency of the evidence supporting the jury's findings of guilt, and (2) the district court's admission of what he contends was unfairly prejudicial testimony.

I. Sufficiency of the Evidence

The sexual abuse charges against Killings were predicated on sex acts that were performed with a sixteen-year-old girl. The jury considering these charges was instructed the State would have to prove the following:

> 1. On or about June 19, 2007, the defendant performed a sex act with [J.D.] . . . .
> 2. The defendant performed the sex act by force, or against the will of [J.D.].
> 3. During the commission of the sexual abuse, the defendant either:
>   a. Displayed a dangerous weapon in a threatening manner; or
>   b. Used or threatened to use force creating a substantial risk of death or serious injury to any person.

The robbery charge was predicated on items that were taken from the home following the commission of the sex acts. On this charge, the jury was instructed the State would have to prove the following:

> 1. On or about June 19, 2007, the defendant had the specific intent to commit a theft from the . . . residence.
> 2. To carry out this intention or to assist in escaping from the scene, with or without the stolen property, the defendant assaulted [J.D.].
> 3. The defendant was armed with a dangerous weapon.

Killings does not dispute that he entered the house and had sex with J.D. He instead challenges (1) the sufficiency of the evidence showing he possessed

a knife, (2) the timing of his possession of the knife, and (3) the sufficiency of the evidence supporting his theft of items.

The first challenge implicates the third elements of the sexual abuse and robbery convictions. Killings specifically maintains "the only evidence presented at trial that [he] ever possessed or used the knife in a threatening manner was the testimony of [J.D.]." We agree with the State that J.D.'s testimony was sufficient. *See State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998) (finding a complainant's testimony "is by itself sufficient to constitute substantial evidence of defendant's guilt"); *State v. Knox*, 536 N.W.2d 735, 742 (Iowa 1995) ("The only direct evidence is the complainant's testimony. But under today's law that is sufficient to convict.").

A jury could have found from J.D.'s testimony that J.D., her father Jeff, and her father's girlfriend, Stacy, toured a rental home and saw a man later identified as Killings painting the dining room. J.D. did not engage in conversation with Killings. The following day, the family moved into the home. J.D. had a bedroom in the basement, and her father and his girlfriend had a bedroom on the second floor.

J.D. testified she awoke in the middle of the night to find Killings straddling her with a knife. She said, "I looked to my left side and he had a knife next to my head." She continued,

> He started talking to me, telling me everything about him. And I just started crying. And he told me not to scream and he kept asking me questions about my—about Jeff and Stacy and where they were at. And I kept telling him that they were going to come down, and he kept saying that he was going to—if they came down, that he would kill them.

She said Killings told her he would hurt or kill her if she screamed, and she believed his threats because he had a knife. Killings engaged in four sex acts with J.D. After one incident, he left her in the bathroom for a couple of minutes, telling her "not to move or he would hurt [her]."

Corroboration of this testimony was not required. *See Hildreth*, 582 N.W.2d at 170; *see also* Iowa R. Crim. P. 2.21(3) ("Corroboration of the testimony of victims shall not be required."); *Knox*, 536 N.W.2d at 742 ("The law has abandoned any notion that a rape victim's accusation must be corroborated."). But, in this case, there was corroborating evidence. J.D. testified that Killings wiped the knife off with a blue towel from her bathroom. Police found a blue towel in the driveway when they responded to a 911 call. Additionally, a knife was found on the kitchen counter, and J.D.'s father testified the knife was not on the counter when he went to sleep that night. Finally, an identification technician testified the lack of any detectable prints or smudges on the knife suggested someone wiped it off, as J.D. testified.

The second challenge relates to the timing of the possession of the knife. Killings suggests the State needed to prove he was armed at the time he entered the house. The statutory definitions of the crimes do not support this argument. *See* Iowa Code §§ 709.3(1) (2007) (stating a person commits sexual abuse in the second degree when "*[d]uring the commission of* sexual abuse the person displays in a threatening manner a dangerous weapon" (emphasis added)), 711.2 ("A person commits robbery in the first degree when, *while perpetrating a robbery*, the person . . . is armed with a dangerous weapon." (emphasis added)).

The third challenge relates to the theft element of the robbery charge. Killings argues "no evidence was ever presented that [he] took any money or property from the house." In fact, no such evidence needed to be presented, as the statute defining robbery states, "It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen." *Id.* § 711.1. What is material is whether the person had "the intent to commit a theft." *Id.* Be that as it may, J.D. testified Killings took "three fake gold chains, a little silver flower necklace, and another silver fairy necklace" from her jewelry box. She also stated he took $5 from her wallet.

We conclude substantial evidence supports the findings of guilt for second-degree sexual abuse and first-degree robbery. *See State v. Smith*, 739 N.W.2d 289, 293 (Iowa 2007) (stating a finding of guilt will be upheld if substantial evidence supports it).

II. Admissibility Ruling

Killings contended the sex with J.D. was consensual. The State attempted to refute this defense with testimony from J.D. and Killings's former landlord. In particular, the State suggested J.D. would not have wanted to have sex with a person "who has no job, who has teeth missing, who is not well-kept, and not well-spoken." Killings objected to the relevancy of this testimony. The district court found the evidence relevant and allowed Killings's former landlord to testify Killings was "[n]ot well taken care of and smelled."

On appeal, Killings argues the "admission of this testimony was prejudicial." Our review is for an abuse of discretion. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008). At the outset, we question the relevancy of this

evidence. Assuming the evidence was irrelevant, its erroneous admission does not mandate reversal if the error was harmless. *See State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004) (recognizing not all evidentiary errors require reversal); *see also* Iowa R. Evid. 5.103(*a*) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. . . . ").

A variety of circumstances may be considered in determining the existence of harmless error, "including the existence of overwhelming evidence of guilt." *Parker*, 747 N.W.2d at 210. As partially detailed above, the record contains overwhelming evidence of Killings's guilt. Accordingly, we conclude the admission of the landlord's testimony concerning Killings's appearance amounted to harmless error.

AFFIRMED.