IN THE COURT OF APPEALS OF IOWA

No. 3-056 / 12-0548
Filed March 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

OTIS ROLLINS JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Otis Rollins Jr. appeals one of his two convictions for child endangerment.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Shelly Sedlak, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Otis Rollins Jr. appeals one of his two convictions for child endangerment. Rollins alleges the State failed to prove he acted with knowledge he was creating a substantial risk to his son's physical health or safety. Viewing the evidence in the light most favorable to the jury's verdict, we find Rollins's conduct met the elements of the statute and affirm his conviction under Iowa Code sections 726.6(1)(a) and 726.6(7) (2011).

I. Background facts and proceedings

The jury could have found the following facts from the evidence presented. In the early morning hours of March 20, 2011, Rollins returned from a night out to the Council Bluffs home he shared with his mother, Nancy. His nine-year-old daughter, D.R., lived with him, and his eight-year-old son, R.R., and six-year-old daughter were staying overnight. Their grandmother had put them to bed hours earlier, but the children were awake when their father returned home and started making himself something to eat.

Rollins "heard them still playing" in their bunk beds and "threatened to discipline" the children. D.R. and R.R. recalled their father rousting them from their beds and ordering them to stand in the corner. Rollins, his mother, and both children agreed Rollins was holding a knife. D.R. testified Rollins "was waving it around in our faces and yelling at us." R.R. also said his father "put a knife in my face." Rollins denied brandishing the knife at his children and testified to having the knife in the kitchen because he was cooking. As a witness for the defense, Nancy agreed her son was still in the kitchen when he waved a butter knife,

saying: "You kids better . . . ." The children reported being scared by the confrontation with their father.

Later that day, Bonnie, the mother of Rollins's two younger children, stopped by Rollins's house to check on them. D.R. told Bonnie that Rollins was "being mean" to the youngest child. When Rollins later learned of D.R.'s conversation with Bonnie, he "took off his belt and started hitting" D.R. She recalled her father saying, "[W]hat happens in the house stays in the house." R.R. witnessed his father beating his half-sister: "She cried and her face turned red and she got black and blue bruises." D.R. told her teacher about the incident, and the teacher notified the Department of Human Services (DHS). A DHS worker interviewed D.R. and photographed her bruises.

On March 30, 2011, the State filed criminal complaints charging Rollins with two counts of felony child endangerment for his acts against his daughter, D.R., and one count of aggravated misdemeanor child endangerment for waving a knife at his son, R.R. The State filed a motion to consolidate the two cases, alleging the offenses happened on the same day. The court granted the motion to consolidate on April 18, 2011.

Also on April 18, 2011, the State filed a trial information charging Rollins with these four counts: (I) child endangerment, in violation of sections 726.6(1)(a) and 726.6(6), a class "D" felony, for his actions resulting in bodily injury to D.R.; (II) child endangerment, in violation of sections 726.6(1)(a) and 726.6(6), for his actions against R.R.; and (III) and (IV) neglect of a dependent person, in violation of section 726.3, for knowingly exposing D.R. and R.R. to hazards they could not

protect themselves against. The State later amended the trial information to allege the offenses occurred "on or about the 15th day of March 2011, to and through the 20th day of March, 2011."

Trial commenced on December 20, 2011. Both D.R. and R.R. testified for the prosecution. At the close of the State's evidence, defense counsel moved for judgment of acquittal. The court denied the motion for judgment of acquittal for counts I and II, finding the prosecution generated a jury question, and reserved ruling on counts III and IV. The jury returned guilty verdicts on all four counts.

Rollins filed a motion in arrest of judgment and motion for a new trial, alleging the jury's verdicts were not supported by the evidence. Rollins also filed a memorandum of law in support of his motion for judgment of acquittal on counts III and IV—alleging the only evidence presented by the State in support of these counts was the presence of drug paraphernalia in Rollins's bedroom. The State filed a responsive argument, mentioning evidence at trial showing Rollins's frequent consumption of marijuana in the home, his act of waving a knife at D.R. and R.R., and his use of physical discipline against the children.

At the sentencing hearing on February 27, 2012, the court sustained the motion for judgment of acquittal on counts III and IV. In a written ruling, the court stated the jury convicted defendant of count I "because he caused a bodily injury to [D.R.] by striking her with a belt." The court also stated defendant was convicted of count II "because he used unreasonable force on [R.R.] by striking him with a belt." The court went on to say: "The question is whether evidence of Defendant's previous use of physical discipline with the children or his marijuana

use in his bedroom are sufficient to constitute hazards or dangers supporting conviction under 726.3" The court concluded the State's evidence was not sufficient on the neglect counts.

The court did not disturb the jury's verdicts on counts I and II and sentenced Rollins to indeterminate prison terms of five years on the class "D" felony and two years on the aggravated misdemeanor, to be served concurrently. Rollins challenges only the aggravated misdemeanor conviction on appeal.

II. Standard of Review

"The scope of our review on a defendant's appeal from a criminal conviction is narrow." *State v. Arnold*, 543 N.W.2d 600, 602 (Iowa 1996). We review for the correction of legal error. *State v. Cartee*, 577 N.W.2d 649, 651 (Iowa 1998). We consider this question: did substantial evidence support the jury's verdict? *See id*. "Substantial evidence is defined as proof which could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt." *Id*. In deciding Rollins's substantial-evidence challenge, we view the record in the light most favorable to the guilty verdict, granting the prosecution the benefit of all fair and reasonable inferences that may be drawn from the evidence. *See id*. at 651-52. But we will not uphold a verdict on proof that raises nothing more than suspicion, speculation, or conjecture regarding guilt. *Id.* at 652.

III. Analysis

A. What Facts Were Marshaled in Support of Count II?

The parties disagree about which acts were alleged to constitute child endangerment for count II involving Rollins's son as the victim. And frankly, the

record is confusing on this point. Rollins limits his argument on appeal to the evidence that he spanked R.R. with a belt, alleging the State failed to differentiate that conduct from reasonable corporal punishment. *See Arnold*, 543 N.W.2d at 603 (discussing line between parent's reasonable correction of child and criminal conduct). The State contends Rollins's sufficiency challenge "focuses too narrowly on some of his acts while overlooking other acts supporting the child endangerment charge." The State urges us to consider proof of "Rollins's acts of waving a knife in R.R.'s face and using controlled substances in the home."

To settle this disagreement, we look first to the charging documents. The criminal complaint filed in the aggravated misdemeanor case alleged Rollins waved a knife in his eight-year-old child's face, causing the child fear for his safety. The trial information charged count II as the aggravated misdemeanor version of child endangerment, alleging Rollins did on or about March 15 through March 20, 2011, as the parent of R.R., "knowingly act in a manner that created a substantial risk to the child's physical, mental, or emotional health or safety." The trial information did not specify what act or acts Rollins performed that endangered his son during that time frame. But read together, the complaint and information provided Rollins notice that the State was alleging he committed child endangerment by waving a knife near his son's face. *Cf. State v. Dalton*, 674 N.W.2d 111, 120 (Iowa 2004) (reading trial information in conjunction with minutes of testimony to conclude defendant was adequately alerted to the nature of the evidence against him).

We turn next to how the State marshaled the evidence at trial. In her opening statement, the prosecutor clarified which evidence she expected to offer in support of each count:

> The State will submit to you at the close of evidence when the defendant, Mr. Rollins, struck [D.R.] with a belt, leaving an injury, he committed the crime of child endangerment. When he threatened the children with a knife, he made them stand in a corner excessively, he committed child endangerment on [R.R.], and the fact he uses this kind of punishment, using a belt for discipline, threatening them with a knife, using drugs in the house where they are living . . . that he committed neglect of a dependent person.

Defense counsel followed the same factual roadmap when arguing his motion for judgment of acquittal at the close of the evidence. Counsel asserted with regard to count I that the State presented no evidence corroborating D.R.'s testimony that the spanking caused her bruising. The defense argued with regard to count II,

> which coincided with the other incidents or other complaints, . . . if you take the [evidence] in the light most favorable to the State, there was some type of knife in the defendant's hand, but there was really no testimony as to how close the defendant got to either of these children when it came to waving a knife. And there is also conflicting testimony about what kind of knife it was, be it a steak knife or butter knife. And . . . there was no testimony that the defendant deliberately picked up the knife for the purpose of waving it at the children. The knife happened to be in his hand because he was doing some cooking.

Defense counsel also argued the evidence that Rollins had paraphernalia to smoke marijuana, commonly called a "bong," in his bedroom and that he made his children stand in the corner did not rise to the level of neglect. The court denied the defense motion in regard to count II, finding sufficient evidence to support the misdemeanor child endangerment charge.

The State's closing argument was less specific about the facts targeted to count II. The prosecutor recounted the testimony from both children that Rollins spanks them with a belt for punishment and that Rollins "pulls them out of bed, puts them in a corner, and starts waving a knife in their face, yelling at them." She asked rhetorically: "Is that acceptable punishment? No matter whether you believe a belt is okay or not, is waving a knife in a kids face ever acceptable? Ever?"

The marshalling instruction for count II asked the jury whether Rollins "acted with knowledge that he was creating a substantial risk to [R.R.'s] physical health or safety" but did not delineate which act or acts were being alleged by the State for that crime.

The confusion about the conduct connected to count II was compounded when the district court discussed the facts in its written order acquitting Rollins on counts III and IV. The court stated—perhaps based on a faulty recollection of the evidence—that Rollins was convicted of count II because he struck R.R. with a belt. The State downplays the court's reference to count II in its February 27, 2012 order, noting the court found sufficient evidence on December 21, 2011, to send count II to the jury. We agree the post-trial order dismissing counts III and IV does not dictate what evidence either the court or the jury found sufficient for count II.

Given the facts alleged in the criminal complaint, the State's opening statement, and most telling, defense counsel's detailed argument for judgment of acquittal, we find the jury's guilty verdict on count II may be properly supported

by Rollins's alleged act of waving a knife in R.R.'s face. *See generally State v. Yeo*, 659 N.W.2d 544, 552 (Iowa 2003) (finding no prejudice based on variance between theory of child endangerment charged and theory upon which defendant was convicted because Yeo "anticipated and defended against the alternative at nearly every stage of trial"). Accordingly, we consider the State's evidence of that conduct to determine whether it was sufficient to support the guilty verdict.

B. Did Rollins Endanger R.R. by Waving a Knife in His Face?

D.R. testified that Rollins was angry with her and R.R. for making noise in their beds. She recalled that her father forced them to stand in the corner, "and then he was cooking steak" and "he came in with the knife, and he was waving it around in our faces and yelling at us." R.R. gave similar testimony, telling the jury that Rollins "put a knife in [his] face" and told him he should not be playing in bed. R.R. testified the knife scared him. On cross-examination R.R. acknowledged his father could have been using the knife for cooking, but added "he could have put it down instead. He wouldn't have come in with a knife."

Testifying for the defense, the children's grandmother acknowledged Rollins was waving a knife, but said it was a butter knife and that he was in the kitchen "when he was like 'you kids better,' you know." Rollins also told the jury he was holding a butter knife in the kitchen, but denied waving it at the children.

The jurors were free to reject certain testimony and credit other testimony. *See State v. Hickman*, 623 N.W.2d 847, 849 (Iowa 2001). Assuming the jurors believed the children's version of events, they could have reasonably determined Rollins's act of waving a knife in his son's face constituted knowingly acting in a

manner that created a substantial risk to R.R.'s health or safety. *See State v. Anspach*, 627 N.W.2d 227, 233 (Iowa 2001) (defining "substantial risk" as "the very real possibility of danger to a child's physical health or safety"). D.R. testified her father was "mad" and "yelling" when he came into their bedroom area with the knife. An angry parent brandishing a knife in close proximity to a child's face creates a real possibility of danger to the child's health or safety.

C. Did Rollins Endanger R.R. by Spanking Him with a Belt?

In the alternative—assuming the district court's statements about count II in its February 27, 2012 order serve to limit our substantial evidence analysis to Rollins's alleged act of striking R.R. with a belt—we conclude that conduct also satisfies the elements of child endangerment.

R.R. testified that sometimes his father spanked him with his hand and sometimes with a belt. R.R. also told the jury that Rollins carried out the spankings when the children failed to follow this house rule: "If something got said in the house or something happened in this house, we can't tell nobody else if it happened. He said what–what happens in the house stays in the house." Rollins admitted in his testimony that he has spanked both children with a belt. He also verified that his children have heard the admonition: "We don't talk about family business to strangers."

On appeal, Rollins contends the State failed to show spanking R.R. fell outside the parental privilege of using corporal punishment under the standards in *Arnold*. That case summarized a parent's right to discipline a child as follows:

> A parent, being charged with the training and education of his [or her] child, has the right to adopt such disciplinary measures for the

> child as will enable him [or her] to discharge his [or her] parental duty. Accordingly, [the parent] has the right to correct the child by reasonable and timely punishment, including corporal punishment. . . . The control and proper discipline of a child by the parent may justify acts which would otherwise constitute assault and battery, but the right of parental discipline clearly has its limits. And if the limits are exceeded, the parent may be criminally liable for assault or other offenses, [or] violation of penal statutes . . . .

Arnold, 543 N.W.2d at 602-03 (citing 59 Am. Jur. 2d *Parent & Child* § 22 (1987)).

But our supreme court placed limits on parental discipline, namely "moderation and reasonableness." *Id*. at 603. The court described "reasonable correction" as the amount of force necessary for behavior modification rather than action which satisfies "the passions of the enraged parent." *Id.* The court did not lay down a precise rule, but offered factors to consider, including the age of the child and "the gravity of the child's misconduct." *Id*.

In the instant case, a reasonable jury could have determined that spanking an eight-year-old child with a belt for failing to abide by a family code of silence exceeded the bounds of reasonable correction and instead veered into the realm of abuse. Under our case law, a parent has a right to "chastise his child," but "when such chastisement amounts to cruelty or inhumanity," the conduct may become criminal. *In re W.G.*, 349 N.W.2d 487, 488 (Iowa 1984) (finding measure of cruelty is punishment which "far exceeds what can be tolerated in a civilized society"). The record contained substantial evidence that Rollins's harsh physical discipline to enforce obedience to a pernicious rule of family secrecy was not protected by parental privilege to correct a child's misbehavior.

AFFIRMED.