

**IN THE COURT OF APPEALS OF IOWA**

No. 3-329 / 10-1875  
Filed May 30, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ANDRE DARREN WHITE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Johnson County, Paul D. Miller,  
Judge.

Defendant appeals his convictions on two counts of sexual abuse in the  
third degree. **AFFIRMED.**

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

Andre Darren White, Mt. Pleasant, pro se.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, Janet M. Lyness, County Attorney, and Anne Lahey, Assistant  
County Attorney, for appellee.

Considered by Eisenhauer, C.J., Potterfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**HUITINK, S.J.****I. Background Facts & Proceedings.**

The record includes evidence of the following. J.H. met Andre White in the fall of 2009 through his daughter, who was J.H.'s good friend. White agreed to babysit J.H.'s child on some evenings, and at times he stayed overnight at her house.<sup>1</sup> White and J.H. engaged in consensual sex on two occasions. J.H. informed White, however, that she did not want to be in a romantic relationship with him.

On January 22, 2010, J.H. and White were at her home in the evening, and she fell asleep on her bed. J.H. testified she woke up to find White choking her with his hands around her throat. White told J.H. he had a gun and placed a blunt object, which she did not see, by her ribs. He then put a knife by her neck. White threatened to kill J.H. and her child. He forced J.H. to engage in sexual intercourse two times.

In the morning of January 23, 2010, J.H. went to the home of Samantha Jones, who observed J.H. "had marks all over her neck. She seemed very shaken up, frightened. She was scared to death." Jones took pictures of J.H.'s injuries. Later that day J.H. went to the Johnson County Sheriff's Department to report the incident. The deputies who talked to J.H. observed scratches and bruising on her neck area. They also stated she was upset and crying.

At the request of the sheriff's department, J.H. had a physical examination at the University of Iowa Hospitals and Clinics by a sexual assault nurse

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<sup>1</sup> J.H. worked some evenings, and White would watch her child at times. If it got too late, White would spend the night at her home.

examiner, Susan VanWye. VanWye stated J.H. had bruises on her neck and upper arms. J.H. was also examined by Dr. Carlyn Christensen-Szalanski, a physician, who testified J.H. had injuries consistent with someone who had been significantly choked.

White was charged with two counts of sexual abuse in the second degree, in violation of Iowa Code section 709.3(1) (2009). At his criminal trial, White testified he and J.H. were engaged in an intimate relationship and they had consensual sex two times during the night in question. He stated that on the second occasion, J.H. asked him to choke her. White also presented the testimony of Dr. Kathryn Ando, a sexologist, who testified about erotic breath control, which can involve choking.

A jury found White guilty of two counts of sexual abuse in the third degree, in violation of section 709.4(1). White filed a motion for new trial. The district court denied the motion, finding, "I expressly find that the verdicts are not contrary to the weight of the evidence." White was sentenced to a term of imprisonment not to exceed ten years on each count, to be served concurrently. White appeals, claiming the district court should have granted his motion for a new trial.

## **II. Standard of Review.**

We review the district court's ruling on a motion for a new trial for an abuse of discretion. *State v. Serrato*, 787 N.W.2d 462, 472 (Iowa 2010). There has been an abuse of discretion when the court has exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

*Id.* Courts have wide discretion in deciding motions for new trial. *State v. Neitzel*, 801 N.W.2d 612, 625 (Iowa Ct. App. 2011).

### **III. Merits.**

White asserts the district court should have granted his motion for a new trial because the jury's verdict was contrary to the weight of the evidence. He claims the case hinges on the credibility of J.H., and he believes she was not a credible witness. He claims the bruises on J.H.'s neck could have been the result of "kinky sex," and so the bruises do not support her claim that White engaged in sex acts with her by force or against her will. He asserts that no gun or knife was found to support J.H.'s claims.

A district court may grant a new trial if the jury's verdict is contrary to the weight of the evidence. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). The court "weighs the evidence and considers credibility as it determines whether 'a greater amount of credible evidence supports one side of an issue . . . than the other.'" *Neitzel*, 801 N.W.2d at 625 (citation omitted). A court should grant a new trial on this ground "only in exceptional cases in which the evidence preponderates heavily against the verdict." *Ellis*, 578 N.W.2d at 659. The court should recognize the role of the jury as the principal trier of facts. *Id.*

We determine the district court did not abuse its discretion in denying White's motion for new trial. The jury's verdict is supported by J.H.'s testimony. J.H.'s testimony is supported by photographs and testimony by several witnesses that she had bruising on her neck and elsewhere on her body. Her testimony is also supported by testimony from other witnesses that she was shook up, frightened, scared to death, upset, and crying when talking about the incidents

the next day. The jury was certainly free to disbelieve White's testimony that J.H. asked him to choke her. His version of the events was contrary to the full extent of J.H.'s injuries and her demeanor when telling others what had happened.

We do not find this weight-of-the-evidence analysis is disturbed by the fact the State was not able to produce the gun or knife J.H. testified about. It was never clear whether White had a gun or just told J.H. he had a gun. J.H. testified she never saw a gun but felt White place a blunt object by her ribs. Also, J.H. testified the knife used looked like one of her kitchen knives. J.H.'s knives were present when officers came to the home, but because White sometimes cooked while he was there, officers did not seize any of the knives. Additionally, several hours passed between the time J.H. left the home and when officers approached White, giving him time to possibly get rid of a gun and knife.

We conclude the district court did not abuse its discretion in denying White's motion for a new trial. We affirm White's convictions.

**AFFIRMED.**