

**IN THE COURT OF APPEALS OF IOWA**

No. 9-483 / 08-1524  
Filed September 2, 2009

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

**vs.**

**RANDY SCOTT MEYERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Defendant appeals from the judgment and sentence entered on his  
convictions of sexual abuse and lascivious conduct with a minor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Julie Walton, Assistant County  
Attorney, for appellee.

Considered by Sackett, C.J., and Vogel, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VOGEL, J.**

Defendant Randy Meyers appeals from the judgment and sentence entered on his convictions of two counts of third-degree sexual abuse, one count of lascivious conduct with a minor, and one count of distribution of a controlled substance to a person under eighteen years of age, in violation of Iowa Code sections 709.4, 709.14, and 124.406 (2003). Meyers asserts the district court erred in finding sufficient evidence to support his convictions.<sup>1</sup> Sufficiency-of-the-evidence challenges are reviewed for correction of errors at law. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008).

**I. Background Facts and Proceedings**

Meyers moved in with Patricia in 1994, and later that year was arrested and pleaded guilty to one count of lascivious acts with a child, M.R., then age six, the daughter of Patricia. After serving his sentence, Meyers was released and he and Patricia again began cohabitating. They married in 2002.<sup>2</sup> During their time together, Meyers and Patricia began using crack cocaine, and even introduced it to M.R. when she was sixteen years old. In 2004, after considerable violence and family dysfunction, Patricia obtained a protective order against Meyers and had him removed from the home; a short time later, she also forced M.R. out of the home. Meyers and M.R. lived together until Patricia had M.R. involuntarily committed in January 2005, so that M.R. would receive

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<sup>1</sup> Meyers also asserts, pro se, that the court erred in failing to rule on his “motion to try me or dismiss me.” He also claims his counsel “erred” in failing to see this was done. The record on appeal fails to include any such motion. Further, Meyers has failed to cite any reference to the record or cite any authority, and thus his arguments are waived. See Iowa R. App. P. 6.14(1)(c).

<sup>2</sup> Patricia cannot remember whether she and Meyers were married in 2002 or 2003.

substance abuse treatment. While M.R. was in treatment, Meyers wrote her many letters, which detailed his explicit sexual conduct with her. Meyers was then charged and convicted of the above crimes.

## II. Corroborative Evidence

Meyers asserts that there was not sufficient corroboration of the admissions he made in the letters to M.R. of his sexual acts to sustain his convictions. “The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense.” Iowa R. Crim. P. 2.21(4). “Other proof,” must connect the defendant with the offense. *State v. Liggins*, 524 N.W.2d 181, 187 (Iowa 1994). “Corroboration need not be strong nor need it go to the whole case, so long as it confirms some material fact connecting the defendant with the crime.” *Id.* Evidence can also be circumstantial; both direct and circumstantial evidence are equally probative. *Id.* at 186.

While M.R. did not testify in this case, other evidence corroborated Meyers’s admissions.<sup>3</sup> Testimony from Department of Human Services worker Kim Fish Cronkleton included that “Randy admitted to me that, yes, him and [M.R.] had been involved in a relationship, they had crossed the line.” M.R.’s Alcoholics Anonymous sponsor, Johnna Foldmann-Ask, testified that Meyers

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<sup>3</sup> M.R. did not testify because she was eight months pregnant, and her gynecologist informed the court that travel was not advised for her health. Her deposition testimony was not admissible, as the court found it was

unable to determine that the defendant did have a meaningful opportunity to cross-examine [M.R.] at the time of the deposition, and therefore introduction of the deposition transcript under 803(24) would be violative of the defendant’s constitutional rights to confront and cross-examine [M.R.].

admitted to her that he wrote the letters to M.R. which contained his explicit sexual conduct. The weakness with both of these witnesses' statements is that both repeated yet another admission by Meyers, rather than provide independent corroboration. However, Foldmann-Ask also testified that the interactions between Meyers and M.R. did not appear to be a father/daughter relationship, and that reading the letters "confirmed her discomfort." She observed Meyers and M.R. sing a pop song to each other, emphasizing the line, "Don't ya wish your girlfriend was hot like me, don't you wish your boyfriend was a freak like me." M.R.'s best friend, Stacy Misfeldt, described similar, romantic behavior. She testified that the interactions between Meyers and M.R. were "not like father/daughter," but Meyers acted "like he wanted to be her boyfriend," and observed that he would, "brush her hair back and like rub her face and tell her how beautiful she was." She also described a strange incident during a party on New Year's Eve 2004, extending into the early morning hours of January 1, 2005, when Meyers and M.R. left the party he was hosting two or three times, and went to his bedroom for approximately thirty minutes each time.

In addition to the observations of these witnesses, Meyers's two prior convictions for sexual abuse were admitted into evidence. Iowa has recognized the use of prior acts in sex abuse cases "to show a passion or propensity for illicit sexual relations with the particular person concerned in the crime on trial." *State v. Tharp*, 372 N.W.2d 280, 281 (Iowa Ct. App. 1985) (quoting *State v. Spaulding*, 313 N.W.2d 878, 880 (Iowa 1981)). Moreover, the legislature has adopted a specific statute addressing the use of "similar offenses—sexual abuse" in Iowa Code section 701.11(1) which provides:

In a criminal prosecution in which a defendant has been charged with sexual abuse, evidence of the defendant's commission of another sexual abuse is admissible and may be considered for its bearing on any matter for which the evidence is relevant. This evidence, though relevant, may be excluded if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. This evidence is not admissible unless the state presents clear proof of the commission of the prior act of sexual abuse.

Evidence was introduced as to Meyers's prior conviction in June 1995 for lascivious acts with a child, M.R., when she was six years old; and Meyers's conviction for lascivious conduct with a minor in April 2006, subsequent to the dates supporting the current charges.<sup>4</sup>

The district court found that the State proved that Meyers "engaged in at least two separate sex acts with M.R. during the period between September 2004 and January 2005." The admission of evidence of the 1995 and 2006 convictions for acts of sexual abuse committed upon M.R. by Meyers has relevance in this case as corroborative evidence, as it demonstrates the nature of Meyers's relationship and feelings towards M.R. *State v. Reyes*, 744 N.W.2d 95, 102 (Iowa 2008). "Further, the potential of undue prejudice where prior sexual abuse evidence is admitted in cases involving the same alleged perpetrator and victim is far less than in cases where the prior bad acts involve other alleged victims." *Id.* Therefore, we may consider as relevant, without undue prejudice, the existence of prior convictions for sexual abuse by Meyers on M.R. to show the nature of the relationship between the two. *See id.*

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<sup>4</sup> Testimony from M.R.'s mother and from Folkman-Ask established that M.R. was the victim of this crime as well.

The Folkmann-Ask, Misfeldt, and Cronkelton testimony, along with the prior convictions for lascivious acts and lascivious conduct with the same victim, sufficiently corroborate the admissions made by Meyers to sustain his convictions.

### **III. Sufficiency of Evidence**

Meyers also asserts that the court was not presented with sufficient evidence (1) to establish the victim's lack of consent, and (2) to support his conviction for lascivious conduct. A defendant commits third-degree sexual abuse if "[t]he act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person." Iowa Code § 709.4(1). It is "not necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person." *Id.* § 709.5. A defendant commits lascivious conduct with a minor when a person over eighteen in a position of authority over a minor persuades the minor to disrobe. *Id.* § 709.14.

Meyers lived with Patricia and M.R. for approximately eight years. Substantial evidence revealed that Meyers was controlling and abusive, introduced crack cocaine to M.R., and assumed a position of authority in the home. Patricia offered M.R. no protection during this time because she was also addicted to crack cocaine, suffered from mental illness, and would stay in bed for days on end. Psychologist Dr. Richard Hutchison never met M.R., but did receive information of alleged physical abuse inflicted on M.R. by Meyers, as well as years of M.R.'s chaotic home environment coupled with drug abuse and

addiction. Based on this scenario, he opined that “[M.R.] did not have the ability to consent.” The district court found

the totality of the evidence presented by the State does convince the Court that the sex acts were performed by the defendant under circumstances in which M.R. psychologically was unable to consent to that sexual activity. M.R.’s free will was compromised and overborne by the defendant’s manipulation of his parental relationship to M.R. She was not capable of knowingly or voluntarily consenting to the sex acts perpetrated on her by the defendant.

We agree with the district court that when Meyers was in a position of authority over M.R., he engaged in a sexual relationship with her without her voluntary consent. We find substantial evidence supports both the convictions of sexual abuse in the third degree and lascivious conduct with a minor.

**AFFIRMED.**

Miller, S.J., concurs. Sackett, C.J., dissents.

**SACKETT, C.J.** (dissenting)

I respectfully dissent. I would reverse defendant's convictions.

Defendant's wife told defendant to leave her home. Later she also told M.R., her daughter and defendant's stepdaughter, who was born October 9, 1987, to leave the house. M.R. and defendant then lived together from September of 2004 to January of 2005, when M.R. entered substance abuse treatment. At the time the two lived together M.R. was sixteen and seventeen years old. Based on defendant's relationship with M.R. during this period the State charged defendant with two counts of sexual abuse in the third degree, in violation of Iowa Code section 709.4 (2003),<sup>5</sup> lascivious conduct with a minor in

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<sup>5</sup> Iowa Code section 709.4, defines sexual abuse in the third degree as follows:

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.

2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

a. The other person is suffering from a mental defect or incapacity which precludes giving consent.

b. The other person is twelve or thirteen years of age.

c. The other person is fourteen or fifteen years of age and any of the following are true:

(1) The person is a member of the same household as the other person.

(2) The person is related to the other person by blood or affinity to the fourth degree.

(3) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.

(4) The person is four or more years older than the other person.

3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

a. The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.



violation of Iowa Code section 709.14, and distribution of a controlled substance to a person under eighteen years of age, in violation of section 124.406 (2003). Defendant appeals challenging his convictions under sections 709.4 and 709.14 contending there is not sufficient evidence to support any of these charges. He also contends that in finding him guilty on these charges the district court considered letters he had written as his admission or confession and there was not sufficient corroboration of his admission or confession. I would reverse these convictions and remand to the district court to dismiss.

**INSUFFICIENT EVIDENCE TO SUPPORT CONVICTIONS UNDER SECTION 709.4.** The district court found defendant guilty of two counts under this section but did not specify what provision or provisions of the section he violated. The question therefore is whether we can find a violation under any section.

M.R. did not testify. The relevant evidence of any sex act between the defendant and M.R. came from letters defendant had written to M.R. and the testimony of a child protection worker with the Iowa Department of Human Services relating that defendant told her he had been involved in a relationship with M.R. and they had “crossed the line,” and that he admitted certain things that were in the letters.

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b. The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

The district court first found the State had not proved that M.R. was “mentally incapacitated.” In convicting defendant under this section, it found: M.R. psychologically was unable to consent to that sexual activity. M.R.’s free will was compromised and overborne by the defendant’s manipulation of his parental relationship to M.R. She was not capable of knowingly or voluntarily consenting to the sex acts perpetrated on her by the defendant.

These findings and the evidence do not support a violation of section 709.4(1) which requires evidence a sex act was done by force or against M.R.’s will. There is no evidence to support such a finding. Section 709.4(2)(a) requires a finding that M.R. was suffering from a mental defect or incapacity which precluded consent. The district court’s finding that the State failed to prove that M.R. was mentally incapacitated precludes a finding of abuse under section 709.4(2)(a). There can be no finding of a violation of section 709.4(2)(b) (victim twelve or thirteen) or section 709.4(2)(c)(1-4) (victim fourteen or fifteen) because the alleged victim was sixteen and seventeen when the alleged acts were to have occurred.<sup>6</sup> Nor could it have been committed under section 709.4(3)(a) or (b), for there is no evidence, and the district court did not find, that M.R. was under the influence of a controlled substance when the alleged acts occurred. Nor could the district court have convicted the defendant under section 709.4(4) as there was no evidence M.R. was physically incapacitated or physically helpless and the district court found the State had not proved that M.R. was

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<sup>6</sup> The State appears to argue that there was sufficient evidence to infer that M.R. did not consent to a sexual relationship with the man who raised her. However, the statute specifically only finds this a violation if the victim is fourteen or fifteen. See Iowa Code § 709.4(2)(c)(1).

“mentally incapacitated.” Finding insufficient evidence to support the convictions under any provision of section 709.4, I would reverse these convictions and therefore find it unnecessary to address whether there was sufficient corroboration to support the alleged admissions here.<sup>7</sup>

**LASCIVIOUS CONDUCT.** Defendant argues this conviction is based only on the speculation that he and M.R. were unclothed when they engaged in sexual activity.<sup>8</sup> While there may be sufficient evidence to support these charges, any evidence of disrobing would have come from defendant’s admissions. However, there does not appear to be corroborating evidence supporting all elements of this charge. Corroborating evidence must connect the accused with the commission of the crime. *State v. Liggins*, 524 N.W.2d 181, 187 (Iowa 1994). I would reverse here also.

I would reverse defendant’s convictions of two counts of a violation of Iowa Code section 709.4 and one count of a violation of section 709.14, and remand for a an order dismissing the charges.

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<sup>7</sup> The district court made no findings either that there *was* corroborating evidence (generally a question for the court) or that there *was sufficient* corroborating evidence (ordinarily a question for the fact finder). See *State v. Hobson*, 284 N.W.2d 239, 243 (Iowa 1979) (“The existence of corroborative evidence is an issue for the court, and its sufficiency is ordinarily for the jury.”).

<sup>8</sup> Iowa Code section 709.14 (2003) provides:

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

Lascivious conduct with a minor is a serious misdemeanor.