

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-274

MAY TERM, 2002

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 2,
	}	Rutland Circuit
v.	}	
	}	
Joseph E. Stocker	}	DOCKET NOS. 1131-8-96 RdcR
	}	
	}	Trial Judge: Theresa S. DiMauro
	}	

In the above-entitled cause, the Clerk will enter:

Defendant appeals his conviction for sexual assault on his minor daughter pursuant to 13 V.S.A. § 3252(b)(1). He argues that the State failed to present evidence to corroborate his confessions about the crime. He also claims the court erroneously admitted evidence of other criminal conduct because the State did not give defendant prior notice of its intent to offer the evidence as required by V.R.Cr.P. 26(c). We affirm.

During the fall of 1995, defendant's daughter, H.S., then thirteen-years old, began expressing to her mother that she did not want to see her father, from whom mother had been divorced since 1986. When H.S. did visit with defendant, she would bring a friend with her. After mother's domestic partner found H.S.'s diary, mother became concerned that defendant was sexually abusing H.S. One of H.S.'s diary entries stated that she wished defendant had a pretty wife so that he would not want to touch H.S. H.S. testified that sometime that fall defendant told her that he was uncomfortable with her growing up and he had sexual feelings for her. She testified that defendant advised her to put a lock on her bedroom door so he would not be able to enter her room.

H.S. also testified that around that same time, she and a friend were sleeping at defendant's home. Because it was hot the two girls asked to sleep in defendant's bedroom because it had an air conditioner. Defendant permitted them to sleep with him in his bed, with H.S. sleeping between defendant and her friend. Defendant testified that the girls were underneath the blankets, while he remained in his trunks on top. H.S. testified that she felt defendant's hand on the back of her upper thigh, close to her pelvis, and she asked him to stop. Only after several requests did he comply with her request, H.S. explained. The next morning, H.S. awoke to find blood on her panties, although she did not start menstruating until the next winter.

The following spring, while driving her back from a visit, defendant told H.S. again about his sexual feelings for her, and confessed that he had touched her vagina. Mother testified that H.S. arrived home from that visit very angry. H.S. thereafter refused to visit with defendant. Defendant made several attempts to contact H.S. to resume visits. On one occasion, he confessed to mother that he had digitally penetrated H.S.'s vagina while she was sleeping at his home. He told mother that he believed he had broken her hymen because he noticed blood in her underpants.

Mother later contacted state authorities and an investigation into the assault commenced. During the investigation, defendant confessed to the crime to two police officers during an interview at defendant's home. The officers testified about defendant's confession at trial. During defendant's trial testimony, he admitted that he was attracted to his daughter and was disturbed by those feelings, stating that he "was plagued with thoughts" that he did not like. He admitted that he told mother, H.S., and the investigating officers about his feelings. He testified that he could smell the difference in his daughter since entering puberty and it bothered him. He also conceded that he told the officers that he

was receiving counseling for his feelings at his church. He denied, however, that he touched H.S.'s vagina as the State alleged. The jury convicted defendant and he timely appealed to this Court.

Defendant's primary argument on appeal centers on the alleged absence of corroborative evidence of his confessions to mother, H.S., and the police under the so-called corpus delicti doctrine. Under that doctrine, uncorroborated extra-judicial confessions are not sufficient to establish the corpus delicti, or body, of a crime. *State v. Weller*, 162 Vt. 79, 82 (1994). Vermont requires that the State present at least slight corroborative evidence to prove the crime charged, but that slight corroboration need not independently establish the defendant's guilt beyond a reasonable doubt, or even by a preponderance of the evidence. *Id.* The rule's purpose is to avoid the danger that a person may confess to a crime when in fact no crime was committed by anyone. *Id.* at 83.

In this case, defendant was charged and convicted of sexual assault on his daughter in violation of 13 V.S.A. § 3252(b) (1). The crime's corpus delicti under the facts of this case is (1) any intrusion by any part of a defendant's body, however slight, into the genital opening of (2) his daughter, (3) who is under sixteen-years old. See 13 V.S.A. § 3252(b)(1) (setting forth elements of sexual assault of a minor). Defendant's challenge focuses on the alleged lack of evidence to corroborate his digital penetration of H.S.'s vagina. He argues that the corroborating evidence the State points to, namely H.S.'s angry behavior, refusal to visit with defendant and the blood on her panties, do not necessarily suggest that defendant assaulted H.S. For example, he argues that juveniles experiencing puberty often act the way H.S. did. Under our slight corroboration standard the State need not present evidence proving by either a preponderance of the evidence or beyond a reasonable doubt that the crime occurred. *Weller*, 162 Vt. at 82. Thus, the fact that other inferences can be made from the corroborating evidence is irrelevant.

Moreover, there was more corroborating evidence in this case than simply H.S.'s change in behavior, refusal to see defendant, and the blood on her underwear. As recounted above, the State presented portions of H.S.'s diary and H.S.'s testimony concerning defendant's groping of her upper thigh while she slept in the same bed as defendant. Perhaps the most important evidence corroborating defendant's multiple confessions was his own trial testimony. He admitted to virtually every fact in those confessions except the fact that he inserted his finger into H.S.'s vagina. The record evidence therefore meets the slight corroboration standard, and the jury's decision must stand.

Defendant also challenges his conviction arguing that the State failed to give him prior notice of its intent to introduce evidence that he allowed H.S. and her friends to view an X-rated movie and drink wine coolers at his home on one occasion. Defendant objected at trial to the admission of that evidence arguing that V.R.Cr.P. 26(c) precludes its admission if the State did not provide advance notice as the rule requires. Although the evidence came in, we do not know the basis for the court's ruling on defendant's objection because the transcript of the bench conference is unintelligible. In several instances the transcript states simply "inaudible," including the point at which it appears the court issued its ruling. In any event, even if the court erred by admitting the evidence, defendant fails to show that the error resulted in a miscarriage of justice necessitating reversal. See *State v. Houle*, 162 Vt. 41, 45 (1994) (trial court's error admitting other criminal conduct evidence in the absence of prior notice to the defense under V.R.Cr.P. 26(c) did not require reversal where jury had before it substantial evidence of guilt). Here, the jury had before it substantial evidence of defendant's guilt, including defendant's confessions to at least four individuals on three separate occasions, his admissions at trial about his attraction to H.S., and H.S.'s testimony that defendant groped her upper thigh while she slept.

Affirmed.

BY THE COURT:

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

