

**IN THE COURT OF APPEALS OF IOWA**

No. 3-857 / 03-0245  
Filed January 14, 2004

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

**vs.**

**JEFFREY MARVIN SOMERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clay County, Patrick M. Carr,  
Judge.

Jeffrey Somers appeals his convictions for one count of indecent contact  
with a child and three counts of lascivious conduct. **AFFIRMED.**

David Scott of Cornwall, Avery, Bjornstad & Scott, Spencer, and Michael  
Bovee of Montgomery, Barry & Bovee, Spencer, for appellant.

Thomas J. Miller, Attorney General, Cristen Odell, Assistant Attorney  
General, and Michael Zenor, County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

**HUITINK, P.J.**

***I. Background Facts & Proceedings***

This case involves charges against Jeffrey Somers on one count of indecent contact with a child, in violation of Iowa Code section 709.12 (2001), and three counts of lascivious conduct, in violation of section 709.14. Somers was an instructor in Western pleasure style horse riding. The State alleged Somers had improper contact with two students, Meghan, then age fourteen, and Riley, then age eleven.

Somers had an independent psychiatric evaluation by Dr. Thomas Gratzner. Dr. Gratzner came to the conclusion Somers did not show features of a psychiatric condition that would be associated with the alleged offense pattern, such as pedophilia. Somers also had a psychological evaluation with Dr. Marvin Logel, which showed Somers did not reveal evidence of past or present antisocial behavior or sociopathic personality traits. Somers sought to introduce this evidence to show his lack of a predisposition to commit the crimes charged.

The State filed a motion in limine seeking to prevent Somers from introducing the testimony of Drs. Gratzner and Logel on the ground that their testimony would constitute improper evidence concerning credibility. Relying on *State v. Hulbert*, 481 N.W.2d 329, 332-33 (Iowa 1992), the district court granted the motion in limine. The court concluded the evidence “would pose a serious threat of being improperly considered by the jury as expert opinion on the ultimate question of guilt or innocence, which clearly invades the province of the jury.”

The case proceeded to a jury trial and Somers was found guilty as charged. He was sentenced to a suspended two-year prison term on the indecent contact charge and placed on probation. He was also sentenced to fifty days in the county jail on each of the lascivious acts charges, to be served consecutively.

Somers now appeals. He claims the district court abused its discretion by excluding psychiatric evidence that he does not exhibit conditions associated with the offenses charges. He also claims there is insufficient evidence in the record to support his conviction for indecent contact with a child.

## **II. Motion in Limine**

In a general sense, we review questions of admissibility of expert testimony for an abuse of discretion. *State v. Buller*, 517 N.W.2d 711, 712 (Iowa 1994). We accord wide latitude to the district court to determine the appropriateness of a subject for expert testimony. *State v. Spilger*, 508 N.W.2d 650, 652 (Iowa 1993).

We agree with the district court that this case is factually similar to *Hulbert*. As in this case, Hulbert sought to introduce results of psychological tests showing he did not meet the profile of sex abusers. See *Hulbert*, 481 N.W.2d at 331. The district court excluded the evidence “on the ground it was not a proper subject of expert testimony and would invade the jury’s exclusive domain regarding issues of credibility.” *Id.* at 332. The supreme court upheld the district court’s decision, finding the proposed evidence “comes cloaked with an aura of scientific reliability about the predisposition of certain individuals to

commit the type of crime at issue.” *Id.* at 333. “To that extent the proposed testimony” improperly comments on “the ultimate question of guilt or innocence.” *Id.* The supreme court concluded the district court had not abused its discretion in excluding the psychological evidence. *Id.*

Like the district court in *Hulbert*, we find the district court in this case did not abuse its discretion by excluding Somers’s proposed expert testimony regarding the results of psychiatric and psychological tests. The proposed testimony would improperly invade the province of the jury regarding “the ultimate question of guilt or innocence.” *See id.*

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

Somers contends the district court should have granted his motion for judgment of acquittal on the charge of indecent contact with a child because there was insufficient evidence in the record to support his conviction on this charge. Somers denied the incident occurred. Furthermore, he argues that if the incident did occur, there was no evidence it was done with the intent to arouse his or the victim’s sexual desires.

We review sufficiency of the evidence claims for errors at law. Iowa R. App. P. 6.4. A jury’s verdict is binding if it is supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Kirchner*, 600 N.W.2d 330, 334 (Iowa Ct. App. 1999). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.14(6)(p).

Under section 709.12(1), a person commits indecent contact with a child if the person fondles or touches the inner thigh, groin, buttock, anus, or breast of the child “for the purpose of arousing or satisfying the sexual desires of either of them.” The question of whether there was sufficient evidence of an intent to arouse or satisfy the sexual desire of either of them is for the jury to decide. *State v. Murphy*, 462 N.W.2d 715, 717 (Iowa Ct. App. 1990) (involving a claim by a defendant that he had accidentally touched the breasts of two young girls while wrestling with them).

In the present case, the State presented evidence that Riley stayed at Somers’s house one weekend for the purpose of having horse riding lessons. After Somers’s girlfriend went to bed, Somers turned the television to a show depicting naked people. He then had Riley spread her legs apart, and he put the side of his face on her inner thigh. Riley testified she was scared, and after about forty-five minutes she told Somers she was tired and she went to bed.

We determine there is substantial evidence in the record to support the jury’s verdict. The jury was in the best position to determine the witnesses’ credibility. *State v. Pierson*, 554 N.W.2d 555, 559 (Iowa Ct. App. 1996). Also, it was for the jury to assign the evidence the weight it deemed proper. *State v. Knox*, 536 N.W.2d 735, 742 (Iowa 1995). The jury could well find Riley’s testimony was credible, and that Somers’s actions were done to arouse or satisfy his sexual desires.

We affirm Somers’s convictions.

**AFFIRMED.**