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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed August 26, 1980
vs.)
STEVEN ORA OWEN,) 0-193
Defendant-Appellant.) 63346

Appeal from Black Hawk District Court - L. John Degnan, Judge.

Defendant appeals conviction of sexual abuse in the second degree in violation of section 709.3, supplement to the Code 1977. REVERSED AND REMANDED.

Larry J. O'Connor, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Kathy Krewer, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant, Steven Ora Owen, appeals conviction of sexual abuse in the second degree in violation of section 709.3, supplement to the Code 1977. As grounds for reversal on appeal, defendant contends: The trial court should have severed his trial from that of the other four defendants; trial court abused its discretion in limiting cross-examination of certain witnesses for the State; the jury instruction on impeachment was incomplete; and the jury verdict was not supported by substantial evidence. We hold the trial court abused its discretion in limiting cross-examination of certain witnesses and reverse the conviction entered below. The matter is remanded for a new trial.

I.

On August 16, 1978, defendant, along with four others, was charged by information with second degree sexual abuse in connection with an alleged homosexual assault on an inmate at the Black Hawk County Jail on August 12, 1973. The five defendants were tried jointly before a jury, which returned verdicts of guilty as charged against all defendants. Defendant was sentenced to an indeterminate prison term of twenty-five years. The convictions of two of the other defendants have been reversed by this court on the issue raised here of the proper scope of cross-examination. State v. Randall, No. 63314 (Iowa Ct. App., filed March 31, 1980); State v. Bird, No. 63326 (Iowa Ct. App., filed December 27, 1979).

II.

Defendant asserts the trial court abused its discretion by refusing to allow defendant to cross-examine: The complainant regarding prior acts of misconduct during which he had made false accusations of sexual misconduct to the police; the complainant regarding his prior psychiatric history; and key witnesses for the State concerning the existence and disposition of felony charges against them. This error, defendant contends, was an abuse of discretion and denied him his sixth amendment right to confront his accusers.

The extent and scope of inquiry in cross-examination lies largely within the sound discretion of the trial court, State v. Sheffey, 250 N.W.2d 51, 55 (Iowa 1977); that discretion is abused when matters vital and proper to the accused's defense are excluded. State v. Carney, 236 N.W.2d 44, 46 (Iowa 1975). Abuse of discretion is more often found when defendant complains trial court has unduly curbed the examination

than when undue extension of the questioning is alleged. State v. Jackson, 259 N.W.2d 796, 800 (Iowa 1977) (quoting McCormick's Handbook of the Law of Evidence § 29, at 59 (2d ed. E. Cleary 1972)). The right to cross-examine is included within the right to confront witnesses. Sheffey, 250 N.W.2d at 54. It is essential to a fair trial and "is to be jealously guarded." Id. at 55.

Defendant sought to cross-examine the complainant to impeach the complainant's credibility, which is a proper subject for cross-examination. State v. Droste, 232 N.W.2d 483, 489 (Iowa 1975). The importance and weight of the complainant's testimony must be acknowledged. Moreover, in an offer of proof made by defendant the complainant admitted giving to the police as a hoax a sworn statement falsely accusing two men of threatening him with a homosexual assault. A witness may properly be questioned on prior acts of misconduct with the purpose of attacking the witness' credibility. See State v. Johnson, 219 N.W.2d 690, 695-96 (Iowa 1974). A witness' prior psychiatric history is also a proper subject for cross-examination when accompanied by a sufficient offer of proof. See State v. Harvey, 242 N.W.2d 330, 336-38 (Iowa 1976). Considering the nature of the allegations, the severity of the charge, and the offer of proof regarding complainant's prior deceptive conduct and psychiatric history, we hold the trial court abused its discretion in limiting his cross-examination by defendant.

We also find the trial court abused its discretion in limiting cross-examination of certain other witnesses for the State concerning the existence and disposition of felony charges against them. Inquiry on this matter was relevant to assessing the witnesses' credibility. After hearing such evidence, the jury could infer the witnesses' testimony was a product of witness cooperation in return for the State's dropping of the charges against them. We hold the court's limitation on cross-examination was in error. See United States v. Verdoorn, 528 F.2d 103, 107 (8th Cir. 1976); State v. Armento, 256 N.W.2d 228, 229-30 (Iowa 1977); State v. Trost, 244 N.W.2d 556, 559-60 (Iowa 1976).

We further hold the court's abuse of discretion was prejudicial to defendant. The witnesses sought to be cross-examined, particularly the complainant, were all important and crucial to the issue of guilt and the weight of their testimony cannot be denied. See State v. Carney, 236 N.W.2d at 45. The error is reversible.

Defendant, however, also asserts the verdict is without substantial support in the evidence. After considering the evidence as a whole, in the light most favorable to the prosecution, we find substantial evidence supports the verdict. State v. Holderness, 293

N.W.2d 226, 235 (Iowa 1980). Accordingly, we reverse and remand for a new trial.

Due to this determination, we do not address defendant's claims regarding severance of his trial and the adequacy of the impeachment instruction.

We reverse the conviction entered below and remand for new trial.

REVERSED AND REMANDED.