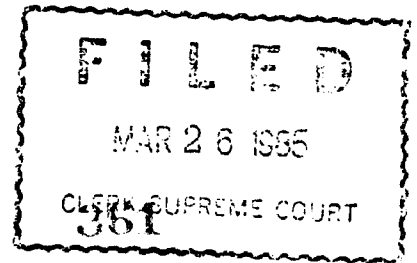


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed March 26, 1985

vs.

)

GEORGE MELBERN BENNETT,

)

5-98
84-930

Defendant-Appellant.

)

Appeal from the Iowa District Court for Black Hawk County - Dennis D. Damsgaard and Joseph C. Keefe, Judges.

Defendant appeals from his conviction of third-degree sexual abuse in violation of Iowa Code section 709.4(3). Trial was to the court. AFFIRMED.

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Steven K. Hansen, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

After a trial to the court, defendant appeals from his conviction of third-degree sexual abuse in violation of Iowa Code section 709.4(3). He asserts the trial court abused its discretion in denying his motion for new trial and his motion in arrest of judgment, both of which were based, for the most part, on the victim's recantation of her trial testimony. We affirm.

At trial the victim, Linda Sue Bennett, testified to seven acts of sexual abuse committed upon her by her father, George Melbern Bennett. She stated these acts occurred during the month of April 1983, after defendant learned she had been intimate with her 15-year-old boyfriend, Kevin Koile. She was 13 years old at that time.

After trial and before sentencing the victim attempted to recant her trial testimony in total.

At the hearing May 10, 1984, on defendant's motion for new trial and motion in arrest of judgment, the victim was again living with her mother. She had been in a foster home until February 2, 1984. Trial to the court commenced February 7, 1984. At this posttrial hearing the victim stated she learned she was pregnant by her boyfriend, Koile, who had moved to Missouri; that her mother told her "the only way she could go to Missouri with her boyfriend was if she got her dad out of jail"; and her mother had threatened that if defendant went to prison "her mother would make her life miserable."

Motions for new trial based on recanted testimony are to be scrutinized carefully and, even if true, do not necessarily entitle the defendant to a new trial. State v. Taylor, 287 N.W.2d 576, 578 (Iowa 1980). The determination as to whether a new trial should be granted is within the broad discretion of the trial court. State v. Frank, 298 N.W.2d 324, 328 (Iowa 1980). That determination will not be disturbed upon appeal unless it is reasonably clear that such discretion was abused. Id.

In determining whether a new trial should be granted, the trial court is not required to believe the recantation. Id. at 329. A witness's recantation of testimony is looked upon with utmost suspicion, and the trial court must make its decision on the basis of the whole trial and matters presented in conjunction with the motion. Id. Applying these rules to the record in this case we hold that defendant has failed to show the trial court abused its discretion in denying his motions.

AFFIRMED.