FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-51 / 89-1788

462

STATE OF IOWA,

Appellee,

vs.

CHARLES JOHN HARDISON,

Appellant.

Appeal from the Iowa District Court for Cedar County, Margaret Briles and Max R. Werling, Judges.

The defendant appeals his conviction, following a jury trial, for second-degree sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Brian K. Sissel, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Julie Ann Halligan, Assistant Attorney General, and Lee W. Beine, County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

PER CURIAM

Charles Hardison was accused of sexually abusing his stepdaughter, H.L., during the period of November 6, 1986, to November 6, 1988. Hardison subsequently filed an application for a court-appointed evaluation of the complaining witness, his stepdaughter, and an evaluation of himself to determine his competency to stand trial.

At the January 6, 1989, hearing on the motions, June Hardison, the defendant's mother, testified H.L. was of limited intelligence and was enrolled in special education classes. She further testified H.L. constantly used vulgar language and lied to her. She also testified H.L. had seen numerous psychologists for behavioral problems. Regarding her son's behavior, June Hardison testified her son has had behavioral problems throughout his life. She further testified Hardison cannot read, and can write his name, but is otherwise limited in basic skills. She also testified Hardison attempted to disfigure himself by shooting his genitals. June Hardison stated she did not believe her son appreciated the severity of the charges against him.

The trial court subsequently denied defendant's applications, and the case proceeded to trial. On August 3, 1989, the trial court entered a mistrial due to a hung jury. The defendant was retried in October 1989, and a jury found him guilty of sexual abuse in the second degree. He has appealed the resulting conviction. We affirm.

The defendant contends the district court abused its discretion by denying his request for a psychiatric examination of the complaining witness, his stepdaughter. He contends such an examination was warranted because his stepdaughter had a history of untruthfulness and behavior problems.

Defendant also contends the district court abused its discretion by denying his pretrial request for a psychiatric examination of himself in order to determine his competency to stand trial. He argues that because of his low intelligence, illiteracy, and history of injuring himself, there was a substantial question whether he could comprehend the charges against him or assist in his own defense.

Our courts previously recognized that the trial court had broad jurisdiction in determining whether a psychological examination of a complaining witness was warranted. State v. Tharp, 372 N.W.2d 280, 284 (Iowa App. 1985). Pursuant to Tharp, the defendant had to present a compelling reason to the trial court before a psychiatric examination of the complaining witness would be ordered. Id. at 283.

However, in State v. Gabrielson, 464 N.W.2d 434 (Iowa 1990), the Iowa Supreme Court reconsidered the question of whether a trial court had the authority to order an examination of the complaining witness. The court in Gabrielson determined that, contrary to language in Tharp,

there exists "no statutory authority empowering the court in a criminal case with the ability to order victims of sexual abuse to undergo psychiatric examinations designed to evaluate the complainant's credibility." 464 N.W.2d at 437. The Gabrielson court also concluded there was no common law authority to order such an examination. Id. at 438. The court noted that even if the trial courts were given the power to order sexual abuse victims to undergo psychiatric evaluations, there would be no mechanism of enforcing such an order. Id. The court, citing to State v. Looney, 294 N.C. 1, 28, 240 S.E.2d 612, 627 (1978), held that "the possible benefits to an innocent defendant, flowing from such a court ordered examination of the witness, are outweighed by the resulting invasion of the witness's right to privacy and the danger to the public interest from discouraging victims of crime to report such offenses . . . ." Id.

Because of the supreme court's holding in Gabrielson, Hardison's argument that the trial court should have ordered H.L. to submit to a psychological examination must fail.

Defendant also maintains the trial court abused its discretion in denying his application for a psychiatric evaluation. He claims his mother's testimony that he has limited intelligence, has had behavioral problems in the past, was institutionalized on several occasions, and attempted to disfigure himself by shooting his genitals,

supports his argument the State should have ordered his evaluation. We disagree.

The central issue raised at the trial court level was whether the court should have ordered a psychological evaluation to determine if defendant was competent to stand trial. On appeal defendant argues he "demonstrated to the court that his sanity, at the time of the offense, could be a significant factor at trial * * *." There was nothing before the trial court, however, indicating defendant was contending his sanity at the time of the offense was at issue. The trial court was able to observe Hardison in the courtroom and had before it all the evidence presented at the hearing on January 6, 1989. The trial court determined there was insufficient evidence to warrant a psychological evaluation of the defendant. We find no abuse of discretion here.

AFFIRMED.