IN THE COURT OF APPEALS OF IOWA

No. 7-147 / 96-0670

000665

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DAVID RAY HINMAN a/k/a RAYMOND JAMES DICKERSON,

Defendant-Appellant.

FILED
JUN 26 '97
CLERK SUPREME COURT

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

David Hinman appeals from his conviction, following a jury trial, for second-degree sexual abuse in violation of Iowa Code section 709.3(2)(1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Lynn K. Fillenwarth, County Attorney, and Richard Meyer, Assistant County Attorney, for appellee.

Heard by Habhab, C.J., and Cady and Vogel, JJ.

HABHAB, C.J.

David Hinman was charged with second-degree sexual abuse after three-year-old T.M. reported to his mother, Denise, that Hinman had performed a sex act on him. Hinman was also charged with theft and being an habitual offender, but these charges were severed and Hinman pleaded guilty to them.

Prior to trial, the State filed a motion in limine seeking to exclude evidence of two prior Department of Human Services physical abuse investigations from 1992 and 1994 regarding the same boy. These reports concluded the boy had been physically abused but the perpetrator could not be identified. The State argued this evidence was not relevant, had very little probative value, and would greatly prejudice the State. Hinman claimed the reports reflected Denise could have abused her son in the past and may have done so in this case.

The district court granted the motion in limine, concluding the past reports had no possible relevance to the present proceedings and any minimal probative value was outweighed by the potential for prejudice.

Following a jury trial, Hinman was found guilty as charged and the district court sentenced him to an indeterminate twenty-five year prison term.

Hinman appeals. He contends under Iowa Rule of Evidence 608(b)[1] he should

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[1] Iowa Rule of Evidence 608(b) provides:

(b) Specific Instances of Conduct. Specific instances of conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of a crime as provided in Iowa Evid. R. 609, may not be proved by

have been allowed to use the reports to impeach Denise through cross-examination using evidence of specific instances of conduct.

Our review of a trial court's ruling under 608(b) will be disturbed on appeal only on abuse of discretion. *State v. Smith*, 522 N.W.2d 591, 593 (Iowa 1994). We find an abuse of discretion only when the court has exercised its discretion on grounds clearly untenable or to an extent clearly unreasonable. *Id.* at 593.

In granting the State's motion in limine, the district court held, in part:

> On the record made, this court cannot conclude that examination regarding the reports of abuse . . . could have any possible relevance to the proceeding. They have no apparent connection whatsoever to this charge; indeed following the mother's report in each instance, abuse was founded but the identity of the perpetrator was unknown. The connection to the essential inquiry, truth telling, is so attenuated that the court concludes that any minimal probative value such an inquiry might have is outweighed by the potential for prejudice and the probability of issue confusion.

Hinman asserts the district court abused its discretion in not allowing him to use the abuse reports to impeach Denise's testimony. He points to our decision in *State v. Chambers*, 370 N.W.2d 600 (Iowa App. 1985), to support this assertion.

In *Chambers*, we reversed the defendant's conviction of second-degree robbery. The defendant in that case attempted to impeach the victim-witness with

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> extrinsic evidence. They may, however, in the discretion of the court, if probative of the truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

questions regarding several theft or robbery charges she had filed with police in the previous year. *Id.* at 601-02. At trial the defendant testified there was no robbery and that rather a fight broke out between the victim-witness and a second woman and he attempted to break it up. *Id.* at 601. The second woman, who was with the defendant at the time of the incident, was also charged with the defendant. *Id.* We found the trial court abused its discretion in sustaining the State's objection to questioning regarding the witness's prior reports of robbery and theft charges. *Id.* at 603. We reasoned that the credibility of a witness is particularly important when his or her testimony is uncorroborated by the evidence. *Id.* at 602. Further, the victim-witness knew the second woman charged with the defendant, the two women had been in a prior fight, and one of the prior complaints made by the victim-witness was against this second woman. *Id.* None of the prior charges resulted in action by the county attorney and the defendant asserted an alibi defense. *Id.*

We find this case more closely resembles *State v. Martin*, 385 N.W.2d 549 (Iowa 1986), than *Chambers*. In *Martin*, the district court granted the State's motion in limine and prohibited the defendant from attempting to impeach the robbery victim by questioning her about other assault reports she had filed with police. The defendant appealed, claiming under Iowa Rule of Evidence 608(b) she should have been allowed to cross-examine the victim as the evidence demonstrated the victim motive for filing the charge. The supreme court affirmed the conviction and fo

the district court had not abused its discretion in precluding the inquiry on cross-examination. The court distinguished the case from *Chambers* as the witness's testimony was corroborated by that of another witness; the victim and defendants had virtually no prior relationship; and the prior charges filed by the witness were against persons who were unrelated to the case and none of the charges were robberies. Further, the defendant was not asserting an alibi defense.

In the case before us, Hinman sought to impeach Denise's testimony with the prior abuse reports; however, the reports did in fact find T.M. had been abused by someone, and thus, they were not frivolously made. Denise's testimony was corroborated by several witnesses at trial and none of the abuse reports alleged Hinman was the perpetrator of the abuse. The reports were made against Denise and persons unrelated to the case. The record does not support Hinman's contention that Denise made the 1994 report. We also note neither report found Denise had perpetrated abuse against T.M.

In our review of the record, we affirm Hinman's conviction. We agree with the trial court's finding that any minimal probative value the reports may have had was outweighed by the potential for prejudice and confusion. We find the trial court did not abuse its discretion in granting the State's motion in limine.

AFFIRMED.