IN THE COURT OF APPEALS OF IOWA

FILED
OCT 28 1987
CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	Filed October 28, 1987
ROBERT CAMPBELL, JR.,	)	7-330 86-1320
Defendant-Appellant.	)	

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Appeal from the Iowa District Court for Black Hawk County (No. DFX 006460) - Joseph C. Keefe, Judge.

Defendant appeals from a judgment entered on his conviction of three counts of sexual abuse in the third degree. **AFFIRMED.**

Charles L. Harrington, Appellate Defender and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Lona Hansen, Assistant Attorney General; and James M. Metcalf, County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel, and Sackett, JJ. Snell, J., takes no part.

SACKETT, J. 259

Defendant, Robert Campbell, Jr., appeals from a judgment entered on a jury verdict finding him guilty of three counts of sexual abuse in the third degree. See Iowa Code §§709.1, .4(4)-(5) (1985). The abuse occurred during 1985 and 1986. The victim, who is defendant's daughter, and two of his other children testified for the State.

Defendant contends the trial court abused its discretion in its prospective ruling that if defendant took the stand to testify about a specific incident which related to the credibility of the State's witnesses, the State could cross-examine defendant on the charged offenses. Because of the trial court's ruling, defendant did not offer evidence of the alleged incident in which the witnesses falsely accused another man of abusing them.

We find the trial court reached the issue of the permissible scope of cross-examination only by virtue of the erroneous assumption that evidence of the prior incident would have been admissible if offered. Thus, we find any error in the trial court's ruling is harmless, and we affirm defendant's conviction and sentence.

In an offer of proof outside the presence of the jury, defendant's last witness testified in 1981 or 1982 an unknown man appeared at his house, accompanied by some young children, and attacked him. The unknown man accused the witness of sexually abusing his children. The witness testified the accusation was false and no charges were filed against him after a subsequent police investigation. The witness could not positively identify defendant as the unknown man who attacked him.

Defendant's counsel then made a statement defendant proposed to testify he was the man who attacked the witness. This limited direct examination

would be offered to impeach the witnesses' credibility by showing four years earlier they had falsely accused a man of sexual abuse.

Evidence of prior false accusation by a complaining witness is certainly probative of the issue of credibility. See State v. Chambers, 370 N.W.2d 600, 602 (Iowa App. 1985). "Courts have uniformly stated that, when a complainant has recanted prior accusations or they are otherwise demonstrably false, the trial court must allow the defendant to cross-examine the complaining witness regarding them." State v. LeClair, 730 P.2d 609, 615 (Or. Ct. App. 1986) (citations omitted). See, e.g., State v. Hutchinson, 688 P.2d 209, 212-13 (Ariz. Ct. App. 1984); State v. Anderson, 686 P.2d 193, 200 (Mont. 1984).

Some courts have imposed a standard less rigorous than that the prior accusation be demonstrably false. LeClair, 730 P.2d at 615. Those courts permit a defendant to cross-examine a complaining witness concerning other accusations where there is "some evidence" the prior accusations were false, unless the probative value of the evidence is substantially outweighed by the risk of prejudice, confusion, embarrassment or delay. Id.; see Iowa R. Evid. 403.

We find the offer of proof in the present case lacked sufficient facts to show the alleged prior charges were ever made. See Hutchinson, 688 P.2d at 213. There is no competent evidence the prior accusations, if made, were false. State v. Martin, 385 N.W.2d 549, 552-53 (Iowa 1986). See Anderson, 686 P.2d at 200. Evidence of prior charges has been barred in those instances where the charges have been dropped due to a belief there was insufficient evidence to prosecute because the evidence is not probative of truth or falsity. Id.

We also note the false accusations were allegedly made four years prior to the incidents of abuse leading to defendant's conviction. The trial court could properly have given great weight to this fact in holding the prior accusations

remote and therefore inadmissible. Hutchinson, 688 P.2d at 213; see Chambers, 370 N.W.2d at 602.

Iowa Rule of Evidence 608 governs the admission of evidence of credibility. Rule 608(b) provides:

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility . . . may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness . . . .

(Emphasis added). Thus, even if evidence of the prior false accusations were admissible, it could only have been inquired into on cross-examination of the State's witnesses.

The trial court incorrectly ruled if defendant took the stand to testify as to the witnesses' credibility, then defendant could be cross-examined on the offenses presently charged. See Iowa R. Crim. P. 19(1) (State strictly confined on cross-examination to matters testified to in direct); Iowa R. Evid. 608(b) (giving of testimony relating to credibility does not waive privilege against self-incrimination). Any error on this issue, however, is clearly harmless. See State v. Cole, 295 N.W.2d 29, 39-40 (Iowa 1980). The proposed evidence relating to the witnesses' prior accusations would have been inadmissible if offered. The prior accusations were not shown to be false and were offered only by extrinsic evidence to impeach the witnesses' credibility.

It is proper for this court to affirm on grounds other than those relied upon by the trial court. See Wenck v. State, 320 N.W.2d 567, 569 (Iowa 1982).

We affirm.

AFFIRMED.