

IN THE COURT OF APPEALS OF IOWA

No. 1-53 / 90-63

FILED

APR 23 1991

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

272

ROY LEE VAN LANINGHAM,

Appellant.

Appeal from the Iowa District Court for Muscatine County, Jack L. Burns, Judge.

The defendant appeals his convictions, following a jury trial, for the crimes of third-degree sexual abuse and incest. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Stephen J. Petersen, County Attorney, for appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ., but decided en banc.

PER CURIAM

Roy Van Laningham was accused of sexually abusing his fifteen-year-old stepdaughter. He was charged with sexual abuse in the third degree in violation of Iowa Code section 709.4 and incest in violation of Iowa Code section 726.2.

In a pretrial deposition the victim stated she had contracted the venereal disease chlamydia from Van Laningham. She also stated that Van Laningham was the only possible source for the disease because her only other sexual experience was with a virgin who could not have transmitted the disease. She tested positive for chlamydia some nine to ten months after the last alleged act of sexual abuse.

Following this deposition, Van Laningham underwent a medical test for chlamydia. The test result was negative. This test was performed approximately one year after Van Laningham's last alleged act of sexual abuse.

At his jury trial Van Laningham sought to introduce into evidence (1) the fact the victim claimed to have contracted chlamydia from him and (2) the fact a medical test had shown him to be free of chlamydia. He argued this evidence was both exculpatory and impeached the victim's testimony.

The district court refused to admit the evidence regarding chlamydia. The district court concluded the evidence was irrelevant because of the time gap between the last alleged act of abuse and the respective medical tests

showing chlamydia to be present in the victim and absent in Van Laningham.

A jury subsequently found Van Laningham guilty of the crimes of third-degree sexual abuse and incest. Van Laningham has appealed the resulting convictions.

Van Laningham contends the district court abused its discretion by excluding his proposed evidence concerning chlamydia. He argues the evidence was relevant to the issue of the victim's credibility. He also claims the evidence was admissible under an exception to Iowa's "rape shield law," Iowa Rule of Evidence 412, because it tended to show he was not "the source of [the victim's] injury." See Iowa R. Evid. 412(b)(2)(A).

Our review is on errors of law. Iowa R. App. P. 4.

We note initially we do not necessarily agree with the trial court's rather sweeping finding the proffered evidence was irrelevant. Our ruling in this case is based on other grounds. "We are obligated to affirm an appeal where any proper basis appears for a trial court's ruling, even though it is not one upon which the court based its holding." Citizens First Nat. Bank v. Hoyt, 297 N.W.2d 329, 332 (Iowa 1980).

We have reviewed the transcript of the trial court hearing on the admission of the evidence at issue. The record is devoid of any definition of "chlamydia." The defense attorney at the hearing asserted it was a sexually transmitted disease. He further stated the disease rarely clears up without medical intervention.

However, the defense attorney was not under oath. Nor does the record show this defense attorney was even competent to testify about this disease, its origin, or its method of transfer. We cannot tell from the record if chlamydia is transmittable exclusively through sexual intercourse, or if it may be transmitted in some other manner. We are not told the duration of the disease or its susceptibility to treatment.

In short, the record before us is not adequate to review defendant's claim. No offer of proof was made. See Iowa R. Evid. 103(a)(2); State v. Hahn, 259 N.W.2d 753, 759 (Iowa 1977). No competent medical testimony about the disease was introduced. See Hahn, 259 N.W.2d at 759. We determine the defendant failed to adequately preserve error on this issue.

We affirm the trial court.

AFFIRMED.

Oxberger, C.J., and Donielson, Hayden, and Habhab, JJ., concur; Schlegel and Sackett, JJ., dissent.

SCHLEGEL, J. (dissenting)

I respectfully dissent. It may well be that had defendant been permitted to develop the evidence relative to the victim's claim that she contracted chlamydia from him, the outcome of this case may have been different. That being so, I believe the trial court was in error in excluding that evidence.

The majority states: "The district court concluded the evidence was irrelevant because of the time gap between the last alleged act of abuse and the respective medical tests showing chlamydia to be present in the victim and absent in Van Laningham." Maj. op. at 2-3.

The majority has examined the transcript and finds no definition of chlamydia. Because of this, the majority approves its exclusion. Yet, the victim claims she contracted the disease--or condition--from the defendant.

The evidence is relevant to show that the defendant did not have the disease, which would at least create the inference that he did not transmit it to the victim. As to the time gap to which the trial court referred, certainly that would be a question for the jury to decide. The ruling was prejudicial error.

I would reverse and remand the case for a new trial, allowing the defendant to develop that evidence.

Sackett, J., joins this dissent.