FILED
OCT 18 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed October 18, 1979

vs.)

EARL WILLIAM CROCKER,) 222/62614

Defendant-Appellant.)

Appeal from Black Hawk District Court - Frank D. Elwood, Judge.

Defendant appeals conviction for committing lascivious acts with a child alleging the trial court erred by admitting testimony on prior acts, by permitting introduction of photographic evidence and by the manner in which it allowed the prosecutrix to testify. - Reversed and remanded.

R. William Petersen, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Julie Pottorff, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant Earl William Crocker appeals conviction for committing lascivious acts with a child in violation of section 725.10(1), The Code 1977. Reversed and remanded.

Defendant Crocker was charged with committing lascivious acts with a child and convicted by a Black Hawk county jury. Defendant asserts several grounds for reversal. We find the trial court improperly admitted testimony on defendant's prior offenses and reverse on that ground. We comment on the remaining issues that may arise upon retrial.

I. The trial court overruled defendant's motion in limine to exclude evidence of past conduct stating, "[T]he court concludes the evidence, as will be permitted, shows clearly and convincingly the offenses of a nature similar to the one now alleged and sufficient to show lewd disposition on the part of the defendant." In State v. Cott, No. 62237, slip op. at 3 (Iowa, filed Sept. 19, 1979) the court rejected the "lewd disposition" exception to the general rule that evidence of prior offenses is inadmissible. Nevertheless, if the trial court's ruling can be sustained on any other ground, no reversible error exists. State v. Nowlin, 244 N.W.2d 596, 600 (Iowa 1976). We look to the exceptions to the general rule as stated in State v. Wright, 191 N.W.2d 638, 641 (Iowa 1971), to determine if the trial court's ruling may be upheld on other grounds.

— Motive, intent, mistake or accident. In Cott, slip op. at 6, the court said motive is not at issue in a case such as this since the offender's mental state inhered in the acts themselves. The court gave the same reason for concluding the intent and mistake or accident exceptions were inapplicable.

— Common scheme or system of criminal activity. In Cott, Id., the court said the prior incidents:

> . . . would neither serve to show that one crime was 'dependent or connected with' the other, id., nor would it 'complete the story of the crime on trial by proving the immediate context of happenings near in time and place. (citation). Hence the only bases for our applying the common scheme exception in this case would be an assumption that the accused was compelled by some sort of internalized plan or character defect. (citation). That would place us perilously close to relying upon the defendant's criminal disposition to find relevance in the disputed testimony.

In Cott, the disputed testimony was held admissible under the identity exception.

In this case, however, identity is not an issue; the defendant is the step-father of the prosecutrix and lives in the same home she does.

Since none of the Wright exceptions derogate the general rule prohibiting evidence of prior offenses, the trial court erred by allowing introduction of such evidence. We therefore reverse and remand for new trial.

II. Since a new trial will follow, we briefly consider defendant's other complaints. He asserts the trial court erred by admitting photographs of the victim. The determination to admit or refuse admission of photographs as evidence is discretionary and the trial court's ruling will not be reversed unless an abuse of discretion is shown, such as where the evidence clearly is irrelevant or prejudicial. State v. McGee, 280 N.W.2d 436, 441 (Iowa 1979). Here, the photographs were relevant to material issues. They showed presence of grease marks on the prosecutrix's abdomen and testimony indicated the defendant had been working on a truck the day of the alleged occurrence. We do not believe the trial court abused its discretion by admitting the photographs as evidence.

Defendant also challenges the manner in which the court allowed the alleged victim to testify. Since the conditions are likely to be different on retrial, we do not determine whether the procedures used below were duly protective of defendant's constitutional rights.

For the reasons stated in Part I, this matter is reversed and remanded for new trial.