FILED
APR 26 1979
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed April 26, 1979
vs.)
RODNEY DALE McDOWELL,) 101/62462
Appellant.)

Appeal from Black Hawk District Court - Roger F. Peterson, Judge.

Defendant appeals robbery conviction alleging he should have been permitted to cross-examine a State's witness concerning the witness' juvenile record and residence at the Boys' Training School. - Reversed and remanded.

John S. Pieters, of Pieters & Pieters, Waterloo, for Appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas A. Evans, Jr., Assistant Attorney General, for Appellee.

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

OXBERGER, C. J.

Defendant Rodney McDowell appeals conviction of robbery with aggravation in violation of section 711.2, The Code 1977, alleging he was denied his constitutional rights of confrontation and cross-examination. We reverse.

Prior to trial, the State made a motion in limine seeking to prevent defense counsel from inquiring into the residence or juvenile record of a State's witness, Tony Scott. After conducting a hearing on the motion, trial court granted it. The State now contends that trial court's disposition of the motion is not subject to review. Although the granting or rejecting of a motion in limine is ordinarily not reversible error, an exception exists where the motion is granted on an evidentiary hearing, the court is advised of the factual situation, and nothing occurs at trial to change the status. State v. Langley, 265 N.W.2d 718, 720 (Iowa 1978). In the instant case, the fact of Scott's confinement in the training school was known to the court and was not disputed by the State. In his memorandum to the court in resistance to the motion, defense counsel apprised the trial judge that his purpose in bringing up Scott's residence was to show bias. Trial court's disposition of the motion left no doubt that cross-examination relating to this matter would not be permitted. Nothing occurred at trial to change the situation. We conclude that the issue was sufficiently preserved for appellate review. See also State v. Miller, 229 N.W.2d 762, 767-68 (Iowa 1975).

Cross-examination is the principal method for testing a witness' believability. The United States Supreme Court has recognized "that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Davis v. Alaska, 415 U.S. 308, 316, 94 S. Ct. 1105, 1110, 39 L.Ed.2d 347, 354 (1974). From the record it is clear that the veracity and accuracy of Scott's testimony were key elements in the State's case against defendant. By questioning Scott concerning his status of confinement at Eldora, defense counsel hoped to establish the basis for an inference of undue pressure. Such an inference could logically arise because Scott, as a committed juvenile, was under the State's control. His future could very much depend on his cooperation with juvenile authorities. We find, therefore, that defendant should have been permitted to cross-examine Scott on the question of his residence at the training school. See Davis, 415 U.S. at 416-17, 94 S. Ct. at 1110-11, 39

L.Ed.2d at 354. We also conclude that the exclusion of this evidence constituted prejudicial error. See State v. Carney, 236 N.W.2d 44, 46-47 (Iowa 1975).

Defendant's conviction is reversed, and the case is remanded for a new trial.

REVERSED AND REMANDED.

All judges concur, except Carter and Donielson, JJ., who dissent.

CARTER, J. (dissenting)

I dissent. The single issue presented is whether the trial court violated the defendant's sixth amendment rights by sustaining, prior to trial, a motion in limine on behalf of the State. The motion produced a ruling that neither (a) the fact that a State's witness was a resident of the state training school for boys, nor (b) the prior juvenile record of the witness should be disclosed to the jury during the trial.

Defendant suggests no basis upon which the prior juvenile record of the witness was properly admissible. As to the materiality of the evidence of the witness's residence at the state training school, the trial court's ruling is not inconsistent with State v. Cornell, 266 N.W.2d 15, 21 (Iowa 1978), cert. denied, 99 S.Ct. 340 (1978).

Defendant urges that the witness's status was admissible on the ground of potential bias of the witness. I do not reject the possibility that such status may, under certain circumstances, be sufficiently indicative of a potential for bias to be admissible on this ground. See Davis v. Alaska, 415 U.S. 308, 316, 94 S.Ct. 1105, 1110, 39 L.Ed.2d 347, 354 (1974) (juvenile offender on probationary status). But from the record before us I am not satisfied that the defendant tendered this issue to the trial court with sufficient specificity to support a claim of reversible error.[1]

Nor can I conclude that this case should be treated as an exception to the general rule that error may not be predicated upon the denial of a motion in limine. State v. Johnson, 222 N.W.2d 483, 485 (Iowa 1974). I would affirm the judgment and sentence.

Donielson, J., joins in this dissent.

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[1] Based upon the record in the trial court, defendant's claim of bias is based on the assertion that mere residence at the state training school was sufficient to establish bias. He offered no other ground for potential bias. This makes this case difficult to distinguish from Cornell, 266 N.W.2d at 21, dealing specifically with the sixth amendment issue. The trial court determined, after an unreported hearing, that defendant's status as a resident of the state training school was not the result of an adjudication that he had been guilty of a crime.