

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 25 1985

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

ERVIN V. HARRIS,)

Defendant-Appellant.)

Filed June 25, 1985

454

5-206
84-924

Appeal from the Iowa District Court for Polk County - Louis A. Lavorato,
Judge.

Defendant appeals from his conviction for sexual abuse in the second degree
in violation of Iowa Code sections 709.1 and 709.3. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, and Linda Del Gallo,
Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven K. Hansen, Assistant
Attorney General, for plaintiff-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

PER CURIAM

The victim, a ten-year-old boy, was playing at an old high school when he was approached by the defendant. The defendant initiated a conversation with the boy and then took him to the basement of an old building and sexually assaulted him. The defendant threatened to hurt the boy if he told anyone. Following the incident, the boy returned to his grandmother's house, where he was staying while his parents were out of town.

The victim did not tell his mother about the incident until approximately a year later. The mother then reported the incident to the police. The victim identified the defendant from a photo array as the person who had forced him to submit to an act of sexual abuse.

An attorney who represented defendant on pretrial matters made a general oral request for exculpatory information. The State's file was reviewed at that time but no disclosure of exculpatory information was made. Following defendant's conviction, trial counsel moved for a new trial when he discovered that the State had not disclosed a police report which he felt indicated that the victim had demonstrated a tendency to fabricate stories. The motion was denied and defendant has appealed.

The police report stated:

The mother has noticed that Ronnie doesn't want to go to grandma's house anymore and play like he use to. She stated he's having a lot of problems in the last year at school. He had been going to Phoenix Elementary School in West Des Moines and he had been fighting with the male teachers, had been fighting and fabricating stories against his stepfather who Ronnie was very close to. She stated that he's been going through a lot of different things that Ronnie has never done before, just to get back at men it seemed like after she heard the story from Ronnie.

Suppression of evidence by the prosecution which is favorable to an accused violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Brady

v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97, 10 L. Ed. 2d 215, 218 (1963). To establish a due process violation it must be shown that: "(1) there was a proper defense request for the evidence; (2) the evidence would be favorable to the defendant; and (3) the evidence was material." See State v. Brown, 337 N.W.2d 507, 509 (Iowa 1983).

The standard of materiality where a general request for exculpatory evidence is made is whether the omitted evidence creates a reasonable doubt that did not otherwise exist. United States v. Augers, 427 U.S. 97, 112-13, 96 S. Ct. 2392, 2402, 49 L. Ed. 2d 342, 355 (1976).

In this case, the defendant has failed to show that the evidence was favorable to the defendant or that it was material. The report showed how the boy's character changed after the attack. It indicated that the boy did not like to visit his grandmother anymore; he was staying at her house at the time the assault occurred. It also indicated that the boy now manifested an antagonistic and resentful reaction to various males. It was clearly unfavorable to the defendant in this respect.

Defendant argues that the statement that the boy had been "fabricating stories against his stepfather" was the sole attack on credibility. The defendant argues that this evidence raised a reasonable doubt as to defendant's guilt because the sole evidence in this case centered on the victim's credibility. The record indicates that the victim was very sure during his testimony and his testimony could not be shaken during cross-examination. We do not believe that this additional evidence would have created a reasonable doubt of the defendant's guilt.

AFFIRMED.