IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	Filed March 9, 1988
ROBERT EIDE, SR.,	)	7-548 87-206
Defendant-Appellant.	)	399

Appeal from the Iowa District Court for Boone County (No. 7546) - Carl Peterson (on motion to dismiss) and M. D. Seiser, Judges.

The defendant appeals from his conviction, following a jury trial, for the crime of perjury. **AFFIRMED.**

John P. Roehrick, of Roehrick, Hulting & Moisan, Des Moines, for the defendant-appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden and Virginia Barchman, Assistant Attorneys General, for the plaintiff-appellee.

Heard by Hayden, P.J., and Sackett, and Habhab, JJ.

SACKETT, J.

Defendant, Robert Eide Sr., appeals from his conviction, following a jury trial, for the crime of perjury in violation of Iowa Code section 720.2 (1985).

Defendant filed a civil suit against Harriet Losee alleging Losee slandered him "in stating that Plaintiff [Eide] was a child molester; that Plaintiff was molesting little girls; and that the children Plaintiff is alleged to have molested are 5, 6, 7, or 8-year olds." Losee's answer to Eide's petition raised the truth of the statements as an affirmative defense.

Eide's deposition was taken in the course of the civil suit. Eide made the following statements in the course of his deposition:

> Q. Did you ever expose yourself? A. No, I didn't.
>
> Q. —your genitals—to—. A. No, sir, I haven't.
>
> Q. Any of these girls? A. No, sir.
>
> ***
>
> Q. Did you ever masturbate in front of any of these children? A. No, I haven't.

Defendant was subsequently charged with perjury. Before trial he filed a motion to dismiss or adjudicate law points which the court overruled. Defendant was convicted of perjury after a jury trial. There was ample evidence before the jury to show the statements defendant made in his deposition were false.

Iowa Code section 720.2 provides in part that

> [a] person who, while under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized by law, knowingly makes a false statement of material facts or who falsely denies knowledge of material facts, commits a class "D" felony.

Defendant argues on appeal, as he did in his motion to dismiss, that the State failed to prove the statements made in his deposition were material.

A false statement of fact knowingly made under oath or affirmation is material and will support a charge of perjury if it directly or circumstantially

(1) supports or attacks the credibility of a witness, or (2) has a legitimate tendency to prove or disprove some relevant fact irrespective of the main fact at issue, or (3) is capable of influencing the court, officer, tribunal or other body created by law on any proper matter of inquiry. State v. Gartin, 271 N.W.2d 902, 914 (Iowa 1978). The materiality of false testimony is a law issue determinable by the court. State v. Deets, 195 N.W.2d 118, 122 (Iowa 1972).

The crux of defendant's argument is "molesting certainly does not include exposure or acts of masturbation." Defendant contends the statements regarding exposure and masturbation are not material to the slander suit, which involved Losee's statement defendant was a child molester.

Substantial truth is an absolute defense to an action for defamation. Hovey v. Iowa State Daily Publication Bd., 372 N.W.2d 253, 256 (Iowa 1985). In Hovey, the alleged libel was publishing that plaintiff was a rape victim when in fact she was the victim of forced oral sex. The supreme court held in Hovey the publication was substantially truthful. Id. The statement in Hovey was in no manner made false by substituting the word in common usage for an exact legalism. See id. (quoting Simonson v. United Press Int'l, Inc., 654 F.2d 478, 482 (7th Cir. 1981)).

A dictionary definition of "molest" is to

> annoy, persecute, disturb, torment; to meddle or interfere with unjustifiably often as a result of abnormal sexual motivation.

Webster's Third New Int'l Dictionary 1455 (1971). Following the rationale of Hovey, we believe defendant's false statements are material because they have a legitimate tendency to prove a relevant fact in the slander suit: whether Losee's remark that Eide is a child molester is substantially true. Proof of exposure and masturbation in front of children would have been probative in the slander action on the issue of substantial truth.

We hold the trial court did not err in overruling defendant's motion to dismiss. The court did not err in deciding as a matter of law the allegedly false statements defendant made at his deposition were material. We affirm defendant's conviction for perjury.

AFFIRMED.