FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed February 22, 1979
v.)
SCOTT CARROLL PETTY,) 29 / 62010
Appellant.)

Appeal from Black Hawk District Court - William G. Klotzbach and Forrest Eastman, Judges.

Defendant appeals conviction of rape alleging erroneous exclusion of evidence of victim's prior sexual conduct and insufficient credible evidence to warrant his transfer from juvenile court. - Affirmed.

R. William Petersen, Waterloo, for Appellant.

Thomas J. Miller, Attorney General of Iowa and J. Susan Allender, Assistant Attorney General, for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant Scott Petty appeals conviction of rape in violation of § 698.1, The Code, alleging that evidence of prosecutrix' abortion was impermissibly excluded and that hearsay statements were unconstitutionally admitted at his juvenile transfer hearing. We affirm the conviction.

Defendant first contends he should have been allowed to present evidence showing that prosecutrix had had an abortion approximately four months prior to the alleged rape. He argues this evidence was relevant, not to prove the victim's consent, but rather to contradict testimony concerning her religiosity. Under § 782.4, The Code, this type of evidence is admissible only if trial court finds it relevant to a material factual dispute and its probative value is not outweighed by danger of unfair prejudice, confusion of issues, or unwarranted invasion of privacy. State v. Ball, 262 N.W.2d 278, 281 (Iowa 1978). The test of relevancy is whether the proffered evidence renders the desired inference more probable than it would be without the evidence. Id. at 279. Prosecutrix testified that she had attended a church concert at the Sunnyside Temple the evening the rape occurred. The witness was not questioned as to the extent of her religious convictions. The mere reference to her attendance at church on the night of the rape did not open the door to impeachment evidence seeking to show that she was not a particularly religious person. The prosecutrix' religious convictions were simply not in issue. Trial court did not abuse its discretion in excluding evidence of her previous abortion.

Next, defendant contends he was denied his constitutional right to cross-examine an adverse witness at his juvenile transfer hearing. At that hearing, the State offered into evidence a signed statement which the prosecutrix made to the police the morning after the rape. Juvenile court overruled defendant's hearsay objection and accepted the statement "solely for the limited purposes" of the hearing. We think it is unnecessary to decide whether this evidence was unconstitutonally admitted. We have reviewed the instant transfer proceeding de novo. Cf. In Interest of Thompson, 241 N.W.2d 2, 4 (Iowa 1976) (delinquency proceeding); In Interest of Osborn, 220 N.W.2d 632, 633 (Iowa 1974) (dependency

proceeding); In Interest of Kelley, 262 N.W.2d 781, 782 (Iowa 1978) (termination proceeding); section 232.58, The Code 1977. In a proceeding where review is de novo, we arrive at our own determination based on admissible evidence only. In Interest of Wheeler, 229 N.W.2d 241, 244 (Iowa 1975).

At a juvenile transfer hearing, the court makes an initial determination of probable cause and then decides whether or not its jurisdiction should be retained. See Bergman v. Nelson, 241 N.W.2d 14, 16 (Iowa 1976). Defendant has not raised the question of whether probable cause existed in the absence of the challenged evidence, so we will not consider that issue. In connection with the decision to transfer, there was evidence showing that defendant had a history of difficulties with school personnel and several previous referrals to the Black Hawk County Probation Department. At the time of the hearing, defendant was only 11 months away from reaching the age of majority. We find the evidence, even without the prosecutrix' statement, supports juvenile court's order of transfer. See Edwards v. State, 249 N.W.2d 851, 854 (Iowa 1977).

AFFIRMED.