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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed June 29, 1982

STATE OF IOWA, )
Plaintiff-Appellant, )
vs. ) 2-148 / 66785 171
GEORGIA RAE SPARKS, )
Defendant-Appellee. )

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

The State was granted discretionary review of the trial court's order sustaining defendant's motion in limine to prevent her husband from testifying in her prosecution for false use by her of a financial instrument in violation of section 715.6, The Code. *REVERSED AND REMANDED.*

Dean Olson, Assistant Public Defender, Waterloo, for plaintiff-appellant.

Thomas J. Miller, Attorney General, and Shirley Ann Steffe, Assistant Attorney General, for defendant-appellee.

Considered by Oxberger, C.J., and Snell and Carter, JJ.

PER CURIAM

The State was granted discretionary review of the trial court's order sustaining defendant's motion in limine to prevent her husband from testifying in her prosecution for false use by her of a financial instrument in violation of section 715.6, The Code. The State claims that the husband's testimony should be allowed under one of the statutory exceptions to the marital privilege evidentiary rule as found in section 622.7, The Code. We affirm.

Defendant was charged by information on January 21, 1981, with the crime of false use of a financial instrument, section 715.6, The Code, in that she allegedly stole her estranged husband's IPERS refund check, forged his name as endorsement and cashed the check. On the day before trial was set to commence, defendant filed a motion in limine seeking to exclude her husband from testifying regarding the absence of the check, the fact that he authorized no one to take or cash the check and other matters involving the charge against defendant. Defendant's motion was sustained, and the State was granted permission to bring this interlocutory appeal.

Section 622.7, The Code, sets forth the common-law marital privilege and provides in relevant part: "Neither the husband nor wife shall in any case be a witness against the other, except: 1. In a criminal prosecution for a crime committed one against the other..." The State claims the general exclusionary rule is inapplicable since the present case involves "a crime committed one against the other"; i.e. defendant being charged with the false use of her husband's check. We agree the facts of the present case fall under the exception listed in section 622.7(1), The Code, which would permit husband Garland Sparks to testify in this criminal proceeding against the defendant, his wife.

The trial court relied heavily on the result of Molyneux v. Wilcockson, 157 Iowa 39, 137 N.W. 1016 (1912). The present case and Molyneux are distinguishable.

In Molyneux the husband forged his wife's name on certain instruments, but the instruments were such that "no liability of the wife would thus be created." Id., at 41, 137 N.W. at 1017. The Molyneux court explicitly pointed out that the victim of the crime was not the wife, but rather was the person who was induced to accept the instrument and who relied on the genuineness of the signature.

Here the true victim of the crime was Garland Sparks. The defendant committed a crime against him when she forged his name to his check, cashed his check, took his money, and deprived him of the use of the money which belonged to him alone. Under this set of facts, Garland Sparks may testify as the victim of the crime. Accordingly, we reverse the trial court's ruling sustaining defendant's motion in limine.

REVERSED AND REMANDED.