FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed March 31, 1980

vs.)

MICHAEL LAWRENCE RANDALL,) 0-50
63314

Defendant-Appellant.)

Appeal from Black Hawk District Court - L. John Degnan, Judge.

Defendant appeals jury conviction for sexual abuse in the second degree, in violation of section 709.3, supplement to the Code 1977. Reversed and Remanded.

John W. Ackerman of Ackerman & Shinkle, Cedar Falls, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, Kathy Krewer, Assistant Attorney General, and David Correll, Black Hawk County Attorney, for plaintiff-appellee.

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

PER CURIAM

Defendant, Michael Lawrence Randall, appeals jury conviction for sexual abuse in the second degree, in violation of section 709.3, supplement to the Code 1977. We reverse and remand for new trial.

Randall was accused of sexual abuse for alleged participation in a "jailhouse gang-rape" in the Black Hawk County jail. He and four other defendants were convicted of the charge of second degree sexual abuse after a joint trial. The conviction of one of the other defendants was reversed by this court, State v. Bird, No. 63326 (Iowa Ct. App. filed December 27, 1979), and several issues of that appeal are raised here. As in Bird, we find the trial court incorrectly limited cross-examination by granting State's motion in limine and we hold retrial is warranted.

Randall claims the court erred by refusing to allow him to cross-examine the victim on his personal history, which allegedly included prior homosexual conduct and false reports to the police on homosexual assualts. Additionally, Randall asserts cross-examination of State's witnesses on charges pending against them that allegedly were dropped incorrectly was excluded, as was inquiry whether the victim and State's witnesses hoped to recover damages for the assault in a civil suit against the county.

The scope of inquiry in cross-examination generally rests in the sound discretion of the trial court. State v. Menke, 227 N.W.2d 184, 191 (Iowa 1975). However, that discretion should not be exercised so as to exclude matters vital and proper to an accused's defense. State v. Carney, 236 N.W.2d 44, 46 (Iowa 1975). Here, the limitation of cross-examination affected Randall's ability to impeach witness credibility. Credibility is a proper subject for cross-examination. State v. Droste, 232 N.W.2d 483, 489 (Iowa 1975), and should have been permitted on the matters raised in Randall's offer of proof. We find the trial court erred in limiting cross-examination on matters affecting witness credibility. We also find that error was prejudicial since the testimony of the victim was essential to the State's case and might have been discredited through cross-examination. See Carney, 236 N.W.2d at 45.

Since the error was prejudicial, we must decide whether simply to reverse the conviction or reverse and remand for new trial. Randall claims the guilty verdict is not

supported by substantial evidence. However, after viewing the evidence in the light most favorable to the state and considering only that evidence supporting the verdict, State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976), we find substantial evidence supports the verdict. Accordingly, based on our finding of prejudicial error, we reverse and remand for new trial.

Since a new trial will follow, we do not discuss Randall's claim a mistrial should have been granted because the prosecution allegedly withheld information from defense counsel on a partially perjured deposition by a State's witness. Nor need we discuss defendant's asserted error concerning testimony allegedly exceeding the scope of the minutes of testimony since any prejudice that occurred is remedied by our ordering a new trial.

For the reasons stated above, we reverse the conviction entered below and remand for new trial.

REVERSED AND REMANDED.