IN THE COURT OF APPEALS OF IOWA

FILED
MAY 31 1988
CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed May 31, 1988
vs.	)	295
CLIFFORD ORRIS JACKSON,	)	7-561 87-476
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (No. Cr 32963) - Anthony M. Critelli, Judge.

Defendant appeals his conviction of sexual abuse in the third degree. **AFFIRMED.**

Charles Harrington, Appellate Defender, and James F. Whalen, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Julie Ann Halligan, Assistant Attorney General; and Nan Horvat, Assistant Polk County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

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Defendant Clifford Jackson appeals his conviction of sexual abuse in violation of Iowa Code sections 709.1 and 709.4. He contends the trial court erred in admitting testimony praising the victim's character when the victim's character had not been placed in issue. We affirm.

On August 8, 1986, the victim, Ms. Redden, was at her home preparing to go swimming with a girlfriend. The defendant contacted her and asked to see her. Redden told the defendant she was going out and did not want to see him. The defendant came to Redden's home and forcibly entered by pulling open the back door. Redden then asked the defendant to come with her and her friend because she felt she would be safer in a public place. The defendant had been terrorizing Redden for the prior two and one half years, beating her severely on six occasions.

When they finished swimming, Redden's friend left, despite Redden's pleas for her to stay, leaving Redden alone with the defendant. Redden's roommate was also away on business. The defendant then took Redden to the basement and began beating her with a steel mop. He also forced Redden to twice have sexual intercourse with him. This continued until the next morning when Redden was able to escape with the help of a neighbor.

At trial the defendant decided to rely on insanity as a defense. His expert testified he was a paranoid schizophrenic who was not able to understand his acts at the time of the attack. The State's expert, on the other hand, testified the defendant was capable of understanding his acts at the time of the attack.

The State called Ms. Redden to testify to the events leading up to and including the attack. She testified how she had gone to a local college, where she learned to read and write, and then to Drake University where she became an outstanding student. On cross-examination, the defendant questioned Ms.

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Redden about her past and elicited that she had been reading at a fourth or fifth grade level until she entered a program and how the defendant admired her for doing so. She also repeated her testimony about being on the President's List at Drake and carrying a 3.6 grade average. The defendant then questioned her about the defendant's behavior and attitudes during the prior two and one-half year period. There was no attack made on her credibility.

The State then called Dr. Janet Simons, Redden's roommate. During her testimony the following exchange took place:

> Q. What, if any, opinion do you have with respect to Michelle Redden?
>
> A. I've always been impressed with her strength. Michelle, before she went to DMACC, probably was reading at like fourth or fifth grade education, that type of stuff, and she just very dedicatedly decided that she wanted to do something with her life, and I'm surprised that she's been able to continue at Drake during these two years. The stress level has been terrifically high. I see her, on the one hand, studying and making the dean's list and, on the other hand, deciding how to survive another week. From that prospective [sic], how can any of my friends help me out so I can survive enough to finish my college education.

The defendant objected to this testimony on the grounds it was irrelevant to the issues being tried. The trial court overruled the objection.

On appeal the defendant submits the testimony should have been excluded because it was irrelevant and violates rule 608(a). The State argues error was not properly preserved. We find error was preserved. Defendant made a timely objection on relevancy grounds and argues the only possible relevance the testimony could have was to enhance Ms. Redden's credibility under rule 608(a).

The challenged testimony is inadmissible under rule 608(a). It does not express an opinion as to Ms. Redden's character for truthfulness. Also, the defendant did not attack Ms. Redden's character on cross-examination or with other witnesses. In fact, the defendant did everything possible to enhance Ms. Redden's credibility in order to bolster his insanity defense. The trial court therefore erroneously admitted the testimony since it was irrelevant.

The error, however, is not sufficient to warrant a reversal of the defendant's conviction. The error was harmless since the evidence elicited was cumulative.

The defendant on cross-examination of Ms. Redden elicited information about her recently learning to read and her current academic success at Drake. The defendant then during Dr. Simons' cross-examination asked Dr. Simons what the basis of her opinion was. Dr. Simons answered that her opinion was based on both her professional background and personal observation of Ms. Redden and the defendant. The following exchange then occurred:

> Q. So I think you're observing this as a person in your community, that she's been under stress, in your opinion, and that you admire her for that?
> A. Yes.

This question and answer combined with Ms. Redden's testimony, placed before the jury the facts that Ms. Redden had undergone a stressful period and that Dr. Simons admired her. The defendant by reiterating Dr. Simons' opinion cumulated the evidence and has failed to show any prejudice from the admission of Dr. Simons' testimony. The ultimate issue at trial was whether the defendant was insane. We do not find, and the defendant has not established, the jury was influenced by this statement when they rejected the defendant's insanity defense.

The defendant's conviction is affirmed.

AFFIRMED.