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FILED

DEC 27 1979

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed December 27, 1979
vs.	)	
WARD ALLEN BIRD,	)	
Defendant-Appellant.	)	$\frac{315}{63326}$

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

Defendant appeals conviction for second degree sexual abuse in violation of section 709.3, Supplement to the Code 1977, alleging the trial court improperly limited cross-examination of State's witnesses. REVERSED AND REMANDED.

John S. Pieters, of Pieters & Pieters, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Kathy Krewer, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant, Ward Allen Bird, appeals jury conviction for second degree sexual abuse in violation of section 709.3, Supplement to the Code 1977.

On appeal, defendant, Ward Allen Bird, asserts insufficient evidence is present in the record to support his conviction. Additionally, he alleges the trial court erred by overruling his motion to sever the joint trial held below and thereby denied him a fair trial. Finally, Bird claims the trial court abused its discretion by limiting the scope of cross-examination of State's witnesses. We find the latter issue determinative and reverse and remand for new trial.

The trial court sustained the State's motion in limine to limit cross-examination of State's witnesses on matters collateral to their testimony. On appeal, Bird asserts limitations on cross-examination of the victim, Spaulding, about prior false accusations of homosexual attack and about a psychiatric examination, and of Spaulding and other State's witnesses, about dismissed criminal charges, were improper and denied him his confrontation right. The State claims Bird waived error on limitations regarding certain State's witnesses and further asserts the scope of the limitations was within proper bounds of the trial court's discretion.

Initially, we believe error properly was preserved on the matter of cross-examination of State's witnesses Harkrider and Spaulding on pending criminal charges that were dropped since that matter was raised in defense counsel's offer of proof. Although the offer of proof did not persuade the trial court to change its position on the motion in limine, it sufficiently brought the matter to the court's attention and the court's ruling inferred cross-examination on witness credibility was to be limited. We do not believe defense counsel could, as the State contends, be expected to raise the matter again in the jury's presence; to do so would risk a contempt or a mistrial declaration. Even if we deemed error not preserved as to Harkrider and Spaulding, our review of the limitation of cross-examination of witness Spear leads us to the conclusion it was improper.

Inquiry on the fact that charges pending against Spear were dropped was relevant to assessing Spear's credibility. With such evidence the jury reasonably could infer

Spear's testimony was a product of witness cooperation in return for the State's dropping the charge against him. By preventing inquiry on that matter, Bird's confrontation was limited and we believe improperly so. While we recognize the scope of inquiry in cross-examination rests generally in the trial court's sound discretion, State v. Menke, 227 N.W.2d 184, 191 (Iowa 1975), that discretion is legal discretion and should not be exercised so as to exclude matters vital and proper to the defense of one accused. State v. Carney, 236 N.W.2d 44, 46 (Iowa 1975) (citing State v. Rowe, 238 Iowa 237, 243, 26 N.W.2d 422, 425 (1947)). We find the limitation on cross-examination of Spear constituted an abuse of discretion.

We also believe the limitation of cross-examination of Spaulding concerning his psychiatric evaluation and prior false accusations of homosexual attack went beyond the trial court's legal discretion. The matter of prior false accusations affected Spaulding's credibility. Clearly, impeachment is a proper subject for cross-examination. State v. Droste, 232 N.W.2d 483, 489 (Iowa 1975). Cross-examination should have been permitted so the issue of witness credibility was developed fully for jury consideration. We find the trial court abused its discretion by limiting Bird's cross-examination of State's witnesses. In light of this finding, we need not discuss Bird's constitutional claim on confrontation rights.

Since we find error in the limitation of cross-examination, we now must determine if it was prejudicial to defendant. See Carney, 236 N.W.2d at 45 (citing State v. Sampson, 248 Iowa 458, 461, 79 N.W.2d 210, 212 (1956)). As stated in Carney, id., we must resolve "whether the witness was an important one or whether his testimony was incidental to the issue and whether the volume of direct evidence was so overwhelming that it was sufficient apart from the testimony of the witness sought to be cross-examined." Here, Spaulding was the alleged victim; his testimony was crucial to the State's case and without it, the volume of direct evidence is insubstantial. Under Carney, therefore, the error is prejudicial.

Having found prejudicial error, we must decide whether simply to reverse the trial court judgment or reverse and remand for new trial. Bird contends the jury verdict is not supported by substantial evidence. We believe, however, that when the evidence is viewed in a light most favorable to the verdict and when only evidence supporting the

verdict is considered, State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976), substantial evidence supports the jury verdict and but for prejudicial error it would bind us on appeal. Iowa R. App. P. 4. Therefore, given our finding of prejudicial error, we reverse and remand for new trial. Since the matter of improper joint trial is unlikely to occur on remand, we do not address that issue.

Reversed and remanded for new trial.