IN THE COURT OF APPEALS OF IOWA

No. 8-725 / 98-0422

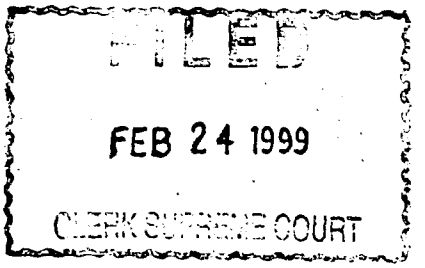
STATE OF IOWA,

Plaintiff-Appellee,

vs.

TIMOTHY DERRELL YOUNG,

Defendant-Appellant.



Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Defendant appeals his conviction, following a jury trial, for second-degree sexual abuse and first-degree burglary. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee-State.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Timothy Young appeals his conviction, following a jury trial, for second-degree sexual abuse and first-degree burglary. He alleges the district court abused its discretion precluding evidence of an exculpatory semen stain on bedding where the sexual assault took place. We affirm.

At approximately 2:30 a.m. on September 12, 1997, a 22-year-old female was sexually assaulted at knife-point in the bedroom of her Cedar Rapids apartment. Her assailant had entered and exited the apartment through the same kitchen window. The victim testified her assailant had vaginal intercourse with her but was unsure if he had ejaculated. She also testified he attempted anal intercourse but stopped when she started to cry. An exam following the assault found no evidence of seminal fluid.

Prior to trial, Young attempted to have evidence from a DCI lab report admitted. Specifically, the lab report indicated a seminal fluid stain with DNA inconsistent to that of Young's had been found on a comforter in the victim's bedroom. The State argued against admission of this evidence. The State noted the victim would testify she had no clear indication her assailant had ejaculated, the victim's examination immediately following the assault showed no evidence of seminal fluid, and the victim would testify the comforter was not involved in the assault.[1] These factors and the location of the comforter and stain thereon in relation to the assault rendered the evidence irrelevant. The district court ruled the evidence

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[1] The comforter was found down and to the side of the bed.

was irrelevant to the case. In addition, the district court ruled the evidence would be more prejudicial than probative.

The evidence against Young consisted of the following:

1. Young's palm print was positively identified on the inside portion of the kitchen window.

2. Five liquor bottles in a grocery sack were discovered missing from the victim's kitchen. The same five bottles in a grocery sack were observed by Young's girlfriend later that morning in his father's apartment.

3. The apartment of Young's father is located "diagonally across the street" from the victim's apartment.

4. The victim's identification of her assailant as a darker-skinned black male, with a slight mustache, 5' 9" tall, muscular build, and about 160 to 170 pounds, fits the description of Young.

5. The knife used in the assault was found underneath a fire escape adjacent to Young's father's apartment.

6. Young's girlfriend observed him at 6:45 a.m. the morning of the assault and observed blood on his jeans near the zipper and on his penis.

7. The victim was menstruating at the time of the assault.

Young was convicted and received concurrent twenty-five year sentences. The district court denied his post-trial motions.

I. STANDARD OF REVIEW. Our review of Iowa Rule of Evidence 412 admissibility issues is for abuse of discretion. *State v. Knox*, 536 N.W.2d 735, 738 (Iowa 1995). We find an abuse of discretion only when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

II. ABUSE OF DISCRETION. Iowa Rule of Evidence 412 [2] prohibits the admission of a sexual abuse victim's past sexual behavior. One of the exceptions to this rule allows such evidence to be admitted when "offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury." Iowa R. Evid. 412(b)(2)(A). Evidence fitting this exception must not only be relevant but its probative value must outweigh the danger of unfair prejudice to the victim. *Knox*, 536 N.W.2d at 739; Iowa R. Evid. 412(c)(3). Relevant evidence is that evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 401; *State v. Alvey*, 458 N.W.2d 850, 852 (Iowa 1990). Evidence is unfairly prejudicial if it "may cause a jury to base its decision on something other than the established propositions in the case." *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988).

The district court ruled the seminal fluid evidence was inadmissible on both relevancy and prejudice grounds. We agree. The evidence against Young was

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[2] This rule is generally referred to as Iowa's "rape shield" law.

overwhelming. Admission of the requested evidence would have defeated the acknowledged purpose of the rape shield law to (1) protect the privacy of victims; (2) encourage reporting; and (3) prevent time-consuming and distracting inquiry into collateral matters. *State v. Mitchell*, 568 N.W.2d 493, 497 (Iowa 1997).[3]

We have reviewed the evidence and conclude the district court properly excluded the requested evidence.

AFFIRMED.

[3] In *State v. Mitchell*, 568 N.W.2d 493 (Iowa 1997), an examination of the victim disclosed three separate sexually transmitted diseases. Defendant had none of the three. The Supreme Court held the district court was correct in ruling said evidence inadmissible.