

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 175666

Kent Circuit Court

STEVEN C. STEPHENS, SR.,

LC No. 93-62132-FC

Defendant-Appellant.

Before: Wahls, P.J., and Young and J.H. Fisher,* JJ.

WAHLS, J. (dissenting).

I respectfully dissent.

The majority concludes that the prosecutor's misconduct in this case was harmless. I disagree. In my view, the prosecutor continually and deliberately elicited irrelevant and highly prejudicial evidence concerning defendant's character, even after being admonished several times and specifically instructed to steer clear of that subject matter.

Defendant was arrested and charged with three counts of first-degree CSC: one involving the alleged anal penetration of a minor boy, and two others involving the alleged anal and vaginal penetration of a minor girl. Rather than simply addressing the alleged sexual molestation charges, the prosecutor instead sought to portray defendant as a "drug dealer," an alcoholic who frequented the local bars on a regular basis, a man who did not care about his dying wife's medical condition, an adulterer, and an incompetent father. Considering the fact that the present case was primarily a credibility contest between defendant and the alleged victims, the fairness of defendant's trial must be seriously questioned.

The prosecutor began this improper attack on defendant's character during his opening statement. He emphasized that defendant's family life was not "pretty," and that defendant, along with his wife, was heavily involved in drugs, morphine, crack cocaine, and alcohol. The prosecutor then specifically referred to defendant as a "drug dealer." Throughout the remainder of the trial, over

* Circuit judge, sitting on the Court of Appeals by assignment.

continued objections by the defense and after being admonished by the court, the prosecutor nonetheless continued to insert intermittent comments and probed almost every witness regarding defendant's alleged substance abuse, his lack of parenting skills, and his general lack of concern for his family.

Although in closing arguments the prosecutor stated that the state need not show *why* defendant molested the victims, it is evident that the prosecutor attempted to make a strong connection between defendant's character and the alleged conduct. During trial, when asked to explain the relevance of the character evidence elicited from the state's witnesses, the prosecutor explained, "we're trying to show the conditions of the home and what led up to the molestation" of the minor girl. In my opinion, it is that improper connection which makes the evidence elicited by the prosecutor highly prejudicial.

Considering the prosecutor's own explanation for the testimony, and the fact that he called an expert witness from whom he elicited an affirmation that drinking and drugs reduce one's inhibitions and are often characteristics prevalent with sexual perpetrators, it is clear that the jury was being urged to conclude that, because defendant was a "bad" person, he must be guilty of the crimes charged. Aside from the fact that the prosecutor's acts were deliberate, I would also conclude that this evidence was highly prejudicial, particularly in a case where credibility was the crucial issue. In my opinion, such error cannot be deemed harmless under any appropriate standard. *People v Humphreys*, 221 Mich App 443, 448-449; 561 NW2d 868 (1997). Thus, I would reverse.

/s/ Myron H. Wahls