

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JACK ROBERT DOBSON,

Defendant-Appellee.

UNPUBLISHED

March 31, 1998

No. 204894

Iosco Circuit Court

LC No. 97-003440 FH

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

PER CURIAM.

The prosecutor appeals as of right from an Iosco Circuit Court order quashing the information charging defendant with inciting or procuring one to commit perjury, MCL 750.425; MSA 28.667. We remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

The prosecutor correctly points out that credibility is a sufficiently material issue to support a prosecution for perjury. *People v Hoag*, 89 Mich App 611, 619; 281 NW2d 137 (1979). However, the prosecutor cites no authority for the proposition that testimony concerning the sexual promiscuity of a criminal sexual conduct (CSC) victim may be generally admitted on the issue of credibility. In fact, sexual conduct or reputation as evidence of character and for impeachment is not legally relevant and, therefore, inadmissible. *People v Hackett*, 421 Mich 338, 346, 347-348; 365 NW2d 120 (1984); see also MCL 750.520j; MSA 28.788(10); MRE 404(a)(3). Evidence of past sexual conduct is only admissible for certain limited purposes not at issue in this case. MRE 404(a)(3); MCL 750.520j; MSA 28.788(10). Accordingly, because any testimony by witness Bridson regarding the promiscuity of the woman who alleged sexual misconduct on the part of defendant would be inadmissible for the general purpose of determining that woman's credibility, because there is no indication in the record that by using the term "tramp" defendant meant to refer to any characteristic but the alleged CSC victim's promiscuity, and because inadmissible evidence, by the very fact that it is inadmissible, could not have had any effect on the course or outcome of the underlying CSC prosecution, the testimony defendant sought to procure was not material for purposes of establishing an attempt to procure perjury.

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

MCL 750.425; MSA 28.667; *People v Honeyman*, 215 Mich App 687, 691-692; 546 NW2d 719 (1996); *People v Sesi*, 101 Mich App 256; 300 NW2d 535 (1980). Thus, while defendant did attempt to procure false testimony, he did not attempt to procure perjury, the false testimony he sought to procure not being materially false testimony. *Honeyman, supra; Sesi, supra.*

This does not mean, however, that defendant is entitled to escape criminal prosecution for his actions. The facts presented in this case might be reasonably construed to support a charge of obstruction of justice (a willful hampering, obstructing, or interfering with the orderly administration of the law), a five-year felony, MCL 750.505; MSA 28.773; *People v Somma*, 123 Mich App 658, 661-662; 333 NW2d 117 (1983), attempted obstruction of justice, MCL 750.92; MSA 28.287; *Somma, supra*, or solicitation of obstruction of justice, MCL 750.157b; MSA 28.354(2). Because the magistrate is authorized to allow a criminal defendant to be proceeded against on charges other than those originally charged where the evidence adduced at the preliminary examination does not support a bindover on the original charges, but does support prosecution on other offenses, MCL 766.13; MSA 28.931; MCL 766.14; MSA 28.932; *People v King*, 412 Mich 145, 152-154; 312 NW2d 629 (1981), this case should be remanded to the district court for a determination whether defendant should be prosecuted for another offense.

We remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka