

Court of Appeals, State of Michigan

ORDER

People of MI v Michael Synder

Docket No. 277985

LC No. 05-009243 01

Kurtis T. Wilder
Presiding Judge

Kathleen Jansen

Donald S. Owens
Judges

The Court orders that the motion for clarification is GRANTED

The Court further orders that the October 28, 2008 opinion is hereby VACATED, and a new opinion is attached.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 11 2008

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL SYNDER, a/k/a MICHAEL SNYDER,

Defendant-Appellee.

UNPUBLISHED

December 11, 2008

No. 277985

Wayne Circuit Court

LC No. 05-009243-01

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

In this prosecutor's appeal, plaintiff appeals as of right from the trial court's order dismissing this case with prejudice after the court declared a mistrial because of the prosecutor's alleged misconduct. We reverse and remand.

I. Facts

This case arises from allegations that defendant molested his stepdaughter when the child was between 10 and 12 years old. At trial defense counsel expressed concern that information that the complainant had lived in two different homes, and attended three different schools after alleging that she had been molested would unduly tend to arouse sympathy for the child. The prosecutor argued that it was important to present any incentives the child might have to lie. The trial court ruled that neither party was to "go into all of those subsequent matters."

At trial the complainant's mother testified. The prosecutor elicited from her that she was upset to have heard the allegations concerning her daughter and defendant from someone other than her daughter, and that she had continued to see defendant afterward. Direct examination continued as follows:

Q. Has there ever been a time where you supported [defendant]?

* * *

A. Supported him like what?

Q. Like would sit with him when he came to court?

A. No, I don't think so.

Q. Do you remember coming to court back on February of 2006?

* * *

A. Yes

Q. Okay. On that date isn't it true that you refused to bring your daughter to court?

[DEFENSE COUNSEL]: I'll object.

THE WITNESS: Yes.

[DEFENSE COUNSEL]: Relevance.

THE COURT: Sustain. Jury, disregard it.

Q. And isn't it true that on that day you supported Michael?

A. If that's what you call it. I mean, that's what you're going to call it, that's what you're going to call it, but I refused to bring—oh, I can't say why I refused to bring her?

THE COURT: Excuse me. I've ruled that anything after this is over is not admissible. The jury is to disregard it. Okay.

Q. Did there ever come a time, ma'am, when your daughter stopped living with you?

A. Yes, ma'am.

Q. Because you didn't bring her to court.

[DEFENSE COUNSEL]: I'll object—

THE WITNESS: I really don't know why, I still don't know to this date.

[DEFENSE COUNSEL]: Judge, I thought the Court ruled on this and now we're going into it again.

THE COURT: Okay, alright. Let me have the jury step in the jury room.

The court then demanded to know why the prosecutor continued disobeying its order. The prosecutor replied, "I honestly believe that that was as it relates to [the complainant]. I think it's fair game that we're not going into her foster care and her homes, but as it relates to this witness,

... she can still go into where her daughter has been, whether or not she supports this defendant ...” The court expressed concern at having asked the jury to disregard so much questioning and declared a mistrial. The prosecutor protested that there had been no manifest necessity, to which the court replied, “I haven’t heard a good explanation as to why the order is continually being violated. So, I don’t think that we’re going to be able to correct this with this jury.” Defense counsel stated, “I concur.” The prosecutor argued that she was trying to test the credibility of the witness. The court declared that this was an intentional violation of its order and that the remedy was dismissal with prejudice.

II. Analysis

The prosecutor argues that the trial court erred in declaring a mistrial and subsequently dismissing the case with prejudice on the grounds of double jeopardy. We agree.

This Court reviews double-jeopardy issues de novo as questions of law. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

Retrial following a mistrial stemming from innocent or even negligent prosecutorial error does not generally offend double-jeopardy principles, but the rule against double jeopardy may bar retrial where a mistrial resulted from serious prosecutorial misconduct. In *People v Dawson*, 154 Mich App 260; 397 NW2d 277 (1986), this Court held that retrial is barred where a mistrial results from intentional prosecutorial misconduct causing prejudice, done “for any improper purpose with indifference to a significant resulting danger of mistrial or reversal,” and sufficiently egregious that only a mistrial can cure the error. *Id.* at 272-273, citing *Pool v Superior Court*, 139 Ariz 98, 108-109; 677 P2d 261 (1984). However, in affirming this Court's decision in *Dawson*, our Supreme Court employed the stricter federal standard, hinging on whether “the prosecutor intended to goad the defendant into moving for a mistrial.” *People v Dawson*, 431 Mich 234, 236; 427 NW2d 886 (1988). The Supreme Court expressly declined to decide whether state double-jeopardy protections stemming from prosecutorial misconduct are broader than federal ones. *Id.* at 257

We also decline to decide whether state double-jeopardy protections stemming from prosecutorial misconduct are broader than federal ones because in this case, under either standard, the prosecutor did not commit intentional prosecutorial misconduct. Here the trial court ruled that in the context of events that occurred in the complainant’s life after she reported her alleged sexual abuse that neither party was to “go into all of those subsequent matters.” Given the extremely vague nature of the trial court’s ruling in this matter, it would have been difficult for the prosecutor to know when she was straying into an impermissible line of questioning. In the conversation preceding the trial court’s ruling, “those subsequent matters” appeared to relate to the complainant being removed from her mother’s care and having to attend several different schools. However, as the prosecutor explained, she was questioning the complainant’s mother about her failure to bring her daughter to court for the purpose of testing the credibility of the witness. Although the fact that the complainant’s mother did not believe that the complainant had been sexually abused could potentially arouse sympathy for the complainant, the witness’ support of defendant was also directly relevant to the witness’ credibility on the stand. It is axiomatic that evidence of a witness’ bias or interest in a case is highly relevant to his credibility. *People v Holliday*, 144 Mich App 560, 567, 376 NW2d 154 (1985); *People v Bell*, 88 Mich App 345, 350, 276 NW2d 605 (1979).

The prosecutor's explanation for her line of questioning, coupled with the trial court's unspecific ruling indicate that the prosecutor inadvertently ran afoul of the trial court's evidentiary ruling. Because the standard in *Dawson, supra* 154 Mich App at 272 requires that a prosecutor engage in "intentional prosecutorial misconduct causing prejudice" in order to invoke double jeopardy, we conclude that the trial court erred in dismissing this case with prejudice. *Dawson, supra* 154 Mich App at 272-273. In addition, because retrial was not barred under the standard applied by this Court in *Dawson, supra*, retrial was certainly not barred under the narrower federal standard that the Supreme Court applied in affirming the latter *Dawson, supra* 431 Mich at 236. Therefore, retrial of defendant in this case is not precluded on double-jeopardy grounds.

Reversed and remanded for proceedings consistent with this opinion.

/s/ Kurtis T. Wilder

/s/ Kathleen Jansen

/s/ Donald S. Owens