

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOANN ELLEN MORLEY,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 180764

LC No. 94-996-FC

Before: Holbrook, Jr., P.J., and Taylor and W.J. Nykamp,* JJ.

PER CURIAM.

Defendant was convicted by a jury of five counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and one count of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). She appeals as of right. We reverse.

Defendant argues that the trial court abused its discretion in prohibiting cross-examination of the complainant regarding the contents of certain psychological reports and records pertaining to certain allegedly false statements made by the complainant while she resided at the Children's Home of Detroit. Defendant argues that the court's ruling infringed on her Sixth Amendment right of confrontation. We agree and reverse.

After reviewing the documentary evidence in camera, the court explained its ruling:

All I did was give the material that in any way could be looked at that could lead to what is admissible, and I haven't heard anything yet that is admissible and, therefore, I'm going to continue to remain constant with what my previous rulings have been, and that in this Court's opinion, that is a collateral matter, does not go to credibility, and it's very prejudicial and inappropriate, and I'm not going to allow for it.

* * *

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

If this conduct[]—if the statements relate to this occurrence, it would be—in any way whatsoever to this occurrence, I would agree, but if it doesn't, it doesn't. And that's where I would interpret where her statements could or could not be used. And there again, I don't know what she said or didn't say to a lot of these people, and that's the reason why I provided both parties with whatever information that even conceivably looked remotely possible that could lead you to a situation to explore that if you felt it was necessary.

Thus, the court precluded cross-examination of the complainant regarding prior allegedly false accusations of a sexual nature unless the complainant's statements related directly to the charged incident. We find this ruling to be contrary to established case law, which requires that the trial court conduct a careful balancing of the complainant's rights under the rape shield statute, MCL 750.520j(1); MSA 28.788(10)(1), and defendant's Sixth Amendment right to confront the witnesses against him. In *People v Hackett*, 421 Mich 338; 365 NW2d 120 (1984), our Supreme Court held that, while prior sexual conduct is irrelevant to prove consent or for general impeachment, it may be properly admitted for other limited purposes, such as to show bias, motive for false charge, or the fact of prior false accusations. *Id.* at 348; see also *People v Stanaway*, 446 Mich 643, 682, n 43; 521 NW2d 557 (1994). Here, defendant sought to cross-examine the complainant regarding allegations that she had falsely accused others at the Children's Home of sexually abusing her and that she had falsely claimed on one occasion that she was pregnant. The importance of such impeachment evidence, in a case such as this one, was well stated in *People v Mikula*, 84 Mich App 108, 115-116; 269 NW2d 195 (1978):

In a prosecution for a sexual offense, the defendant may cross-examine the complainant regarding prior false accusations of a similar nature and, if she denies making them, submit proof of such charges. *People v Werner*, 221 Mich 123; 190 NW 652 (1922), *People v Wilson*, 170 Mich 669; 137 NW 92 (1912), *People v Evans*, 72 Mich 367; 40 NW 473 (1888). In a case such as the one before us, where the verdict necessarily turned on the credibility of the complainant, it is imperative that the defendant be given an opportunity to place before the jury evidence so fundamentally affecting the complainant's credibility.

We emphasize that the complainant is not to be put on trial for any prior sexual activity. The evidence here discussed seeks to impeach her not because she is shown to be unchaste but because she has lied concerning similar charges in the past. See *People v Wilson*, *supra*, at 673-674.

Contrary to the trial court's ruling in this case, there is no requirement that prior false allegations of sexual misconduct be related to the charged incident before they may be used to impeach the complainant. Because there was no direct corroborating evidence of the complainant's allegations, and her credibility was the ultimate issue in this case, we cannot say that the court's error was harmless. See *People v Adamski*, 198 Mich App 133, 140-141; 497 NW2d 546 (1993). Accordingly, we reverse defendant's conviction and remand for a new trial.¹

Defendant also argues that the trial court abused its discretion in prohibiting cross-examination of the complainant regarding the specific nature of allegations by defendant to the authorities of sexual misconduct by the complainant that resulted in her being removed from defendant's home and sent to the Children's Home of Detroit. We find no abuse of discretion. At trial, defense counsel was able to elicit from the complainant on cross-examination that defendant had made certain "allegations" against her, resulting in the complainant being removed from her home. Hence, defendant was able to show that the complainant had a motive to fabricate the charges against defendant. Given that the specific nature of defendant's allegations against the complainant was not probative of defendant's guilt or innocence, and admission of this evidence would have violated the rape shield statute, MCL 750.520j(1); MSA 28.788(10)(1), we find that the trial court properly exercised its discretion in limiting defendant's cross-examination of the complainant.

Defendant also argues that the trial court abused its discretion in disallowing expert testimony concerning past behavior of the complainant. Defense counsel had moved several times for the appointment of an expert to perform an independent psychological examination of the complainant. The defense sought to have the expert testify regarding the victim's prior false accusations and other prior acts of a sexual nature to show that the victim's story was not credible and that she had a motive to lie. The court held that there was no legal basis to allow what amounted to personality profiling and expert opinion of the complainant's veracity. The court reasoned that to allow such testimony would infringe upon the jury's responsibility to evaluate the credibility of witnesses. We find no abuse of discretion. See *People v Peterson*, 450 Mich 349; 537 NW2d 857 (1995). See also *People v Graham*, 173 Mich App 473, 477-478; 434 NW2d 165 (1988).

Reversed and remanded for further proceedings as directed, including a new trial.

/s/ Donald E. Holbrook, Jr.

/s/ Wesley J. Nykamp

¹ Before the complainant is impeached on retrial with the contents of these documents, the trial court must conduct another *in camera* review of the documents to determine whether an adequate foundation can be laid for the trustworthiness of the contents of the psychological reports and juvenile home records. For example, the court must determine the reliability of the evidence of false allegations, such as whether the complainant acknowledged their falsity. See *People v Garvie*, 148 Mich App 444, 447-449; 384 NW2d 796 (1986). In the event that the trial court holds that the complainant may be impeached with the contents of these documents, it must also ensure that any implicated statutory privileges are properly waived.