

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

In the Matter of: J.F.

Court of Appeals No. H-10-002

Trial Court No. SO 2009 00003

DECISION AND JUDGMENT

Decided: September 17, 2010

* * * * *

Russell Leffler, Huron County Prosecuting Attorney, and
Dina Shenker, Assistant Prosecuting Attorney, for appellee.

George C. Ford, Huron County Public Defender, and
James Joel Sitterly, Assistant Public Defender, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, which granted appellee's motion to quash appellant's subpoena

of the assigned prosecutor to testify in the case. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, J.F., a minor, by and through counsel, sets forth the following sole assignment of error:

{¶ 3} "I. THE COURT ABUSED ITS DISCRETION BY QUASHING THE PROSECUTOR'S SUBPOENA."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. In August 2008, an eight-year-old girl attended a sleepover at a friend's home. At some point during the night, the friend's older brother entered the bedroom where the girls were sleeping. He asked his sister's friend to join him in his bedroom. The victim agreed. Upon entering appellant's bedroom, he asked the girl if she wanted to have sex. The victim agreed. Appellant placed a condom on his penis and vaginally penetrated the victim. The victim asked him to cease the activity and he did so.

{¶ 5} On May 21, 2009, appellant was charged with one count of gross sexual imposition, in violation of R.C. 2907.05(A)(4). On August 21, 2009, counsel for appellant filed discovery listing the assigned prosecuting attorney as a witness. The prosecutor was one of the parties who attended the victim interviews during the initial investigation of this case. In total, the police officer, the prosecutor, the victim, the victim's mother, and a victim's assistance representative were present.

{¶ 6} On August 24, 2009, counsel for appellant filed a notice of intent to call the prosecuting attorney of record as a witness to testify in the case. On August 27, 2009, appellee filed an objection. On August 31, 2009, a hearing was conducted on the opposing motions. The trial court found appellee's objection well-taken.

{¶ 7} Subsequently, the matter was set for an adjudicatory hearing to commence on October 26, 2009. Counsel for appellant again issued a subpoena to the prosecuting attorney of record in the case. On October 20, 2009, appellee filed a motion to quash the subpoena. On October 26, 2009, the trial court conducted a hearing on the disputed motion to quash the subpoena. Appellee's motion to quash the subpoena of the prosecutor was granted. The adjudicatory hearing was conducted. Appellant was found delinquent of the one count of gross sexual imposition. Timely notice of appeal was filed.

{¶ 8} In the single assignment of error, appellant argues that the trial court abused its discretion in granting the motion to quash the subpoena of the assigned prosecutor. It is well-established that determinations pertaining to the admission or exclusion of evidence lies well within the sound discretion of the trial court. *State v. Combs* (1991), 62 Ohio St.3d 278. As such, they will not be reversed absent demonstration of an abuse of discretion and material prejudice to the defendant. *State v. Long* (1978), 53 Ohio St.2d 91, 98. An abuse of discretion connotes more than a mere error of law or judgment. It

necessitates establishing that the disputed trial court action was arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219.

{¶ 9} In conjunction with the abuse of discretion standard of review controlling this matter, the seminal case of *State v. Coleman* (1989), 45 Ohio St.3d 298, delineates the legal threshold which must be established to justify the unorthodox step of calling a prosecuting attorney of record in a case to testify as a witness in that case. Such a subpoena will not stand absent demonstration of extraordinary circumstances and compelling reasons. *Id.* at 301-302.

{¶ 10} In support of the appeal, appellant places great reliance on the fact that the assigned prosecutor was in attendance at victim interviews during the investigation phase of this matter. The record of evidence reflects that the victim's mother, the investigating police officer, and a victim advocate were similarly present at the interviews.

{¶ 11} Appellant unilaterally concludes that the case possessed extraordinary circumstances and compelling reasons in support of the subpoena of the assigned prosecutor. Appellant similarly concludes without objective legal support that the assigned prosecutor possessed, "an unbroken rapport with the alleged victim." Appellant argues that this constituted a compelling reason in support of the subpoena. We disagree.

{¶ 12} We have carefully reviewed and considered the record of evidence in this matter. The record is devoid of any legally relevant evidence demonstrating the requisite extraordinary circumstances and compelling reasons in support of a prosecutor subpoena.

There is no evidence in support of the notion that a claim of an "unbroken rapport" between a victim and the prosecutor constitutes the legal prerequisite of a compelling reason and extraordinary circumstances so as to warrant a prosecutor subpoena. We further note that the record clearly reflects the availability of multiple other witnesses to testify, who were not subject to the conflict of interest of simultaneously serving as counsel of record, to the same meetings which the prosecutor attended.

{¶ 13} Wherefore, we find that appellant has failed to make the requisite *Coleman* showing of compelling reasons and extraordinary circumstances in support of the disputed subpoena. We find appellant's sole assignment of error not well-taken.

{¶ 14} On consideration whereof, the judgment of the Huron County Court of Common Pleas, Juvenile Division, is hereby affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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