

**IN THE COURT OF APPEALS OF IOWA**

No. 1-187 / 10-0158  
Filed May 25, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TERRY LEE SCHOTT, SR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Chickasaw County, Richard D. Stochl, Judge.

A defendant contends the district court inappropriately excluded certain expert testimony and considered an improper factor in imposing sentence against him. **JUDGMENT AFFIRMED, SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Terry Lee Schott, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, W. Patrick Wegman, County Attorney, and Denise A. Timmins, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

**VAITHESWARAN, P.J.**

Terry Lee Schott, Sr., found guilty of sexual abuse in the third degree, contends the district court inappropriately excluded certain expert testimony and considered an improper factor in imposing sentence.

***I. Background Facts and Proceedings***

Fifteen-year-old E.S. was a friend and neighbor of Terry Schott's children and spent considerable time at Schott's home. One summer evening, she went to the house to listen to music. After a short while, only Schott remained in the home with E.S. According to E.S., Schott asked her if she wanted to get drunk, left to purchase alcohol, returned with two bottles of whiskey, and prepared a whiskey/ginger ale mix for her. E.S. later had two additional drinks and began to fall asleep. She testified she felt Schott lifting her up and heard him ask her if she would like him to perform oral sex on her. She indicated no. Schott nonetheless proceeded with oral and vaginal sex. After it ended, a distraught E.S. ran home and her family called 911.

Law enforcement officials apprehended Schott the same evening. Schott denied giving E.S. alcohol and denied having sexual contact with her. He asserted E.S. was already intoxicated when she arrived at his home and may have been upset as a result of text messages she had exchanged with her ex-boyfriend.

The State charged Schott with sexual abuse in the third degree. Before trial, the district court ruled that a defense expert, Hollida Wakefield, would not be allowed to testify generally about false allegations of sex abuse made by

adolescents. The case proceeded to trial before a jury, which found Schott guilty as charged.

Schott was sentenced to prison. At the time of sentencing, the district court made reference to a plea offer, then stated, "I don't have any idea what the plea deal was, but I would have been a lot more considering of a suspended sentence if you were sitting before me today saying . . . I don't know what came over me. I made a mistake. I've never done something like this before. [E.S.], I'm sorry. But you chose to go the other way." This appeal followed.

## ***II. Evidentiary Ruling***

In a deposition, Wakefield stated she could testify about "the literature on false allegations in adolescents and older children, false rape allegations, the studies that have tried to come up with percentages of how many rape allegations are false and the studies that have looked at the various motivations behind making such false allegations." She continued,

For example, there is a book called "Rape Controversial Issues" by John MacDonald, written in 1995. He has a chapter in it on false reports of rape. His whole chapter is talking about various categories of motivations.

One, I will read it to you. Young women who have lost the affection of a boyfriend may attempt to regain it by dramatic appeals for sympathy. That is a girl calls a boyfriend in a distraught State claiming she's been sexually assaulted and appealing to him for help in the crisis.

Wakefield suggested E.S.'s allegations against Schott might have been motivated by such a loss of affection and appeal for sympathy. However, she could not say this was in fact E.S.'s motivation and acknowledged she could not say, "[H]ey, your Honor, I am here to give you my analysis of the case."

The district court refused to allow this aspect of Wakefield's proposed testimony. The court reasoned, "Testimony by an expert witness that other children have fabricated stories of sexual abuse and the reasons they do that would place an impermissible stamp of scientific legitimacy to the truth or lack of truth of [E.S.'s] story."

Schott takes issue with this ruling. He contends Wakefield's testimony would have simply assisted "the jury in evaluating the credibility of the witness and the facts of the present case."

Our courts afford "considerable deference to the trial court's exercise of its discretion" on admissibility rulings. *State v. Allen*, 565 N.W.2d 333, 338 (Iowa 1997). That deference is warranted here.

While experts are authorized to opine on matters relating to the pertinent mental and physical symptoms of abused persons, *see id.*, Wakefield repeatedly emphasized that she could not tie her testimony to E.S., except in the most generic sense. By her own admission, her challenged testimony was not based on an analysis of E.S.'s assertions but on general literature as to why teens might make false allegations of sex abuse. Her statements amounted to a thinly-veiled attempt to impugn the credibility of E.S. and, to that extent, they were impermissible. *C.f. State v. Myers*, 382 N.W.2d 91, 98 (Iowa 1986) (noting testimony regarding truthfulness of complaining witness "improperly suggest[ed] the complainant was telling the truth and, consequently, the defendant was

guilty”).<sup>1</sup> The district court appropriately exercised its discretion to exclude Wakefield’s testimony.

Schott finally asserts that the district court’s evidentiary ruling infringes on his constitutional right to a fair trial. See *State v. Peterson*, 532 N.W.2d 813, 816 (Iowa Ct. App. 1995) (discussing various constitutional rights, including the right to offer witnesses’ testimony and to compel their attendance at trial). This constitutional argument was not preserved. See *State v. Mulvaney*, 600 N.W.2d 291, 293 (Iowa 1999) (stating that error preservation is required even on constitutional issues). Accordingly, we decline to address it.

### **III. Reasons for Sentence**

The district court is required to state its reasons for imposing a particular sentence. Iowa R. Crim. P. 2.23(3)(d). The court may only rely on proper considerations in selecting a particular sentence. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000).

Schott argues “[t]he court committed error by penalizing [him] for refusing to plead guilty and insisting on his right to trial.” The State concedes error on this point. Accordingly, we vacate Schott’s sentence and remand for resentencing.

### **IV. Pro Se Claims**

Schott raises several pro se claims but does not support the claims with citations to legal authority or references to the record. While he asks that we grant him latitude as a non-lawyer, we do not afford special privileges to pro se litigants. See *Metro Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726,

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<sup>1</sup> This case does not involve prior false complaints of sexual abuse by a complainant, which have been held to be admissible. See *State v. Baker*, 679 N.W.2d 7, 10 (Iowa 2004).

729 (Iowa Ct. App. 1991) (“We do not utilize a deferential standard when persons choose to represent themselves.”). For that reason, we decline to consider his unsupported arguments. See Iowa R. App. P. 6.903(2)(g)(3).

**JUDGMENT AFFIRMED, SENTENCE VACATED AND REMANDED FOR RESENTENCING.**