

**IN THE COURT OF APPEALS OF IOWA**

No. 7-312 / 06-0059

Filed June 13, 2007

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

**vs.**

**RODNEY ALLEN DAVIS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Dallas County, Gary G. Kimes,  
Judge.

Rodney Allen Davis appeals his judgment and sentence for indecent acts  
with a child. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant  
Attorney General, Wayne Reisetter, County Attorney, and Sarah Pettinger,  
Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**MAHAN, P.J.**

Rodney Allen Davis appeals his judgment and sentence for indecent acts with a child. He argues the district court erred when it refused to allow expert testimony concerning factors consistent with both true and false sexual abuse allegations. We affirm.

**I. Background Facts and Proceedings**

Davis was charged with two counts: indecent acts with a child in violation of Iowa Code section 709.12(2) (2003) and second-degree sexual abuse in violation of sections 709.1 and 709.3. The charges arose from allegations that Davis touched his nephew's penis while his nephew was napping. At a bench trial, Dr. William Bernet testified on behalf of the defense concerning factors relating to true and false allegations of sexual abuse by children. During direct examination, Dr. Bernet testified to factors relevant to the case indicating the truth or falsity of the nephew's account. He was then asked,

COUNSEL: Sir, did you consider factors in this case—and I know you are not offering a final opinion and I don't want you to—but factors consistent with true allegations of sexual abuse and factors consistent with false allegations? BERNET: Yes. I did try to take all of the information that was given to me and then I used an outline that I have used in other situations in which I tried to identify factors that are one way or the other that are consistent with the true or false allegations.

Counsel then asked what factors were consistent with a true allegation in the case. The court sustained the State's objection the question called for comment on the victim's credibility. Davis was allowed to enter into evidence Dr. Bernet's report considering all the factors. The district court ultimately determined Davis

was guilty of count I, indecent acts with a child. He was found not guilty of second-degree sexual abuse. Davis appeals.

## **II. Standard of Review**

We review the admissibility of expert testimony for abuse of discretion. *State v. Rodriguez*, 636 N.W.2d 234, 245 (Iowa 2001). We give the district court wide discretion concerning the appropriateness of the proposed testimony's subject matter. *State v. Spilger*, 508 N.W.2d 650, 652 (Iowa 1993).

## **III. Merits**

Davis concedes expert testimony directly expressing an opinion on the credibility of a witness is not admissible. See *State v. Allen*, 565 N.W.2d 333, 338 (Iowa 1997). He argues Dr. Bernet would have testified to objective factors used to determine the truth or falsity of a child's allegations of sexual abuse. According to Davis, if he had been allowed, Dr. Bernet would have then applied those factors to this case. We conclude the latter crosses that "fine but essential line" between testifying to opinions that are helpful to the factfinder in determining credibility and actually commenting on another witness's credibility. See *State v. Hulbert*, 481 N.W.2d 329, 332 (Iowa 1992); *State v. Myers*, 382 N.W.2d 91, 97-98 (Iowa 1986). Dr. Bernet's application of the factors to the case would have been a comment on the veracity of the complaining witness, and thus an opinion on Davis's guilt. See *Myers*, 382 N.W.2d at 98. The district court did not abuse its discretion in excluding the testimony.

Even if we concluded the district court abused its discretion, we would have to find the ruling was harmless. See *State v. McKettrick*, 480 N.W.2d 52, 60 (Iowa 1992). Such testimony would have been cumulative for three reasons.

See *State v. Halstead*, 362 N.W.2d 504, 508 (Iowa 1985). First, during his testimony, Dr. Bernet identified and explained all but two of the factors he considered relevant to the case.

Second, he actually did apply several of the factors to the case. For example, Dr. Bernet testified to the mistakes he believed the forensic interviewer made while interviewing Davis's nephew. Counsel then asked, "Did the fact [the interviewer] did not elicit a free narrative in your opinion affect the reliability of [the nephew's] account that day?" Dr. Bernet answered, "Well, I think that interviews that are not correctly performed create unreliable information." Dr. Bernet continued to expound on the problems with the forensic interview. Counsel asked, "Do you think taken as a whole those criticisms tend to make the account of [the nephew] less reliable than if [the interviewer] had corrected all those problems?" Dr. Bernet answered, "Well, yes. I think not only do they make the account given to her less reliable but unfortunately they make all future accounts unreliable." Counsel asked whether Dr. Bernet thought the nephew was suggestible, and he responded in the affirmative. He also testified he thought the nephew had been influenced by parental suggestion. When asked about the possibilities of a false report, Dr. Bernet stated, "For instance, sometimes a parent who hears some initial information misinterprets the information and attaches significance to it that is not correct and I think that that may have happened here." Dr. Bernet also addressed innocent lying by children who believe they are in trouble. He then stated,

And in this case [the allegation] first arose in this situation where [the nephew] said something that was considered naughty, when he said that statement . . . his mother was upset and she scolded

him. She said never say that again. Don't talk like that. And he was in a little bit of trouble. And according to the accounts that I reviewed, later that evening or a little while after that, [the nephew] comes to his mother and says to her somebody touched me. . . . And that's exactly what happened here because, of course, the mom said to him . . . if somebody touched you, you're not in trouble.

Finally, the defense entered into evidence Dr. Bernet's report, in which he applied his factors to the case. We therefore conclude the opinion defense counsel attempted to elicit was cumulative and the ruling excluding it was harmless. See *Halstead*, 362 N.W.2d at 508.

The district court's ruling is affirmed.

**AFFIRMED.**