

CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION ONE

People v. Boone

126 Cal. App. 2d 746 (Cal. Ct. App. 1954) · No. Crim. No. 2995 · Decided July 28, 1954

SUMMARY

The California Court of Appeals reviewed Orlando C. Boone's conviction under Penal Code section 288. The court addressed challenges concerning the sufficiency of evidence regarding the victim's age, admission of evidence, cross-examination of character witnesses, prosecutorial misconduct, and jury instructions. The court found no prejudicial error and affirmed the judgment.

CASE DETAILS

COURT	California Court of Appeal, First District, Division One
WRITING FOR THE COURT	Wood (Fred B.), J.; Peters, P. J.; Bray, J.
JURISDICTION	California
DECIDED	July 28, 1954
DOCKET	Crim. No. 2995
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him of violating California Penal Code section 288, challenging the sufficiency of the evidence, evidentiary rulings, jury instructions, and alleged prosecutorial misconduct.
STANDARD OF REVIEW	The court reviewed the asserted evidentiary, instructional, and prosecutorial-misconduct errors for prejudicial error and assessed the sufficiency of the evidence based on the trial record.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion; precedential under the law applicable at the time of decision.
PARTIES	Orlando C. Boone v. The People

TOPICS

- character evidence
- impeachment
- hearsay
- preservation of error
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate litigation

QUESTIONS PRESENTED

1. Whether the evidence sufficiently established the victim's age.
2. Whether testimony concerning the victim's complaints to her aunt and medical personnel, and a hospital pathological report, was improperly admitted.
3. Whether the prosecutor improperly cross-examined Boone's character witnesses.
4. Whether the prosecutor committed misconduct in opening statement or closing argument.
5. Whether the trial court erred in giving or refusing jury instructions concerning prior acts, complaints, corroboration, accomplice status, and the victim's age.

HOLDINGS

1. The evidence was sufficient to establish that the victim was under 14 years old when the offense was committed because both the victim and her aunt testified to her age.
2. The defendant could not obtain reversal based on the admission of testimony concerning complaints to the victim's aunt because the testimony was admitted without a timely objection, and the defendant elicited much of it again on cross-examination.
3. Any error in admitting the pathological report was nonprejudicial because the report may have been irrelevant, but the defendant could not show prejudice, particularly where substantial oral medical testimony concerning the miscarriage was admitted without objection.
4. In the absence of a showing of bad faith, the prosecutor properly asked character witnesses whether they had heard reports of the defendant's conduct and whether such information would affect their opinion of his reputation.
5. The prosecutor did not commit reversible misconduct in the opening statement or closing argument, and the defendant's failure to object contemporaneously supplied an additional reason the claims did not support reversal.
6. The instructions, considered in context, were adequate, and the refusal to give the requested age instruction was not prejudicial because the victim's age was established by uncontradicted evidence and the jury was fully instructed on the elements of the offense.

KEY QUOTATIONS

“The McKenna case, a decision of the Supreme Court, is of course, controlling. It sanctions questions (2) and (5).” (at 751)

“In the absence of a showing of bad faith upon the part of the district attorney, the asking of these questions does not furnish a basis for reversal of the judgment.” (at 752)

“A child under that age cannot be an accomplice” (at 754)

FACTUAL BACKGROUND

Boone was convicted under Penal Code section 288 based on the testimony of a girl who was approximately 11 years old when the charged offense occurred on June 28, 1953. She testified that Boone had intercourse with her

and that, after the incident, she was hospitalized and suffered a miscarriage. The prosecution also presented testimony from her aunt and medical personnel, and cross-examined Boone's character witnesses about reports concerning his conduct and relationship with Carmen Berry.

PROCEDURAL HISTORY

A jury convicted Orlando C. Boone of violating Penal Code section 288. Boone appealed, arguing that the prosecution failed to prove the victim's age and that the trial court committed reversible error in admitting evidence, permitting cross-examination of character witnesses, handling prosecutorial statements, and giving or refusing jury instructions. The California Court of Appeal rejected the claims and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Logan, 41 Cal. 2d 279, 287, 260 P.2d 20 (1953)
- People v. McKenna, 11 Cal. 2d 327, 335-336, 79 P.2d 1065 (1938)
- People v. Stevens, 5 Cal. 2d 92, 99-100, 53 P.2d 133 (1935)
- People v. Beltran, 94 Cal. App. 2d 197, 210, 210 P.2d 238 (1949)
- People v. Neal, 85 Cal. App. 2d 765, 771, 194 P.2d 57 (1948)
- People v. McDaniel, 59 Cal. App. 2d 672, 675-676, 140 P.2d 88 (1943)
- People v. Troutman, 187 Cal. 313, 201 P. 928 (1921)