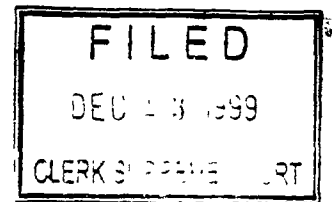


IN THE COURT OF APPEALS OF IOWA

No. 9-553 / 98-591
Filed December 13, 1999



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL McLEMORE,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch.
Judge.

Michael McLemore appeals the judgment and sentence entered upon a jury
verdict finding him guilty of domestic abuse assault. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Linda Myers, Assistant County
Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Vaitheswaran, JJ.

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STREIT, P.J.

This case presents the quintessential domestic abuse scenario with the victim retracting her story of familial violence that had earlier prompted her desperate plea for rescue in a 911 call. Michael McLemore appeals his conviction for enhanced domestic abuse claiming: (1) the trial court erred in permitting the officer's opinion testimony regarding the origin of Laura's scratches and (2) his trial counsel was ineffective for failing to object to the officer's statement that Laura was assaulted despite her recantation and her recantation was false. We find the trial court properly admitted the officer's testimony that Laura's scratches were not self-inflicted and preserve the claims of ineffective assistance of counsel for postconviction proceedings.

I. Background Facts & Proceedings.

In November of 1997 the Waterloo Police Department received a 911 call from Laura McLemore. In talking to the 911 operator, Laura, overtly upset, screamed at her husband, Michael McLemore, said he assaulted her, and demanded an officer respond. The dispatcher immediately called the residence back. The defendant, Michael McLemore, answered the phone and remained on the line until officers arrived. When officers arrived a still upset Laura claimed Michael had grabbed her by the neck, threw a soda pop bottle at her, and kicked her in the leg. Laura had liquid stains on her clothing and fresh scratches on her neck. The officers arrested Michael. Two days later Laura came to the Waterloo Police Department claiming

Michael had not assaulted her and the scratches on her neck were self-inflicted. The State charged Michael with enhanced domestic abuse assault in violation of Iowa Code section 708.2A(4) (1997), despite his wife's recantation.

At trial and over defendant McLemore's objection, the court permitted testimony from one of the officers that in his opinion Laura's scratches were not self-inflicted. The officer further testified, without objection, that in his opinion Laura had been assaulted and her recantation was not truthful. The jury found McLemore guilty. He stipulated to his previous domestic abuse assault convictions, and the court sentenced him to a term of imprisonment not to exceed five years but not less than one year.

McLemore now appeals claiming: (1) the trial court erred in permitting the officer's opinion testimony regarding the origin of Laura's scratches and (2) his trial counsel was ineffective for failing to object to the officer's statements that Laura was assaulted despite her recantation and her recantation was false.

II. The Trial Court Properly Admitted the Officer's Expert Testimony.

McLemore claims the trial court erred in allowing the officer to testify as to the origin of Laura's scratches as he did not possess sufficient expert knowledge to offer such an opinion.

A. Standard of Review. We review the admissibility of evidence for corrections of errors at law. Iowa R. App. P. 4; *State v. Khalsa*, 542 N.W.2d 263, 267 (Iowa App. 1995). Admission of expert testimony is within the sound discretion of

the trial court and will not be disturbed absent an abuse of discretion. *See Khalsa*, 542 N.W.2d at 267. To show an abuse of discretion, one must generally show the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)). The general rule of "liberality in the admission of opinion evidence" further guides our analysis. *State v. Hummell*, 228 N.W.2d 77, 82 (Iowa 1975).

B. The Merits. Iowa Rule of Evidence 702 permits a witness qualified as an expert to offer specialized knowledge if it will assist the trier of fact in either understanding the evidence or determining **contended facts**. Iowa R. Evid. 702. Specialized knowledge may be gained through **experience, training, or education**. *Id.* The threshold requirements for expert status are **determined by the trial court**; all further inquiries into a witness's qualifications go **only to the weight of the evidence**. Iowa R. Evid. 702 committee cm..

The trial court did not abuse its discretion in **determining** the officer had sufficient knowledge to offer an opinion as to **the nature of Laura's injuries**. The officer **was a member** of Waterloo's Domestic Abuse Response Team; received **specialized training in domestic violence**; **was one of eight people qualified** in the state of Iowa to **teach classes in domestic violence**; **taught classes** in domestic violence for a local community college, the **law enforcement academy**, and for the Iowa Coalition Against Domestic Abuse; and had **worked with over three thousand**

victims of domestic abuse. The officer's training and experience provided a sound basis for his expert testimony. Merely because he lacked specific training in determining the origination of wounds does not negate his significant practical experience. The appropriate venue for exposing deficiencies in the officer's knowledge or training was cross-examination. Such deficiencies, however, bear only upon the weight of the evidence, once the initial threshold is properly crossed. The trial court properly admitted the officer's statement that Laura's injuries were not self-inflicted.

III. Ineffective Assistance of Counsel.

McLemore next claims his trial counsel was ineffective for failing to object to the officer's statement that Laura was assaulted despite her recantation and her recantation was false.

Normally, "we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct." *State v. Query*, 594 N.W.2d 438, 444 (Iowa App. 1999). "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). Claims of ineffective assistance of counsel may be resolved on direct appeal "when the record is adequate to decide the issue." *Query*, 594 N.W.2d at 444.

McLemore's claim of ineffective assistance of counsel rests on the proposition that testimony commenting on the veracity of a witness or on the defendant's guilt is

inadmissible. *State v. Allen*, 565 N.W.2d 333, 338 (Iowa 1997); *State v. Pansegrau*, 524 N.W.2d 207, 210 (Iowa App. 1994). Experts may express opinions regarding the mental state of victims of abuse and physical symptoms of abuse, but “[t]here is a fine . . . line between testimony that is helpful to the jury and an opinion that merely conveys a conclusion concerning the defendant’s guilt.” *Pansegrau*, 524 N.W.2d at 210-11. Given this fine line, we preserve McLemore’s claims for postconviction proceedings. Further development of the record is necessary to properly determine such narrow demarcations. The conviction is affirmed.

AFFIRMED.