JUN 28 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff - Appellee,	)	Filed June 28, 1979
vs.	)	
CARLOS VINCENT BERNAL,	)	164 62457
Defendant - Appellant.	)	

Appeal from Scott District Court - Margaret S. Briles, Judge.

Defendant appeals conviction of aggravated assault claiming he was denied a fair trial due to trial court's denial of request to voir dire jury concerning their exposure to a motion picture on night before trial and also appeals sentence imposed due to the court's failure to state the reasons therefor on the record. - Judgment vacated and remanded for resentencing.

Patrick J. Kelly, of Shifley and Mullen, Davenport, for Defendant - Appellant.

Thomas J. Miller, Attorney General of Iowa, Thomas A. Evans, Jr., Assistant Attorney General, and Celeste Bremer, Assistant Scott County Attorney, for Plaintiff - Appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant Carlos Bernal appeals conviction and sentence for aggravated assault, a lesser included offense of second degree sexual abuse, section 709.3 Code Supp. 1977, the crime with which he was charged. Defendant argues that he was denied a fair trial and that sentencing court abused its discretion. We affirm the conviction but remand the case for resentencing.

On the evening after the jury had been selected, a motion picture was purportedly shown on television entitled "Cry Rape." The following day and before any evidence had been received, defense counsel sought to poll the jurors to determine if any of them had seen the film and if so, what their reactions had been. Trial court denied this request. Defendant asserts that since he was on trial for sexual abuse, the film could have prejudiced the jury against him because it allegedly portrayed, in a sympathetic way, the victim of a rape as well as the difficulties in investigating and prosecuting that crime.

Standard 3.5(f) of the A.B.A. Standards Relating to Fair Trial and Free Press has been adopted in Iowa. State v. Bigley, 202 N.W.2d 56, 58 (Iowa 1972). That standard provides in pertinent part:

> If it is determined that material disseminated during the trial goes beyond the record on which the case is to be submitted to the jury and raises serious questions of possible prejudice, the court may on its own motion or shall on motion of either party question each juror, out of the presence of the others, about his exposure to that material.

In State v. Burt, 249 N.W.2d 651, 654 (Iowa 1977), the court held that this standard may be mandatorily invoked only when the material per se "raises serious questions of possible prejudice," and if not, the defendant must demonstrate evidence of jury prejudice. We do not believe the motion picture involved herein met the per se test, nor has the defendant shown prejudice by way of post-trial juror affidavits or testimony. His failure to do so is controlling. See Burt at 654. Defendant was not denied a fair trial.

Following his conviction, defendant was sentenced to a prison term not to exceed two years. The State concedes the trial court stated no reasons on the record for the sentence imposed as required by Iowa R. Crim. P. 22(3)(d). Under the recent holding in

State v. Luedtke, No. 62116 (Iowa, filed May 30, 1979), the failure of the sentencing court to state its reason for selecting the particular sentence requires us to vacate defendant's sentence and remand for resentencing.

Judgment vacated and remanded for resentencing.