IN THE COURT OF APPEALS OF IOWA

No. 3-474 / 92-1860

FILED
NOV 29 1993
CLERK SUPREME COURT
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STATE OF IOWA,

Appellee,

vs.

JOSE DARIO RUESGA,

Appellant.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

Jose Dario Ruesga appeals his convictions and sentences for four counts of child endangerment, in violation of Iowa Code section 726.6(1)(b) (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Julie Halligan Brown, Assistant Attorney General; John P. Sarcone, County Attorney; and Melodee Hanes, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., and Habhab, J., and Keefe, S.J.* Donielson, J., takes no part.

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

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OXBERGER, C.J.

Jose Dario Ruesga appeals from his jury conviction for child endangerment. He contends the trial court erred in allowing an expert witness to testify that the victim's condition could be described as "battered child syndrome." He also contends the court erred in limiting his impeachment of a prosecution witness. Finally, he contends the district court erred in failing to articulate reasons for imposing consecutive sentences.

Joanne Taggart, her daughter, her son, J.W., and her boyfriend, Jose Dario Ruesga, moved into the house of Michelle and David Crouse in February 1992. The Crouses noticed Ruesga was very strict in disciplining J.W.; Ruesga would take J.W. to the basement to impose discipline. The Crouses noticed injuries on J.W. When David asked Ruesga about a large blister on J.W.'s hand, Ruesga responded he and the child had played a game in which J.W. held his hand over a cigarette lighter that Ruesga was holding.

After breakfast on March 5, 1992, Ruesga twice asked J.W. if he had urinated in his pants. J.W. said no. Ruesga took J.W. to the basement to change his pants. About a half-hour later, Ruesga called for Taggart to come to the basement.

Michelle Crouse went to the basement when she heard Taggart yelling J.W.'s name. J.W. was unconscious on the floor. Ruesga told Taggart and Crouse he had spanked J.W. for soiling his pants and J.W. had fallen and hit his

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head. Paramedics were called to the house. J.W. was taken to the hospital suffering from serious injuries.

On April 15, 1992, Taggart and Ruesga were charged with several counts of child endangerment and willful injury. Ruesga entered a plea of guilty to one count of child endangerment; the remaining five counts (four counts of child endangerment and one count of willful injury) were tried to the jury.

On September 8, 1992, Ruesga's jury trial commenced. Ruesga moved in limine to exclude any testimony concerning the "battered child syndrome", arguing it was improper opinion testimony. The motion was denied.

On September 14, 1992, the jury found Ruesga guilty on three counts of child endangerment and on the willful injury count. On November 6, 1992, judgment was entered and Ruesga was sentenced to four consecutive terms not to exceed ten years on the child endangerment counts. The court concluded that double jeopardy principles barred the court from imposing sentence on the willful injury count.

Ruesga appeals.

I. Battered Child Syndrome Testimony

Ruesga contends "battered child syndrome" testimony is improper and asks that State v. McKowen, 447 N.W.2d 546 (Iowa App. 1989), be overruled. We decline the invitation to overrule McKowen and affirm the district court.

In McKowen, the pediatric radiologist who evaluated the victim testified regarding the injuries received by the child. Id. at 548. After a thorough explanation of each injury, ruling out birth defect and self-inflicted injury, he testified the pattern disclosed by the x-rays was typical of battered child syndrome. Id. In upholding the admissibility of the testimony, we noted the many jurisdictions which have upheld the admissibility of battered child syndrome testimony and its relevance to the mens rea element of the offense of child endangerment. Id. at 549. Of course, the witness never at any time expressed an opinion as to whether McKowen was guilty of child endangerment. Id.

We continue to find battered child syndrome evidence useful to the trier of fact. The type, severity and pattern of injuries is highly relevant to the issue of the cause of the injuries and the question of the mens rea element of the offense of child endangerment. Such testimony does not indicate the identity of the perpetrator of the injuries. It does, however, provide relevant, useful information germane to the determination of important questions, such as whether the injuries were accidental. We find the district court committed no abuse of discretion in allowing the testimony.

II. Scope of Cross-Examination

Ruesga next argues that the trial court erred in limiting his cross-examination of Michelle Crouse. He claims he should have been allowed to cross-examine Crouse regarding others who may have influenced her testimony.

A witness may be cross-examined to show bias "by reason of emotional influences such as kinship for one party or hostility to another , or motives of pecuniary interest, whether legitimate or corrupt." State v. Carney, 236 N.W.2d 44, 46 (Iowa 1975).

Examination of Ruesga's offer of proof reveals no evidence of bias. He claims Crouse was biased and unable to fairly testify. Crouse testified, during Ruesga's offer of proof, a Child Protective Services investigator told her her name would be on a "list" for ten years for failing to report J.W.'s injuries. She further testified she was afraid the investigator could take her children away because of the J.W. incident and testified this made her angry. However, Crouse also testified the investigator never mentioned she needed to cooperate with the prosecution. In fact, Crouse testified the investigator had never mentioned "anything about the trials or agreeing with the case." She also testified she knew that the placement of her name on a "list" was not a criminal charge. We find no indication of bias; no hostility towards one party nor kinship towards another nor do we find motives of pecuniary interest. We find no abuse of discretion in the decision of the district court.

III. Sentencing

Lastly, Ruesga contends the district court failed to articulate reasons for imposing consecutive sentences.

Iowa R. Crim. P. 22(3)(d) (1993), in pertinent part, provides: "[T]he court shall state on the record its reason for selecting the particular sentence." The court must state reasons sufficient to demonstrate the exercise of discretion and to indicate what motivated the sentence , but the statement need not be lengthy or detailed. State v. Johnson, 445 N.W.2d 337, 342-43 (Iowa 1989); State v. Powell, 400 N.W.2d 562, 565-66 (Iowa 1987); State v. Victor, 310 N.W.2d 201, 205-06 (Iowa 1981). The trial court is not required to state and reject each alternative sentencing option.

At the defendant's sentencing hearing, the trial court made the following record:

> COURT: It is the judgment of the Court that the defendant is adjudged guilty of Child Endangerment, Counts V, VI, VII and IX and shall be imprisoned for a period not to exceed 10 years on each count.
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> * * *
>
> The granting of probation in this case is denied because it is unwarranted in order to protect the public from further criminal activity by the defendant, would unduly lessen the seriousness of the offense, and because the defendant is convicted of a forcible felony.
>
> * * *
>
> Counts V, VI, VII and IX shall be served consecutively to each other.

We find this to be a sufficient statement of the reasons for the sentence. While the trial judge is initially referring to denial of probation, it is apparent that he is explaining the entire sentence.

AFFIRMED.