

No. 98-302. [9-089] STATE v. IMHOFF

Appeal from the Iowa District Court for Clarke County, David L. Christensen, Judge. **AFFIRMED.** Heard by Streit, P.J., and Vogel and Zimmer, JJ. Sackett, C.J., takes no part. Opinion by Zimmer, J. (11 pages \$4.40)

Imhoff appeals his convictions and sentences, following a jury trial, for two counts of sexual abuse in the second degree. **OPINION HOLDS: I. Motion to Suppress.** Prior to trial, the defendant filed a motion to suppress the admissions he made during a custodial interrogation. He claims he could not and did not voluntarily, knowingly, and intelligently waive his Miranda rights at any time prior to or during the custodial interrogation. Defendant asserts that he was under the influence of drugs and

alcohol, sleep deprived, and possibly promised leniency. We conclude the evidence is overwhelming that Imhoff suffered from no condition that would have impaired his ability to voluntarily and intelligently waive his constitutional rights. Intoxication will render a waiver involuntary when intoxication reaches the extent of incoherence or mania. The record does not indicate Imhoff was intoxicated, much less incoherent or manic. **II. Sufficiency of the Evidence.** Imhoff contends the evidence was insufficient to support a conviction for the second count of second-degree sexual abuse. His conviction was based in part on a confession of sexual abuse. We find sufficient corroboration of this confession was presented to allow the charge of second-degree sexual abuse to be considered by the jury. **III. Sentencing.** The defendant contends the trial court abused its discretion in sentencing him to two consecutive twenty-five year terms of incarceration. Imhoff requested the sentences be ordered to run concurrently. If a defendant has been convicted of distinct and separate offenses, the sentencing court has the authority to order "separate and distinct sentences which are cumulative, and are to run consecutively." The reasons for imposing consecutive sentences must be stated separately. We conclude from the record that the trial court carefully considered the sentencing options in this case. We find the district court's rationale adequate to demonstrate an appropriate exercise of discretion. **IV. Ineffective Assistance of Counsel.** Imhoff claims his trial counsel was ineffective for failing to object to hearsay evidence and for failing to move to enlarge the findings made by the trial court regarding his motion to suppress. We determine Imhoff's claims should not be reached on direct appeal. We thus preserve Imhoff's ineffective assistance of counsel claims for postconviction relief proceedings.