IN THE COURT OF APPEALS OF IOWA

No. 3-408 / 92-1181

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RUBEN RAMIREZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wennell, Judge.

The defendant appeals from his convictions and sentences, following a jury trial, for three counts of sexual abuse in the third degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Sheryl Soich, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Jill Pitsenbarger, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ. Donielson, J., takes no part.

OXBERGER, C.J.

Ruben Ramirez appeals his conviction for three counts of sexual abuse in the third degree. The State alleged Ramirez was found guilty of engaging in nonconsensual intercourse with a seventeen-year-old girl on three occasions.

Prior to trial, Ramirez filed a motion in limine. He sought to exclude, among other things, opinion testimony from State witnesses concerning whether the victim had been sexually abused, whether the acts were nonconsensual and whether the victim was telling the truth. The trial court granted these three portions of the motion in limine.

Ramirez's motion in limine also sought to suppress statements he made to the police following his arrest. The court treated this portion of the motion in limine as a motion to suppress and scheduled a separate hearing. At the suppression hearing, Ramirez argued because of his limited ability to communicate in English the statements made during his interrogation were not voluntary. He claimed that despite the presence of an interpreter, the officers conducted the interrogation in English. He also claimed the officers asked leading questions. The trial court subsequently denied Ramirez's motion to suppress with the exception of one question concerning whether this was the first time Ramirez had raped anyone. The matter proceeded to a jury trial.

The jury found Ramirez guilty on all three charges. The court entered judgment on the jury's verdict and sentenced Ramirez up to ten years on each conviction. It ordered the sentences to run concurrently. Ramirez appeals.

I. Denial of Mistrial Motion

Ramirez contends the district court abused its discretion in failing to grant his mistrial motion. He claims improper expert testimony unfairly prejudiced him. He further argues that the admonishment given the jury was insufficient to dissipate the taint that arose as a consequence of the expert's testimony.

Trial courts have considerable discretion in passing on mistrial motions, State v. Ware, 205 N.W.2d 700, 702 (Iowa 1973), and we reverse only upon a showing that that discretion was abused. To find an abuse of discretion in a mistrial context, no support for the trial court's decision may exist in the record. State v. Jirak, 491 N.W.2d 794, 796 (Iowa App. 1992). The court is found to have abused its discretion only when defendant shows prejudice which prevents him from having a fair trial. State v. Callender, 444 N.W.2d 768, 770 (Iowa App. 1989).

The State presented the testimony of the victim's treating physician, Dr. Steven Vlach. During trial, the following exchange occurred:

> Q [Prosecution]: Did you make a diagnosis of Heather, your patient?
> A [Dr. Vlach]: Yes. I--I felt she had been sexually assaulted.

Ramirez objected to this testimony and requested a mistrial. The court denied the motion; however, it admonished the witness and gave the following admonishment to the jury:

> Ladies and gentlemen of the jury, you heard the witness use the word "sexual assault." You are instructed to disregard those terms and those terms are stricken from the record.

Generally, an admonition to the jury to disregard inadmissible testimony is sufficient to cure any prejudice. Callender, 441 N.W.2d at 770. The trial court is in a better position to observe the matter complained of and to observe the effect it has on the jury. Id. Generally, a trial court's quick action in striking the improper response and cautioning the jury to disregard it, coupled, when necessary, with some type of general cautionary instruction, will prevent any prejudice. State v. Brown, 397 N.W.2d 689, 699 (Iowa 1986).

The trial court cautioned the jury to disregard the statement made by the witness almost immediately after the complained of statement was made. After the statement was made, defense counsel immediately objected and requested a sidebar. The jury was excused from the courtroom. Ten minutes later, the jury returned to the courtroom and received the noted admonishment. Ramirez has made no showing that the trial court's actions failed to remove any potential prejudice he might otherwise have suffered had the complained of response not been stricken. We find no error.

II. Denial of Motion to Suppress

Ramirez next contends the district court erred in failing to grant his motion to suppress certain statements he alleges were involuntary. He claims his constitutional right to due process was violated when officers interrogated him in English. Ramirez claimed that, although an interpreter was present, the entire interrogation was conducted in English with leading questions, even after the defendant indicated to officers his limited ability to communicate in English and his need for a Spanish interpreter.

When appellant alleges the denial of a constitutional right, our review is de novo. State v. Reid, 394 N.W.2d 399, 402 (Iowa 1986).

Statements are voluntary when they are the "product of an essentially free and unconstrained choice, made by the defendant at a time when his will was not overborne nor his capacity for self-determination critically impaired." State v. Snethen, 245 N.W.2d 308, 315 (Iowa 1976). Such factors as age, mental capacity, use of deception and ability to understand questions are considered when determining whether a defendant's statements are voluntary. See State v. Aldape, 307 N.W.2d 32, 37 (Iowa 1981); Reid, 394 N.W.2d at 404; and State v. Munro, 295 N.W.2d 437, 440 (Iowa 1980).

Ramirez is 48 years old. He has lived in the United States over twenty years. He was provided with an interpreter throughout the interrogation. Although the questioning was conducted in English, the interpreter was seated next to him for the entire interview. Ramirez was read his Miranda rights in both English and Spanish. At the pretrial hearing, the interpreter testified Ramirez was articulate, used proper English manner, and never asked her any questions. She stated she believed, as she observed the entire interrogation, Ramirez was answering questions voluntarily. Ramirez never indicated to either the interrogating officer or the interpreter that he did not understand a question. He does not claim impaired capacity beyond his alleged inability to understand English.

Based on the evidence, we conclude the State has satisfied its burden that Ramirez's statements were voluntary. Thus, we find that Ramirez's due process rights were not violated. We affirm the district court.

AFFIRMED.