STATE V. MARTINEZ

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RAMON MARTINEZ,
Defendant-Appellant.

No. 32,772

COURT OF APPEALS OF NEW MEXICO

December 10, 2013

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, William C. Birdsall, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, B. Douglas Wood III, Assistant Public Defender, Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, J. MILES HANISEE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals from his conviction for criminal sexual penetration of a minor. We previously issued a notice of proposed summary disposition in which we proposed to uphold the conviction. Defendant has filed a memorandum in opposition, which we

have duly considered. Because we remain unpersuaded by Defendant's assertions of error, we affirm.

{2} Defendant raised three issues in his docketing statement, all of which are renewed in the memorandum in opposition. Because we previously set forth the pertinent background information in the notice of proposed summary disposition, we will avoid unnecessary reiteration here. We address each of the issues in turn.

{3} First, Defendant contends that the district court erred in declining to strike the testimony of a sexual assault nurse examiner (the SANE nurse). [MIO 6-9] Defendant argues that her testimony was objectionable insofar as she characterized the red, crescent shaped mark observed in the victim's genital area as an injury. [MIO 4, 6-8] Because the SANE nurse had not specifically referred to that mark as an injury in her pretrial report, [MIO 4,7] and because she failed to explain how she came to conclude that the mark should be so classified, [MIO 6-8] Defendant contends that her testimony was "unreliable," "was not actually probative of whether an injury occurred and only tended to confuse the jury or unfairly prejudice them against Defendant." [MIO 8] We disagree. Whether the report used the word 'injury' or not, the SANE nurse clearly indicated that she had observed positive findings, which she specifically described as crescent-shaped marks indicative of fingernails and consistent with digital penetration. [RP 152] She further explained at trial that she noted these findings because they comprised abnormalities, [RP 154] which could not have been caused by naturally occurring conditions. [RP 157] This ultimately formed the basis for her conclusion that the victim had suffered injuries consistent with forced penetration. [RP 152, 157] We perceive nothing about the SANE nurse's testimony to have been unclear, unfounded, or unreliable, such that it lacked probative value or was otherwise likely to cause jury confusion as Defendant contends. Finally, we note that Defendant was duly permitted to cross-examine the SANE nurse at length below. [RP 152-56] We remain of the opinion that this was the appropriate method of revealing weaknesses in her testimony and conclusions. *See, e.g.*, *State v. Paiz*, 2006-NMCA-144, ¶ 41, 140 N.M. 815, 149 P.3d 579.

{4} Next, Defendant renews his argument that the district court improperly disallowed questioning in the course of voir dire. [MIO 9-12] In his memorandum in opposition Defendant clarifies that he was prevented from asking one of the panel members, a kindergarten teacher, about specific types of fabrications with which she was familiar. [MIO 5-6, 10] However, insofar as defense counsel was permitted to ask other questions about child credibility, [MIO 5, 10] we disagree that the court's disallowance of the specific inquiry was improper. *See generally State v. Sosa*, 1997-NMSC-032, ¶ 14, 123 N.M. 564, 943 P.2d 1017 ("If the questions allowed are sufficient to probe juror bias on a specific issue, the court's refusal to allow additional fact-specific questions does not amount to an abuse of discretion."). Defendant further contends that he was improperly prohibited from questioning prospective jurors about biases regarding drug use. [MIO 10-11] However, in this case no evidence appears to have been presented to suggest that either Defendant or the victim had consumed drugs. [DS 3; MIO 1] While some evidence appears to have been presented to the effect that the victim's mother

and two other individuals consumed methamphetamine, [DS 3; MIO 1, 11] any potential biases relative to those individuals would have little or no apparent bearing on the proceedings. Under the circumstances, the district court acted within its broad discretion. *Id.* (observing that "courts are given broad discretion in limiting the scope of questioning during voir dire").

{5} Third and finally, Defendant continues to argue that the district court erred in denying disclosure of the victim's counseling records. [MIO 12-15] However, insofar as the district court duly conducted an in camera examination of the records and concluded that the limited relevant material contained therein was cumulative of information previously obtained by defense counsel, [DS 5-6; MIO 13] we perceive no error. In this regard, we disagree with Defendant's suggestion that the court's finding that the records "contained very little detail other than what was expressed" previously, [MIO 13] suggests that "there was, in fact, relevant and discoverable information that should have been available to the defense." [MIO 13] A fair reading of the district court's statement simply reflects that the records contain "very little detail," and that detail comprised nothing "other than what was expressed" in the course of the previous interview. *See generally State v. House*, 1998-NMCA-018, ¶ 94, 124 N.M. 564, 953 P.2d 737 (Armijo, J., concurring in part, dissenting in part) ("While matters not of record cannot be reviewed on appeal, . . . findings of fact adopted by the [district] court are to be construed so as to uphold rather than defeat a judgment, and, if from the facts found, the other necessary facts to support the judgment may be reasonably inferred, the [district] court's judgment will not be disturbed on appeal." (internal quotation marks and citation omitted)), *rev'd on other grounds*, 1999-NMSC-014, 127 N.M. 151, 978 P.2d 967. Finally, with respect to the victim's "issues with her mother" and alternative sources of sexual knowledge, [MIO 12-15] we note that Defendant was able to explore these matters at trial. [RP 138-40] As a consequence, we remain unpersuaded that the district court abused its discretion in denying Defendant discovery of the victim's counseling records. *See generally State v. McDaniel,* 2004-NMCA-022, ¶ 6, 135 N.M. 84, 84 P.3d 701 (observing that a trial court's decision with regard to discovery is reviewed for an abuse of discretion, and noting that speculative assertions of prejudice are inadequate).

{6} Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

{7} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

J. MILES HANISEE, Judge