IN THE COURT OF APPEALS OF IOWA

No. 3-893 / 12-1899
Filed November 20, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PATRICK EDOUARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Marion County, Paul R. Huscher, Judge.

Patrick Edouard appeals from his convictions of sexual exploitation. **REVERSED AND REMANDED.**

Gary Dickey and Angela Campbell of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Ed Bull, County Attorney, and Scott Brown and Laura Roan, Assistant County Attorneys, for appellee.

Heard by Potterfield, P.J., and Doyle and Bower, JJ.

DOYLE, J.

Patrick Edouard appeals from his convictions of sexual exploitation. We reverse his convictions and remand for a new trial consistent with this opinion.

I. Background Facts and Proceedings.

From 2003 to 2010, Patrick Edouard served as the pastor of the Covenant Reformed Church in Pella, Iowa. In January 2011, four female members of Edouard's congregation alleged Edouard, while counseling them, repeatedly engaged in sex acts with them. Edouard was subsequently charged with three counts of third-degree sexual abuse, in violation of Iowa Code section 709.4(1) (2011), four counts of sexual exploitation by a counselor, in violation of section 709.15(2)(c), and one count of the crime of pattern, practice, or scheme to engage in sexual exploitation, in violation of section 709.15(2)(a).[1] Venue in the matter was changed, and a jury trial followed.

At trial, Edouard admitted he engaged in sexual conduct with the four parishioners. However, he denied he was a "counselor or therapist" who provided them any "mental health services." Following a ten-day jury trial in Dallas County, the jury found Edouard guilty of four counts of sexual exploitation by a counselor or therapist, and one count of pattern, practice, or scheme to engage in sexual exploitation. The jury acquitted Edouard of the three counts of third-degree sexual abuse.

[1] All references to the Iowa Code in this opinion refer to the 2011 edition of the code unless otherwise stated. However, we note the legislature has since amended section 709.15, among other statutes, to make "technical corrections." *See* 2013 Iowa Acts ch. 90, § 230. This resulted in restructuring the section and its subparts, but it did not substantively modify the language of section 709.15 relevant here.

Edouard now appeals, asserting numerous claims, including that the district court erred in failing to include in the jury's instructions the definition of "counseling," as defined by the Iowa Supreme Court in *State v. Gonzalez*, 718 N.W.2d 304, 308 (Iowa 2006), resulting in prejudice to him. Because we find this issue dispositive, we need not address his other claims raised on appeal.[2]

II. Discussion.

A. Jury Instructions.

"A trial court must instruct on all material issues raised by the evidence." *State v. Broughton*, 425 N.W.2d 48, 51 (Iowa 1988); *see also* Iowa R. Civ. P. 1.924 ("The court shall instruct the jury as to the law applicable to all material issues in the case . . . ."); Iowa R. Crim. P. 2.19(5)(f) ("The rules relating to the instruction of juries in civil cases shall apply to the trial of criminal cases."); *State v. Marin*, 788 N.W.2d 833, 837 (Iowa 2010). "In criminal cases, the court is required to instruct the jury on the definition of the crime." *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996).

We generally review a district court's ruling on a challenge to jury instructions for the correction of errors at law. *State v. Frei*, 831 N.W.2d 70, 73 (Iowa 2013). However, "[w]e review the related claim that the trial court should have given the defendant's requested instructions for an abuse of discretion." *Id.* An abuse of discretion occurs when the trial court exercises its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Redmond*, 803 N.W.2d 112, 117 (Iowa 2011) (citation omitted).

[2] We note the parties' appellate briefs to be of exceptionally good quality.

> Error in giving or refusing to give a particular instruction warrants reversal unless the record shows the absence of prejudice. When the error is not of constitutional magnitude, the test of prejudice is whether it sufficiently appears that the rights of the complaining party have been injuriously affected or that the party has suffered a miscarriage of justice.

Frei, 831 N.W.2d at 73 (internal citations and quotation marks omitted).

The crime of sexual exploitation by a counselor, therapist, or school employee is set out in Iowa Code section 709.15. For purposes of this section, a "counselor or therapist" is any person "who provides or purports to provide mental health services." Iowa Code § 709.15(1)(a). This includes, but is not limited to, "a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, [or] *member of the clergy*," regardless of whether or not the person is licensed or registered by the state. *Id.* (emphasis added). Under section 709.15(2)(c), a "counselor or therapist" commits sexual exploitation if it is found that, within one year of the termination of the provision of "mental health services," the counselor or therapist had sexual conduct with a patient or client, including former patients or clients, "for the purpose of arousing or satisfying the sexual desires of the counselor or therapist."

Paragraph (d) of section 709.15(1) defines the term "mental health service" as "the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction." However, the terms "treatment," "assessment," and "counseling" are not defined in section 709.15.

In *Gonzalez*, the Iowa Supreme Court was faced with a challenge to Iowa Code section 709.15 (Supp. 2003) as applied to a psychiatric nursing assistant's conduct. 718 N.W.2d at 306-08. In that case, Gonzalez was charged with sexual exploitation by a counselor or therapist arising from his alleged "touching of a female patient's genital area in his role as a nursing assistant in the psychiatric unit." *Id.* at 306. Gonzalez challenged the charge in a motion to dismiss, asserting that as a psychiatric nursing assistant, his conduct did not fall within the intended scope of section 709.15; specifically, he did not provide the patients "mental health services." *Id.* The district court agreed and dismissed the trial information. *Id.* The State appealed. *Id.*

On review, the Iowa Supreme Court first set forth the standards of statutory construction:

> "The goal of statutory construction is to determine legislative intent. We determine legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, *words in the statute are given their ordinary and common meaning by considering the context within which they are used*. Under the guise of construction, an interpreting body may not extend, enlarge or otherwise change the meaning of a statute."

Id. at 307-08 (emphasis added) (quoting *Auen v*. *Alcoholic Beverages Div*., 679 N.W.2d 586, 590 (Iowa 2004).

> The interpretation of a statute requires an assessment of the statute in its entirety, not just isolated words or phrases. Indeed, we avoid interpreting a statute in such a way that portions of it become redundant or irrelevant. We look for a reasonable interpretation that best achieves the statute's purpose and avoids absurd results. We strictly construe criminal statutes with doubts resolved in the accused's favor.

Id. at 308 (internal citations and quotation marks omitted).

In analyzing section 709.15, the court noted it had previously determined the term "mental health service" did "not encompass strictly personal relationships involving the informal exchange of advice." *Id.* The court then consulted a dictionary to determine the "ordinary meanings" of the words "treatment," "assessment," and "counseling" used by the legislature in the statute, and it specifically found the ordinary meaning of "counseling" is "'a practice or professional service designed to guide an individual to a better understanding of his problems and potentialities by utilizing modern psychological principles and methods esp. in collecting case history data, using various techniques of the personal interview, and testing interests and aptitudes.'" *Id.* (quoting *Webster's Third New Int'l Dictionary* 518 (unabr. ed. 2002)).[3]

In the present case, jury instruction number 24 provided the definition of "counselor or therapist" as set forth in section 709.15(1)(a). The next jury instruction defined "mental health services," stating:

> "[M]ental health services" is the providing of treatment, assessment, or counseling to another person for a cognitive, behavioral, emotional, mental or social dysfunction, including an intrapersonal or interpersonal dysfunction. It does not include strictly personal relationships involving the informal exchange of advice, nor does it include the giving of general spiritual advice or guidance from a clergy member to congregants. It contemplates a counseling relationship with the clergy member established for the purpose of addressing particular mental, intrapersonal or interpersonal dysfunctions.

[3] Using dictionary definitions, the court concluded under the facts alleged by the State, Gonzalez provided treatment and assessment to patients. *Gonzalez*, 718 N.W.2d. at 309. Because Gonzalez's provision of mental health services qualified him as a "counselor or therapist" for purposes of section 709.15, the court reversed the district court's dismissal of the trial information. *Id*. at 310.

Over Edouard's objection, the court declined to include the *Gonzalez* definition of "counseling" in its "mental health services" jury instruction, concluding:

> While the court in *Gonzalez* referred to a dictionary definition in its determination of whether the defendant in that particular case and that defendant's occupation fit within the definition of one who provides mental health services, the court's reading of that case does not indicate that the appellate court either in fact or intended to establish that that dictionary's definition was the element or the definition of a counselor or therapist to be applied in this state.

On appeal, Edouard argues that the definition of "counseling" in *Gonzalez* is controlling here, and the trial court's failure to instruct the jury as to that narrower definition was an abuse of discretion. We agree. Our supreme court determined the more narrow definition of "counseling" is the term's ordinary meaning. *See Gonzalez*, 718 N.W.2d at 308. This court and the district courts are bound by our supreme court's pronouncements. *See State v. Hughes*, 457 N.W.2d 25, 28 (Iowa Ct. App. 1990) (citing *State v. Eichler*, 83 N.W.2d 576, 578 (1957) ([t]rial courts are under a duty to follow [the law] as expressed by the courts of last resort. "If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.")); *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990) (stating the Court of Appeals is "not at liberty to overturn Iowa Supreme Court precedent"). The court found that definition of counseling was "a reasonable interpretation that best achieves the statute's purpose and avoids absurd results." *Gonzalez*, 718 N.W.2d at 308.

To be sure, it can be persuasively argued, particularly in the context of this case, that the *Gonzalez* definition of counseling is narrower than intended by the legislature. But, "[w]e assume the legislature is familiar with the holdings of [our supreme] court relative to legislative enactments and that if [the court has]

improperly decided what their intention was they will by additional legislation state the real intention." *Welch v. Iowa Dep't of Transp.*, 801 N.W.2d 590, 600 (Iowa 2011) (internal quotation marks and citation omitted). Furthermore, "[w]hen the legislature amends some parts of a statute following a recent interpretation, but leaves others intact, this 'may indicate approval of interpretations pertaining to the unchanged and unaffected parts of the law.'" *State v. Sanford*, 814 N.W.2d 611, 619 (Iowa 2012) (quoting 2B Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 49:10, at 144 (7th ed. 2008)).

The *Gonzalez* decision was filed in 2006. Despite ample opportunities, the legislature has declined to overturn or limit the scope of the *Gonzalez* decision. In fact, section 709.15 was recently amended by the legislature, but it left the term counseling undefined. *See* 2013 Iowa Acts ch. 90, § 230. Thus, it is appropriate for us to conclude that after seven years of legislative acquiescence, the legislature is satisfied with the *Gonzalez* definition of counseling. *See Sanford*, 814 N.W.2d at 619; *Welch*, 801 N.W.2d at 600. As a result, we must conclude the trial court's declination to employ the *Gonzalez* "counseling" definition was unreasonable. We therefore also conclude the district court abused its discretion.

Additionally, we agree with Edouard that he suffered prejudice as a result of the court's failure to include the *Gonzalez* definition of "counseling" in the jury instruction defining "mental health services." Edouard's entire defense was premised on the fact that he could not be convicted of sexual exploitation because his actions did not meet the definition of "counseling." That issue was

for the jury to determine, and without the proffered instruction, the jury was allowed to convict him even if it found he did not offer each parishioner "a practice or professional service designed to guide [her] to a better understanding of [her] problems and potentialities by utilizing modern psychological principles and methods esp. in collecting case history data, using various techniques of the personal interview, and testing interests and aptitudes." Gonzales, 718 N.W.2d at 308. Consequently, we conclude his convictions must be reversed, and we remand for a new trial.

B. Pastoral Care and Counseling Expert.

Because we have already determined that a retrial is required, we will address Edouard's claim the district court erred in excluding his expert's testimony, as the issue is likely to arise again on remand. At trial, Edouard sought to offer the expert testimony of Dr. Hollida Wakefield, a forensic psychologist, to explain the differences between "pastoral counseling" versus "pastoral care." In an offer of proof, Dr. Wakefield opined that Edouard's interactions with the four parishioners did not fit "the definition of pastoral counseling." Edouard asserts the district court's exclusion of the expert "deprived the defense of one of its strongest arguments of innocence." We agree.

Iowa is committed to a liberal view on the admissibility of expert testimony, though this court is deferential to the discretion of the district court in this area. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa 1999). However, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness

qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Iowa R. Evid. 5.702. An expert witness need not be a specialist, but the testimony must be within his general area of expertise. *Ranes v. Adams Labs., Inc.*, 778 N.W.2d 677, 687 (Iowa 2010). The proponent of the expert has the burden of demonstrating their qualifications and reliability to the court. *Id.* at 686. "[T]rial courts have a well-recognized role as guardians of the integrity of expert evidence offered at trials." *Id.*

Here, Edouard's offer of proof clearly established his witness was a qualified expert with specialized knowledge in the areas of counseling, and given our state's liberal view of admitting expert testimony, we conclude the district court erred in excluding the expert's testimony. The issue before the jury was whether Edouard provided counseling to these women, and the expert's training and education will assist the jury in understanding the evidence and determining if Edouard did in fact counsel these women within the definition of section 709.15, as intended by the legislature.

III. Conclusion.

Having determined Edouard suffered prejudice as a result of the failure to include the *Gonzalez* definition of "counseling" in the jury instruction, we reverse his convictions and remand for a new trial consistent with this opinion.

REVERSED AND REMANDED.