IN THE COURT OF APPEALS OF IOWA

No. 7-744 / 06-1465
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PEDRO PEREZ-FUENTES,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

Defendant appeals from his first-degree murder conviction. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger and Douglas Hammerand, Assistant Attorneys General, Jennifer Miller, County Attorney, for appellee.

Heard by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

Pedro Perez-Fuentes appeals from his conviction of first-degree murder. Perez-Fuentes asserts that the district court erred in not granting his motion to suppress and his motion for judgment of acquittal. In spite of a less than perfect translation of the *Miranda* warnings, we agree with the district court that Perez-Fuentes knowingly and intelligently waived his *Miranda* rights and further, that there was sufficient evidence to support the jury's guilty verdict. We affirm.

I. *Facts Presented to the Jury*

Perez-Fuentes and Laurie Reyes had lived together off and on in a rather volatile relationship since 2003. Perez-Fuentes was described by Reyes's friends and family as jealous, possessive, and controlling of Reyes. On April 2, 2003, Perez-Fuentes came at Reyes with a knife, pushed her down on the bathroom floor, and tried to choke her. Perez-Fuentes was arrested and convicted of domestic assault. Sometime later, a friend of Reyes overheard Perez-Fuentes threaten to kill Reyes if he ever found her with another man. On May 11, 2005, Reyes attempted to end the relationship. Perez-Fuentes removed his personal belongings from Reyes's apartment and returned her key. The following weekend, Reyes went to Des Moines with a friend, partied and had sex with another man, Manuel Ontiveros. During this weekend Perez-Fuentes told witnesses he knew Reyes had other boyfriends and attempted to determine who they were.

On May 16, 2005, Reyes's body was discovered in her apartment. An autopsy established that Reyes had numerous bruises and scrapes over her body and had been strangled with an electrical cord between 8:00 a.m. and

11:00 a.m. that day. The officers who processed the apartment for evidence testified that the bathroom where Reyes's body was discovered was very wet and appeared as if everything had been washed down. However, DNA from a blood drop found in the bathroom matched Perez-Fuentes. Additionally, a blood stain on a pillowcase in the bedroom and a cigarette butt could also be tied to Perez-Fuentes. The results of the sexual assault test done on Reyes's body did not match Perez-Fuentes, but rather Ontiveros, which was consistent with Reyes and Ontiveros having sex the day before, May 15.

On May 23, 2005, officers arrested Perez-Fuentes on a material witness warrant and questioned him to determine whether he was involved in Reyes's murder. Because Perez-Fuentes does not speak English, Tina Weber served as an interpreter. Weber was employed as a half-time probation and parole officer for the Marshalltown Department of Corrections' office and specialized in translations for Spanish-speaking offenders.[1] Weber and Perez-Fuentes had met and conversed previously when Perez-Fuentes participated in the Batterers' Education Program following his 2003 conviction. As Perez-Fuentes does not read Spanish, officers gave Weber a form to read to Perez-Fuentes, which contained the *Miranda*[2] warnings translated into Spanish. However, after reading through the form, Weber determined that the form was "written in terrible

[1] Weber is on the Iowa Judicial Branch's roster of non-certified interpreters. *See* Iowa's Roster of State Court Interpreters, http://www.judicial.state.ia.us/; *see also* Iowa Ct. R. 14.3 & 14.5 (defining the classifications of interpreters and stating the state court administrator shall maintain a statewide roster of court interpreters). Weber has also provided interpretation services for the Marshall County Public Defender's Office, the Marshall County Sheriff's Office, the Marshalltown Police Department, and private-practicing attorneys. She is the only Spanish-speaking individual in the Marshalltown Department of Corrections' office.

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Spanish" and that a Spanish speaker would not be able to understand it.[3] She concluded that the form was useless and decided to explain each warning on the form to Perez-Fuentes, without advising the officers that she was not reading the form verbatim. During the following police interview, Perez-Fuentes did not admit to killing Reyes but did give some inconsistent statements about his activities on the day of her death.

Prior to trial, Perez-Fuentes filed a motion to suppress his statements to police and the videotaped interview. An expert defense witness, Michael Piper,[4] challenged the accuracy of Weber's translation of the *Miranda* warnings as well as the police interview. The district court denied Perez-Fuentes's motion, finding that the sum and substance of the *Miranda* warnings were sufficiently conveyed to Perez-Fuentes and he knowingly and intelligently waived them. The district court further found that Perez-Fuentes and the police understood one another during police questioning such that the errors in the translation did not infringe on Perez-Fuentes's right to a fair trial. The videotape of the police interview was introduced at trial and Perez-Fuentes, through his expert witness, challenged and explained any inaccuracies he believed existed. After a jury trial, Perez-Fuentes was convicted of first-degree murder in violation of Iowa Code section 707.2(1) (2005) and was sentenced to life in prison.

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[3] The defense expert agreed that the form "had many problems."

[4] Piper is on the Iowa Judicial Branch's roster of certified interpreters. *See* Iowa's Roster of State Court Interpreters, http://www.judicial.state.ia.us/; *see also* Iowa Ct. R. 14.3 & 14.5 (defining the classifications of interpreters and stating the state court administrator shall maintain a statewide roster of court interpreters). He is employed by Des Moines Area Community College as an interpretation and translation instructor and was previously employed by the U.S. District Court for the Southern District of Iowa as a staff court interpreter. He also has extensive teaching experience in the area of interpretation and translation.

II. *Motion to Suppress*

Perez-Fuentes argues that the district court erred in denying his motion to suppress, which alleged violations of the Fourth and Fifth Amendments of the Untied States Constitution. We review constitutional claims de novo. *State v. McGrane*, 733 N.W.2d 671, 675 (Iowa 2007) (citations omitted). This review requires us to "make an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Simmons*, 714 N.W.2d 264, 271 (Iowa 2006) (quoting *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). We give deference to the factual findings of the district court due to its opportunity to evaluate the credibility of the witnesses, but we are not bound by such findings. *McGrane*, 733 N.W.2d at 675-76 (citing *Turner*, 630 N.W.2d at 606).

A. Miranda *Waiver*

A *Miranda* waiver must be knowingly, intelligently, and voluntarily made. *State v. Countryman*, 572 N.W.2d 553, 559 (Iowa 1997).[5] In order for a waiver of *Miranda* rights to be valid, two requirements must be met:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decisions to abandon it.

Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 1140, 89 L. Ed. 2d 410, 421 (1986) (citations omitted). Once a defendant raises the validity of a *Miranda*

[5] "*Miranda* warnings are not required unless there is both custody and interrogation." *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997). The state concedes that the defendant was in custody and being interrogated.

waiver, the state has the burden to prove these factors by a preponderance of the evidence. *Countryman*, 572 N.W.2d at 559.

Perez-Fuentes does not claim his *Miranda* waiver was involuntarily made; he only claims that the inaccuracies in Weber's translation of his *Miranda* rights resulted in a waiver that was not knowingly or intelligently made. A *Miranda* warning does not have to be given with any specific wording; rather the appropriate inquiry is whether the warning reasonably conveyed to a suspect his rights as required by the *Miranda* decision. *State v. Thai*, 575 N.W.2d 521, 524 (Iowa Ct. App. 1997) (citing *State v. Schwartz*, 467 N.W.2d 240, 246 (Iowa 1991)). "Although language barriers may inhibit a suspect's ability to knowingly and intelligently waive his *Miranda* rights, when a defendant is advised of his rights in his native tongue and claims to understand such rights, a valid waiver may be effectuated." *United States v. Hernandez*, 913 F.2d 1506, 1510 (10th Cir. 1990). "The translation of a suspect's *Miranda* rights need not be perfect if the defendant understands that he or she need not speak to police, that any statement made may be used against him or her, that he or she has a right to an attorney, and that an attorney will be appointed if he or she cannot afford one." *United States v. Perez-Lopez*, 348 F.3d 839, 849 (9th Cir. 2003).

Perez-Fuentes first argues there were two inaccuracies in the translation of the right to have an appointed attorney that could have caused confusion for a Spanish speaker. First, in describing the right to have a lawyer present, Weber used the Spanish word "consejeria," which more accurately refers to medical or psychological counseling and not legal counseling. Although Weber used the wrong word to refer to legal counseling, she accurately stated that Perez-Fuentes

could have a lawyer present while he gave his statement to police and that he could stop the interview and speak with a lawyer. Furthermore, there is nothing in the record that indicated Perez-Fuentes was confused by the use of this particular word. Next, when Perez-Fuentes was informed that if he could not pay for a lawyer the court would appoint a lawyer, Weber used the Spanish word "apuntar" for the word "appoint." The defendant's expert, Piper, stated that the word "apuntar" does not mean "appoint" but means to "sign up" or "to aim" or "to point." Weber disagreed with this characterization and testified that based upon her extensive experience with local Spanish speakers, the term "apuntar" also means "to appoint." Again, Perez-Fuentes did not indicate he was confused by the use of "apuntar." The district court further found Weber's testimony more valuable than Piper's based upon her experience with local Spanish speakers. Even with these two inaccuracies, we agree with the district court that the constitutional right to have an attorney was sufficiently described to Perez-Fuentes.

Perez-Fuentes also argues that the record is unclear as to whether he understood his rights. Although he points to errors in the translation, none of these errors were substantive and impacted his ability to understand the meaning of the translation. Several times Perez-Fuentes verbally indicated to Weber he understood his rights. Before discussing each right individually, Weber specifically told Perez-Fuentes that he had certain rights, he needed to understand these rights, and he would indicate his understanding of each right by initialing the page. After explaining the right to remain silent and that anything he said could be used against him in court, Weber asked if he understood each right

and he responded affirmatively. Weber told Perez-Fuentes that if he understood each right but wanted to waive his rights, he could talk to the police officers but could stop the interview and speak with a lawyer at any time. She further stated that he should sign the form if "you understand the rights and that for right now you want to speak with the police without the presence of a lawyer." Perez-Fuentes then stated he wanted to talk with the police officers. Perez-Fuentes's conduct demonstrated that he understood his rights. *See State v. Hajtic*, 724 N.W.2d 449, 454 (Iowa 2006) (discussing that a complete audio and videotape of the *Miranda* proceedings and questioning that followed aided the court in determining the *Miranda* waiver was valid). He asked questions and conversed with Weber. *See id.* (discussing that the defendant was not reluctant to ask questions when he was confused). He demonstrated his understanding by nodding his head and answering questions, sometimes even before the interpretation was completed. Additionally, Perez-Fuentes had been read his *Miranda* rights when he was arrested for a previous crime. *See United States v. Heredia-Fernandez*, 756 F.2d 1412, 1416 (9th Cir. 1985) (stating a defendant who had been arrested numerous times in the past could be "presumed to be familiar with *Miranda* rights procedures"); *see also United States v. Astello*, 241 F.3d 965 (8th Cir. 2001) (discussing the defendant's prior arrests were correctly considered in determining whether the defendant's *Miranda* waiver was voluntary); *United States v. Collins*, 40 F.3d 95, 98 (5th Cir. 1994) (stating the district court did not err in considering that the defendant was familiar with the criminal justice system in determining the defendant was informed of and understood his rights). We agree with the district court that the translation done

by Weber sufficiently described to Perez-Fuentes his rights such that Perez-Fuentes knowingly and intelligently waived his *Miranda* rights.

B. *Due Process Rights*

Perez-Fuentes next argues that the admission of his videotaped and transcribed statements to police violated his due process rights to a fair trial. *See State v. Gardner*, 661 N.W.2d 116, 117 (Iowa 2003) ("A fair trial in a fair tribunal is a basic requirement of constitutional due process."). We agree with the district court that although there were many errors in Weber's translation, the parties understood each other. *See Baltazar-Monterrosa v. State*, 137 P.3d 1137, 1142 (NV 2006) ("In evaluating the translation of testimony, a reviewing court asks whether the translation was adequate and accurate on the whole."); *State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004) (stating that "there is no such thing as a perfect translation" and the court determines whether "the testimony was on the whole adequate and accurate" (internal quotations omitted)). This is evidenced by comparing the defense expert's translation with the police-generated translation. Furthermore, Perez-Fuentes presented expert testimony, challenging each point in the interview transcript he viewed as inaccurate. As the district court noted, there were "numerous failings but nothing in the translation transcript prepared by Mr. Piper nor in the videotape itself supports Mr. Perez's proposal that the principals in the interrogation did not understand the substance of the other party's remarks." We agree and conclude that the introduction of Perez-Fuentes's videotaped and transcribed statements did not violate his due process rights.

III. *Sufficiency of the Evidence*

Perez-Fuentes also argues the district court erred in overruling his motion for judgment of acquittal as he claims sufficient evidence does not support his first-degree murder conviction. We review challenges to the sufficiency of the evidence for corrections of errors at law. Iowa R. App. P. 6.4; *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003) (citing *State v. Webb*, 648 N.W.2d 72, 75-76 (Iowa 2002)). A jury verdict is upheld if it is supported by substantial record evidence, which is evidence that could convince a rational jury that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006); *Bash*, 670 N.W.2d at 137 (citing *Webb*, 648 N.W.2d at 75-76). Substantial evidence must do more than raise suspicion or speculation; it must raise a fair inference of guilt. *Bash*, 670 N.W.2d at 137 (citing *Webb*, 648 N.W.2d at 75-76). When reviewing the sufficiency of the evidence, we review the entire record in the light most favorable to the State, including all legitimate inferences that may be reasonably deduced from the record. *State v. Corsi*, 686 N.W.2d 215, 218 (2004). "Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *Nitcher*, 720 N.W.2d at 556 (quoting *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994)).

Perez-Fuentes specifically argues that there was insufficient evidence to establish that he was the person who strangled and killed Reyes. The jury heard testimony from several witnesses that Perez-Fuentes had previously been physically violent toward Reyes. Witnesses testified that Perez-Fuentes was jealous and that they had previously seen bruises on Reyes's arms and legs.

Perez-Fuentes had been convicted of domestic assault for attacking and trying to choke Reyes. Additionally, he had threatened to kill Reyes if she was ever with another man. Just days before the murder, Reyes had attempted to end the relationship and went to Des Moines to spend time with another man. Perez-Fuentes told a friend of Reyes that he knew Reyes was seeing other men, repeatedly questioned Reyes and attempted to find out who those men were.

Perez-Fuentes, who normally worked third-shift hours, left work early on May 15 and never returned to work. Testimony placed Perez-Fuentes at Reyes's apartment the morning of May 16, which was the morning Reyes was killed. Two witnesses saw Perez-Fuentes outside of Reyes's apartment between 7:30 a.m. and 8:00 a.m. and another saw him leaving the area of her apartment at approximately 10:30 a.m. When asked of his whereabouts on May 16, Perez-Fuentes stated repeatedly that he had been kicked out of Reyes's apartment on May 11, never returned, and never saw Reyes after that. He later admitted to being in Reyes's apartment the morning of May 16 for approximately one to two hours.

Additionally, DNA linked Perez-Fuentes to Reyes's apartment, including a drop of blood found in the bathroom where Reyes was killed, a drop of blood on a pillowcase in Reyes's bedroom and a cigarette butt found in the apartment.

Perez-Fuentes's conduct subsequent to the murder also supported the jury's finding. *See State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) ("Admissions may be implied by the conduct of the defendant subsequent to a crime, including fabrication, when such conduct indicated a consciousness of guilt."). A witness testified that the day police seized evidence from the house where Perez-

Fuentes was staying, Perez-Fuentes asked him for a ride to Chicago. Unsuccessful in getting a ride, Perez-Fuentes went to Des Moines where he gave a false name to someone he just met, claiming he had just arrived from Mexico. He then secured a ride back to Marshalltown and while attempting to pick up his paycheck, he was arrested. Upon his arrest, Perez-Fuentes asked officers "What's happening with Laurie?" even though the officers had not mentioned Reyes.

From all of the evidence, the jury could have determined that Perez-Fuentes was the person who murdered Reyes. Viewing the evidence in a light most favorable to the state, we conclude substantial evidence supports Perez-Fuentes's first-degree murder conviction. We therefore affirm Perez-Fuentes's conviction and the judgment of the district court.

AFFIRMED.