IN THE COURT OF APPEALS OF IOWA

No. 7-051 / 05-1870
Filed May 9, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANGEL GARCIA-MIRANDA,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge.

Angel Garcia-Miranda appeals his convictions for murder in the first degree, attempted murder, willful injury, and child endangerment. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, Gary Allison, County Attorney, and Alan Ostergren and Korie Shippee, Assistant County Attorneys, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Defendant-appellant Angel Garcia-Miranda appeals his convictions for murder in the first degree, attempted murder, willful injury, and child endangerment. Garcia-Miranda contends that (1) the district court erred in admitting the doctors' testimony regarding the timing of the injuries, (2) his trial counsel was ineffective for failing to properly object to the doctors' testimony regarding to the timing of the injuries, and (3) the trial court abused its discretion in allowing a police officer's testimony regarding his demeanor during an interrogation. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

At about 9 a.m. on December 19, 2004, Melinda Enriquez went to a restaurant to buy breakfast. Before going out, she checked on her two daughters, two-year-old Leeanna and four-year-old Breeana, and saw they were both asleep in their shared bedroom. Garcia-Miranda, Enriquez's boyfriend, was in the house with the children while Enriquez was gone.

When Enriquez returned after about an hour, she found Leeanna and Breeana severely injured. Enriquez called 911 and the children were taken to the hospital. In this process, Breeana told several people that Garcia-Miranda had hurt her and Leeanna. Leeanna died shortly after arrival at the hospital due to internal bleeding from a torn liver caused by blunt force trauma to her abdomen. Breeana survived, but was hospitalized for almost three weeks.

Garcia-Miranda was charged with first-degree murder, attempted murder, willful injury and child endangerment. A jury trial was held in September 2005. Garcia-Miranda testified at the trial, denying he had hurt the children. He claimed

he was asleep and never entered Leeanna and Breeana's bedroom the morning of the incident. However, the jury found him guilty of all counts. On November 10, 2005, judgment was entered and Garcia-Miranda was sentenced to life imprisonment on the murder conviction. He was also sentenced to prison terms on the other convictions. The terms were to run consecutively to one another, but concurrently with the life sentence. Garcia-Miranda appeals, challenging the district court's decision to admit the testimony of Dr. Klein, Dr. Helmsworth, and Dr. George regarding the timing of injuries, and of police officer Schwarz regarding Garcia-Miranda's demeanor when the police officers were questioning him. Garcia-Miranda also alleges his counsel was ineffective for failing to object to Dr. Kirby's testimony indicating the time of injuries and to properly object to the other doctors' testimony.

II. DOCTORS' TESTIMONY REGARDING TIME OF INJURIES.

During the trial, Dr. Klein and Dr. Kirby[1] gave their expert opinions concerning the time when Leeanna suffered her injuries. Dr. Helmsworth and Dr. George gave their opinions concerning the time when Breeana was injured.

Dr. Klein, Deputy State Medical Examiner, performed the autopsy on Leeanna. Relying on his autopsy findings, the written statements from the paramedics and other medical records, Dr. Klein formed his opinion that Leeanna was injured between 10:00 and 10:15 that morning. He also testified he could not find any relevant scientific studies or articles on the issue and he made the estimation based on his experience.

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[1] Garcia-Miranda did not object to Dr. Kirby's testimony at trial, but on appeal, he challenges this testimony in the ineffective assistance of counsel claim. We will discuss Dr. Kirby's testimony in the later section.

Dr. Helmsworth, a general surgeon who treated Breeana in the emergency room, testified that based on his experience and observation, Breeana could not have survived more than two hours after the injuries. This testimony placed the time of Breeana's injuries at 9:04 a.m. or later. Dr. Helmsworth stated that he was not aware of any clinical studies or statistics showing how long a person could survive with such injuries.

Dr. George, a pediatric critical care physician from the University of Iowa Hospital, also treated Breeana. Dr. George agreed Breeana could not have survived more than two hours after the injury occurred. Based on this testimony, the injuries occurred at or after 9:04 in the morning.

Garcia-Miranda objected to Dr. Klein, Dr. Helmsworth, and Dr. George's testimony on one or more of the following grounds: lack of scientific basis, irrelevance, and unfair prejudice.[2] We review a district court's ruling on the admissibility of evidence for abuse of discretion. *State v. Rodriquez*, 636 N.W.2d 234, 245 (Iowa 2001). Iowa has a well-established tradition to take a very liberal view on the admissibility of expert testimony. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa 1999). The higher courts have been "quite deferential to the district court in the exercise of its discretion" concerning this issue. *Id.* We will not reverse the trial court's decision to admit the testimony unless there is a manifest abuse of discretion. *Id.*

[2] At trial, Garcia-Miranda's counsel objected to Dr. Klein's testimony only for lack of scientific basis. He objected to Dr. Helmsworth's testimony for lack of scientific foundation and being irrelevant. Objection was made to Dr. George's testimony on all three grounds. On appeal, Garcia-Miranda raised the additional grounds in the ineffective assistance of counsel claim. We will address them in the next section.

Under Iowa Rule of Evidence 5.702, admissible expert testimony must meet three conditions. First, the witness must qualify as an expert by knowledge, skill, experience, training or education. *Id*. Second, the testimony must be in the form of scientific, technical, or other specialized knowledge. *Id*. Third, it must assist the trier of fact to understand the evidence or to determine a fact in issue. *Id.* The third condition is essentially a relevance requirement in the context of expert testimony. Furthermore, even if the testimony is admissible under rule 5.702, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Iowa R. of Evid. 5.403. We now consider Dr. Klein, Dr. Helmsworth, and Dr. George's testimony on each ground Garcia-Miranda raised at trial.

A. Lack of Scientific Foundations

Garcia-Miranda claims that under *Daubert* and existing Iowa analysis, the doctors' testimony should not be allowed. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 580, 113 S. Ct. 2786, 2790, 125 L. Ed. 2d 469, 475 (1993). Garcia-Miranda cites *Iowa Power & Light Co. v. Stortenbecker*, 334 N.W.2d 326, 330-31 (Iowa Ct. App. 1983) in which we stated that "in order for the expert's opinion to be competent, sufficient data must be present upon which an expert judgement can be made." Garcia-Miranda claims all three doctors conceded there were no existing studies giving reference to a child's possible survival time frame after suffering certain injuries; sufficient data therefore does not exist. Garcia-Miranda apparently considers the "sufficient data" language in *Stortenbecker* as equivalent to the *Daubert* standard requiring an opinion to be based on studies that have been tested or subjected to peer

review and publication. This interpretation is mistaken because it takes the language out of context. In *Stortenbecker*, the "sufficient data" language goes primarily to the reliability of the opinion, rather than the authoritative foundation requirement. Immediately following the "sufficient data" language, we stated, "[T]hese facts must be sufficient for the witness to reach a conclusion which is more than mere conjecture or speculation." *Id*. at 331. In the next paragraph, we concluded the witness's testimony could not be properly characterized as expert opinion because his testimony referred to a mere possibility rather than probability. *Id*. It is clear that we did not intend to set forth a scientific foundation requirement in *Stortenbecker*. In fact, it would be impractical to require the doctors to base their opinions on published data or research in the present case. As the doctors testified, it is impossible to conduct controlled scientific studies on this topic because it would involve intentional infliction of serious injuries on human subjects.

Garcia-Miranda also argues the district court judge failed to conduct a preliminary assessment of whether or not the reasoning or methodology underlying the testimony was scientifically valid and whether or not it could be properly applied to this case. He claims that had the trial judge made such analysis, the conclusion would have been to disallow the testimony. This preliminary assessment requirement was set forth by *Daubert*. *See Daubert v. Merrell Dow*, 509 U.S. 579, 580, 113 S. Ct. 2786, 2790, 125 L. Ed. 2d 469, 475 (1993). However, *Daubert* is an interpretation of the Federal Rules of Evidence. Iowa courts are not required to follow it while applying the Iowa Rules of Evidence. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa

1999). The Iowa Supreme Court provided us with guidance regarding when the courts are encouraged to use *Daubert* considerations. In *Goodyear*, 590 N.W.2d at 534, the supreme court stated that if the evidence proffered by the expert was so "novel or complex", the court, in its discretion, could require proof of acceptance of the theory or technique in the scientific community. In the present case, the doctors were not introducing new theories or explaining complex methodologies. Testimony regarding forensic pathology has been widely used in court proceedings. The doctors' testimony concerned the mechanism of injury, their observation of the injuries, the cause of death, and the blood collection process. It was quite plain and easy to understand. The jury would have sufficient knowledge and personal experience to decide the credibility of the testimony and to give it proper weight. It is unnecessary to require a preliminary assessment. *See Goodyear*, 590 N.W.2d at 636 (holding the witness's testimony was simple to understand, and the trial court's analysis that the expert witness's testimony was sufficient to establish the defective design was supported by the record).

Based on above analysis, we conclude the district court did not abuse its discretion by allowing the doctors' testimony even though the testimony was not based on published authorities. We next consider whether the testimony was relevant.

B. Relevance.

For an expert opinion to be relevant, it must assist the jury to understand the evidence or determine an issue in question. The testimony must be reliable to be relevant because unreliable testimony will not assist the jury. *State v.*

Murphy, 451 N.W.2d 154, 156-57 (Iowa 1990). Garcia-Miranda contends that because Dr. Helmsworth and Dr. George's opinions lack scientific foundation, they are unreliable and irrelevant.

When determining the reliability of the testimony, the doctors' failure to base their testimony on published authorities is not dispositive. The record supports the district court's finding that the doctor's testimony was sufficiently reliable. Dr. Helmsworth and Dr. George formed their opinion based on their observations and experience. Dr. Helmsworth specialized in abdominal surgery, intra-abdominal organs, and trauma. In his fourteen-year practice as a general surgeon, he had seen many injuries similar to the injuries suffered by Breeana. He testified similar injuries commonly occur in bicycle accidents when the bicycle handle hits the cyclist in the upper abdomen. In those cases, the time of the accident was known to him. Therefore, he could make a reliable estimation of the time of Breeana's injuries by comparing the severity of Breeana's injuries with injuries in other similar cases.

Similarly, Dr. George specialized in pediatric critical care medicine. She had treated children with serious medical conditions for about ten years. She treated Breeana, and had first-hand information regarding Breeana's injuries. She had also seen many children with injuries similar to Breeana's in her practice, and most were in association with car accidents. In those cases, the time of injury was known. She could estimate the time of Breeana's injuries based on her experience with other children under similar conditions. In addition, Dr. George referred to some relevant studies in forming her opinion. Although

these studies mostly concerned adults, Dr. George took into account the age factor: children in general tolerated this degree of injury less well than adults.

The State points out that an additional, highly persuasive guarantee of the reliability of the doctors' opinions is the consistency of their opinions. We agree. The doctors employed methods appropriate to their respective specialties and independently reached similar conclusions concerning the timing of the injuries. We conclude that the doctors' experience-based opinions were sufficiently reliable to be relevant.

C. Prejudice.

Garcia-Miranda claims Dr. George's testimony regarding the time of injuries should be excluded as unfairly prejudicial. Under Iowa Rule of Evidence 5.403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. In this case, we find no danger of unfair prejudice in admitting Dr. George's testimony. It is true Dr. George's opinion regarding the time of Breeana's injuries is detrimental to Garcia-Miranda. However, "[r]ule 5.403 does not provide protection against all evidence that is prejudicial or detrimental to one's case; it only provides protection against evidence that is *unfairly prejudicial*." *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988) (emphasis added). Evidence is not unfairly prejudicial if its adverse effect on the defense derives from its legitimate probative value, because "this type of prejudice is inherent in any evidence that is probative of a material issue." *State v. Newell*, 710 N.W.2d 6, 28-29 (Iowa 2006). Unfairly prejudicial evidence is the evidence that "appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or trigger other mainsprings of human reaction

that may cause a jury to base its decision on something other than the established propositions in the case." *State v. Rodriquez,* 636 N.W.2d 234, 240 (Iowa 2001). Dr. George's opinion did not present this type of danger. It did not suggest decisions on emotional or other improper basis. It was not graphic or inflammatory. It had no tendency to arouse passion. It only suggested that it was probable that Garcia-Miranda was the person who inflicted the injuries to the children, which was the purpose of all the evidence proffered by the State. We do not find the testimony to be unduly prejudicial.

Garcia-Miranda again cites *Stortenbecker* in which the opinion of a doctor was found to be improper expert testimony for its prejudicial effects. *Stortenbecker*, 334 N.W.2d at 331. He contends this case deserves the same treatment. However, the decision in *Stortenbecker* was made based on the court's finding the expert's opinion was so unreliable that its probative value was very slight, and the testimony could have easily misled and confused the jury.[3] *Id.* The present case is clearly distinguishable from *Stortenbecker*. Dr. George's testimony had a much higher probative value. We do not find it was misleading or confusing to the jury.

Based on the above analysis, we conclude the district court did not abuse its discretion in admitting the doctors' testimony. The testimony was sufficiently reliable to be relevant, and there was no undue prejudice to Garcia-Miranda.

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[3] The court particularly found that "[the expert's] insertion of the words 'leukemia' and 'multiple sclerosis', which allegedly illustrated the 'biological effects' from electrical fields created by the transmission lines, and his equivocation when discussing the extrapolation of the effects on animals to humans, could have easily misled and confused the jury."

III. INEFFECTIVE ASSISTANCE OF COUNSEL.

Garcia-Miranda claims his trial counsel was ineffective for two reasons: first, for failing to object to Dr. Kirby's testimony regarding the time of injuries; and secondly, for failing to properly object to other doctors' testimony on all available grounds. More specifically, counsel should have objected to (1) Dr. Klein's testimony for irrelevance and undue prejudice, (2) Dr. Helmsworth's testimony for undue prejudice, and (3) Dr. George's testimony as speculation.

We review claims of ineffective assistance of counsel de novo. *State v. McBride,* 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). To succeed with a claim of ineffective assistance of counsel, a defendant typically must prove the following two elements: (1) counsel failed to perform an essential duty, and (2) defendant was prejudiced by counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). There is an assumption that counsel's performance is competent. *Id.* 466 U.S. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694. The defendant must show that his counsel performed below the standard demanded of a reasonably competent attorney. *Id*. 466 U.S. at 687-88, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. To show prejudice, the defendant must show that there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. Ineffectiveness claims raised on direct appeal are ordinarily preserved for postconviction relief to allow full development of the facts surrounding counsel's conduct. *Berryhill v. State,* 603 N.W.2d 243, 245 (Iowa 1999). Here we find the record sufficient to decide the claims on direct appeal.

A. Dr. Kirby's Testimony.

Dr. Kirby's video deposition was played for the jury. She testified the microscopic defects in Leeanna's brain indicated she suffered injuries resulting in lack of blood and oxygen to the brain one and one-half to two hours before resuscitation efforts ceased. This testimony suggested the injuries occurred around 9:35 a.m. or later. Dr. Kirby testified she referred to studies concerning both adults and children, although the records concerning children were often vague as to the timing of the original injury. Garcia-Miranda's counsel did not object to Dr. Kirby's testimony at trial. Garcia-Miranda claims counsel breached an essential duty for failing to do so.

Our previous analysis of the other doctors' testimony applies here. Dr. Kirby was a neuropathologist. She had made post-mortem examinations of hundreds of brains, looking for the type of injuries she found in Leeanna's brain. She was familiar with studies involving both adults and pediatric patients. Her education and experience placed her in a position to express a reliable opinion as to the approximate amount of time that elapsed between Leeanna's injuries and the abandonment of the effort to resuscitate her. We do not find Dr. Kirby's testimony so unreliable to be irrelevant. Neither do we find its probative value is substantially overweighed by its prejudicial effects for the reasons we stated in the context of issue one. Therefore, we conclude that counsel did not fail to perform an essential duty since he had no obligation to raise a meritless objection. *State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005).

B. Dr. Klein's Testimony.

Dr. Klein was a very experienced medical examiner. He had performed 100 to 150 autopsies per year for five years before the trial. When conducting the autopsy on Leeanna's body, Dr. Klein measured the amount of blood in Leenanna's abdomen, and found her liver was almost split in half. He testified the liver was a very vascular organ and it bled quite rapidly. In Leeanna's case, it did not have the appearance of a slow collection of blood over a period of time based on the severity of the laceration of her liver. Based on these observations, he estimated the child would likely be unconscious within about thirty minutes or so of the injuries. We find this analysis to be reasonable. Dr. Klein's experience placed him in a position to form a reliable opinion on the question of how long the victim could survive with such injuries. We conclude Dr. Klein's testimony was sufficiently reliable to be relevant. For the same reason as we discussed regarding Dr. George's testimony, it was not unfairly prejudicial.

C. Dr. Helmsworth's Testimony

We do not find Dr. Helmswoth's testimony to be unduly prejudicial for the same reason we stated in the context of Dr. George's testimony.

D. Dr. George's Testimony:

Garcia-Miranda attacked part of Dr. George's testimony as being speculative because she used the word "guess" when giving the estimated time of injuries.[4] We do not believe the use of the word "guess" makes Dr. George's opinion a speculation. When asked whether she could express an opinion "to a

[4] The State asked Dr. George whether she was surprised at Dr. Helmsworth's testimony that the injuries would not have occurred for more than two hours. Dr. George answered "I guess I'm not surprised. I think it's a conservative time frame. My guess is it's shorter than that."

sufficiently reasonable degree of medical certainty that peers in [her] specialty with [her] kind of education, specialized training, as well as specialized experience, would find to be reasonable and reliable, something that they would accept as appropriate under the circumstances," Dr. George relied, "Sure." She was confident on the certainty and accuracy of her estimation. The use of "guess" was only a figure of speech.

From the above analysis we conclude that the doctors' testimony is admissible under *de novo* review. Counsel did not fail to perform an essential duty because he did not have the duty to raise meritless claims. *State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005). Therefore, Garcia-Miranda's ineffective assistance of counsel claim fails.

III. POLICE OFFICER'S TESTIMONY.

Officer Schwarz was one of the officers who interviewed the defendant after the incident. He testified that when Garcia-Miranda was asked whether he was sexually abusing the children, his demeanor changed. Officer Schwarz stated,

> "Instead of being in a slouched position looking away from me, [Garcia-Miranda] sat up, made eye contact with me, like they were standing their ground, and was affirmative, a little more affirmative in the answers than they were giving at other times."

Officer Schwarz also testified no sexual abuse was found in this case. Garcia-Miranda's counsel moved to strike the testimony and objected on the basis that the testimony was an improper comment on the credibility of the defendant. The district court allowed the testimony as long as the witness only described what he observed, and did not express an opinion on whether or not he believed Garcia-Miranda.

This court's review on the admissibility of this testimony is for abuse of discretion. *State v. Myers*, 382 N.W.2d 91, 93 (Iowa 1986). It is improper for a witness to express an opinion about the credibility of another witness. *Johnson v. State*, 495 N.W.2d 528, 530 (Iowa Ct. App. 1992). The issue of credibility is reserved for the finder of fact. *Myers*, 382 N.W.2d at 93.

There is a "fine but essential line between an opinion which would be truly helpful to the jury and that which merely conveys a conclusion concerning the defendant's legal guilt." *Id.* at 98. Unlike the expert witnesses in *Myers*, who testified that the children do not lie about incidents of sexual abuse, Officer Schwarz was not giving an expert opinion whether he believed Garcia-Miranda was telling the truth or lying. He simply described what he observed. The jury still had to make their decision on how to interpret this alleged change of demeanor. This extra step keeps the testimony within the "fine and essential line." The State argues that although this testimony implicates the credibility of Garcia-Miranda, in principle and effect it is no different from other types of evidence from which credibility can be inferred, such as evidence of a witness' inconsistent statements, knowledge of the facts, interest in the outcome of the trial, motive, bias, or prejudice. We agree with this argument, and conclude that the district court did not abuse its discretion in allowing Officer Schwarz's testimony.

AFFIRMED.