
NO. 21-1676
IN THE SUPREME COURT FOR THE STATE OF IOWA

STATE OF IOWA,
Appellee,

vs.

NELSON FLORES,
Appellant.

AN APPEAL FROM THE IOWA DISTRICT COURT
FOR CRAWFORD COUNTY

HONORABLE ZACHARY HINDMAN, JUDGE

FINAL REPLY BRIEF OF APPELLANT

NELSON FLORES
Appellant,

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ARGUMENT

A. The District Court's admission of both the Project Harmony Tape and co-conspirator statements were not harmless errors.

The State argues in both sections II and III of their brief that the admission of the Project Harmony Tape and co-conspirator statements were harmless errors. The District Court's admission of both of these pieces of evidence was error, and the error was not harmless.

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. Iowa R. Evid. 5.103(a). Rule 5.103(a) requires a harmless error analysis where a nonconstitutional error is claimed. *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004). "To determine whether the error is harmless we ask: "Does it sufficiently appear that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice?" *State v. Newell*, 710 N.W.2d 6 (Iowa 2006), citing *Sullivan*.

The State asserts that the admission of the Project Harmony tape and co-conspirator statements were harmless errors due to the strength of the State's case against Mr. Flores. The State cites to *State v. Parker*, 747 N.W.2d 196 (Iowa 2008). In *Parker*, the proof against the defendant was that multiple eyewitnesses identified the defendant, the defendant admitted to another that he committed the

crime, and the defendant's alibi could not be corroborated. *Id.* The case against Mr. Flores consisted of the testimony of one witness.

The case against Mr. Flores is more analogous to other cases. Mr. Flores' case is more similar to *State v. Buelow*, where there was limited evidence the defendant had committed a killing. 951 N.W.2d 879 (Iowa 2020). Or the case of *State v. Montgomery*, where the only witness was the complaining witness, "[t]here is no DNA or other physical evidence that he abused S.V. He denies abusing her. No witness saw him abusing her." 966 N.W.2d 641 (Iowa 2021). There is also the case of *State v. Paredes*, where the evidence was a confession by the defendant and access to a child that was injured, yet the Iowa Supreme Court still found that exclusion of evidence was not harmless. 775 N.W.2d 554 (Iowa 2009).

In this case, the only evidence was the testimony by W.R. There was no other physical or eyewitness evidence to corroborate her statements. Any error by the District Court in admitting evidence was not harmless due to the weakness of the State's case.

CONCLUSION

For the reasons stated above, the Appellant requests this Court find any errors were not harmless. Further, the Appellant requests the Court dismiss both cases due to the speedy trial violations. Alternatively, the Appellant requests that this Court vacate his convictions and enter a judgment of acquittal consistent with the insufficient evidence. Lastly and in the alternative, the Appellant requests this Court vacate his convictions and remand the case for a new trial.

NELSON FLORES,
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CERTIFICATE OF SERVICE

CHRISTOPHER J. ROTH, after being duly sworn states:

1. He is the attorney for the Appellant herein.
2. On the 14th Day of October 2022 he filed a copy of the Appellant's Proof Reply Brief with the Appellate EDMS system, which served an electronic copy on all parties of record.
3. Mr. Roth further served a copy via USPS mail to Nelson Flores, #6471829, Iowa Medical and Classification Center, 2700 Coral Ridge Ave., Coralville, IA 52241

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R.App. 6.903(1)(g)(1) or (2) because:
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 - a. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14.

/s/ Christopher J. Roth

10/14/2022