

IN THE COURT OF APPEALS OF IOWA

No. 3-798 / 12-2037
Filed December 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BIANCA AZUCENA ARREOLA-DOMINGUEZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

The defendant appeals the district court's order denying her motion in
arrest of judgment. **AFFIRMED.**

Nicolas Sarcone of Stowers Law Firm, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney
General, Perry Shoemaker, Student Legal Intern, John Sarcone, County
Attorney, and Stephan Bayens, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

After Bianca A. Arreola-Dominguez (Arreola) pled guilty to delivery of a controlled substance and failure to possess a tax stamp, she filed a motion in arrest of judgment claiming the plea was made under duress. Arreola claims the district court abused its discretion by not properly considering the expert testimony she presented at the evidentiary hearing. She further claims that due to duress caused by her former boyfriend, her guilty plea was not voluntarily entered. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In February 2012, Arreola and her former boyfriend, Jossue Gomez, were arrested in Polk County for their participation in the delivery of methamphetamine, a schedule II controlled substance. Arreola provided translation services for Gomez during the course of the unlawful delivery.

Arreola appeared in the Polk County District Court on May 14 with her former attorney Rodger Owens, and pled guilty.¹ Before the court accepted her guilty plea, the court engaged Arreola in a step-by-step colloquy to determine that she understood the elements and penalties of the charged crimes. Next, the court asked: “[H]ave there been any threats or promises made to you to get you to plead guilty,” and “[A]re you pleading guilty today voluntarily and of your own free will?” Arreola denied that she had been coerced and responded that the guilty plea was her own decision. Satisfied with Arreola’s responses, the court

¹ Ten days prior, Mr. Gomez appeared in court and pled guilty to delivery of a controlled substance and received a sentence of an indeterminate term not to exceed twenty-five years. Mr. Gomez and Ms. Arreola have not communicated since their arrest, though Ms. Arreola was aware of the sentence received by Mr. Gomez.

then accepted her guilty plea.

Arreola timely filed a motion in arrest of judgment and moved to withdraw her previously entered guilty plea. In her motion, Arreola asserted her guilty plea was not intelligently and voluntarily made due to duress caused by Gomez. Arreola further stated Owens was unaware of her duress at the time of the plea, and therefore, he had not been able to provide proper advice. He had only become aware of the abuse after speaking with her family after the plea. The motion included statements by Laurie Schipper.² Schipper found that Arreola's "constant concern" about Gomez was consistent with someone suffering from "battered woman syndrome." The State filed a resistance to Arreola's motion and argued that she had made the guilty plea both intelligently and voluntarily.

At the evidentiary hearing on her motion in arrest of judgment, Arreola testified about her relationship with Gomez. She stated that during their six-month relationship Gomez often subjected Arreola to physical and psychological abuse. When asked by her attorney why she did not mention the abuse to Owens while he represented her, she stated, "Because—mostly because I fear from everything, from my family, for him, from all of the things that were going on." Additionally she noted that she had made the plea because "everything was going to be better once I got to prison and do my time and just disappear." Arreola's attorney asked her about the effect of Gomez on her decision to plead guilty: "I think I will go to prison for him and he will just be okay and he will take it

² The Iowa Supreme Court established Schipper's status as an expert on "battered woman syndrome" in *State v. Griffin*, 564 N.W.2d 370, 374 (Iowa 1997). Schipper's qualifications as an expert witness are not in question in this appeal.

in a good way and just make the relationship better.”

Schipper’s testimony at the hearing provided a general overview of domestic abuse and the “power and control tactics” that one spouse may assert over the other. The “power and control” dynamic can extend to an individual’s decision to plead guilty to a crime if the individual thinks that the plea may protect their abuser. After reviewing the notes from Arreola’s counselor, Schipper stated that she saw “alleged power and control tactics.” She also observed that “battered woman’s syndrome” is a clinical type conclusion that is categorized “under posttraumatic stress,” and that some women “will develop posttraumatic stress . . . [a]nd some will not.”

Subsequently, the court denied Arreola’s motion in arrest of judgment and reaffirmed her conviction. Arreola then filed this appeal. On appeal Arreola presents two arguments: (1) the district court abused its discretion when it gave no weight to the expert testimony presented by Schipper, and (2) Arreola made her guilty plea while under duress and, therefore, the guilty plea is void.

II. SCOPE AND STANDARD OF REVIEW.

On appeal, we review a court’s ruling on a motion in arrest of judgment for an abuse of discretion. *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008). The reviewing court will find an abuse of discretion when the basis for the trial court’s ruling was “untenable or to an extent clearly unreasonable.” *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997). A ruling “is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law.” *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). Additionally, if

constitutional safeguards are involved the method of review changes to “an evaluation of the totality of the relevant circumstances . . . thus the review is de novo.” *State v. Boone*, 298 N.W.2d 335, 337–38 (Iowa 1980).

III. ANALYSIS.

A. Expert Testimony

Arreola argues that the court did not properly consider the expert testimony presented by Schipper. She asserts that the court’s reasoning is “problematic” since the court abused its discretion when it “totally disregarded Schipper’s testimony” and “afforded [it] no weight” because Schipper did not testify that Arreola actually suffered from “battered woman syndrome.”

When considering expert testimony, the trial court is given broad discretion to adopt the testimony “in whole, in part, or not at all.” *Ehlinger v. State*, 237 N.W.2d 784, 792 (Iowa 1976). The court is not “obligated to accept expert testimony,” though the court should not “arbitrarily and capriciously” reject expert testimony. *Waddell v. Peet’s Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978). “A trier of fact may not totally disregard testimony, but also has the duty to weigh evidence and determine the credibility of witnesses.” *Eventide Lutheran Home v. Smithson Elec. & Gen. Constr., Inc.*, 445 N.W.2d 789, 791 (Iowa 1989).

In this case Schipper presented evidence of a general nature concerning “battered woman syndrome.” Throughout her testimony, Schipper only occasionally related her experience and knowledge to the specific facts of Arreola’s case. Accordingly, the district court weighed the evidence presented by Schipper:

Ms. Schipper's credentials were not questioned by the State or the court; however, she never offered any opinions based on her training, education or experience that the defendant actually suffers from any such conditions. In the absence of such opinions, or any opinions that are specifically directed to the defendant, the court gives no weight to Ms. Schipper's testimony as it does not assist it in being able to determine the issue at hand.

The district court's well-reasoned opinion demonstrate that it exercised its discretion to consider Schipper's testimony but ultimately gave the testimony no weight in determining the voluntariness of Arreola's guilty plea. The district court did not abuse its discretion.

B. Guilty Plea Under Duress

Arreola asserts that she did not voluntarily plead guilty due to the duress caused by Gomez. "Fundamental due process" requires that a defendant must make a guilty plea both voluntarily and intelligently. *State v. Speed*, 573 N.W.2d 594, 597 (Iowa 1998). To ensure that a guilty plea is voluntarily and intelligently made, trial courts satisfy the requirements set out in Iowa Rule of Criminal Procedure 2.8(2)(b). Iowa R. Crim P. 2.8(2)(b); *State v. Sayre*, 566 N.W.2d 193, 195 (Iowa 1997). In this case, Ms. Arreola does not contend that the trial court failed to follow the procedural guidelines established by rule 2.8(2)(b) at the original plea hearing. Instead, she argues her plea was involuntary and violated her "constitutional guarantees of due process."

The United States Constitution and the Iowa Constitution include similar due process clauses that define an individual's right to life, liberty, and property. *Putensen v. Hawkeye Bank of Clay Cnty.*, 564 N.W.2d 404, 408–09 (Iowa 1997). Whether a court is evaluating the due process clauses of the United States

Constitution or the Iowa Constitution, state action is the threshold requirement. See *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 349 (1974) (“[T]he principle that private action is immune from the restrictions of the Fourteenth Amendment is well established and easily stated”); *Putensen*, 564 N.W.2d at 408–09 (“Constitutions were not designed to micromanage disputes between citizens A state due process clause becomes implicated at the point where the power of the state is called upon by a private party . . . to deprive another of life, liberty or property.”).

Arreola argues that the alleged duress imposed by Gomez rendered her plea involuntary. Thus, she claims the court denied her due process protections by accepting the plea and refusing to grant the motion in arrest of judgment. Her argument is apparently based on a substantive due process claim rather than a procedural claim, as her brief specifically concedes that the “procedural requirements of the plea agreement were satisfied.”³

The issue of private actor violence used to interfere with or coerce another actor’s right to due process is a settled issue in federal jurisprudence. See, e.g., *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 195–97 (1989) (“As a general matter, then, we conclude that a State’s failure to protect an individual against private violence simply does not constitute a violation of Due Process.”). Arreola is, in effect, advocating for an exception to the federal rule that requires state action in order to succeed on a due process claim. The issue of private actor duress in this context is one of first impression in Iowa.

³ In context, her reference to “plea agreement” appears to include the plea proceedings.

Under the facts of this case, however, we need not decide whether a substantive due process claim of private actor duress should be recognized in Iowa. We agree with the following findings and conclusions of the district court:

While the court is willing to conclude that Gomez may have been physically, verbally and emotionally abusive to the defendant during their relationship, it is equally clear that the defendant was not subject to any direct or implied threats of retribution from Gomez should she not plead guilty. The two had no contact with each other from the time of their arrest in March Her explanation as to how this purported abuse resulted in the claimed coercion is inconsistent at best and nonsensical at worst. What is consistent through her testimony during the motion hearing is that she understood the charges against her, the consequences of pleading guilty and that she was truthful with the court when she replied in the negative when she was asked if there had been any threats made against her to compel her to plead guilty

Arreola has failed to establish she was under duress at the time of her guilty plea.⁴

IV. Conclusion

The district court did not abuse its discretion when it decided not to give weight to Schipper's testimony. On our de novo review of Arreola's due process claim, we agree with the findings and conclusions of the district court that Arreola failed to establish that she was under duress at the time of her guilty plea.

AFFIRMED.

⁴ Neither in the motion in arrest of judgment nor on appeal has she claimed to be innocent.