

IN THE COURT OF APPEALS OF IOWA

No. 6-665 / 05-1128
Filed November 30, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ABOUOURABIOU AFO-ODJEBITI,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary McKenrick,
Judge.

Abouourabiou Afo-odjebiti appeals from the judgment and sentence entered upon his convictions of theft in the first degree and three counts of theft in the second degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, William E. Davis, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Abouourabiou Afo-odjebiti appeals from the judgment and sentence entered upon his convictions of theft in the first degree and three counts of theft in the second degree in violation of Iowa Code sections 714.2(1) and 714.2(2) (2003). He contends: (1) the district court erred in refusing to appoint an interpreter and in failing to allow him access to his national consulate, (2) the court erred in submitting a jury instruction on aiding and abetting and in failing to give an instruction on corroboration, and (3) his trial counsel was ineffective. We affirm the defendant's convictions.

I. Background Facts and Proceedings

In the fall of 2004, Afo-odjebiti opened accounts at five different credit unions in the Davenport area with small amounts of money. He then deposited checks into the accounts and withdrew money. After Afo-odjebiti made the withdrawals, the credit unions discovered the checks he had deposited were invalid and the withdrawals exceeded the amounts available in the accounts.

Following an investigation, the State filed a trial information charging Afo-odjebiti with theft in the first degree, four counts of forgery, identity theft, and two counts of theft in the second degree. The State amended the trial information on June 6, 2005. The amended trial information charged Afo-odjebiti with one count of theft in the first degree and four counts of theft in the second degree. The case proceeded to trial, and a jury found Afo-odjebiti guilty of one count of theft in the first degree and three counts of theft in the second degree. Afo-odjebiti now appeals.

II. Discussion

A. Interpreter

Afo-odjebiti, a native of Africa, filed a motion requesting an interpreter who speaks his native language of Ewe. His motion stated, “He [Afo-odjebiti] understands English but has a thick accent that makes it difficult to understand his speech.” Initially, the State did not resist the motion, and the court granted it. Later, the State move to withdraw the order authorizing an interpreter. No interpreter was present on the date set for hearing on Afo-odjebiti’s motion to suppress, so the court continued the hearing date and ordered the court administrator to investigate the availability of Maud Dogoe, who speaks Ewe, to act as an interpreter.

The record reveals a hearing was held on the State’s motion to withdraw the order authorizing an interpreter on June 6, 2005, before trial commenced. No interpreter was present who could speak Ewe. The court heard evidence from both parties and ruled Afo-odjebiti had sufficient English communication skills to proceed to trial without the assistance of an interpreter. Afo-odjebiti now contends the court erred in refusing to appoint an interpreter. For the reasons that follow, we reject this assignment of error.

Iowa Code section 622A.2 provides: “Every person who cannot speak or understand the English language and who is a party to any legal proceeding or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding.” We review issues of statutory interpretation and application for the correction of errors at law. *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000). To the extent a defendant alleges a violation of a constitutional

right, we review de novo the totality of the circumstances as shown by the entire record. *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001).

Upon careful review of the record, we find the district court correctly determined Afo-odjebiti could understand and speak English. In his motion requesting an interpreter, the defendant conceded he understands English and only stated his accent makes it difficult to understand his speech. Afo-odjebiti filed several pro se documents in English. Credit union employees testified Afo-odjebiti communicated with them in English when conducting financial transactions. Afo-odjebiti also read documents in English when he interacted with credit union personnel. On one occasion, he refused to sign a document because he did not want to pay interest on a deficiency balance in connection with a repossession.

A Davenport police officer interviewed Afo-odjebiti for approximately half an hour when investigating the allegations of theft. She testified the defendant was able to communicate in English. The officer said, "I actually noted that he was articulate in his English, and answered appropriately with whatever question I would address to him." Afo-odjebiti signed a form indicating he could "read, write and understand the English language" and understood his *Miranda* rights. The videotape of the police interview indicates Afo-odjebiti was able to speak and understand English. The defendant's girlfriend testified she lived with him for several months and was able to communicate with him even though she only spoke English. The record reveals the defendant did not need an interpreter.

We also conclude Afo-odjebiti's claim fails for another reason. It is apparent from the record that Afo-odjebiti affirmatively attempted to frustrate the

court's attempts to provide him with an interpreter. Two individuals who knew Afo-odjebiti and spoke Ewe refused to act as interpreters. One of the potential interpreters said he wanted to avoid harming Afo-odjebiti. The other, Maud Dogoe, refused to act as Afo-odjebiti's interpreter because Afo-odjebiti did not want to make it easy for the court.

Afo-odjebiti is a native of Togo, where the official language is French. The defendant told a credit union employee he was fluent in French, and he spoke with a district court judge during a pretrial proceeding in French. However, when a French-speaking interpreter went to the jail to speak with Afo-odjebiti, the defendant refused to acknowledge the interpreter and told his attorney he wanted an interpreter who spoke Ewe.

We find Afo-odjebiti deliberately thwarted attempts to provide him with an interpreter. He cannot now complain his constitutional rights were violated because he did not have an interpreter at trial. *See State v. Hall*, 235 N.W.2d 702, 728 (Iowa 1975) (a party cannot complain of error he or she invited).

Because Afo-odjebiti could speak and understand English and tried to frustrate attempts to provide him with an interpreter, we conclude the district court did not err in refusing to appoint an interpreter.

B. Vienna Convention Claim

Afo-odjebiti also claims the court erred in failing to allow him access to his national consulate pursuant to Article 36 of the Vienna Convention. Article 36 states:

[I]f he [national of the sending State] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a

national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph.

Vienna Convention on Consular Relations and Optional Protocol on Disputes art. 36, Dec. 24, 1969, 21 U.S.T. 77.

In a hearing prior to the commencement of trial, the court noted Afo-odjebiti had a right to access his country's consular services and gave him an opportunity to discuss the matter with his attorney. Afo-odjebiti's attorney informed the court he had discussed consular access with his client in a cursory fashion. Neither Afo-odjebiti nor his attorney indicated they wished to pursue the issue of consular rights, so the court proceeded with other pretrial motions. We find Afo-odjebiti has waived this claim of error.

C. Jury Instructions

Afo-odjebiti next claims the court erred in submitting a jury instruction on aiding and abetting and in failing to give an instruction on corroboration. We review a trial court's refusal to give a requested jury instruction for the correction of errors at law. *State v. Martinez*, 679 N.W.2d 620, 623 (Iowa 2004). On appeal, we determine whether the instructions correctly state the law. *State v. Predka*, 555 N.W.2d 202, 204 (Iowa 1996). Any error in jury instructions must be prejudicial to warrant reversal. *State v. Holtz*, 548 N.W.2d 162, 164 (Iowa Ct. App. 1996). A jury instruction error is presumed prejudicial unless upon a review of the entire case, we find the error resulted in no prejudice. *State v. Bone*, 429 N.W.2d 123, 127 (Iowa 1988).

The State expressed reservations about the jury instruction on aiding and abetting, contending the evidence did not indicate another person was involved in the thefts from the credit unions. The trial court invited defense counsel to respond to the State's objection, but counsel indicated he had no response regarding the jury instruction. Parties must make specific objections to preserve issues for appeal. *State v. Taylor*, 310 N.W.2d 174 (Iowa 1981). We find Afo-odjebiti failed to preserve error on this issue. Furthermore, Afo-odjebiti does not claim on appeal that he even requested a jury instruction on corroboration at trial; therefore, we find he failed to preserve error on this issue as well.

D. Ineffective Assistance of Counsel

Afo-odjebiti claims his trial counsel was ineffective if error was not preserved on some of the claims he has raised on appeal. We conclude the record is inadequate to address the defendant's claims of ineffective assistance of counsel. Accordingly, we preserve them for possible postconviction relief proceedings.

III. Conclusion

We affirm the defendant's convictions and preserve his claims of ineffective assistance of counsel for possible postconviction relief proceedings.

AFFIRMED.