

IN THE COURT OF APPEALS OF IOWA

No. 8-144 / 06-1811
Filed April 9, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PEDRO ANTONIO BONITO,
Defendant-Appellant.

Appeal from the Iowa District Courts for Pottawattamie County, Timothy O'Grady, Judge.

Defendant appeals his conviction for murder in the second degree.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Pedro A. Bonito, Clarinda, appellant pro se.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Jon Jacobmeier, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Baker, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

Pedro Bonito was charged with first-degree murder and first-degree kidnapping relating to the death of his wife's lover, Filiberto Lopez Varela, also known as Miguel Rosales. Rosales died from blunt force injuries to the head consistent with the use of a hammer.

Bonito was arrested in California and placed in custody. He was interrogated at the Los Angeles Police Department by Detectives Jon Clark and Joseph Hothersall from Council Bluffs, Iowa, and Detective Lorenzo Armondo Moriel from Los Angeles, California. Bonito primarily speaks Spanish, but can speak some English. Detective Moriel speaks Spanish and English, and helped translate statements for Bonito.

At the beginning of the interrogation, the detectives reviewed Bonito's *Miranda* rights. Bonito was given a written copy of his rights in Spanish. The Iowa detectives read each part to Bonito in English. Bonito initialed the form to indicate he understood he had the right to an attorney. An audio recording of the interrogation was made. A transcript of the recording was made by a professional and certified interpreter in Spanish and English.

According to the transcript, the following exchange occurred during the interrogation, with the translation in parentheses:

Hothersall: On the rights here, any questions for me?

Bonito: Yea, Yeah [ui] El abogado si tiene uno el derecho de agarrar un abogado dice alli, verdad? (Yeah, [ui] The attorney a person has the right to get an attorney it says there, right?)

Moriel: Si. (Yes.)

Bonito: Si no tiene uno dinero? (If a person doesn't have money?)

Moriel: Si. (Yes.)

Bonito: Si. Yo quiero – (Yes. I want --)

Moriel: Quiere quiere aqua? (You want you want water?)

Bonito: No.

Moriel: Se oye muy -- (You sound very --)

Bonito: No. No. Es que acabo de comer. (No. No. It's that I just ate.)

Moriel: --o, OK, comio ahorita. (--o, OK, so you ate right now.)

Moriel: O, OK. I offered him some water, he sounded a little bit raspy, but he said he just ate, so that is why.

Hothersall: Oh anything good? What did they have for lunch?

Bonito: Un mugrero. (Some crap.)

Hothersall: Any good?

Bonito: Well, eh, it's OK.

The interrogation continued and Bonito made several incriminating statements.

Bonito filed a motion to suppress statements he made during the interrogation, claiming that by saying, "Yo quiero" he was saying that he wanted an attorney and the interrogation should have ceased at that time. At the suppression hearing detective Moriel testified he did not believe Bonito said, "Yo quiero." Detective Moriel stated Bonito said, "Si," and then detective Moriel asked in Spanish if Bonito wanted water. Detective Moriel also testified that Bonito did not say he had "un mugrero" for lunch, but rather stated he had "un burrito," and the jail had served burritos for lunch that day.

The district court listened to the recording of the interrogation several times. The court found Bonito did not say, "Yo quiero," and rather what was heard was "detective Moriel stammering as he asked whether Bonito wanted water." The court determined that even if Bonito said, "Yo quiero" it was not an unequivocal request for an attorney. The court concluded, "It has not been proven that Bonito asked for counsel at all, much less unequivocally." The court overruled Bonito's motion to suppress.

The case proceeded to trial. A jury found Bonito guilty of second-degree murder, in violation of Iowa Code section 707.3 (2005). Bonito filed a motion for new trial and a motion in arrest of judgment. The district court denied Bonito's post-trial motions. Bonito was sentenced to a term of imprisonment not to exceed fifty years. He now appeals.

II. Motion to Suppress

A person has a Fifth Amendment right to have counsel present during custodial interrogation. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1044, 103 S. Ct. 2830, 2834, 77 L. Ed. 2d 405, 412 (1983). This right is extended to the states through the Fourteenth Amendment. See *Malloy v. Hogan*, 378 U.S. 1, 6, 84 S. Ct. 1489, 1492, 12 L. Ed. 2d 653, 658 (1964). Our review of cases raising constitutional challenges is de novo. *State v. Burgess*, 639 N.W.2d 563, 567 (Iowa 2001). We make an independent evaluation of the totality of the circumstances. *State v. Whitset*, 339 N.W.2d 149, 152 (Iowa 1983).

If a person expresses the desire for an attorney during questioning, the interrogation must cease until an attorney is present. *Miranda v. Arizona*, 384 U.S. 436, 473, 86 S. Ct. 1602, 1627, 16 L. Ed. 2d 694, 723 (1966). On the other hand, "[o]fficers have no obligation to stop questioning an individual who makes an ambiguous or equivocal request for an attorney." *State v. Harris*, 741 N.W.2d 1, 6 (Iowa 2007) (citing *Davis v. United States*, 512 U.S. 452, 461-62, 114 S. Ct. 2350, 2356, 129 L. Ed. 2d 362, 373 (1994)). "[H]e must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the

circumstances would understand the statement to be a request for an attorney.” *Davis*, 512 U.S. at 459, 114 S. Ct. at 2355, 129 L. Ed. 2d at 371.

A person must make an unambiguous request for counsel. *See Harris*, 741 N.W.2d at 6 (noting statement, “If I need a lawyer, tell me now,” was not sufficient to invoke the right to counsel); *State v. Washburne*, 574 N.W.2d 261, 267 (Iowa 1997) (finding question asking if police officer thought defendant needed a lawyer was not sufficient); *State v. Morgan*, 559 N.W.2d 603, 608 (Iowa 1997) (finding defendant’s statement he “might need a lawyer” was not sufficiently unambiguous); *Whitset*, 339 N.W.2d at 152-53 (noting defendant’s question, “Do you think I need an attorney?” should not be viewed as a request for an attorney); *State v. Johnson*, 318 N.W.2d 417, 430 (Iowa 1982) (finding defendant’s question, “Should I have my attorney here?” indicated indecision, not an unambiguous request for counsel).

It is not clear from the recording of the interrogation if Bonito was stating he wanted something, and if he was requesting something, what he wanted. Even if we assume Bonito stated, “Yo quiero,” “I want,” this is not an unambiguous request for counsel. We cannot speculate and assume he was requesting an attorney. We determine Bonito did not sufficiently invoke his right to counsel so that the interrogation should have ceased at that time. We affirm the district court decision denying his motion to suppress.

III. Ineffective Assistance of Counsel

In an alternative argument, Bonito asserts that if we found he had not preserved error on his claim that he requested counsel during his interview with

detectives in Los Angeles, we should address the issue under a claim of ineffective assistance of counsel. We have addressed Bonito's claims on the merits, and therefore, do not need to address his claim of ineffective assistance of counsel.

IV. Pro Se Claims

Bonito raises the following pro se claims on appeal: (1) the district court erred by failing to disclose his protected rights under the Vienna Convention; (2) there was a high likelihood he was denied a fair trial due to racial hatred in the community; and (3) he was prejudiced by gross police misconduct. None of these issues was raised before the district court. We conclude Bonito has failed to preserve error on these issues. *See State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997) (noting we do not address claims on appeal that have not been presented to the district court).

In a reply brief Bonito raises these additional claims: (1) he was denied due process due to gross police misconduct; (2) section 707.3 is overbroad and the sentence is disproportionate; (3) the State violated the Vienna Convention; (4) the district court judge was biased; and (5) racial hate groups influenced the jury. These issues were not raised before the district court, and we conclude they have not been preserved for our review. *See id.* Additionally, an issue raised for the first time in a reply brief is not properly presented to the court. *See Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996).

Bonito has filed several pro se motions while this appeal was pending. On March 10, 2008, he filed a petition requesting the translation of all documents in

the case from English to Spanish. The Iowa Supreme Court previously denied Bonito's requests on this matter in three separate orders. No further consideration of this request will be made.

Bonito also filed a motion seeking to recant previous statements. He claimed his defense counsel directed him to testify during the trial. This issue is not properly raised in a motion, and should have been raised in the appellate briefs. See Iowa R. App. P. 6.14(1)(c). Furthermore, there is insufficient evidence in the record to address this issue on appeal, and it may more properly be considered in a postconviction action. See *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998) (noting claims of ineffective assistance of counsel are decided on direct appeal when the record is adequate to decide the issue).

Bonito's motion also seeks to compel notification of the El Salvadoran consulate based on the Vienna Convention.¹ He states he did not know of his right to contact the consulate, and if he had known of this right he would have taken advantage of it. Bonito did not raise this issue before the district court, and we conclude it has not been preserved for our review. See *Jefferson*, 574 N.W.2d 578.

We affirm Bonito's conviction for second-degree murder.

AFFIRMED.

¹ We note the United States Supreme Court has recently determined that international treaties, such as the Vienna Convention, do not create domestically enforceable federal law. *Medellin v. Texas*, ___ U.S. ___, ___ S. Ct. ___, ___ L. Ed. 2d ___ (2008).