STATE V. RENTERIA

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RONALD RAY RENTERIA,
Defendant-Appellant.

NO. A-1-CA-37350

COURT OF APPEALS OF NEW MEXICO

November 15, 2018

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Kea W. Riggs, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldridge, Assistant Public Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, EMIL J. KIEHNE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief Judge.

{1} Defendant Ronald Ray Renteria appeals following his conviction for criminal sexual contact of a minor. We previously issued a notice of proposed summary disposition, proposing to uphold the conviction. Defendant has filed a memorandum in

opposition. After due consideration, we remain unpersuaded by Defendant's assertions of error. We therefore affirm.

{2} Because the relevant background information has previously been set forth, we will avoid undue reiteration here. Instead, we will focus on the specific arguments articulated in the memorandum in opposition.

{3} First, Defendant renews his argument that the district court erred in denying his motion for mistrial. [MIO 6-9] He continues to argue that the potential juror's remark tainted the jury pool and effectively denied his right to a fair trial. [MIO 6] However, given the isolated and spontaneous nature of the comment, we conclude that the district court acted within its discretion in electing to give a curative instruction. *See, e.g., State v. Vialpando*, 1979-NMCA-083, ¶¶ 21, 23, 25-27, 93 N.M. 289, 599 P.2d 1086 (arriving at a similar conclusion, under highly analogous circumstances); *and see generally State v. Fry*, 2006-NMSC-001, ¶¶ 52-53, 138 N.M. 700, 126 P.3d 516 (explaining that in this context we review for abuse of discretion, and indicating that when an inadvertent remark is at issue, a curative instruction is generally sufficient).

{4} We similarly reject Defendant's assertion that it was incumbent upon the district court to individually question the potential jurors. [MIO 8] We find no indication that Defendant requested such individual voir dire, and we reject the suggestion that the district court was obligated to undertake such action *sua sponte*. *Cf. State v. Johnson*, 2010-NMSC-016, ¶ 55, 148 N.M. 50, 229 P.3d 523 (observing, in relation to an analogous argument, that the failure of the district court to conduct an unrequested inquiry does not require reversal).

{5} Defendant also continues to challenge the sufficiency of the evidence, specifically and exclusively attacking the State's showing with respect to the use of force. [MIO 9-14] However, as Defendant acknowledges, [MIO 11] we have previously held that there is no specific quantum of force necessary to establish this element. *State v. Huff*, 1998-NMCA-075, ¶¶ 11-12, 125 N.M. 254, 960 P.2d 342. "The issue is not how much force or violence is used, but whether the force or violence was sufficient to negate consent." *Id.* ¶ 12. In this case, the victim's description of the touching clearly negates consent. [MIO 3] We therefore reject the claim of evidentiary insufficiency.

{6} Accordingly, for the reasons stated in the notice of proposed summary disposition and above, we affirm.

{7} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

EMIL J. KIEHNE, Judge