

SUPREME COURT OF NEBRASKA

State v. Martinez

306 Neb. 516 (2020) · No. No. S-19-758 · Decided July 17, 2020

SUMMARY

The Nebraska Supreme Court affirmed Juan Gonzalez Martinez’s conviction and sentence for first degree sexual assault. The court held that Spanish-to-English translations of Martinez’s out-of-court statements were admissible as nonhearsay where the translator was qualified, testified at trial, and was subject to cross-examination. The court also rejected Martinez’s claims concerning residual hearsay, prior sexual conduct evidence, Miranda waiver, sufficiency of the evidence, and excessive sentencing.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	July 17, 2020
DOCKET	No. S-19-758
DISPOSITION	affirmed
PROCEDURAL POSTURE	Martinez appealed from a jury conviction and sentence for first degree sexual assault, challenging evidentiary rulings, admission of translated statements, denial of a motion to suppress, sufficiency of the evidence, and the sentence.
STANDARD OF REVIEW	Evidentiary admissibility is reviewed for abuse of discretion when committed to the trial court's discretion; factual findings underlying hearsay rulings are reviewed for clear error and the ultimate hearsay determination de novo except for residual-hearsay rulings. Miranda suppression rulings receive clear-error review for historical facts and independent review for constitutional application. Sufficiency is reviewed by asking whether any rational trier of fact could find the essential elements beyond a reasonable doubt when viewing the evidence favorably to the prosecution. A sentence within statutory limits is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Juan Gonzalez Martinez v. State of Nebraska

TOPICS

hearsay

miranda rights

suppression of evidence

criminal procedure

sentencing

PRACTICE AREAS

criminal law

evidence

criminal procedure

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appellate procedure

QUESTIONS PRESENTED

1. Whether English translations of Martinez's Spanish-language statements were inadmissible hearsay.
2. Whether the district court properly excluded statements offered under the residual hearsay exception for lack of mandatory pretrial notice.
3. Whether Martinez preserved his challenge to evidence of prior sexual contact by failing to renew his objection at trial after the pretrial ruling.
4. Whether Martinez knowingly and voluntarily waived his Miranda rights and whether his statements should have been suppressed.
5. Whether the evidence was sufficient to support the first degree sexual assault conviction.
6. Whether the sentence was excessive or constituted an abuse of discretion.

HOLDINGS

1. When the State establishes that a translator is qualified by knowledge, skill, experience, training, or education, and the translator testifies and is subject to cross-examination, the translation of the defendant's foreign-language verbal or written statements is admissible as nonhearsay under Nebraska Evidence Rule 801(4); challenges to translation accuracy concern weight rather than admissibility.
2. Pretrial notice of an intent to offer evidence under Nebraska Evidence Rule 803(23) is mandatory; an adverse party's general knowledge of the statement does not satisfy the rule.
3. An objection to evidence addressed in a motion in limine must be renewed by an appropriate objection at trial to preserve the issue for appellate review.
4. A Miranda waiver is valid when it is knowing and voluntary, and validity is determined under the totality of the circumstances; the State bears the burden of proving the waiver by a preponderance of the evidence.
5. The evidence was sufficient to support the first degree sexual assault conviction; corroboration of the victim's testimony was not required, and the victim's testimony alone could sustain the conviction if believed by the jury.
6. A sentence within statutory limits will not be disturbed absent an abuse of discretion.

KEY QUOTATIONS

“We hold that where the translator of a defendant’s out-of-court verbal or written statements from a foreign language to English is initially shown by the State to be qualified by knowledge, skill, experience, training, or education to perform such translation, and where the translator testifies at trial and is subject to cross-examination, the translation is admissible as nonhearsay under rule 801(4), and any challenges to the accuracy of the translation go to the weight of the evidence and not to its admissibility.” (529-530)

“Pretrial notice of an intent to admit evidence under the residual hearsay exception is mandatory. An adverse party’s knowledge of a statement is not enough to satisfy the notice requirement of rule 803(23).” (532-533)

FACTUAL BACKGROUND

Martinez was convicted of sexually assaulting his daughter during a period from January 2001 through July 2006, when she was between 5 and 11 years old. The State introduced Spanish-language text messages, recorded calls, and a recorded police interview with English translations prepared by bilingual technician Luz Aguirre, who testified and was cross-examined. Martinez also challenged the exclusion of proposed residual-hearsay evidence, admission of prior sexual contact, the admission of his police interview after a Miranda waiver, the sufficiency of the victim's testimony, and his 30-to-40-year sentence.

PROCEDURAL HISTORY

The State charged Martinez by information with three counts of first degree sexual assault involving his daughter. The district court directed acquittals on counts 2 and 3, and a jury convicted him on count 1. The court imposed a sentence of 30 to 40 years' imprisonment. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020)
- State v. Epp, 278 Neb. 683, 773 N.W.2d 356 (2009)
- State v. Montoya, 305 Neb. 581, 941 N.W.2d 474 (2020)
- U.S. v. Charles, 722 F.3d 1319 (11th Cir. 2013)
- U.S. v. Nazemian, 948 F.2d 522 (9th Cir. 1991)
- U.S. v. Martinez-Gaytan, 213 F.3d 890 (5th Cir. 2000)
- United States v. Beltran, 761 F.2d 1 (1st Cir. 1985)
- United States v. Da Silva, 725 F.2d 828 (2d Cir. 1983)
- State v. Lopez-Ramos, 929 N.W.2d 414 (Minn. 2019)
- Hernandez v. State, 291 Ga. App. 562, 662 S.E.2d 325 (2008)
- Correa v. Superior Court, 27 Cal. 4th 444, 40 P.3d 739, 117 Cal. Rptr. 2d 27 (2002)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Tapio-Reyes v. Excel Corp., 281 Neb. 15, 793 N.W.2d 319 (2011)

- U.S. v. DiDomenico, 78 F.3d 294 (7th Cir. 1996)
- State v. Devers, ante p. 429 (2020)
- State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016)
- State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006)
- State v. Castor, 262 Neb. 423, 632 N.W.2d 298 (2001)
- State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008)
- State v. Liesy, 207 Neb. 118, 295 N.W.2d 715 (1980)
- State v. Reed, 201 Neb. 800, 272 N.W.2d 759 (1978)
- State v. Wood, 296 Neb. 738, 895 N.W.2d 701 (2017)
- State v. Huston, 285 Neb. 11, 824 N.W.2d 724 (2013)
- State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018)
- State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020)
- State v. Wenke, 276 Neb. 901, 758 N.W.2d 405 (2008)
- State v. Hernandez, 299 Neb. 896, 911 N.W.2d 524 (2018)
- North Carolina v. Butler, 441 U.S. 369 (1979)
- State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017)
- State v. Mrza, 302 Neb. 931, 926 N.W.2d 79 (2019)
- State v. Blaha, 303 Neb. 415, 929 N.W.2d 494 (2019)

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