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Summary of Guitron (Miguel) v. State, 131 Nev. Adv. Op. 27 (May 21, 2015)

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CRIMINAL LAW: EVIDENCE, RAPE SHIELD, AND JURY SELECTION

Summary

The Court determined that (1) the State presented sufficient evidence for a jury to convict Guitron of incest and sexual assault, (2) the district court did err by not allowing Guitron to introduce evidence of the victims sexual knowledge, but this error was harmless, (3) the district court did err refusing to give the jury Guitron’s requested inverse elements instruction, but this error was also harmless, and (4) Guitron could not show that the district court erred by denying his *Batson* challenge.

Background

Guitron met the victim’s mother, Anita, in Las Vegas in 1997 or 1998 and the two dated for some time. During that time, Anita became pregnant, but did not inform Guitron. When Anita was three or four months pregnant, she moved to Michigan without Guitron and the two did not stay in contact. When the child was five years old, Anita applied for child support from Guitron, which was granted following a positive paternity test.

In October of 2010, when the victim was eleven years old, Guitron called Anita. The victim overheard the two talking on the phone and, realizing it was her father, asked to speak with him. Anita described the victim as a “kid in a candy store” when she was talking to her father for the first time.

After the phone call, Anita and the victim moved back to Las Vegas, where Anita resumed her relationship with Guitron and the victim enrolled in elementary school and an Individualized Learning Plan because she was a slow learner. When the victim was twelve years old, Anita realized the victim was pregnant. DNA tests conclusively proved Guitron was the father of the victim’s baby. Guitron also sent the victim letters, openly admitting he was the father.

At trial, Guitron asserted he and the victim only engaged in sex on one occasion, while Guitron was intoxicated and partially unconscious. Guitron argued the victim was sexually curious and wanted to have sex with him, and she was capable of understanding the consequences of her actions despite her age. Guitron also argued that the State did not meet its burden of proof on the incest charges because the State did not present DNA evidence proving he was the victim’s father. Guitron was conviction by a jury of incest, four counts of sexual assault with a minor under the age of 14, and two counts of lewdness with a minor under the age of 14. Guitron appealed.

Discussion

On appeal, Guitron contends (1) the State presented insufficient evidence for the jury to convict him of incest and sexual assault with a minor under the age of 14, (2) the district court erred by denying Guitron’s motion to admit evidence of the victim’s prior

¹ By Aleem A. Dhalla.

sexual knowledge, (3) the district court erred by refusing to give Guitron's proposed inverse instruction, and (4) the district court erred by denying Guitron's *Batson* challenges.

(1) The State presented insufficient evidence

With respect to the incest charge: NRS 201.180 defines incest as occurring when “[p]ersons being within the degree of consanguinity within which marriages are declared by law to be incestuous and void [either] intermarry with each other or . . . commit fornication or adultery with each other.”² Although the State did not present DNA evidence proving Guitron was the victim's father, both the victim and Anita testified that Guitron was the victim's father. Additionally, Guitron himself admitted numerous times he was the biological father of the victim. The Court held, based on Guitron's own statements, the jury could reasonably infer he was the biological father of the victim.

With respect to the sexual assault with a minor under the age of 14 charge: NRS 200.366 defines sexual assault as occurring where a person “subjects another person to sexual penetration . . . against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.” Guitron argues that the victim consented to having sex and she knew or should have known the consequences of her actions, thus he should have been convicted of a lesser crime of statutory sexual seduction. At trial, the victim testified she was in love with Guitron and Guitron was in love with her. Guitron, through his counsel, asserted at trial that the victim initiated sex by climbing on top of him while he was intoxicated because she was curious about sex.

The State presented evidence that the victim was young, a slow learner, and vulnerable. Additionally, the State presented evidence that Guitron and the victim had sex on multiple occasions and the victim was initially reluctant. The Court found that the State presented sufficient evidence for a rational trier of fact to conclude the victim did not understand the consequences of her actions, she was incapable of giving her consent, and Guitron knew or should have known the victim was mentally or physically incapable of resisting his conduct when he engaged in sex with her.

(2) Motion to admit evidence of a victim's prior sexual knowledge

Guitron argued the district court erred by denying his motion to admit evidence of the victim's prior knowledge of sexual conduct. Specifically, Guitron wished to admit evidence that the victim had “vast sexual knowledge” from viewing internet pornography with her friends from middle school. While Nevada's rape shield law limits the degree to which a defendant may inquire into a victim's past sexual history³, this limitation is tempered by the defendant's fundamental rights under the Sixth and Fourteenth Amendments.⁴ The Nevada Supreme Court in *Summitt v. State* held evidence that would ordinarily be bared by rape shield may be admissible if the defense uses such evidence not to advance a theory of the victim's general lack of chastity, but to show knowledge or

² NEV. REV. STAT. § 201.180

³ NEV. REV. STAT. § 50.090

⁴ U.S. CONST. AMEND. VI; U.S. CONST. AMEND. XIV.

motive.⁵ The district court must admit the evidence if used to show knowledge or motive and the probative value outweighs the prejudicial effect of the evidence. Here, the Court found that although the district court held a hearing on the motion in limine, it failed to explain its finding in light of the defense's theory in the case. The district court simply found that the evidence was too prejudicial. Because Guitron sought to admit the evidence of the victim watching internet pornography not to besmirch the victim character but rather to show knowledge of sexual conduct, the district court erred in denying the defendant's motion to admit the evidence.

However, the Court found the error to be harmless. Although the district court precluded Guitron from presenting evidence regarding the victim's conduct of viewing internet pornography, the district court allowed Guitron to present other similar evidence and argue that the victim was knowledgeable of sex prior to having sexual intercourse with Guitron. The Court found that, given the overwhelming evidence supporting the verdict and the fact that Guitron was not precluded from advancing his defense to the jury, the district court's error did not contribute to the jury's verdict and was therefore harmless.

(3) Defendant's requested inverse elements instruction

Guitron further claims the district court erred by rejecting his proposed inverse elements instruction as to the crime of sexual assault with a minor under the age of 14. The district court rejected the proposed instruction because it would confuse the jurors and the inverse instruction added unnecessary extra explanation. In *Crawford v. State*, the Nevada Supreme Court held that the district court may not refuse a defense instruction simply because it already was substantially covered by other instructions.⁶

The Court found that the negatively phrased elements instruction was not misleading to the jury under *Crawford* and the district court, therefore, abused its discretion in denying Guitron's proposed instruction. Nevertheless, the Court concluded this error was harmless under the circumstances, as the jury was accurately instructed regarding the elements of sexual assault and there was substantial evidence that supported the jury's verdict that Guitron committed sexual assault with a minor under the age of 14.

(4) Batson challenges

Lastly, Guitron contends that under *Batson v. Kentucky*⁷, the State improperly used its peremptory challenges to remove non-white venire persons from the jury pool in violation of Guitron's Fourteenth Amendment right to equal protection. The three-pronged *Batson* test for determining whether illegal discrimination has occurred requires: (1) the opponent of the peremptory strike to show a prima facie case of discrimination, (2) the proponent of the strike to provide a race-neutral explanation, and (3) the district court to determine whether the proponent has "in fact demonstrated purposeful discrimination."⁸

⁵ 101 Nev. 159, 163-64 (1985).

⁶ 121 Nev. 744, 750-54 (2005).

⁷ 476 U.S. 79 (1986).

⁸ *Diomampo v. State*, 124 Nev. 414, 422 (2008) (citing *Batson*, 476 U.S. at 96-98).

Here, Guitron argues that the record indicates he initially objected to the State's preemptory strike of Prospective Juror 31, an Asian male, and the district court initially determined Guitron had failed to make a prima facie case as to that juror. After the State exercised a preemptory challenge to excuse Prospective Juror 52, an African-American female, Guitron renewed his objection, arguing the State had exercised more than half of its preemptory challenges on minorities. The district court at that time turned to the State, seeking a race-neutral explanation. The State indicated it had struck Juror 31 because he was a single father who automatically believed children. As to Juror 52, the State indicated, among many other reasons, that it was currently prosecuting Juror 52 for a sex offense. The district court then turned to Guitron to show the State's explanations were pretext. To meet this burden, Guitron argued the State's failure to strike similarly situated jurors evinced pretext. The district court found the State's reasons to be race-neutral and rejected the *Batson* challenge. The Court found the State's reasons to be clear, reasonably specific, facially legitimate, and did not communicate any inherent discriminatory intent and therefore, under these facts the district court did not err in denying the *Batson* challenges.

Conclusion

The Court found Guitron's convictions of incest and sexual assault with a minor under the age of 14 to be supported by substantial evidence. To the extent the district court erred in failing to allow evidence of the victim's prior sexual knowledge and failing to give Guitron's inverse elements instruction, those errors were harmless and did not warrant reversal. Finally, Guitron failed to show the district court erred by denying his *Batson* challenges. Accordingly, the Court affirmed the jury's verdict.