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Chelsea Stacey
Nevada Law Journal

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Gonzalez v. State, 131 Nev. Adv. Op. 99 (Dec. 31, 2015)¹

CONSTITUTIONAL LAW: RIGHT TO A FAIR TRIAL
Jury Instructions; Jury Questions; Bifurcation

Summary

The Court, sitting *en banc*, determined that by failing to answer questions from the jury that suggested confusion on a significant element of the law, failing to give an accomplice-distrust instruction, and by not bifurcating the guilt phase from the gang enhancement phase the district court violated the defendant's right to a fair trial.

Background

Defendant, Ernesto Gonzalez was found guilty by a jury on all counts charged. The district court merged the convictions of challenge to fight resulting in death with the use of a deadly weapon and second-degree murder with the conviction of first-degree murder with the use of a deadly weapon. The jury did find deadly-weapon and gang enhancements, however the district court only imposed sentences for the weapons enhancement.

During deliberations the jury asked the judge two questions which the judge failed to answer or give any clarifying instructions and also, the trial court did not bifurcate the guilt phase with the gang-enhancement phase. Further, the trial court refused to give an accomplice-distrust instruction requested by Gonzalez's against the witness whose testimony was uncorroborated.

On appeal Gonzalez alleged several claims, four of which the Court addressed. Gonzalez alleged that the district court abused its discretion when: (1) it refused to answer two questions from the jury during deliberations; (2) it gave a defense-of-others jury instruction that was unduly confusing and not supported by evidence; (3) it refused to give defendant's proffered accomplice-distrust jury instruction; (4) it refused to bifurcate the gang-enhancement portion of the trial from the guilt phase.

Discussion

District court's refusal to answer jury inquiries during deliberations

The trial judge has wide discretion in deciding how to answer jury questions, if the judge feels that the instructions were adequate and correct then he may refuse to answer questions already covered by the instructions.² Under the current *Tellis* rule, the trial judge did not abuse his discretion, however, the Court created an exception to this bright-line rule. The Court held that in situations where the jury's question shows confusion or a lack of understanding of a significant element of applicable law the trial judge does have a duty to give additional instructions to clear up the confusion.

¹ By Chelsea Stacey.

² *Tellis v. State*, 84 Nev. 587, 591, 445 P.2d 938, 941 (1968).

The defense-of-others jury instruction

The defense-of-others instruction was erroneously given because it included a self-defense instruction, which was not supported by the evidence in the record. The Court held that intertwining the two instructions was unduly confusing on the jury and the instruction was erroneously given. However, the Court found that the defense-of-others instruction did not amount to plain error.

The district court abused its discretion by refusing to give an accomplice-distrust instruction

The Court held that it was an abuse of discretion for the trial judge to not give an accomplice-distrust instruction. This instruction is required when an accomplice's testimony is uncorroborated.³ The accomplice's testimony against Gonzalez was uncorroborated; therefore the trial court was required to give the instruction and the Court abused its discretion in refusing to give an accomplice-distrust instruction.

The district court abused its discretion by refusing to bifurcate the presentation of gang-enhancement evidence from the guilt phase of the trial.

Bifurcation is required when failure would compromise a defendant's right to a fair trial.⁴ The admission of highly prejudicial evidence in order to show gang involvement that is not otherwise relevant to proving the underlying crime, compromises a defendant's right to a fair trial. Here, the evidence brought forth to prove the gang enhancement was not relevant to the underlying crime and therefore prejudiced the defendant and bifurcation was mandatory. The district court's refusal to bifurcate the guilt and gang enhancement portions of the trial was an abuse of its discretion.

Cumulative error

"[I]f the cumulative effect of errors committed at trial denied the appellant his right to a fair trial, this court will reverse the conviction."⁵ Here, the Court held that the aggregate effect of the errors effectively denied Gonzalez his constitutional right to a fair trial.

Conclusion

The trial court abused its discretion when failing to answer the jury's questions and by refusing to give the accomplice-distrust instruction. Also, the court erred by failing to bifurcate the guilt phase of the trial with the gang enhancement phase. Due to the cumulative effect of these mistakes on Gonzalez's right to a fair trial the Court reversed Gonzalez's conviction and remanded for a new trial.

³ Howard v. State, 102 Nev. 572, 576, 729 P.2d 1341, 1344 (1986).

⁴ Brown v. State, 114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998).

⁵ DeChant v. State, 116 Nev. 918, 927, 10 P.3d 108, 113 (2000).