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Summary of Peciado v. State, 130 Nev. Adv. Op. 6

Geordan G. Logan
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CRIMINAL LAW: RECORDING OF SIDEBAR CONFERENCES AND JURY
CHALLENGES FOR CAUSE

Summary

The Court determined two issues: (1) whether due process requires that all sidebar proceedings be made a part of the record; and (2) whether prospective jurors who are anything less than unequivocal about their impartiality should be excused for cause.

Disposition

A district court's failure to memorialize all bench conferences, either contemporaneously or by allowing the attorneys to make a record afterward, deprives a defendant of meaningful appellate review. However, such deprivation warrants reversal only if the appellant shows that the record's missing portions are so significant that their absence precludes the Court from conducting a meaningful review of alleged errors. Additionally, where a prospective juror's statements or conduct cast doubt on his or her impartiality, the defendant is entitled to have that juror excused for cause.

Factual and Procedural History

A jury convicted Edward Peciado of voluntary manslaughter with the use of a deadly weapon. While in a physical altercation with Kim Long, Peciado repeatedly struck Long in the head with a hammer, killing her. Peciado claimed self-defense. The district court sentenced Peciado to the maximum of 4 to 10 years in prison, with a consecutive 4 to 10 years for the weapon enhancement. During the jury selection process, Peciado asserted challenges for cause against three prospective jurors in an attempt to exclude them from the jury pool. One of the jurors, #318, knew two of the State's witnesses. Another juror, #496, had a relationship with a Las Vegas police officer. The third juror, #304, stated that graphic photos would make her think Peciado was a little bit guilty. The district court denied all of Peciado's challenges for cause after each of the three prospective jurors stated that he or she could be impartial. Peciado used peremptory challenges to eliminate prospective jurors #304 and #496, but he did not have a peremptory challenge left to eliminate juror #318. Throughout the trial, the district court conducted numerous unrecorded bench and in-chambers conferences.

On appeal, Peciado argued that the court's failure to memorialize all of the sidebar conferences effectively denied him his right to appeal. Additionally, Peciado asserted that he was unduly prejudiced by having to use his peremptory challenges on jurors #304 and #496, and that juror #318's presence on the empaneled jury further prejudiced him.

¹ By Geordan G. Logan

Discussion

Unrecorded bench conferences and in-chambers discussions

A defendant is essentially deprived of an accurate record of the lower court proceedings when bench conferences and in-chambers discussions are not memorialized in the record. Accordingly, the defendant who wishes to challenge issues rising from his trial may be divested of the kind of “meaningful appellate review [that] is inextricably linked to the availability of an accurate record.” In *Daniel v. State*, the Court “determined that SCR 250(5)(a) and due process require a district court to record all sidebar proceedings in a capital case either contemporaneously with the matter’s resolution, or the sidebar’s contents must be placed on the record at the next break in trial.”² That said, the Court concluded that regardless of the type of case, “due process requires [this Court] to extend our reasoning in *Daniel* to defendants in noncapital cases.”

However, the district court’s failure to record sidebar proceedings “does not warrant reversal,” unless “the appellant shows that the record’s missing portions are so significant that their absence precludes this [C]ourt from conducting a meaningful review of the alleged errors.” Preciado did not make such a showing. The district court’s record sufficiently preserved the issues that Preciado sought to challenge.

Challenges for cause

Removal of a juror for cause is necessary only where the “prospective juror’s views ‘would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.’”³ The district court’s broad discretion in ruling on challenges for cause⁴ is subject to reversible error only where it results in an unfair empaneled jury.⁵ “If the jury actually seated is impartial, the fact that a defendant had to use a peremptory challenge to achieve that result does not mean that the defendant was denied his right to an impartial jury.”⁶

The district court’s decision to deny Preciado’s challenge for cause of prospective jurors #318 and #496 did not rise to the level of abuse of discretion. That each of these prospective jurors unequivocally stated that they could be impartial when examining the evidence and rendering a verdict, sufficiently establishes they were suitable jurors. Prospective juror #304, on the other hand, was equivocal even though she stated that she could be impartial. As a result, the district court’s failure to grant Preciado’s challenge for cause against prospective juror #304 was an abuse of discretion. The error, however, was harmless as prospective juror #304 was not empaneled “and her preconceptions did not infect the jury panel.”

² *Daniel v. State*, 119 Nev. 498, 507-08, 78 P.3d 890, 897 (2003).

³ *Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (quoting *Leonard v. State*, 117 Nev. 53, 65, 17 P.3d 397, 405 (2001)).

⁴ *Blake v. State*, 121 Nev. 779, 795, 121 P.3d 567, 577 (2005).

⁵ *See id.* at 796, 121 P.3d at 578.

⁶ *Id.*

Conclusion

When the district court fails to memorialize bench conferences and in-chambers discussions, it deprives the defendant of an accurate record. Here, Preciado was unable to show that the deprivation was so significant that it would preclude the Court from conducting a meaningful review. Furthermore, the district court's decision to deny Preciado's challenges for cause did not result in an unfair empaneled jury. The prospective juror whose impartiality was in doubt was not empanelled. That her removal was due to a peremptory challenge as opposed to a challenge for cause is a harmless error. As a result, neither the unrecorded sidebar proceedings, nor the denied challenges for cause warranted reversal of the district court's decision.

Accordingly, the Court affirmed Preciado's conviction.