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Summary of Patterson v. State of Nevada, 129 Nev. Adv. Op. No. 17

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CRIMINAL LAW – RIGHT TO COUNSEL OF CHOICE

Summary

The Court considered an appeal from a jury verdict convicting the defendant of conspiracy to commit murder, murder with the use of a deadly weapon and discharging a firearm at a vehicle.

Disposition/Outcome

The Sixth Amendment right to counsel applies at the defendant's preliminary hearing. A denial of retained counsel at this stage is a violation of the right to counsel of choice. However, such a violation is subject to harmless-error review. The justice court's error in denying defendant's right to counsel of choice in this case was harmless.

Facts and Procedural History

The State brought charges against Michael Patterson in association with the Las Vegas shooting death of Bobby Wilkerson. Bobby Wilkerson was found dead outside of his car by a gun shot wound to his head. Video surveillance revealed that a person exited the passenger side of a vehicle, approached the driver's side of Wilkerson's vehicle, and then jumped back into the passenger side of the first vehicle. Wilkerson then exited his vehicle and fell to the ground.

Wilkerson's mother informed police that Wilkerson planned to meet with Patterson that evening with regard to a dispute over a dog. Police found the vehicle pictured on the video footage in the parking lot of Patterson's apartment complex. The vehicle belonged to Patterson's roommate, who told police that Patterson used her car often. Following the issuance of an arrest warrant Patterson was apprehended by FBI in Chicago, Illinois and he allegedly confessed to the murder and revealed the location of the murder weapon. The interrogation was not recorded, but officers located the murder weapon in the exact location stated in his alleged confession.

Although attorney Richard Tannery was appointed to represent him, Patterson retained attorney Garrett Ogata the night before his preliminary hearing. At the hearing, Ogata requested to be substituted as counsel and sought a continuance of the hearing. The judge denied Ogata's requests because Ogata was not prepared to proceed and Tannery was present and prepared to proceed. However, Ogata was allowed to sit at counsel's table and provide input to Tannery. Subsequently, Patterson was convicted on all charges and appealed.

¹ By Brittanie Watkins.

Discussion

The case was heard before Justice Hardesty, Justice Parraguirre and Justice Saitta. Justice Hardesty wrote the opinion. Criminal defendants are guaranteed the right to an attorney by the Sixth Amendment to the Constitution.² The Fourteenth Amendment extends that right to criminal defendants in state court.³ The Supreme Court has determined that the Sixth Amendment right to counsel applies to “critical” stages of the proceedings.⁴ Furthermore, the Nevada Supreme Court has previously held that the Sixth Amendment right to counsel is guaranteed at a preliminary hearing.⁵

The court reviews the justice court’s denial of Patterson’s request to substitute counsel for an abuse of discretion.⁶ Defendants further have the right to replace existing counsel with retained counsel.⁷ However, that right is not absolute, and the court has wide latitude must balance the right to choose counsel against the needs of fairness and calendar demands.⁸ The test to determine whether or not the justice court abused its discretion in denying the substitution of newly retained counsel is whether the denial significantly prejudiced Patterson, or if it was untimely resulting in an unreasonable interference with the orderly process of justice.⁹

When a court does not provide for due consideration of the issues at hand, there is an abuse of discretion.¹⁰ Although there may have been some inconvenience related to Ogata’s substitution, the justice court failed to balance the interests through further inquiry. The justice court’s reasons for denying Patterson’s request did not take into consideration any prejudice to Patterson, or assess whether Ogata’s substitution would cause an unreasonable disruption in the proceedings.

Patterson argued that the denial of counsel of choice at the preliminary hearing was a structural error that requires reversal. The Court disagreed, and relied on Supreme Court precedent in holding that the denial of counsel at a preliminary hearing is subject to harmless error review.¹¹ If the error did not contribute to the defendant’s conviction, then the error was harmless.¹² Patterson failed to show that the denial of counsel of choice at the preliminary hearing contributed to his conviction. Ogata was given permission to sit at counsel’s table during the hearing and provide his support to Tannery, and the state produced overwhelming evidence of Patterson’s guilt.

Patterson also argued that his rights were violated under *Brady v. Maryland*,

² U.S. CONST. amend. VI.

³ U.S. CONST. amend. XIV.

⁴ *United States v. Wade*, 388 U.S. 218, 224 (1967).

⁵ *Kaczmarek v. State*, 91 P.3d 16, 25 (Nev. 2004).

⁶ *Young v. State*, 102 P.3d 572, 576 (Nev. 2004).

⁷ *Miller v. Blackletter*, 525 F.3d 890, 895 (9th Cir. 2008).

⁸ *Gonzalez-Lopez*, 548 U.S. at 152 (2007).

⁹ *People v. Lara*, 103 Cal. Rptr. 2d 201, 211-12 (Ct. App. 2001).

¹⁰ *Jones Rigging v. Parker*, 66 S.W.3d 599, 602 (2002).

¹¹ *Coleman v. Alabama*, 399 U.S. 1, 11 (1970).

¹² *Hernandez v. State*, 188 P.3d 1126, 1136 (Nev. 2008).

which requires a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.¹³ Evidence is material if there is a reasonable probability of a different result at trial if the defense had known of the withheld evidence.¹⁴ Patterson contended that his rights under Brady were violated because the government withheld an FBI memoranda encouraging agents to request permission to record interviews. Such evidence, Patterson contended, could have been used to impeach the testimony of an FBI witness. The Court determined that the memoranda implied that the default policy was to not record interviews and, as such, the evidence did not impeach the FBI agent's testimony that the policy was to not record interviews. Moreover, the Court did not believe that this evidence would have changed the result. Thus, the Court determined that the State did not commit a violation under Brady.

Conclusion

The Court affirmed the lower court's judgment of conviction.

¹³ State v. Bennett, 81 P.3d 1, 8 (Nev. 2003).

¹⁴ Lay v. State, 14 P.3d 1256, 1264 (Nev. 2000).