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Summary of Wyman v. State, 125 Nev. Adv. Op. 46

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CRIMINAL LAW- JUDGMENT OF CONVICTION- MOTIONS

Summary

Appeal from a judgment of conviction for second-degree murder, challenging the district court's denial of Appellant's motion to dismiss for pre-indictment delay and Appellant's motion for certificate of materiality to obtain out-of-state mental health records.

Disposition/Outcome

Reversed. Although the district court did not error in denying Appellant's motion to dismiss for pre-indictment delay, the district court did error in denying Appellant's motion for certificate of materiality to obtain out-of-state mental health records. Thus, the Court reversed Appellant's conviction for second-degree murder.

Factual and Procedural History

On August 10, 1974, Appellant Catherine Wyman took her three-and-one-half-year-old son, J.W., to the hospital in Reno, Nevada. An examination revealed multiple bruises at different stages of healing all over J.W.'s body. J.W. also suffered a concussion and scratches on his neck. A pediatric surgeon inserted a catheter to help rehydrate J.W.; however, J.W. stopped breathing and the doctors could not resuscitate him.

Wyman told doctors that early that day J.W. fell out of a lawn chair and hit his head on the sidewalk. Two doctors suspected child abuse, and one doctor contacted the police and ordered an autopsy to determine the cause of death. The coroner that performed the autopsy concluded that an accidental fall from a lawn did cause J.W.'s death. Alternatively, the coroner serving from 1979-2006 disagreed with the original coroner's conclusion, noting, "[t]he mode of injury is inconsistent with the accidental fall from a lawn chain finding." Yet at that time, the State did not prosecute Appellant, or any other family member, for J.W.'s death.

In 2005, over 30 years after J.W.'s death, Julie Bader-Dunn, Appellant's daughter, accused Appellant of murdering J.W. Dunn and told police that she first made these allegations in 1995 during therapy treatment. Further, Dunn "recalled" additional memories during subsequent sessions and continued to meet with the therapist once a week and a psychiatrist once a month to "deal with all the issues and so that [she is] a strong witness." Dunn told police that she suffered from "major depression," experienced a mental breakdown in 2005, and attempted suicide several times after J.W.'s death.

On May 30, 2006, nearly 32 years after J.W.'s death, the State indicted Appellant for murder and child abuse. The State eventually dropped the child abuse charge.

Before trial, Appellant filed a motion to dismiss for pre-indictment delay, arguing that the State had no reasonable justification for the 32-year delay. The district court denied Appellant's motion to dismiss for two reasons: (1) both the State and Appellant were prejudiced by the delay and (2) Appellant failed to demonstrate that the State delayed prosecution to obtain a tactical advantage.

Additionally, throughout the proceedings, Appellant moved for certificate of materiality, under Nevada's Uniform Act to Secure the Attendance of Witnesses From Without a State in

¹ By Karlee Phelps

Criminal Proceedings.² Appellant sought Dunn's mental health records from California and argued that the records were material to her defense. The district court denied the motions concluding that Appellant failed to demonstrate with particularity that the records would produce any information favorable to her defense and that her defense would be prejudiced without the records.

On appeal, Appellant challenged both the district court's denial of her motion to dismiss for pre-indictment delay and the denial of her motion for certificate of materiality to obtain out-of-state mental health records.

Discussion:

Pre-indictment Delay

As an initial matter, the Court addressed a question of first impression: what standard of review applies to a district court's denial of a motion to dismiss for pre-indictment delay? The Court noted that some jurisdictions treat pre-indictment delay as a mixed question of law and fact.³ Yet, other jurisdictions, including the Ninth Circuit, apply an abuse of discretion standard to pre-indictment delay challenges.⁴ Agreeing with the Ninth Circuit and because analyzing pre-indictment delay is fact intensive, the Court adopted an abuse of discretion standard of review.

In doing so, the Court held that the district court did not abuse its discretion in denying Appellant's motion to dismiss for pre-indictment delay. To succeed on a pre-indictment delay challenge, a defendant must demonstrate: (1) actual, nonspeculative prejudice from the delay and (2) intentional delay to obtain a tactical advantage.⁵

First, the Court held that Appellant failed to demonstrate prejudice. Appellant argued that she suffered prejudice because many witnesses were either difficult to find or deceased 32 years after J.W.'s death. These witnesses could have testified to the unlikelihood of abuse. But Appellant did not indicate what certain witnesses would have testified to specifically, and made no showing of how the witnesses would have benefited her defense. Therefore, the Court found Appellant's argument speculative and rejected Appellant's claim of prejudice.

Even so, the Court went on to consider the second requirement for pre-indictment delay: whether the prosecution intentionally delayed to gain a tactical advantage. Not only did Appellant fail to make any showing in support of intentional delay, the Court determined that the State likely suffered from the delay as well. Accordingly, the Court held that the district court did not abuse its discretion in denying Appellant's motion to dismiss for pre-indictment delay.

Out-of-state Mental Health Records

Although the Court affirmed the district court's denial of the motion to dismiss, the Court went on to reverse the district court's denial of Appellant's motions for certificate of materiality.

² NEV. REV. STAT. §§ 174.395- 174.445 (2007).

³ See, e.g., State v. Knickerbocker, 880 A.2d 419, 424 (N.H. 2005); State v. Williams, 125 P.3d 93, 96 (Or. Ct. App. 2005); State v. Lee, 602 S.E.2d 113, 117 (S.C. Ct. App. 2004).

⁴ See, e.g., United States v. Corona-Verbera, 509 F.3d 1105, 1112 (9th Cir. 2007); State v. Gonzales, 156 P.3d 407, 411 (Alaska 2007); People v. Morris, 756 P.2d 843, 866 (Cal. 1988).

⁵ United States v. Lovasco, 431 U.S. 783, 784 (1977); US v. DeGeorge 380 F.3d 1203, 1210-11 (9th Cir. 2004).

More specifically, the Court defined the scope of Nevada’s Uniform Act relating to out-of-state evidence and the standard for certificates of materiality under NRS § 174.425(1).⁶

Under the Sixth Amendment of the U.S. Constitution, a criminal defendant can “compel the production of witnesses to testify on his or her behalf.”⁷ In accordance with the Sixth Amendment, Nevada’s Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings allows Nevada courts through a motion for certificate of materiality to subpoena a citizen from another state to testify in a criminal case in Nevada.⁸

The Court then held that “subpoena” not only refers to witnesses, but also to documents, known as subpoenas duces tecum. While a minority of courts with similar Uniform Acts limit the term “subpoena” to witnesses,⁹ the majority of courts find it reasonable to extend “subpoena” to include documents.¹⁰ The Court analogized to *Atlantic Commercial v. Boyles*, where the Nevada Supreme Court held that even though a Nevada statute provided only for subpoenas of witnesses, the statute “arguably would apply to subpoena duces tecum for production of documents.”¹¹ The Court reaffirmed *Boyles* and held that Nevada’s Uniform Act allows for subpoenas duces tecum.

In this case, Wyman sought a subpoena duces tecum for Dunn’s out-of-state mental health records that had an ancillary request for the appearance of an out-of-state witness. As such, the Court concluded that Wyman’s certificate of materiality request fell within the purview of Nevada’s Uniform Act.

The Court examines two elements to determine whether the district court abused its discretion in denying a request for a certificate of materiality

The Court set out the two requirements for subpoenas duces tecum: (1) the subpoena must request *material* out-of-state documents; and (2) a showing that absent the material evidence, defendant would suffer prejudice.¹²

First, the Court found Dunn’s out-of-state mental health records material to Appellant’s defense. More specifically, the Court used rules of statutory interpretation to define “material.” After finding Nevada’s Uniform Act unambiguous, the Court articulated “material’s” plain meaning as “evidence that is logically connected with the facts of consequence or the issues in the case.” The Court accepted Appellant’s argument that the records are material because Dunn made the accusations in connection with her mental health treatment, thus forming a logical connection between the records and “the facts of consequence and issues presented in the case.” Therefore, the Court held that substantial evidence demonstrates the materiality of Dunn’s out-of-state mental health records.

⁶ NEV. REV. STAT. § 174.425(1) states in pertinent part: “If a person in any state, which by its laws has made provision for commanding person within its borders to attend and testify in criminal prosecutions, . . . is a material witness in a prosecution . . . a judge of such a court may issue a certificate . . . specifying the number of days the witness will be required.”

⁷ *Wilson v. State*, 121 Nev. 345, 366, 114 P.3d 285, 299 (2005).

⁸ *Id.*

⁹ *In re Grothe*, 208 N.E.2d 581, 586 (Ill. App. Ct. 1965) (quoting ILL. REV. STAT. ch. 38, § 156-1, now 725 ILL. COMP. STAT. ANN. 220/1 (2008)).

¹⁰ *See, e.g.*, *Application of Grand Jury of State of N.Y.*, 397 N.E.2d 686, 689 (Mass. App. Ct. 1979); *In re Saperstein*, 104 A.2d 842, 846 (N.J. Super. Ct. App. Div. 1954).

¹¹ 103 Nev. 35, 39, 732 P.2d 1360, 1363 (1987) (referring to NEV. REV. STAT. § 174.415—the counterpart to § 174.425—which allowed courts to subpoena a witness in Nevada to appear in another state).

¹² *See Wilson v. State*, 121 Nev. 345-367-68, 114 P.3d 285, 300 (2005).

Second, the Court ruled that the absence of Dunn's mental health records prejudiced Appellant's defense. In fact, the Court noted that evidence becomes prejudicial when "there is a reasonable probability that the . . . [evidence] would have affected the outcome of the trial."¹³ Appellant presented as evidence of the prejudice caused by the absence of the mental health records: (1) Dunn first made the accusation in a therapy session; (2) Dunn "recalled" additional memories during therapy sessions; (3) Dunn met with a therapist once a week and psychiatrist once a month to "deal with all the issues and so that [she is] a strong witness;" (4) Dunn suffered from major depression; (5) Dunn attempted suicide several times; and (6) Dunn experienced a mental breakdown in 2005. The Court added that Dunn served as the only witness to directly implicate Appellant as responsible for J.W.'s death. Additionally, Dunn's mental health raises doubts as to her reliability and credibility as a witness. As a result, the Court found a probability that the mental health records "would have affected the outcome of the trial." Thus, the absence of Dunn's mental health records as evidence at trial did in fact prejudice Appellant's defense. Accordingly, the Court held that the district court abused its discretion by denying Appellant's motion for a certificate of materiality to subpoena Dunn's out-of-state mental health records.

Conclusion:

The Court held that the district court did not abuse its discretion in denying Appellant's motion to dismiss for pre-indictment delay. However, the Court went on to hold that the district court did error in denying Appellant's motion for certificate of materiality to obtain out-of-state mental health records. Therefore, the Court reversed the decision of the district court and remanded for further proceedings.

¹³ Bell v. State, 110 Nev. 1210, 1215, 885 P.2d 1311, 1315 (1994).