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Summary of Valdez v. State, 124 Nev. Adv. Op. No. 97

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Valdez v. State,
124 Nev. Adv. Op. No. 97 (November 26, 2008)¹

Criminal Law – Jury Instructions

Summary

Cumulative effect of prosecutorial misconduct and the abuse of discretion on the part of the district court through a failure to give the jury a written bifurcation instruction and the resultant effect of juror misconduct warrants reversal warranted reversal of a first-degree murder and attempted murder conviction.

Disposition/Outcome

Cumulative errors require reversal of the conviction. Case is remanded to district court for additional proceedings.

The dissent filed additional opinion arguing that while there was juror and prosecutorial misconduct, that misconduct did not violate Valdez’s constitutional rights, and therefore the Court should affirm the conviction.

Factual and Procedural History

James Valdez was convicted of first-degree murder and attempted murder with the use of a deadly weapon. On November 8, 2004, James Valdez and his girlfriend Teresa Tilden became involved in a drunken altercation. Tilden woke her son, S.E., a minor, to alleviate the situation. The situation escalated and Valdez left the apartment, and returned shortly thereafter. When Tilden refused to answer the door, Valdez again left and returned a second time. Witnesses testified that Valdez was calm when he left the apartment and returned the first two times.

During his second return, Valdez began packing some of his belongings and carried them to the door. Tilden interfered and returned the belongings to where they had been. Valdez then retrieved a knife from the kitchen and threatened Tilden. Tilden pushed him and said she was not afraid of him. When she turned to walk away, Valdez grabbed her from behind and sliced her chin in a motion similar with an attempt to slit her throat. Valdez’s hand was cut during this episode, however, there is conflicting testimony as to whether Tilden had a knife and attacked him, or if he was cut when he attacked her. After cutting Tilden, Valdez stabbed S.E. in the chest. The knife broke and remained lodged in S.E.’s body. Valdez then dragged S.E. to the kitchen, obtained another knife, and continued to stab S.E. Valdez then returned to Tilden, who had been screaming in the other room. Evidence showed that Tilden had multiple blunt force injuries, nine stab wounds, and was found face down covered in blood.

When Valdez returned to attack Tilden, S.E. fled the apartment and fell in the apartment common yard. Valdez chased S.E. with a knife. Testimony conflicted as to whether Valdez continued his assault on S.E. outside the apartment. Witness testimony showed that Valdez then ran after a security guard who had attempted to help S.E. but then ran in the opposite direction.

Valdez left the apartment complex and called his friend telling him that he had “screwed up” and had tried to kill himself. Police found the bloody knife by a dumpster. Police apprehended Valdez and arrested him outside the hospital.

Valdez was indicted on charges of (1) first-degree murder with the use of a deadly weapon for the death of Teresa Tilden, (2) attempted murder with the use of a deadly weapon for the attack on S.E., and (3) assault

¹ By Elham Roohani

with a deadly weapon for running after the security guard. The State expressed its intention to ask for the death penalty. A four day trial ensued, after which the jury began its deliberations.

The jury was not given written instructions on the bifurcation of guilt and penalty phases by the district court, however, the instructions were orally explained during jury selection. After deliberations, the jury returned a verdict of guilty on the first two charges and not guilty on the third. When reading the verdict, the foreperson also included that the jury had already reached its decision of Valdez's sentence. The district court concluded both phases were necessary and required the jury to return the following day for sentencing.

Valdez had accepted two consecutive life sentences without the possibility of parole, reserving his right to appeal any issue in the case. The State reserved the right to seek the death penalty in the case of reversal. Valdez waived his right to the penalty phase. The defense moved for mistrial based on juror misconduct by combining guilty and penalty phases. The district court denied the motion. Valdez appeals.

Discussion

On appeal, Valdez made four arguments which the Court addressed: (1) misconduct on the part of the district court in not providing a written instruction of bifurcation, (2) juror misconduct violated Valdez's constitutional rights, (3) an abuse of discretion on the part of the district court for denying a mistrial based on juror misconduct, and (4) these cumulative errors along with prosecutorial misconduct require reversal.

Jury instruction

A district court must hold separate guilt and penalty hearings in first-degree murder cases.² In this regard, a district court must give the jury written instructions.³ However, the parties may mutually agree to oral instructions.⁴ In this case, the district court gave oral instructions to jurors during jury selection. The record is silent as to a mutual agreement to waive written instructions in favor of oral instructions. Therefore, the Court assumes an objection to oral instructions and reviews the instruction for an abuse of discretion or judicial error.⁵

The Court held that because the jury could have forgotten, and probably did forget, the instruction, the district court abused its discretion. The error directly contravened Nevada law, thereby causing the jury misconduct. Therefore, the judicial error requires reversal.

Juror deliberation during guilt phase

The Court analyzed two constitutional considerations for bifurcation. Without proper jury instruction, the jury could potentially make an arbitrary and capricious decision for a capital sentence resulting in a violation of the Eighth Amendment. Similarly, the possibility of the jury altering the verdict to affect the sentence violates the Sixth Amendment's right to a fair trial by an impartial jury.

Valdez's Eighth Amendment right was violated because the district court's oral instructions to the jury were insufficient to instruct the jury regarding sentencing. Therefore, the jury's decision was inherently arbitrary and capricious, violated Valdez's constitutional rights, and resulted in juror misconduct.

Valdez's Sixth Amendment right was violated. When the jury prematurely deliberated on Valdez's penalty and formed an opinion, it violated Valdez's constitutional right to an impartial jury.

Juror misconduct warranting reversal

² NEV. REV. STAT. § 175.552(1).

³ NEV. REV. STAT. § 175.161(1).

⁴ *Id.*

⁵ *Grey v. State*, 178 P.3d 154, 163 (Nev. 2008). No parallel citation available.

Failure to follow jury instructions is inherently juror misconduct. When a motion for mistrial is denied in light of juror misconduct, the standard of review is an abuse of discretion. A mistrial is warranted unless it appears beyond a reasonable doubt that no prejudice has resulted from the misconduct.

The jury's failure to follow the oral instructions for bifurcation resulted in juror misconduct. Additionally, that misconduct could reasonably have affected the verdict because they jury considered penalty during the guilt phase. Valdez's violation of constitutional rights coupled with the effect the misconduct reasonably had on the verdict warrants reversal.

Prosecutorial misconduct

Prosecutorial misconduct is analyzed under a two-part test. The Court first determines whether there was misconduct. Then the Court will determine whether the misconduct warrants reversal. In the second step of the analysis, reversal is improper when there is only harmless error. Harmless error is analyzed under the *Chapman*⁶ test if it is of constitutional dimension. Otherwise, if the error is not of constitutional dimension, then reversal is only granted when the error substantially effects the decision of the jury. The defendant can only invoke harmless error review if the error was preserved for appeal; otherwise, plain-error review applies. Plain-error review only requires reversal when there has been actual prejudice.

The Court applied plain-error review to the prosecutor's mention of pre-trial publicity, referral of S.E. as a "little boy," and use of the term "man hunt," as there was no objection and the issue was not preserved for appeal. The Court held that mention of pre-trial publicity and the referral of S.E. as a "little boy," were not prosecutorial misconduct because exposure to pre-trial publicity is a valid subject during jury selection, and S.E. was in fact a child when he was stabbed. The Court held that reference to a "man-hunt" was improper because it was an inaccurate characterization of the arrest. This statement alone was not enough for reversal, but taken into consideration cumulatively with other errors, the statement warranted reversal.

The Court applied harmless-error review to the prosecutor's suggestion that Valdez had no problem killing kids, statement of aggravators and punishments, question of an expert witness, and statements made in closing arguments. The Court held that the prosecutor's suggestion that Valdez had no problem killing kids, his statement of aggravators and punishments, and statements made in closing arguments, was misconduct as it invoked the prosecutor's personal opinion. The Court further held that these comments individually did not affect the verdict, but in their cumulative effect with other errors warranted reversal. The Court held that the prosecutor's questioning of an expert witness was misconduct because the prosecutor disregarded and violated the district court's sustained defense's objection twice. The Court noted that while this violation individually would not warrant reversal, taken in its cumulative effect, reversal was necessary.

Cumulative error

The cumulative effect of errors may violate a defendant's constitutional rights even if individually those errors are harmless. The Court considers three factors in determining cumulative error: "(1) whether the cause of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged."⁷

The Court held that the first factor was not met because there was sufficient evidence to support the verdict, however, the evidence was not overwhelming to overcome the prejudice caused by the cumulative error. The Court specifically noted Valdez's drunken state, conflicting testimony as to whether he was calm or angry when he returned to his apartment, testimony that there was cognitive impairment, and conflicting testimony as to whether he stabbed S.E. outside the apartment, shows that the evidence proving intent for first-degree murder and attempted murder was not overwhelming.

⁶ *Chapman v. California*, 386 U.S. 18, 24 (1967).

⁷ *Mulder v. State*, 116 Nev. 1, 17 (Nev. 2000).

The Court held that the quantity and character of the errors was substantial because it resulted in serious juror misconduct, prosecutorial misconduct, and constitutional violations. Further, the Court held that the third factor was satisfied because the crimes charged were very grave.

Based on the lack of overwhelming evidence of guilt, the Court held that the cumulative errors warranted reversal.

Dissent

The dissent agreed that the district court erred in its failure to give a written jury instruction and that the jury committed misconduct by disregarding the oral instruction for bifurcation, but that the errors individually and cumulatively did not require reversal because it would not have changed the result. The dissent argues that because Valdez did not object or offer the instruction and waived his right to a sentencing hearing, it could not and did not prejudice him.

The dissent agreed with the majority ruling that there was prosecutorial misconduct, but disagreed with the cumulative error analysis. With respect to the first factor, the dissent argues that the issue of guilt was not close, but was rather overwhelming. The dissent notes that intent may be formed instantaneously and facts such as threats, leaving and returning the apartment, the sheer number of stab wounds, and stabbing Tilden then S.E. and then returning to stab Tilden again strongly demonstrate intent in this case. As to the second factor, the dissent argues that the errors were not great and did not prejudice Valdez. Therefore, the errors did not require reversal. Lastly, the dissent agrees with the majority that the charge is grave.

In conclusion, the dissent would affirm the conviction because while there were errors, those errors do not warrant reversal.

Conclusion

The cumulative errors of juror misconduct resulting in constitutional violations, and prosecutorial misconduct warranted reversal of the judgment of conviction. The case was remanded to district court.