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Summary of Chartier v. State, 124 Nev. Adv. Op. No. 66

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Recommended Citation

Stout, Kelly, "Summary of Chartier v. State, 124 Nev. Adv. Op. No. 66" (2008). *Nevada Supreme Court Summaries*. 412.

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***Chartier v. State*, 124 Nev. Adv. Op. No. 66 (Sept. 11, 2008)¹**

CRIMINAL LAW - SEVERANCE

Summary

This case is an appeal from a jury conviction in district court on one count of conspiracy to commit murder and two counts of first-degree murder with the use of a deadly weapon.

Disposition/Outcome

Reversed and remanded. The Nevada Supreme Court reversed the district court's decision and remanded the case for a new trial holding that the district court committed error by refusing to sever the Appellant's trial from that of his codefendant because it resulted in unfair prejudice to the appellant. Additionally, the court held that the misjoinder was not harmless.

Factual and Procedural History

On August 18, 2004, Rachel Bernat and her father, Carlos Aragon, were stabbed to death outside of their home with Bernat's two daughters and mother present. Bernat's 10-year-old daughter testified that she saw her mother's assailant. Although she initially told the police that she believed the person stabbing her mother was Bernat's ex-husband, Chartier, she later recanted. Bernat's mother, who was stabbed while trying to fend off Bernat's assailant, testified that she was "positive" that the attacker was not Chartier.

Before Bernat's murder, she and Chartier has been involved in a custody dispute over their son. A few months earlier, the Clark County Family Court granted Bernat's request to move out of state and gave Chartier seven weeks of visitation during the summer. At trial, the prosecution presented evidence that Chartier was upset about the arrangement.

In the years between Bernat's and Chartier's divorce, Chartier has become friends with David Wilcox. Following his divorce from Bernat, Chartier lived with Wilcox and his wife, Cindy for a while. After the murders, Cindy turned over a suicide note Bernat wrote in 2002. Addressed to Wilcox, the letter instructed him to "take out mom and grandpa" (Aragon), take custody of Chartier's son, and to destroy the letter before police arrived.

At trial, the State prosecuted Wilcox and Chartier as coconspirators. The State claimed that Chartier was motivated to kill Bernat because of the custody dispute and enlisted Wilcox, a former military sniper, to commit the two murders. The State's witnesses testified to Wilcox's and Chartier's friendship, that Chartier was behind in child support payments, and had made statements that Bernat "deserved to be killed."

Chartier defended himself by claiming that he had an alibi and lacked a motive because he believed the custody matter had been resolved in his favor. Chartier's girlfriend testified that he was at home at the time of the murders. Wilcox claimed that he did not have a motive to kill

¹ By Kelly Stout

either Bernat or Aragon and that Chartier was the mastermind and killer.

After a five-day trial, a jury convicted both Chartier and Wilcox on all charges. Each defendant received consecutive life sentences for the two first-degree murders with a deadly weapon and four to ten years for conspiracy to commit murder.

Discussion

Under NRS 174.165(1), a trial judge may exercise his discretion and sever the trials of defendants where the facts of the case indicate that joinder may result in prejudice to either defendant or prevent the jury from reliably determining guilt or innocence.² The district court has “a continuing duty at all stages of the trial to grant a severance if prejudice does appear.”³ A defendant seeking reversal on appeal “carries the heavy burden”⁴ of demonstrating that the trial judge abused his discretion and that the error was not harmless, but resulted in “substantial and injurious effect on the verdict.”⁵

Chartier’s first argument was that Wilcox’s defense was antagonistic to his own.⁶ The court has previously held that antagonistic defenses cause prejudice where the defendants have “conflicting and irreconcilable defenses and there is danger that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty.”⁷ Here, the Nevada Supreme Court held that the defenses were antagonistic because Wilcox claimed that Chartier was present at the scene of the crime, there was little evidence to support Wilcox’s theory of the crime, and Taylor testified that the attacker was definitively not Chartier.

Second, Chartier alleged that the lower court’s failure to grant severance hindered his ability to present his theory of the case. The Nevada Supreme Court has “held that severance may be required where a failure to sever hinders a defendant’s ability to prove his theory of the case.”⁸ Here, the court found that the district court’s refusal to grant severance prevented Chartier from offering “critical evidence” of police recordings in which Wilcox made inculpatory statements.⁹ Additionally, the court noted that Chartier did not have the ability to question Wilcox as to why he kept a suicide note from several years back and that Wilcox likely improperly influenced the jury by emphasizing the custody dispute.

Finally, Chartier alleges that he is entitled to a new trial because the cumulative effect of

² Chartier v. State, 124 Nev. Adv. Op. No. 66, *6 (2008) (citing Marshall v. State, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002)).

³ Chartier, 124 Nev. Adv. Op. No. 66 at *7 (2008) (quoting Marshall, 118 Nev. at 646, 56 P.3d at 379).

⁴ Chartier, 124 Nev. Adv. Op. No. 66 at *5 (quoting Buff v. State, 114 Nev. 1237, 1245, 970 P.2d 564, 569 (1998)).

⁵ Chartier, 124 Nev. Adv. Op. No. 66 at *66 (quoting Marshall, 118 Nev. at 647, 56 P.3d at 379).

⁶ Chartier contends that because Wilcox defended under a theory substantially different from the State’s theory he was forced to defend himself against multiple theories of the crime. Chartier also alleges that the State possessed “overwhelming” evidence against Wilcox, but very little evidence against himself. Chartier also argued that Wilcox selected jurors based on the sentencing phase, where Chartier’s strategy focused primarily on selecting jurors based on the verdict phase. The court’s opinion did not address this argument.

⁷ Chartier, 124 Nev. Adv. Op. No. 66 at *6 (quoting Marshall, 118 Nev. at 646, 56 P.3d at 378).

⁸ Chartier v. State, 124 Nev. Adv. Op. No. 66, *9 (quoting Buff, 114 Nev. at 1245, 970 P.2d at 569).

⁹ Chartier, 124 Nev. Adv. Op. No. 66 at *10 (2008). The lower court excluded the recordings because of potential prejudice to Wilcox.

the district court's failure to grant severance was sufficiently prejudicial to justify reversal. The Nevada Supreme Court agreed with Chartier and stated that "the cumulative effect of the joint trial was not harmless, but rather resulted in a trial so unfair to Chartier as to warrant reversal of the judgment of conviction."¹⁰

Concurring Opinion

Concurring in the entirety of the majority opinion, Justice Cherry would further hold that the district court erred by denying Chartier's motion for a mistrial based on the misconduct of Wilcox's counsel. Although the Nevada Supreme Court did not address the issue of attorney misconduct, Chartier alleged that Wilcox's attorney made multiple statements during his closing argument which were unsupported by the evidence.

The concurrence proposes that the Nevada Supreme Court should adopt the standard set forth in the California case, *People v. Estrada*, finding that "a pattern of misconduct by [the] codefendant's counsel may, when taken as a whole, rise to the level of so infecting the proceedings with unfairness to warrant a new trial."¹¹ In that case, the court found unfairness where counsel's conduct misconduct included statements unsupported by admissible evidence and counsel's own opinions regarding the appellant's guilt.

The concurrence concludes that Wilcox's counsel committed misconduct and violated the Nevada Rules of Professional Conduct (RPC) by making several statements that were either unsupported by the record or constituted unreasonable inferences. Furthermore, the concurrence finds that because Chartier was unable to rebut his codefendant's closing argument, question Wilcox's counsel or have the misconduct remedied by the court, the statements were "highly prejudicial and so infected the proceedings with prejudice as to violate Chartier's right to due process."¹² Thus, the concurrence maintains that the misconduct requires that the court reverse the convictions and the case remanded to the district court.

Conclusion

The Nevada Supreme Court held that the district court abused its discretion by failing to sever the trials. As a result of the district court's error, Chartier suffered prejudice and so the misjoinder was not harmless. Consequently, the Nevada Supreme Court reversed the judgment of conviction and remanded the case to the district court for a new trial.

¹⁰ *Id.*

¹¹ *Chartier*, 124 Nev. Adv. Op. No. 66 at *2 (2008) (Cherry, J., dissenting) (citing *People v. Estrada*, 75 Cal. Rptr. 2d 17, 20 (Cal. App. 1998)).

¹² *Chartier*, 124 Nev. Adv. Op. No. 66 at *3 (2008) (Cherry, J., dissenting).