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Summary of Fiegehen v. State, 121 Nev. Adv. Op. 30

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CRIMINAL LAW – JURY INSTRUCTIONS & VERDICT

Summary

An intruder entered a residence, killed one person and shot another. The victim placed a 911 call, but within minutes, the 911 connection went dead. Sheriff's deputies arrived at the residence shortly thereafter and found one victim alive, lying on the floor in a pool of blood. The telephone line nearby had been cut. A body was discovered on a deck outside.

Evidence implicated Christopher Fiegehen as the primary suspect. However, he abruptly fled Nevada on the day of the crime. Two months later, he was stopped and questioned by police officers in Indiana, where they apprehended him after a routine check revealed an outstanding warrant for his arrest in Nevada for homicide. Fiegehen eventually returned to Nevada to face criminal charges.

The State charged Fiegehen with murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, burglary while in possession of a deadly weapon, and home invasion while in possession of a deadly weapon. The State alleged that Fiegehen committed the murder: (1) with malice aforethought by means of a willful, deliberate and premeditated killing; (2) in the perpetration or attempted perpetration of a burglary; or (3) in the perpetration or attempted perpetration of a home invasion. Fiegehen waived his right to a separate penalty hearing and agreed to have the sentence imposed by the district court, if the jury found him guilty of first-degree murder.

The State presented overwhelming evidence establishing that Fiegehen was the assailant. The jury instructions advised the jury only on the State's three alternative theories of first-degree murder and contained no mention of second-degree murder. The jury was further instructed:

All verdicts returned in this case must be unanimous. In considering Count I, murder with the use of a deadly weapon, the State has alleged three alternative theories of first-degree murder.

You do not have to agree on the theory of murder in the first degree, it is sufficient that each of you find beyond a reasonable doubt that the murder, under any one of the three theories, was murder of the first degree.

The jury found Fiegehen guilty of "murder with the use of a deadly weapon, a category A felony."² The jury also found Fiegehen guilty of attempted murder with the use of a firearm, burglary while in possession of a deadly weapon, and invasion of the home while in possession of a deadly weapon. The jury was polled, and all of the jurors

¹ By Michael Shalmy

² *Fiegehen v. State*, 113 P.3d 305, 308 (Nev. 2005).

confirmed that they were in agreement with the verdicts. Fiegehen did not object to or further discuss the verdict at that time.

Later, defense counsel orally requested the district court to declare the verdict on the murder count void because it failed to designate the degree of murder. The district court denied the motion, basing its decision on the totality of the circumstances. The district court then sentenced Fiegehen to two consecutive terms of life in the Nevada State Prison without the possibility of parole for murder, a sentence consistent with a finding of first-degree murder. Fiegehen appealed.

The Nevada Supreme Court held that the jury's failure to designate in its verdict the degree of murder did not render the verdict void. The verdict satisfied the requirements of NRS 200.030(3) because the jury's separate findings of guilt on the charges of murder, burglary, and home invasion together established a finding of first-degree felony murder as a matter of law. The Nevada Supreme Court confirmed Fiegehen's conviction in its entirety.

Issue and Disposition

Issue

Does a felony murder conviction which does not designate a degree of murder satisfy NRS 200.030(3)?

Disposition

Yes. Felony murder is first-degree murder as a matter of law. By convicting a defendant of felony murder the murder is automatically designated first-degree murder as a matter of law, and the verdict is not void.

Commentary

State of Nevada Law Before *Fiegehen*

Nevada law provides that a jury's failure to designate the degree of murder in its verdict renders a murder conviction fatally defective. NRS 200.030(3) provides: "The jury before whom any person indicted for murder is tried shall, if they find him guilty thereof, designate by their verdict whether he is guilty of murder of the first or second degree." The law is supported by a line of cases dating back to 1875.³

In *Sellers v. State*, the Nevada Supreme Court rejected the argument that the district court can look to the totality of the circumstances to assess the validity of a murder verdict which fails to state the degree of murder.⁴

Subsequently, in *Loveless v. State*, the Nevada Supreme Court rejected the argument that a verdict which fails to designate a degree of murder can be waived by a defendant's failure to object or request that the jury designate the murder as first or

³ *Sellers v. State*, 108 Nev. 1017, 843 P.2d 362 (1992); *State v. Loveless*, 62 Nev. 17, 136 P.2d 236 (1943); *State v. Lindsey*, 19 Nev. 47, 5 P. 822 (1885); *State v. Rover*, 10 Nev. 388 (1875).

⁴ *Sellers*, 108 Nev. at 1019, 843 P.2d at 364.

second degree. *Loveless* explained that the requirement to designate the degree of murder "is not a mere matter of procedure that the legislature has prescribed, but a substantive law commanding an unequivocal act of the jury as part of the trial of one charged with murder."⁵

Effect of *Fiegehen* on Current Nevada Law

In *Fiegehen*, the State successfully argued that the Court's more recent holding in *Graham v. State*⁶ provided a sound basis to reexamine and abandon the "rigid and formalistic application of NRS 200.030(3)"⁷ as set forth in *Loveless* and *Sellers*. In *Graham*, the court explained that certain categories of first-degree murder only require proof that the murder was committed with malice (or in the case of felony murder, with the intent to commit the enumerated felony).⁸ *Graham* observed that these types of murders are "legislatively deemed to be murder of the first degree."⁹

Graham explained:

[W]hen an enumerated first-degree murder is charged . . . the presence or absence of deliberation and premeditation is of no consequence. Such murders do not fall within the category of murder that can be reduced in degree by failure to prove deliberation and premeditation. . . .

We therefore hold that it is unnecessary to instruct juries on deliberation, premeditation, and second-degree murder when proofs in the case can only support a theory of guilt described within one of the specifically enumerated categories set forth in NRS 200.030(1).¹⁰

In *Fiegehen*, the court agreed with the State's argument that *Graham* was an appropriate starting point to reexamine the precedent addressing NRS 200.030(3). The Court stated that the jury clearly found that *Fiegehen* committed the felonies underlying the first-degree felony murder theories. Thus, the jury found appellant guilty of first-degree felony murder as a matter of law. Such a murder does not fall within the category of murder that can be reduced by the jury to second-degree murder. Therefore, the district court did not need to evaluate the totality of the circumstances in determining the significance of the verdict. A finding of first-degree felony murder can be clearly recognized solely from the jury's verdict.

Because of the jury's separate findings of guilt on the charges of murder, burglary, and home invasion, the fact that the jury found first-degree felony murder, as a matter of law, is not subject to speculation. Therefore, the Nevada Supreme Court clarified its prior precedent and held that where the verdict itself establishes a finding of first-degree murder as a matter of law, the verdict satisfies the requirements of NRS 200.030(1).

⁵ 62 Nev. at 25 , 136 P.2d at 239-40.

⁶ 116 Nev. 23, 992 P.2d 255 (2000).

⁷ 113 P.3d at 309.

⁸ 116 Nev. at 27-28, 992 P.2d at 257.

⁹ 116 Nev. at 28-28, 992 P.2d at 258

¹⁰ 116 Nev. at 28-29, 992 P.2d at 257-58.

California Law

The Nevada Supreme Court's holding in *Fiegehen* is consistent with California law. The California Supreme Court has held that a first-degree felony murder conviction based on a verdict that failed to expressly designate the degree of murder did not render the verdict a nullity.¹¹ The California court concluded that because the defendants had not been convicted of a crime which was distinguished into degrees within the meaning of the California Penal Code, the requirement in the code that the jury specify the degree of murder did not apply.¹² The court further concluded that the trial court's failure to instruct the jury on offenses other than first-degree felony murder or on the differences between the degrees of murder did not violate the code or the defendants' right to have a jury determine questions of fact.¹³

The court held that the jury need not specify the degree of murder where: (1) the prosecution's only murder theory is felony murder, which is first-degree murder as a matter of law; (2) the trial court properly instructed the jury to return either an acquittal or a conviction of first-degree murder; and (3) the jury finds the defendant guilty of felony murder.¹⁴

The California Supreme Court also found that where the jury did not expressly state that it convicted the defendant of first-degree murder, but did specify in its verdict that it found a willful, deliberate, premeditated killing, "[t]here is no logical reason to compel the fact finder to articulate a numerical degree when, by definition, 'first degree [murder]' and '[willful, deliberate, and premeditated killing]' are one and the same thing."¹⁵

Other Jurisdictions

The Nevada Supreme Court's holding in *Fiegehen* is also supported by other jurisdictions. Other courts have held that, despite statutory provisions requiring specification in the verdict of the degree of murder, verdicts that failed to do so were not void if only one degree of murder could have been returned.¹⁶ The California law, along with these cases, was helpful to the Nevada Supreme Court in distinguishing *Fiegehen* from cases the court had previously addressed.

¹¹ *People v. Mendoza*, 4 P.3d 265, 274 (Cal. 2000).

¹² *Id.* at 275

¹³ *Id.*

¹⁴ *Id.* at 269.

¹⁵ *People v. San Nicolas*, 101 P.3d 509, 524 (Cal. 2004).

¹⁶ *See Gaines v. Leverette*, 266 S.E.2d 451 (W. Va. 1980) (although it is always preferable that the jury comply with the statute and specify the degree, if there can be only one degree of murder based on the proof and instructions, the court would not void a verdict because it did not specify the degree); *Buchanan v. State*, 488 S.W.2d 724 (Tenn. 1973) (although statute required the jury to ascertain in its verdict the degree of murder, the court held in a post-conviction proceeding that jury's express finding in verdict of murder perpetrated in commission of a robbery satisfied the statute because the language of verdict described murder in the first degree); *Briggs v. State*, 501 S.W.2d 831 (Tenn. Crim. App. 1973) (citing to *Buchanan* in rejecting a post-conviction claim that verdict was void for failure to specify degree of murder where verdict specified defendants were found guilty of murder in perpetration of a robbery).

Unanswered Questions

The Nevada Supreme Court specifically limited its holding in *Fiegehen*. Nevada continues to adhere to the prior precedent which precludes an analysis of the totality of the circumstances in evaluating the validity of a murder verdict if that verdict fails to designate the degree of murder. In all murder cases, the court must provide the jury with verdict forms which require them to specify the degree of murder. Only where a jury finds the defendant guilty of felony murder, can first degree murder be designated as a matter of law.

While the *Fiegehen* court reaffirmed prior precedent stating that the failure to designate the degree of murder renders a verdict void, it did not answer the question as to whether that failure requires an entirely new trial on the merits. While that may be assumed from the holding, the court did not clearly state it.

Conclusion

A jury's failure to designate the degree of murder does not render a verdict void if they find the defendant guilty of felony murder. Felony murder is first-degree murder as a matter of law, and as such, a felony murder verdict satisfies the requirements of NRS 200.030(3).