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Summary of Rudin v. State, 120 Nev. Adv. Rep. 17

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***Rudin v. State*, 120 Nev. Adv. Rep. 17, 86 P.3d 572 (2004).¹**

CRIMINAL LAW

Summary

Appellant Margaret Rudin (Rudin) married her husband, Ron, in September of 1987. In January of 1995, Ron's remains were discovered at Lake Mohave, he apparently had been murdered. Shortly after the discovery of her husband's body, Rudin boarded a plane to St. Louis, Missouri.

On April 17, 1997, Rudin was indicted by the Clark County grand jury on three counts for (1) unauthorized surreptitious intrusion of privacy by listening device, (2) murder with the use of a deadly weapon and (3) accessory to murder. A warrant was then issued for her arrest. Rudin was subsequently apprehended in Massachusetts in November of 1999, and extradited to Nevada for trial.

On March 31, 2000, Rudin was arraigned in the Eighth Judicial District Court. She pled not guilty to all counts. Rudin retained Michael Amador (Amador) to defend her after a brief period of representation by the Clark County Public Defender. Amador claimed to be working on a pro bono basis. After several delays, on February 20, 2001, the district court appointed Thomas F. Pitaro (Pitaro) to assist Amador.

Approximately one month later, Rudin moved for a mistrial based on the lack of preparedness by Amador.² The district court denied the motion finding that there was not enough evidence of prejudice to warrant a mistrial. Two weeks later, the district court appointed John Momot (Momot) as additional counsel for Rudin.

On May 2, 2001, after an eventful trial, Rudin was found guilty on counts I and II. On May 8, 2001, Rudin filed a motion for a new trial. Rudin also moved to terminate Amador as her attorney based on alleged misconduct by Amador.³ The district court granted Rudin's motion to terminate Amador as her attorney. However, the court denied her motion for a new trial because Rudin did not present any specific evidence or argument to support that she was prejudiced at trial.

Rudin was subsequently sentenced to one year in prison on count I and to life in prison with the possibility of parole after ten years on Count II, plus an equal and consecutive sentence for a weapon enhancement. Rudin appealed.

¹ By Mike Feliciano

² The motion was based on several acts committed by Amador including (1) an incoherent opening statement, (2) lack of preparation for the trial and (3) an improper examination of a witness.

³ Rudin claimed that Amador had (1) abused drugs, (2) retained her personal possessions without her permission, (3) mishandled her defense, (4) secretly obtained media rights to the case while claiming to be working on a pro bono basis and (5) secretly released private information to tabloids without Rudin's permission.

Issues and Disposition⁴

Issue

1. Must a trial court grant a motion for a mistrial in a criminal case when the defendant's attorney was not prepared for trial?
2. Must a trial court grant a motion for a new trial in a criminal case when the defendant's attorney was not prepared for trial and the attorney had a conflict of interest with the defendant?

Disposition

1. No, a mistrial *may* be granted when prejudice occurs that prevents the defendant from receiving a fair trial. Mere evidence of lack of preparation is insufficient; rather, the defendant must show that the attorney's actions actually prejudiced the defendant's case.
2. No, a motion for a new trial *may* be granted when the record is sufficient to permit the conclusion that the attorney's performance during trial was adversely affected by a alleged conflict of interest or that the attorney's performance prejudiced the defendant's right to a fair trial.

Commentary

State of the law before *Rudin*

In Nevada, the standard for a motion for a mistrial based on ineffective counsel is that the performance must be "so prejudicial as to be unsusceptible to neutralizing by an admonition to the jury."⁵ The standard for a motion for a new trial based on a conflict of interest on the part of an attorney requires evidence that an attorney's conflict of interest adversely affected the attorney's performance.⁶

The Holding in *Rudin*

Although the supreme court disagreed with the district court's reasons for denying the motion for a mistrial, it did agree with the result. This is because Rudin did not demonstrate that Amador's performance was so prejudicial that an admonishment to the jury was not enough to rectify the problem.⁷ The district court repeatedly admonished Amador, granted requests for extra time during the trial and appointed Pitaro and Momot to assist Amador with the trial. Based on these factors, the court found that Amador's

⁴ Rudin raised several issues on appeal. The supreme court quickly disposed of claims of (1) improperly admitting expert testimony, (2) prosecutorial misconduct, and (3) judicial misconduct. The court concluded the foregoing claims were without merit. These issues are not discussed herein.

⁵ Allen v. State, 665 P.2d 238, 241 (Nev. 1983).

⁶ Clark v. State, 831 P.2d 1374, 1376 (Nev. 1992).

⁷ See Allen, 665 P.2d at 241.

conduct, although improper, did not rise to the level of ineffectiveness that warranted a mistrial. This is because “[a] defendant is not entitled to a perfect trial, only a fair trial.”⁸

Regarding the motion for new trial, the court held that Amador’s actions were not enough to warrant a new trial because the mistakes were adequately addressed by the district court. The appointment of Pitaro and Momot was also a factor that the court found was relevant in remedying Amador’s performance.

The Impact of *Rudin* on Nevada Law

Rudin will result in less protection for defendants in criminal cases. This is because it makes it more difficult for a criminal defendant to successfully assert that the defendant’s attorney was either ineffective or had a conflict of interest that resulted in an unfair trial. For instance, the court was aware of improper conduct committed by Rudin’s attorney including failure to prepare for the case properly and a conflict of interest with Rudin. If the court found that these factors were not enough to warrant a mistrial or new trial, this is evidence that the court will not do so in all but the most egregious cases of attorney misconduct.

Unanswered Questions

The court held that the attorney misconduct in *Rudin* did not rise to the level to warrant a mistrial or a new trial. The court did not articulate the factors that would warrant a mistrial or new trial. In *Rudin*, the attorney’s conduct was undoubtedly improper. However, without more guidance, it is difficult to determine what actions would warrant a new trial or mistrial.

Survey of Law in Other Jurisdictions

The test for ineffectiveness of counsel stems from *Strickland v. Washington*, a United States Supreme Court decision that established a two-pronged test for ineffectiveness of counsel.⁹ Under the first prong of *Strickland*, the defendant must show that the attorney’s performance was deficient.¹⁰ This requires evidence that the attorney made errors so serious that the attorney was not acting as “counsel” as defined by the Sixth Amendment.¹¹ Second, the defendant must show that the errors were so serious that they prejudiced the defense.¹² This requires a showing that the errors were so serious as to render the trial unfair.¹³

The *Strickland* test is used by the majority of the states to determine effectiveness of counsel. While the states have different nuances to the test, the main point is the same

⁸ Ennis v. State, 539 P.2d 114, 115 (Nev. 1975) *citing* Michigan v. Tucker, 417 U.S. 433, 446 (1974).

⁹ 466 U.S. 668 (1984).

¹⁰ *Id.* at 687.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

as the factors above, that is, the attorney must have committed errors so serious as to render the representation ineffective.¹⁴

Conclusion

Rudin offered some, albeit limited, guidance as to the proper standard for a motion for a mistrial and a motion for a new trial. Hence, the law is still unclear as to the proper standards. However, *Rudin* implies that the court will not grant a mistrial or new trial in all but the most severe cases of attorney misconduct.

¹⁴ See, e.g. *People v. Ledesma*, 729 P.2d 839 (Cal. 1987); *State v. Nash*, 694 P.2d 222 (Ariz. 1985); *State v. Nelson-Waggoner*, 94 P.3d 186 (Utah 2004).