

12-24-2014

Summary of Brant v. State, 130 Nev. Adv. Op. 97

Jaymes Orr
Nevada Law Journal

Follow this and additional works at: <http://scholars.law.unlv.edu/nvscs>

 Part of the [Criminal Law Commons](#)

Recommended Citation

Orr, Jaymes, "Summary of Brant v. State, 130 Nev. Adv. Op. 97" (2014). *Nevada Supreme Court Summaries*. Paper 840.
<http://scholars.law.unlv.edu/nvscs/840>

This Case Summary is brought to you by Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact david.mcclure@unlv.edu.

CRIMINAL LAW: ADMISSIBILITY OF EXPERT WITNESSES

Summary

The Court upheld that the exclusion of expert testimony is left to the district court's wide discretion, except in cases of abuse of its discretion. Expert testimony must be relevant and reliable to be of assistance to the trier of fact. Because Brant could not present scientific or other evidence that his interrogation witness would demonstrate that Brant's brain injury caused him falsely confess, the district court's discretion would not be disturbed and the judgment was affirmed.

Background

Thomas Brant was convicted by a jury of the first-degree murder of Kimberly Seaton. Under questioning by the police Brant confessed to the murder, but later maintained that another man, Robert Belsey, had committed the crime and that his confession was false.

Brant recounted that he came home one night to find Seaton strangled in the living room. In fear of the home owner (his sister) finding out that she had been living there, Brant buried Seaton in a shallow grave in the garage. After a missing person report was filed, police searched Brant's home and found Seaton's body. Later at the police station Brant admitted to knowing that the body had been there. Following nearly six hours of video-taped and audio recorded interrogation Brant confessed to the crime, giving details of Seaton's death which were consistent with the corporal evidence and the coroner's findings.

At trial Brant sought to prove that his confession was false. The district court excluded testimony from Brant's expert in police interrogation. The court also excluded evidence of Belsey's history of domestic violence stating that it would not assist the jury in understanding the facts in issue. However, the district court permitted testimony from expert witnesses to establish brain damage due to an injury Brant suffered in his youth. The experts testified that the injuries did not affect Brant's intelligence, but his ability to resist impulses was affected.

Discussion

A.

The Court discussed that NRS 50.275 governs the admissibility of expert testimony. An expert witness must satisfy three requirements: (1) he/she must be qualified in an area of scientific, technical, or specialized knowledge (the qualification requirement); (2) the special knowledge must assist the fact finder in understanding the facts at issue (the assistance requirement); and (3) testimony must be limited to matters within the scope of the special knowledge (the limited scope requirement).² The district court has wide discretion to determine

¹ By Jaymes Orr.

² *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

the admissibility of expert testimony and this Court gives differential review, not disturbing the district court's discretion except in cases of abuse.

To meet the assistance requirement, the proponent of the expert witness must demonstrate relevancy, and that the testimony is the product of reliable methodology.³ Evidence is relevant if it makes a fact of consequence more or less probable than it would be without the evidence.⁴ When determining if evidence is reliable the district court should consider if the evidence is: (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subject to peer review; (4) generally accepted in the scientific community; and (5) based more on particular facts than assumption, conjecture or generalization.⁵

The district court held a pretrial hearing on the admissibility of the expert witness. Brant's counsel represented the interrogation expert as a clinical psychologist that specializes in interrogation techniques. The expert believed that the interrogating detective used the Reid technique, which was a 1956 polygraph operator's technique, in interviewing Brant. Counsel represented that expert would explain how the social interaction between the interrogator and the interviewee was inappropriate, given the Brant's brain injury.

While the Court did not dismiss the idea of utilizing an expert witness to discuss interrogation techniques, it would defer to the district court's determination unless there was an abuse of discretion. To prove abuse the Defendant would need to provide scientific or other evidence that the testimony is relevant and reliable. In this case Brant did not provide such evidence.

The Court considered the argument that in the case of evidence that a mental disorder would cause the Defendant to make self-inculpatory statements, psychiatric testimony should be considered. However, in this case the defense does not establish a link between Brant's brain injury and a tendency to falsely incriminate himself. Brant's brain injury expert claimed to have no knowledge of any research to suggest that Brant's specific injury would cause him to lie to incriminate himself. Brant's interrogation expert's proposed testimony did not contradict this claim.

After discussing other court's findings in regard to the exclusion of the testimony of interrogation experts, the Court concluded that Brant did not prove an abuse of discretion in excluding such testimony. Brant's expert offered no evidence that the Reid technique was inappropriate or that Brant would be more likely to incriminate himself due to the use of the Reid technique. The Court stated that the expert should have been able to identify specific problems with the technique as he had access to all of the video and audio of the interrogation.

The Court also rejected Brant's claim that he needed the expert witness to establish the phenomenon of false confession. Brant demonstrated the phenomenon by presenting testimony from his interrogator, who acknowledged that false confessions do occur. The Court will not speculate as to the nature and substance of excluded testimony.⁶

³ *Id.* at 500, 189 P.3d at 651.

⁴ NEV. REV. STAT. 48.035(2) (2013).

⁵ *Higgs v. State*, 126 Nev. 1, 19, 222 P.3d 648, 660 (2010).

⁶ *Burgeon v. State*, 102 Nev. 43, 47, 714 P.2d 576, 579 (1986).

B.

Brant also challenged as judicial misconduct two unobjected-to statements by the district court judge which Brant claims disparaged his defense and gave credibility to the interrogating officer. The Court employed plain error review and rejected this claim it found no plain error in the judge's statements.

The first statement in question came after the defense questioned the officer about his supposed use of the Reid technique. The officer denied the use after which the judge told counsel that "we don't need to spend a lot of time on a technique that he was not using." The second statement was given at the end of the officer's testimony when the district judge thanked the officer for his patience and excused him.

District court judges have been counselled to not make comments concerning the facts at any case at trial. Even if thanking the officer for his patience, following a nine day trial, or the comment on the interrogation technique was disparaging to the defense, the Court concluded that the evidence of guilt was strong and the statements did not prejudice Brant's defense.

C.

The Court rejected Brant's final claim that evidence of Belsey's past domestic violence issues should have been admitted. Evidence of other crimes, wrongs, or acts may be admitted for a nonpropensity purpose.⁷ Brant presented evidence from Belsey's ex-girlfriend in which she testified of incidents of domestic violence. The intent of the defense was to impeach Belsey's credibility as he had testified that he had never been violent to a woman. However, the Court noted, that Belsey's statement was not properly before the jury as an objection to defense counsel's questioning of Belsey's history had been sustained.

D.

The Court found that the district court's ordered restitution of \$3,624.51 should have been \$2,128.59 stipulation of the parties.

Conclusion

Although false confessions are a concern, especially in cases of mental illness, the defense did not provide sufficient scientific or other evidence to demonstrate the district court's abuse of discretion. The claims made by the interrogation expert were not supported by the defense's other physiological experts or any additional evidence. The Court affirmed the district court's judgment of conviction.

⁷ Bigpond v. State, 270 P.3d 1244, 1245-56 (Nev. 2012).