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Summary of Martinorellan v. State, 131 Nev. Adv. Op. 6

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CRIMINAL LAW: REVERSAL FOR PLAIN ERROR, PREJUDICIAL ERROR RELATED TO
SUBSTITUTION OF AN ALTERNATE JUROR

Summary

The Court determined that (1) a district court's failure to instruct the jury to restart deliberations when an alternate juror replaces an original juror is an error of constitutional dimension; (2) unpreserved errors are reviewed for plain error regardless of whether they are of constitutional dimension; (3) A prejudicial error can result if most of the jury's deliberation time takes place before the error related to the replacement of an original juror occurs.

Background

Appellant Rogelio Martinorellan was tried for stabbing a storeowner during the commission of a robbery. At trial, the district dismissed a juror who knew the victim and replaced that juror with an alternate juror. By that point, the jury had already deliberated for approximately one hour and fifteen minutes, but the district court did not instruct the jury to restart its deliberations, as required under NRS 175.061(4).² Martinorellan did not object. After the juror's replacement, the jury spent another four hours and thirty minutes deliberating and subsequently convicted Martinorellan of multiple offenses.

On appeal, a panel of the Court affirmed the conviction, rejecting Martinorellan's assignment of error regarding the district court's failure to instruct the jury to restart deliberations. The court granted petition for en banc reconsideration on three issues: (1) whether the district court's failure was an error of constitutional dimension, (2) which standard of review applies to an unpreserved constitutional error, (3) and whether the district court committed a reversible error in this case.

Discussion

The failure to instruct the jury to restart deliberations when an alternate juror replaces an original juror is an error of constitutional dimension

The Court first addressed whether the district court's failure to instruct the jury to restart deliberations was an error of "constitutional dimension." Martinorellan argued it was, asserting that the error interfered with his constitutional right to a fair and impartial jury. Conversely, the State argued that the error did not interfere with this right, because nothing prevented the jury from restarting deliberations after the juror replacement.

Ultimately, the Court held that the error was of a constitutional dimension. An error meets this standard, when it impairs a defendant's constitutional rights, such as the Sixth Amendment right to a fair trial by an impartial jury. The Court has previously held that a failure to instruct a jury to restart deliberations after the replacement of a juror can constitute reversible

¹ By Gil Kahn.

² "If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury." NEV. REV. STAT § 175.061(4) (2014).

error, because it creates the risk that the original jurors will exert undue influence on the alternate juror.³ Therefore, this failure infringes on a defendant's right to a trial by an impartial jury and creates an error of constitutional dimension.

Unpreserved errors are reviewed for plain error regardless of whether they are of constitutional dimension

Next, the Court concluded that an unpreserved error, even of a constitutional dimension, must be reviewed under the plain error standard. Martinorellan asserted that the Court should determine whether the error was harmless beyond a reasonable doubt, the standard applied to a *preserved* constitutional error. The Court, however, has previously applied the plain error standard to unpreserved errors, finding it consistent with U.S. Supreme Court precedent.⁴ It therefore held that all unpreserved errors must be reviewed for plain error, regardless of whether they are of a constitutional dimension.

Martinorellan did not demonstrate that the district court's failure to instruct the jury to restart deliberations after the alternate juror replaced the original juror was plain error

Finally, the Court determined whether reversal of Martinorellan's conviction was warranted, by reviewing the district court's failure to instruct the jury to restart deliberation for plain error.

The district court's error is subject to review for plain error

The Court held that "reversal for plain error is only warranted if the error is *readily apparent* and the appellant demonstrates that the error was prejudicial to his substantial rights."⁵ Here, the error was readily apparent, because the trial transcript shows that the district court did not give any instruction to the jury after the alternate juror joined. In turn, the only issue was whether this error had a prejudicial effect on Martinorellan's substantial rights.

Martinorellan did not demonstrate that the district court's error had a prejudicial effect on his right to a jury trial

The Court determined that whether an error relating to the substitution of an alternate juror is prejudicial, depends in part on the length of the jury's deliberation before and after the substitution. A prejudicial error can occur if most of the jury's deliberation time takes place *before* the error related to the replacement of an original juror. Here, the jury deliberated for only one hour and fifteen minutes before the original juror was replaced, compared to the four hours and thirty minutes of deliberation with the alternate juror. Because over seventy-five percent of the deliberation occurred after the error, the Court held that the district court's failure to instruct the jury to restart deliberations was not prejudicial and thus did not amount to plain error.

³ See *Carroll v. State*, 111 Nev. 371, 372-74, 892 P.2d 586, 587-88 (1995).

⁴ See *Johnson v. United States*, 520 U.S. 461, 465-66 (1997) (reviewing an unpreserved Sixth Amendment jury right violation for plain error).

⁵ Emphasis added.

Conclusion

Determining that the district court's failure to instruct the jury to restart deliberations did not amount to plain error, the Court ultimately held that the oversight not did warrant reversal of Martinorellan's conviction and thus affirmed the judgment of conviction.⁶

⁶ The dissent concluded that the conviction should be reversed, arguing that the district court's error was a "structural error," which created a significantly greater risk that the original jurors will improperly impose previously deliberated conclusions on the alternate juror.