12-6-2018

State v. Dist. Ct. (Ojeda (Francisco)), 134 Nev. Adv. Op. 94 (Dec. 6, 2018) (en banc)

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State v. Dist. Ct. (Ojeda (Francisco)), 134 Nev. Adv. Op. 94 (Dec. 6, 2018) (en banc)[1]

CRIMINAL LAW: MANDAMUS/PROHIBITION

Summary

The Court focused on the issue of whether a district court can grant a motion to compel disclosure of criminal background information of veniremembers gathered by the prosecution. The Court determined that a district court has the authority to order the prosecution to share criminal background information of veniremembers obtained from databases that the defense cannot access.

Background

The defendant, Francisco Ojeda, filed a pretrial motion to compel the State to disclose information regarding the criminal histories of potential jury members. Ojeda alleged (and the State did not dispute) that the State uses government databases to view veniremember criminal backgrounds, to which the defense does not have access. The district court granted the motion and ordered the State to "disclose the criminal histories the State gathers, if any, for potential venire members." The district court identified their authority under NRS 179A.100(7)(j) (2015), which requires "[r]ecords of criminal history [to] be disseminated by an agency of criminal justice" to those authorized by "court order."[2] The district court stated their goal to reduce disparity between the access of the State and that of the defense. The State filed a petition to prevent release of such information, stating the district court had no authority to compel these disclosures. This appeal followed.

Discussion

We exercise our discretion to consider the State's petition

The Court has the sole discretion to consider a writ of prohibition or mandamus. Writ relief is usually only available when no "adequate and speedy" legal remedy remains.[3] The Court, here, however, intervened to resolve a question of first impression which arises somewhat frequently and acts in the interest of sound judicial economy and administration. Prohibition is appropriate when restraining a district judge acting "without or in excess of its jurisdiction."[4] Mandamus is appropriate "to control a manifest abuse or arbitrary or capricious exercise of discretion."[5] Since the State has no available remedy, the Court examined the petition in the interest of sound judicial economy and administration.

A district court has the authority to compel the State to disclose veniremember criminal histories

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[1] By Myrra Dvorak.
[2] NRS 179A.100(7)(j) (2017).
[3] Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008).
[4] Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).
[5] State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 931, 267 P.3d 777, 779 (2011).

The State argued that the district court acted outside of its authority when it granted the defense's motion to compel; however, the Court disagreed. While the United States Constitution does not require such disclosures, the Court held that the district court still has the authority to compel the State as it enjoys broad discretion in regard to discovery disputes as well as under NRS 179A.100(7)(j).

The district court did not act arbitrarily or capriciously in requiring the State to share veniremember criminal history information

Since the Court found the district court had authority to order such disclosures, the Court then needed to determine whether the district court acted arbitrarily or capriciously in compelling the State. In order to find the district court acted in this manner, the Court needed to decide whether the discretion was founded on prejudice or preference contrary to the evidence or the rules of law. Here, the district court only made one factual finding that the State's use of governmental databases created a disparity, and the Court agreed.

While the judicial system does not require parity of information, the district court may still aim to correct such a disparity. The district court possesses the inherent authority to create rules designed to prevent injustice and preserve judicial process integrity. Additionally, the information discovered by the prosecution through these databases does not quality as a work-product subject to privilege as it does not contain "the mental processes of the attorney."[6]

Conclusion

The Court held that upon motion by the defense, district courts must require the State to disclose information regarding the criminal backgrounds of veniremembers that is otherwise inaccessible to the defense. The district court here had such authority and did not exercise its authority in an arbitrary or capricious manner nor as an abuse of discretion. Thus, the Court denied the State's petition.

Pickering, J., dissenting:

The dissent rejected the majority's new criminal procedure rule. The dissent noted that district courts have no authority to do so under any constitution (federal or state), statute, or other formal rule, and the majority relied solely upon their own inherent authority and the discretion of district courts to uphold this rule. The dissent pointed out concerns of infringements of privacy for jurors as well as laws which already govern information in governmental databases.

Moreover, the dissent identified a case that already addresses a close variant of the question presented in this case. In *Artigua-Morales v. State*, the Court already recognized that criminal defendants do not have a constitutional right to the prosecution's research on the background of jurors.[7] Nevada statutes for criminal discovery also lack such required disclosures.[8] In fact, such statutes seem to allude that it prohibits these kinds of disclosures.

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[6] Floyd v. State, 119 Nev. 156, 167, 42 P.3d 249, 257 (2002) (internal quotation marks omitted).
[7] 130 Nev. 795, 335 P.3d 179 (2014).
[8] *See* NRS 174.233–95.

The dissent further rejected a holding based on a fairness-based mandatory disclosure rule. While disparities may exist between the prosecution's access to juror information and that of the defense, creating a rule requiring district courts to grant defenses' motions to compel would affect other stakeholders in a negative manner. This includes potential jurors, as their privacy interests may be harmed in order to correct the information disparity. This may also negatively impact government entities, which gather information beyond just criminal background histories. Such positions ought to be considered through the formal rule-making process, affording public debate and input and the positives and negatives of the rule.

Juror's privacy is particularly subject to harm. Their questionnaires are available to both the public and the press, and disclosures such as these pose the potential of releasing particularly personal information. Each juror is expected to disclose their criminal background history during the veniremember process; however, the databases collect far more information than just criminal history. Such files may include "home addresses, birth dates, social security numbers, distinctive markings such as tattoos, suspected gang affiliation, weapons possession, suspected terrorist activity, and special risks to police and medical response teams posed by residents with documented mental illness or high-risk communicable diseases like AIDS."

State statutes also restrict access and dissemination of the information accessible to the prosecution. For example, NRS 179A.800, Art. IV(3) requires that "[a]ny record obtained . . . may be used only for the official purposes for which the record was requested."[9] The majority fails to address statutes which may already prevent the release of such information, and the statute upon which the majority relies simply allows for disclosure but does not require automatic disclosure to correct disparities in jury selection.

The dissent recognized that other jurisdictions have also addressed this issue and a wide array of responses have come forth from these deliberations; however, none of the cases cited by the majority actually mandate required disclosures by the prosecution to the defense of juror-background information. The few states that do have such disclosures also have unique court rules or state constitutions allowing for promulgation of such a rule.

Finally, the dissent rebuked the majority's dependence upon inherent authority for the creation of their mandatory disclosure rule. The dissent noted that this authority "is not infinite . . . and it must be exercised within the confines of valid existing law."[10] This authority ought only to be exercised "when established methods fail or in an emergency situation," neither of which has occurred here.[11]

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[9] NRS 179A.800, art. IV(3) (2017).

[10] Halverson v. Hardcastle, 123 Nev. 245, 263, 163 P.3d 428, 441 (2007) (footnote omitted).

[11] *Id.*