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Harris v. State, 134 Nev. Adv. Op. 107 (Dec. 27, 2018) (en banc)

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CRIMINAL LAW: DEATH PENALTY

Summary

The Court considered whether the admission of gruesome photographs showing the disfigured bodies of the victims following their deaths and the subsequent autopsies amounted to an abuse of the district court's discretion. The Court concluded that admission of these photographs was an abuse of the district court's discretion.

Background

On the morning of February 21, 2013, the appellant Ammar Harris was partying at a Las Vegas nightclub with several women. Kenneth Cherry and Freddy Walters, victims in this case, were also present at the valet of the club. As Harris was leaving the club with the women, he remembered that he forgot his jacket and returned to the club to retrieve it. While Harris was absent, an argument occurred. One of the women with Harris saw a man waving around a gun. The woman found Harris and told him of the incident. In response, Harris went to his vehicle and retrieved a firearm from the glovebox and told the woman to use it if necessary. Harris then approached Cherry's vehicle, but Cherry drove away from the club.

Harris and the women left the club and drove down the Las Vegas Strip. Harris pulled alongside Cherry and cut him off. Harris informed his passenger to roll down her window and to lean back. Harris engaged with Cherry. Harris then fired at Cherry, striking and killing Cherry. Harris also fired and hit Walters, who did not die but was injured. When the bullet struck and killed Cherry, his foot pressed the gas pedal and the vehicle accelerated to a rate of roughly eighty-eight miles per hour. The vehicle collided with several vehicles, ultimately striking a taxicab, which then burst into flames. The driver of the taxicab, Michael Bolden, and his passenger Sandra Sutton died from the injuries they sustained in the crash and the subsequent fire.

Harris was charged with the murders of Cherry, Bolden, and Sutton, and with the attempted murder of Walters. The State sought the death penalty for each of the three (3) murders. Harris presented a defense of self-defense and a lack of premeditation due to intoxication. The State successfully argued that surveillance video and other testimony did not show that Cherry or Walters were acting in any threatening matter. Further, the State successfully argued that even if Harris was intoxicated, he was not so intoxicated as to be unable to form the requisite intent to be guilty of first-degree murder. At trial, the jury found Harris guilty. After a penalty hearing, the jury imposed a sentence of death for each murder. Harris appealed.

Discussion

The admission of the photographs was harmless

The primary issue before the Court was whether the district court abused its discretion when it admitted photographs of the victims. Harris attempted to exclude the photographs before trial. The State explained the photographs were necessary to show the manner in which the victims

¹ By Yilmaz Turkeri.

were found, the extent of the injuries, and the cause of their deaths. Harris did not dispute any of these points, but the district court still admitted the photographs despite agreeing that the images were disturbing. The Court reviewed the district court's decision for an abuse of discretion.²

The photographs at issue were highly probative and can thus be admitted regardless of their graphic content. However, NRS 48.035(1) requires the district court to perform a balancing test to determine if an evidence's probative value is substantially outweighed by the danger of unfair prejudice.³ The Court found the district court did not employ a meaningful weighing of the potential for unfair prejudice against each photograph's probative value. Thus, the district court failed to fulfill its role as a gatekeeper for properly determining, on a case-by-case basis, what evidence should and should not be admitted.⁴ The photographs could easily inflame the jury, tempting them to decide based on emotion rather than reason. The probative value was outweighed by the unfair prejudice because the State did not need the photographs to prove an important fact and because the State had other evidence for its case, sufficient to satisfy its burden of proof.

Because the district court abused its discretion, the Court needed to determine if the error was harmless. Nonconstitutional errors are only reversible if the error, "had a substantial and injurious effect or influence in determining the jury's verdict."⁵ The admission of the photographs was harmless error because most of the events were captured on video and gaps were filled in with eyewitness testimony.

Other assertions of error

Harris' other assertions of error included: (1) right to a fair trial was violated when the trial was broadcasted and reported on by the media; (2) the district court should have been given an instruction regarding voluntary intoxication; (3) he was entitled to a new trial because the verdict form did not allow the jury to find him guilty of voluntary manslaughter; (4) prosecutorial misconduct occurred because during the penalty phase, the prosecutor stated that Harris would not feel remorse in prison and that a life sentence for each victim would mean that Harris would not be separately punished for killing three people; (5) he should not be eligible for the death penalty for the murders of Bolden and Sutton because he did not intend to kill them; (6) the district court should have granted a motion to compel the State to produce data and statistics regarding the death penalty; and (7) cumulative error deprived him of due process.

The Court briefly analyzed and rejected these arguments, based upon the following: (1) Harris did not demonstrate that the media coverage of his trial was unduly pervasive nor did he discuss whether the media coverage deprived him of a fair trial; (2) Harris did not adequately explain why the instruction regarding voluntary intoxication should have been given; (3) because the jury was properly instructed on the necessary elements of voluntary manslaughter and there was overwhelming support for the jury's decision to find Harris guilty of first-degree murder,

² West v. State, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003) (Reviewing a district court's decision to admit photographic evidence for an abuse of discretion).

³ NEV. REV. STAT. § 48.035(1) (2017).

⁴ See Hall v. Commonwealth, 468 S.W. 3d 814, 827 (Ky. 2015) (observing under similar facts "[t]his is the prototypical case where [the equivalent of NRS 48.035] required the trial judge to comb through and exclude many of the offered photographs; it required the judge to recognize and safeguard against the enormous risk that emotional reactions to the inflammatory photos would obstruct the jury's careful judgment and improperly influence its decision").

⁵ Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008) (quoting Kotteakos v. United States, 328 U.S. 750, 776 (1946)).

failure to give a complete verdict form was harmless error; (4) Harris did not object to the prosecutor's statement that he would not feel remorse in prison and the appeal did not demonstrate plain error and regarding the prosecutor's statement that Harris would not be separately punished for the murder of three (3) people if granted a life sentence, was objected to and sustained; (5) Harris' argument against the death penalty for the deaths of Bolden and Sutton were not well-developed or convincing; (6) Harris did not establish that he had a right to the requested information, nor that he could get the information from other sources; (7) the errors identified by the Court were unquestionably harmless.

Mandatory review of Harris' death sentences

NRS 177.055(2) requires the Nevada Supreme Court to determine whether the evidence supports the aggravating circumstances; whether the verdict of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and whether the death sentences are excessive considering this defendant and the crime.⁶ The Nevada Supreme Court concluded there was sufficient evidence to support the jury's verdict and no relief was warranted.

Conclusion

The Court affirmed the conclusion of the district court case. Although the district court may have erred in admitting the photographs and other errors were present in the trial, the errors were harmless. In the presents case, there was sufficient evidence to support the jury's verdict in this case and no relief was warranted.

Dissent

Cherry, J., with whom Gibbons, J., agrees

The majority correctly concluded that a number of errors plagued Harris' trial, but incorrectly concluded the verdict was not tainted by such errors. There are three relevant factors for evaluating a claim of cumulative error: (1) whether the issue of guilt is close; (2) the quantity and character of the error; (3) the gravity of the crime charged.⁷ Applying a heightened level of security, the dissent is not convinced that the errors were harmless. The dissent focused on two particular issues, the admission of the photographs and the incomplete verdict form. As for the admission of the photographs, the dissent concluded that admission of the photographs was not harmless because the Court could not say with confidence that admission did not influence the way the jurors interpreted the evidence of Harris' intent. As for the incomplete jury verdict form, the dissent was not convinced that the jurors perfectly understood the instructions given and there was no possibility that the jurors did not follow the instructions. Ultimately, the dissent concluded the Court should have decided any doubt in favor of the defendant rather than the State.

⁶ NEV. REV. STAT. § 177.055(2) (2017).

⁷ Valdez v. State, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008).