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Azucena v. State of Nevada, 135 Nev. Ad. Op. (Sep. 5, 2019)

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CRIMINAL LAW: VOIR DIRE

Summary

The Court determined that the trial judge's actions during jury selection rose to the level of judicial misconduct in response to a prospective juror indicating she could not be unbiased. These actions could have impeded Azucena's right to a fair trial with an impartial jury as the court feared that the potential jurors would not have been able to answer candidly about any biases they may have had.

Background

Azucena was charged with multiple counts of sex offenses which proceeded to a jury trial. During voir dire, the process for selection a jury, a potential juror indicated that she did not believe that she could be unbiased due to her exposure to child abuse through her work as a nurse. The trial judge was upset that she had not disclosed this information during the first day of voir dire, and accused her of making up an excuse in order to get out of jury service. He proceeded to yell, curse, and even threw a book against the wall.

Azucena moved to dismiss the venire, the whole jury pool, out of concern that the remaining jurors would not want to express any bias that they may have had due to the conduct of the judge. The judge denied the request and stated that he needed to make it clear jurors could not lie to get out of jury service. Azucena appealed after he was convicted of most of the charges.

Discussion

Standard of review

There had been no standard set forth for a preserved claim of judicial misconduct during voir dire. Generally, the district court has broad discretion during voir dire and will not overturn its decision unless there is an abuse of discretion.² When there is alleged misconduct by a trial judge, a less deferential standard is appropriate.³ Therefore, the standard of review is de novo and the court considers the particular circumstances regarding the misconduct to determine whether this impacted the defendant's right to a fair trial.

The trial judge committed misconduct during voir dire

The trial judge accused a potential juror of lying to get out of jury service and threw a book at the wall. He then warned the venire of the repercussions of trying to avoid serving on the jury. The Court recognized the frustration that the judge was going through, although nonetheless his actions fell short of the high standards that judges are held to. Therefore, the

¹ By Mia Mallette.

² *Morgan v. Illinois*, 504 U.S. 719, 729 (1992).

³ *State v. Gaither*, 156 P.3d 602, 610 (Kan. 2007).

Court determined that the trial judge's words and actions during the process of voir dire constituted judicial conduct and agreed with Azucena that it had a "chilling" effect and tainted the venire.

The judicial misconduct deprived Azucena of his constitutional right to a fair trial before an impartial jury

After the Court determined that the trial judge's actions rose to the level of judicial misconduct, they then determined whether those actions prejudiced Azucena's right to a fair trial. A defendant has a right to be tried by a fair and impartial jury and voir dire is a vital part of that.⁴ The Court noted that voir dire is only effective if the potential jurors feel that they can answer candidly.

The State argued that any judicial misconduct was harmless and did not warrant a reversal. However, the actions of the trial judge could have discouraged other potential jurors from answering honestly. It created an atmosphere of intimidation, and therefore the Court was not confident that an impartial jury was chosen. Even when the evidence is apparent, misconduct can still interfere with the right to a fair trial, and the Court determined this was the case.⁵ The misconduct by the trial judge interfered with the Constitutional right to an impartial jury.

Conclusion

The trial judge's actions rose to the level of judicial conduct and possibly impacted the ability to choose an impartial jury. Therefore, the Court reversed and remanded the case for a new trial in front of a different district judge.

⁴ U.S. Const. amend. VI; Nev. Const. art. 1, § 3.

⁵ Kinna v. State, 84 Nev. 642, 647, 447 P.2d 32, 35 (1968).