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Newson v. State, 135 Nev. Adv. Op. 50 (Oct. 10, 2019)

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Newson v. State, 135 Nev. Adv. Op. 50 (Oct. 10, 2019)[1]

CRIMINAL LAW: JURY INSTRUCTION

Summary

The Court determined although the district court has broad discretion to settle jury instructions, the failure to instruct the jury on a defendant's theory of a case that is supported by *any* evidence warrants reversal unless the error was harmless.

Background

Defendant, Vernon Newson, and his girlfriend, Anshanette McNeil, were driving a rented SUV on a freeway on-ramp when Newson turned shot McNeil several times. McNeil was seated in the backseat next to the couple's infant son and McNeil's toddler. Newson pulled the vehicle over to the side of the road and shot McNeil several more times outside of the vehicle after McNeil fled or was pulled from the SUV. At least one of the shots fired outside of the vehicle was from a distance of less than two feet. Newson left McNeil on the side of the road and drove away. McNeil passed away shortly after the shooting from one of three fatal gunshot wounds.

Immediately after the shooting, Newson drove to the home of one of McNeil's close friends, Zarharia Marshall. Marshall was expecting Newson and McNeil, who had arranged for Marshall to babysit McNeil's toddler. Marshall testified that when Newson exited his vehicle upon arriving at Marshall's residence, bullets fell from his lap. Marshall witnessed Newson pick one bullet up from the street and place it into a gun magazine. Marshall testified that Newson was acting frantic, irritated, and nervous. She also testified that Newson unexpectedly decided to leave his son with her who appeared frightened. When Marshall asked Newson what had happened to cause his excited state, he responded, "you know, just know that mother fucker's pushed me too far to where I can't take it no more." Before leaving Marhsall's house, Newson requested that she tell Newson's son that he always loved him. After Newson left, Marshall brought the two children inside and noticed blood on the infant's clothes and car seat.

Newson was apprehended over a week later. The state charged him with murder, use of a deadly weapon, two counts of child abuse, neglect or endangerment, and ownership or possession of a firearm by a prohibited person. Newson wished to have the jury instructed on voluntary manslaughter and his counsel proffered instructions to that end. The State argued that the instructions were not warranted because there was no evidence of any particular provocation that incited the killing. Newson's counsel countered that circumstantial evidence justified the instructions and that the State's provocation threshold would force Newson to testify and waive his Fifth Amendment right against self-incrimination.

The district court agreed with the State that the evidence did not establish sufficient context to warrant the instructions. The jury convicted Newson of first-degree murder with use of a deadly weapon and all other charges. Newson's appeal alleges error as to the convictions for first-degree murder and child abuse, neglect and endangerment. The Court addressed (1) whether the district court abused its discretion by refusing to instruct the jury on voluntary manslaughter and (2) whether the State failed to adequately inform Newson of the child abuse, neglect or endangerment charges or prove the necessary elements of those charges

[1] By Richard Young.

Discussion

Failure to instruct the jury on the Defendant's theory of the case that is supported by evidence warrants reversal.

While "the district court has broad discretion to settle jury instructions, the failure to instruct the jury on a defendant's theory of the case that is supported by the evidence warrants reversal unless the error was harmless.[2] Furthermore, a criminal defendant "is entitled, upon request, to a jury instruction on his or her theory of the case, so long as there is some evidence, no matter how weak or incredible, to support it."[3] Therefore, where circumstantial evidence may support a theory of voluntary manslaughter, as it did here, the failure to instruct the jury of the defendant's theory is not harmless and warrants reversal.

Under NRS 200.508(1), (4)(a), and (4)(d), the burden of proof for finding child abuse, neglect and endangerment can be supported by proof that an individual placed children in a situation where they may have suffered from physical danger.

Evidence is sufficient to support a verdict if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[4] Under NRS 200.508(1), (4)(a), and (4)(d), the State could satisfy its burden of proof by showing that Newson placed the children in a situation where they may have suffered a physical injury.[5] Evidence of exposing children to physical danger by discharging a firearm several times in a vehicle with the children present, especially when seated immediately adjacent to the victim, overwhelmingly supports a verdict of child abuse, neglect and endangerment.

Conclusion

A district court must instruct the jury on voluntary manslaughter when requested by the defense so long as it is supported by some evidence. Newson shot McNeil next to their children in the back seat of a moving car that he was operating. He shot McNeil again in broad daylight in a populated area. Finally, Newson continued to McNeil's friend's house, who was expecting McNeil and was instead greeted by the frantic Newson who handed off two children with their mother's blood on them. The district court erred in declining to instruct the jury on voluntary manslaughter where Newson's statement to the victim's friend, viewed in light of the other evidence adduced at trial, suggests the shooting occurred in a heat of passion after Newson was provoked and the error was not harmless. The Court reversed the ruling of the district court and remanded for a new trial on the murder charge.

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[2] Crawford v. State, 121 Nev. 744, 748, 121 P3d. 582, 585 (2005); *See* Cortinas v. State, 124 Nev. 1013, 1023-25, 195 P.3d 315, 322-23 (2008) (discussing when instructional error may be reviewed for harmlessness).

[3] Williams v. State, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983).

[4] Higgs v. State, 126 Nev. 1, 11, 222 P.3d 648, 654 (2010) (internal quotations omitted).

[5] *See* Clay v. Eighth Judicial Dist. Court, 129 Nev. 445, 451-52, 305 P.3d 898, 902-03 (2013).