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### Valentine v. State of Nevada, 135 Nev. Adv. Op. 62 (Dec. 19, 2019)

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*Valentine v. State of Nevada*, 135 Nev. Adv. Op. 62 (Dec. 19, 2019)<sup>1</sup>  
Evidentiary Hearings Related to Fair-Cross-Section Claims

## **Summary**

The Court held that evidentiary hearings are appropriate on fair-cross-section challenges when the defendant makes specific allegations that, if true, would be sufficient to constitute a prima facie violation of the state's fair-cross-section requirement.

The Court also briefly discussed appellant's claims of insufficient evidence and prosecutorial misconduct regarding DNA evidence. The Court found that neither claim warranted a new trial.

## **Background**

Appellant, Keandre Valentine ("Valentine"), was convicted by a jury of several counts related to five armed robberies that took place in Las Vegas, Nevada. Before the trial, Valentine objected to the 45-person venire, claiming that it violated his right to a jury selected from a fair cross-section of the community. Valentine argued that two community groups – African Americans and Hispanics – were not fairly and reasonably represented in the venire due to a systematic exclusion.

He provided two theories to explain how the system excludes specific groups. Valentine's first theory was that the system did not enforce jury summonses. Valentine's second theory was that the system sent the same number of jury summonses to each zip code without first determining the percentage of the population living in each zip code. After presenting his theories, Valentine requested an evidentiary hearing, which was denied. The district court did find that Hispanics were not fairly and reasonably represented in the venire, however it found that the underrepresentation was not due to a systematic exclusion. Thus, the district court denied Valentine's constitutional challenge.

## **Discussion**

### *Fair-cross-section challenge warranted an evidentiary hearing*

The Constitution dictates that a defendant has the right to a trial before a jury constituted of a representative cross section of the community.<sup>2</sup> This right does not require that a jury to be exactly proportional to the distinctive groups living in the community, but it does require that the methods by which juries are drawn do not systematically exclude distinctive groups of the community.<sup>3</sup> A defendant making a fair-cross-section challenge must establish a prima facie violation of the right by showing that the excluded group is a distinctive group in the community,

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<sup>1</sup> By Riley Coggins.

<sup>2</sup> *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996).

<sup>3</sup> *Evans*, 112 Nev. at 1186, 926 P.2d at 274–75.

its representation in the cross-section is not fair and reasonable, and the underrepresentation is because of systematic exclusion.<sup>4</sup>

Valentine contended that the district court committed structural error by denying his request for an evidentiary hearing on his fair-cross-section challenge. The Court accepted this argument. After reviewing the rules for making a fair-cross-section challenge, the Court concluded that the district court abused its discretion in denying Valentine's request for an evidentiary hearing.

The Court has not previously stated the circumstances when an evidentiary hearing is appropriate for fair-cross-section challenges, but it has articulated these circumstances in other contexts, such as in postconviction petitions for a writ of habeas corpus. The Court used this example as a basis for its holding that "an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement."

Based on this standard, the Court concluded that Valentine's request for an evidentiary hearing should have been granted because Valentine met the criteria. Valentine made specific allegations that the same amount of jury summonses was sent to each zip code without first determining the proportion of the population living in each zip code. The Court found that those allegations, if true, could establish systematic exclusion of a distinct group of people. Thus, Valentine deserved an evidentiary hearing, and the Court vacated the judgment of conviction and remanded to the district court for an evidentiary hearing.

#### *Sufficiency of the evidence*

Valentine also argued that the State presented insufficient evidence to support convictions on two counts of robbery with the use of a deadly weapon. In evaluating a claim of insufficient evidence, the Court views the evidence in the light most favorable to the prosecution to decide whether any rational trier of fact could have concluded beyond a reasonable doubt that the essential elements of the crime were present. In the case of robbery with the use of a deadly weapon, the prosecution must present evidence that the victim had a possessory interest in the stolen property.

The Court rejected the State's argument that the mere fact that two individuals are married supports the conclusion that they each have a possessory interest in the community property of the marriage. Instead, the Court agreed with Valentine and concluded that the convictions for the two counts cannot be sustained because the mere fact that two individuals are married does not support the conclusion that each spouse has a possessory interest in the community property of the marriage.

#### *Prosecutorial misconduct regarding DNA evidence*

Valentine also argued that the State participated in prosecutorial misconduct by inviting the jury to make determinations regarding DNA evidence that the State's own expert witness

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<sup>4</sup> *Evans*, 112 Nev. at 1186, 926 P.2d at 275 (quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979)).

testified she was unable to make. In evaluating a claim of prosecutorial misconduct, the Court decides whether the conduct was inappropriate, and if so, whether a reversal is required.

The Court accepted Valentine's argument that the State acted improperly when it invited the jury to make conclusions about DNA evidence that the State's own expert witness testified could not be made. Thus, the Court found that the state did commit prosecutorial misconduct. However, the Court concluded that a new trial was unnecessary because the prosecutorial misconduct ultimately did not have any impact on the outcome of the case.

### **Conclusion**

The Court held that evidentiary hearings are appropriate on fair-cross-section challenges when the defendant makes specific allegations that, if true, would be sufficient to constitute a prima facie violation of the state's fair-cross-section requirement. Based on this standard, the Court vacated the judgment of conviction and remanded to the district court for an evidentiary hearing.