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Newson v. State, 136 Nev. Adv. Op. 22 (Apr. 30, 2020)

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CRIMINAL LAW: JURY INSTRUCTION

Summary

The Court determined that a district court must instruct the jury on voluntary manslaughter when requested by the defense so long as it is supported by any evidence unless the error was harmless. The Court also concluded that there was sufficient evidence in the case to support a verdict of child abuse, neglect and endangerment and affirmed the judgement.

Background

Defendant, Vernon Newson was convicted of first-degree murder with use of deadly weapon, child abuse, neglect or endangerment, and ownership or possession of a firearm by a prohibited person by jury verdict. Newson was driving a rented SUV with his girlfriend, Anshanette McNeil, on a freeway on-ramp when he turned and shot McNeil several times. McNeil was sitting in the backseat next to their infant and her toddler. After McNeil escaped from the car and attempted to flee, Newson got out of the car and shot McNeil at least one more time and left her on the side of the road as he drove away.

Immediately after the shooting, Newson drove to the home of McNeil's close friend, Zarharia Marshall, who was expecting both Newson and McNeil to be dropping off the two children for babysitting. Newson appeared to be frantic, agitated, and nervous as he brought out the infant in the car seat and the toddler. When Marshall asked Newson about McNeil, he said that "[she] pushed me too far to where I can't take it no more." Blood stains were found on the infant's pants and car seat.

The State charged Newsom with murder with 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 requested the district court to instruct the jury on voluntary manslaughter. The State argued that there was no evidence of particular provocation that supports the theory. The district court agreed with the State and denied Newson's request. The jury convicted Newson with first degree murder with use of deadly weapon, child abuse, neglect, or endangerment, and ownership or possession of a firearm by a prohibited person.

Newson appealed the conviction, claiming that (1) the district court erred by failing to instruct the jury on manslaughter and (2) the State failed to inform Newson of the charges of child abuse, neglect, or endangerment or prove the necessary elements of those charges.

In an opinion issued on October 10, 2019, a panel of the Court reversed the first-degree murder conviction and held that the district court erred by failing to instruct the jury on voluntary manslaughter. The panel also affirmed the remaining convictions, holding that the State met the burden of proof for child abuse, neglect and endangerment. Newson then petitioned for en banc reconsideration.

Discussion

¹ By Wendy Antebi.

The district court erred in declining to instruct the jury on manslaughter. While “the district court has broad discretion to settle jury instructions . . . 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 The Court reiterates that 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

Circumstantial evidence supports the theory that Newson acted in the heat of passion. Testimony shows that the couple fought frequently while driving and evidence shows McNeil was under the influence of methamphetamine at the time of the shooting. Physical evidence suggests McNeil had moved out of her seat and had her upper body near Newson when he fired one of the shots. Newson shot McNeil in a moving vehicle and left her in a high traffic area in broad daylight. His behavior and actions observed by Zarharia immediately after the shooting also suggest it happened in the heat of passion. The Court found that circumstantial evidence suggests sufficient provocation. Furthermore, the State’s case for first-degree murder was not strong. Therefore, the Court is not convinced that failure to instruct the jury on voluntary manslaughter was harmless beyond a reasonable doubt.

The Court concluded that sufficient evidence was present for Newson’s conviction of child abuse or neglect. 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), the State needs to show Newson “willfully cause[d] a child . . . to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect.”⁵ NRS 200.508(4)(a) defines “abuse or neglect” as “maltreatment of a child . . . under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.”⁶

Newson shot at McNeil while she was seated next to the children in the car. This puts the children in a situation where they *may suffer* physical pain or mental suffering as a result. Newson subjected the children to harmful behavior that was terrorizing or emotionally traumatic. The jury was instructed that negligent treatment or maltreatment was a type of “abuse or neglect” at issue. Accordingly, a jury could reasonably find Newson guilty beyond a reasonable doubt for two counts of child abuse, neglect or 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. Some evidence in this case suggests the shooting occurred in the heat of passion. The district court erred by declining to instruct the jury on voluntary manslaughter. The Court reversed the judgement of conviction of first-degree murder and remanded for new trial. However, the Court determined that there was sufficient evidence to support the remaining convictions and therefore, affirmed the conviction of the remaining charges.

² Crawford v. State, 121 Nev. 744, 748, 121 P.3d 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 at 261(1983).

⁴ Higgs v. State, 126 Nev. 1, 11, 222 P.3d 648, 654 (2010).

⁵ NEV. REV. STAT. § 200.508(1) (2019).

⁶ NEV. REV. STAT. § 200.508(4)(a) (2019).