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SEXUAL ASSAULT OF A MINOR UNDER 16 YEARS OF AGE

Summary

The Nevada Supreme Court reversed the sexual assault conviction of Jason Honea, a former Las Vegas police explorer. The Court concluded that the trial judge, District Judge Kathleen Delaney, erroneously instructed the jury that consent was not a defense to a charge of sexual assault of a minor under sixteen.

Background

In 2015, appellant Joshua Honea was accused of maintaining a four-year relationship with an underage girl. Honea was in his late teens and early twenties during his relationship with the girl, who was eleven when she met him and fifteen when their relationship ended. The girl testified in a preliminary hearing before trial that she had had a sexual relationship with Honea for years. However, she recanted her story at trial (when she was eighteen) and said that the two were only friends.

Honea was convicted in 2018. District Judge Kathleen Delaney ordered Honea to serve twenty-five years to life in prison and register as a sex offender. Honea appealed, arguing that that the court had misinstructed the jury about legal consent.

Discussion

The victim's age, by itself, was not dispositive of any element of sexual assault

Honea argues that the court erred by instructing the jury that the age of consent is 16 and that consent is not a defense when the victim is under 16.

Honea was charged with violating a previous version of Nevada's sexual assault statute, NRS 200.366 (2007), which defined sexual assault as

“subject[ing] another person to sexual penetration, or forc[ing] another person to make a sexual penetration on himself . . . against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct.”²

¹ By Samantha Goett.

² NEV. REV. STAT. § 200.366 (2007).

The statute does not mention the victim's age. However, Judge Delaney instructed jurors that consent by a child younger than sixteen was not a defense to a charge under the statute. Therefore, the court's instruction that 16 is the age of consent to sexual penetration and that consent from a victim under 16 is not a defense was an incorrect statement of law.

Honea was entitled to an inverse jury instruction

Honea claims that the court erred by rejecting his proposed jury instruction. The court has previously held that a defendant has the right to have its instruction given to the jury, but that a defendant is not entitled to "instructions that are misleading, inaccurate, or duplicitous".³ As written, Honea's instructions partially misstated the law. Regardless, he was entitled to a correctly worded instruction. Therefore, the court held that the district court abused its discretion by not giving an inverse instruction that correctly stated the law.

The district court's jury-instruction errors were not harmless

The court evaluates appellate claims on jury instruction using the harmless error standard.⁴ Here, Honea was entitled to a proper jury instruction. The court's failure to give the instruction may have been harmless. However, the Court held that the failure to give an inverse instruction when coupled with the misstatements in the given instruction may have contributed to the jury verdict and were therefore not harmless.

Conclusion

Honea was entitled to an accurate jury instruction upholding the theory of his defense, and the jury should not have been instructed that minors under age 16 could not consent because the sexual assault statute in effect at the time contained no age-of-consent element. Honea's conviction was therefore reversed and remanded for a new trial.

³ Crawford v. State, 121 Nev. 744, 751, 121 P.3d 582, 586 (2005); *Id.* at 754, 121 P.3d at 589.

⁴ Mathews v. State, 134 Nev. 512, 517, 424 P/3d 634, 639 (2018).