

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

11-2021

Chaparro (Osbaldo) v. State, 137 Nev. Adv. Op 68 (Nov. 10, 2021)

Jaden Braunagel

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

Recommended Citation

Braunagel, Jaden, "Chaparro (Osbaldo) v. State, 137 Nev. Adv. Op 68 (Nov. 10, 2021)" (2021). *Nevada Supreme Court Summaries*. 1454.

<https://scholars.law.unlv.edu/nvscs/1454>

This Article is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

ZOOM VIDEOCONFERENCE HEARINGS: A DEFENDANT’S RIGHT TO BE PRESENT
AT SENTENCING HEARING

SUMMARY

The Court answered if a defendant’s right to be present was violated when the sentencing hearing was conducted via Zoom videoconferencing because of the COVID-19 pandemic. The Court concluded that the defendant’s sentencing hearing was just considering the surrounding circumstances, and that he was not entitled to relief. The Court also found that the admitted evidence of the defendant’s previous conviction was proper and that district courts should not categorically limit questions about jurors’ views concerning whether a defendant has prior convictions. Additionally, the Court held that inconclusive evidence can be relevant and admissible when used to show that an investigation was thorough or is presented to complete a story regarding a particular piece of evidence.

FACTS AND PROCEDURAL HISTORY

On December 17, 2016 in the early morning, L.L. was walking in downtown Reno towards the Harrah’s casino when Chaparro grabbed her. Chaparro groped her buttocks and breasts, and digitally penetrated her. L.L. struggled and yelled that she would call 9-1-1. When L.L.’s friend approached, Chaparro quickly left. L.L. reported the assault, underwent a sexual assault exam, and the Harrah’s security system captured footage of the assault.

Chaparro was charged with sexual assault, battery with the intent to commit sexual assault upon a victim age 16 or older, and open or gross lewdness. The State moved to admit evidence of Chaparro’s prior conviction for battery with the intent to commit sexual assault where he groped and accosted P.J. in the parking lot of the Nugget Casino Resort. He opposed the motion arguing it was unfairly prejudicial, but the district court granted the motion and allowed P.J. to testify at trial. At trial, Chaparro argued that he neither penetrated L.L. nor intended to do so and was therefore innocent of the sexual assault and battery with intent charges. The jury convicted him of all charges in February 2020.

The COVID-19 pandemic required courts across the country to halt in-person hearings.² As a result, Chaparro’s sentencing hearing was held over Zoom on May 20, 2020. He joined the videoconference call from a jail courtroom and was able to communicate with counsel confidentially via headset and could see and hear the other participants. The only thing Chaparro could not see and hear were the members of the public who chose to watch including his friends and family. However, the members of the public could see and hear Chaparro throughout the duration of the hearing. Chaparro objected to the use of Zoom stating that he wanted to see his supporters, but the district court overruled the objection and proceeded with the hearing. The district court sentenced Chaparro to an aggregate sentence of life with parole eligibility after 12 years.

¹ Jaden Braunagel

² See *In re Second Judicial District Court’s Response to Coronavirus Disease (COVID-19)*, Administrative Order 2020-1 (Mar. 16, 2020); see also *In re Second Judicial District Court’s Response to Coronavirus Disease (COVID-19)*, Administrative Order 2020-02(A) (Apr. 9, 2020).

DISCUSSION

Chaparro's due process challenge to the sentencing hearing over Zoom

The first issue on appeal is whether Chaparro's due process rights were violated by holding his sentencing hearing over Zoom. The Court acknowledged that because a sentencing hearing is a critical stage,³ a defendant has the right to be present for sentencing. But the court distinguished the right by stating that the right to present is not absolute.⁴ The Court noted that the presence of a defendant is a condition of due process that is limited such that a fair and just hearing would be prevented by the defendant's absence.⁵ Therefore, considering whether Chaparro's hearing was fair and just despite its deviation from the norm, the Court concluded that it was appropriate considering the circumstances of the pandemic. Chaparro was able to be heard, seen, speak, and confidentially communicate with counsel.⁶ The Court stated that the district court balanced Chaparro's various rights appropriately, and acknowledged that the realities of the assessing the district court's decision could not be separated from the circumstances in which the proceeding took place.⁷

Chaparro also contended that his confrontation rights were violated. The Court declined to consider this claim by Chaparro because this claim was being raised for the first time on appeal.⁸ Chaparro further argued that he had a right to the in-person presence of friends and family, but provided no supporting authority for the expansion of the right to be present to third parties.

The district court did not abuse its discretion in admitting testimony regarding the prior assault and conviction

The second issue on appeal is whether the district court erred in admitting testimony regarding the prior assault and conviction. In determining whether to admit a prior sexual offense pursuant to NRS 48.045(3), the district court must both make a preliminary finding that the prior sexual offense is relevant, and find that a jury could reasonably find by a preponderance of the evidence that the bad act constituting a sexual offense occurred.⁹ The Court then specified that a district court should evaluate whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice by considering five different factors.¹⁰ The Court disagreed with Chaparro that the evidence was not necessary to the State's case and that the

³ See *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 938 (1978).

⁴ *Gallego v. State*, 117 Nev. 348, 367, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (2011).

⁵ *United States v. Gagnon*, 470 U.S. 522, 526 (1985); see *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996) ("The due process aspect has been recognized only to the extent that a fair and just hearing would be thwarted by the defendant's absence.").

⁶ *Cf. People v. Lindsey*, 772 N.E.2d 1286, 1276–79 (Ill. 2002) (holding the due process right was not violated where defendant participated in critical stages of arraignment and jury waiver by audiovisual transmission and "was able to interact with the court with relative ease," and noting similar holdings by other state supreme courts).

⁷ See *Snyder v. Massachusetts*, 291 U.S. 97, 116 (1934) ("Due process of law requires that the proceedings shall be fair, but fairness is a relative, not absolute, concept. It is the fairness with reference to particular conditions or particular results.").

⁸ See *Rippo v. State*, 113 Nev. 1239, 1260, 946 P.2d 1017, 1030 (1997) (declining to consider appellate claim where objection was not made below).

⁹ NEV. REV. STAT. § 48.045(3) (2020); *Franks v. State*, 135 Nev. Adv. Op. 1, 5, 432 P.3d 752, 756 (2019).

¹⁰ *Id.* at 6, 432 P.3d at 756–57.

probative value evaluation was in error. The Court concluded that the district court did not abuse its discretion in admitting the evidence because it weighed the factors appropriately.

The district court did not err in limiting voir dire

The third issue on appeal is whether Chaparro was improperly barred from asking prospective jurors questions regarding the effect that evidence of his prior conviction might have on their deliberation in his case. NRS 175.031 states that when conducting the initial examination of potential jurors, the defendant or their attorney as well as the district attorney are entitled to add to the examination by asking more questions as the court deems appropriate.¹¹ It also states that any further examination must not be unreasonably restricted.¹² The Court recognized that the purpose of voir dire is to determine whether jurors provide a fair and impartial trial,¹³ but also that the scope and method is within the district court's discretion and they will review for an abuse of discretion or a showing of prejudice.¹⁴

The Court held on this issue that the district court appropriately limited Chaparro from inquiring into specific evidence that would be presented at trial because the line of questioning risked depriving Chaparro of an impartial jury.¹⁵ Here, the district court did not categorically obstruct questioning into the general issue of potential jurors' views on defendants with previous convictions and thus it did not err.¹⁶

The district court did not abuse its discretion in allowing testimony on inconclusive DNA evidence

The fourth issue on appeal was if the district court erred when it allowed evidence of a DNA tested pair of tights that the victim was wearing during the incident and the results were inconclusive. The Court ruled that when DNA test results are inconclusive, they can be relevant and probative to determining the reliability and sufficiency of the investigation.¹⁷ The Court further found that inconclusive evidence may be relevant to the State's presentation of a complete story regarding a certain piece of evidence. So here, the Court held that the tights in question were relevant because they showed the thoroughness of the investigation and completed the story of the evidence.

Cumulative Error

Finally, the Court determined whether there was cumulative error that denied Chaparro of a fair trial. The Court rejected Chaparro's assignments of error, and concluded that his allegation lacked merit.

¹¹ NEV. REV. STAT. § 175.031 (2020).

¹² *Id.*

¹³ *Oliver v. State*, 85 Nev. 418, 422, 456 P.2d 431, 434 (1969).

¹⁴ *Salazar v. State*, 107 Nev. 982, 985, 823 P.2d 273, 274 (1991); *Leonard v. State*, 117 Nev. 53, 64, 17 P.3d 397, 404 (2001).

¹⁵ *See Witter v. State*, 112 Nev. 908, 915, 921 P.2d 886, 892 (1996), *abrogated on other grounds by Nunnery*, 127 Nev. 749, 263 P.3d 235; *see also Browning v. State*, 124 Nev. 517, 531 n.32, 188 P.3d 60, 70 n.32 (2008) (impliedly recognizing that it is error to ask a potential juror to prejudge the merits of the case); *see also People v. Carasi*, 190 P.3d 616, 632 (Cal. 2008) (observing that voir dire seeks to uncover jurors' views in the abstract to ensure that they will consider the facts with an open mind and that this aim is undermined by overly specific questions that expose the facts of the case).

¹⁶ *Id.* at 632–33 (recognizing that district courts err in categorically limiting inquiry into case-specific issues).

¹⁷ *People v. Marks*, 374 P.3d 518, 524 (Colo. App. 2015); *accord Commonwealth v. Cavitt*, 953 N.E.2d 216, 231 (Mass. 2011).

CONCLUSION

The Court concluded that Chaparro was not denied a fair and just trial caused by the pandemic's in-person restrictions, because he was provided with an appropriate alternative. The Court concluded on the issue of the admission of the prior conviction that the district court did not err. The Court ruled that district courts should not categorically limit inquiry during voir dire into jurors' views regarding defendants with prior convictions, and that the district court here did not err when it barred inquiry into Chaparro's specific prior conviction. Lastly, the Court affirmed the conviction and clarified that inconclusive DNA evidence can be admitted where it is relevant and is otherwise aligned with the rules of evidence.