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CRIMINAL LAW—HABEUS CORPUS/JURY ELIGIBILITY

Summary

A jury convicted Benjardi Bucan Viray for lewdness with a minor. He appealed claiming that there was an improper inclusion of new information at a preliminary hearing and that this inclusion was sufficient to declare a mistrial. The Nevada Supreme Court held that a change in the factual situation is not sufficient to declare a mistrial if the inclusion of new information does not affect the defendant’s substantial rights and the charged offense remained the same. The second issue was whether a court should declare a mistrial when a juror disregards the admonishment of the court to not speak about the case. The Court held that a district court has discretion to remove a juror mid-trial for violation of the court’s admonishment rather than declaring a mistrial.

Disposition/Outcome

The Nevada Supreme Court affirmed the district court’s decision to allow the trial to continue regardless of the inclusion of new information and minor juror impropriety.

Factual and Procedural History

During Viray’s trial, the victim testified that Viray forced her to massage his legs and feet. The State, however, argued at the preliminary hearing that Viray forced the victim to let him massage her legs and feet. After the inconsistency became apparent, Viray filed a writ of habeas corpus which was denied.

In addition to the factual discrepancy, during the trial Juror #4 became unsettled about his ability to be a part of the jury. In fact, contrary to the court’s admonishment, Juror #4 spoke to Juror #5 about his personal concerns of serving on the jury. Upon discovering that Juror #4 had disobeyed the court’s admonishment, the judge held a special hearing to address the situation. Because Juror #5 felt confident that he could remain impartial, the court allowed Juror #5 to remain on the jury. The court, however, substituted Juror #4 with an alternate juror.

Viray appealed the conviction and contended that the district court erred by refusing to grant a continuance when the State amended the information on the first day of trial, and to order a mistrial instead of substituting an alternate juror mid-trial for a juror who violated the court’s admonishment not to discuss the case.

Discussion

A criminal defendant has a substantial and fundamental right to be informed of the charges against him so that he can prepare an adequate defense. The Nevada Supreme Court, however, citing Shannon v. State, decided that as long as Viray’s substantial rights were not

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disrupted and that the charges against him remained the same, there was no reason for a mistrial.
The court also held that although jurors are admonished not to speak with one another about
anything pertaining to the trial, minor juror improprieties are within the purview of the district
court’s discretion. However, the court also hinted that a mistrial would be appropriate in a case
where a juror violated the court’s admonishment in front of the other jurors.

**Conclusion**

The Nevada Supreme Court affirmed the district court’s decision to allow the trial to
continue regardless of the inclusion of new information and minor juror impropriety.

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3 NEV. REV. STAT. 175.401(1) (2004).