Nevada Supreme Court Summaries   Law Journals

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Brioady v. State, 133 Nev. Adv. Op. 41 (Jun. 29, 2017)

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CRIMINAL PROCEDURE: MOTION FOR NEW TRIAL; JUROR MISCONDUCT

Summary

The Court determined that (1) Appellant's motion for a new trial complied with the provisions of NRS 176.515(3); and (2) that the district court abused its discretion in denying Appellant's motion for a new trial based on juror misconduct when it relied on the belief of the Juror who had withheld information during voir dire that she could remain impartial.

Background

C.P. alleged appellant Jericho Brioady had molested her when she was twelve years old. Brioady was charged with two counts of sexual assault on a child and three counts of lewdness with a child under fourteen years of age. Brioady's trial was held in January 2016.

During voir dire, the district court asked the veniremembers to answer questions fully, completely, and honestly. When asked if anyone had been a victim of a crime, two veniremembers disclosed they had been victims of molestation when children, and one veniremember disclosed her child had been molested. One veniremember, who would later serve as Juror Three, did not disclose any information related to this question during voir dire.

When the venire asked if any venireperson had a serious secret and if they had told anyone that secret, Juror Three disclosed she had such a secret and that she had told it to a trusted doctor. She did not disclose any further information related to this question. Defense counsel exercised its peremptory challenges on seven of the venire members and waived its eighth.

The jury found Brioady guilty of two counts of lewdness with a minor and not guilty as to his remaining counts. Eleven days after the verdict was entered, Brioady filed his motion for new trial based on juror misconduct due to Juror Three's failure to disclose she had been a victim of molestation as a child. At hearing, Juror Three testified she did not recall being asked if she had ever been a crime victim, then stated that while she had been molested as a child, she did not disclose that information because she believed she could be fair and impartial. Juror Three also testified that her childhood molestation had been the secret she had thought of during questioning, and that she had told her secret to a therapist as an adult.

During deliberations, Juror Three told the other jurors she had been a molestation victim as a child, but claimed she had persuaded other members of the jury to find Brioady not guilty of the two sexual assault charges. Based on this, the district court denied Brioady's motion due to Brioady's failure to demonstrate he had been prejudiced by Juror Three's alleged misconduct. Brioady appealed.

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Discussion

Standard of review and timeliness of motion

     NRS 176.515 permits the court to grant a new trial to a defendant as a matter of law or based on newly discovered evidence. A motion based on newly discovered evidence must be made within two years of the guilty verdict,[2] while a motion based on any other grounds must be made within seven days of the guilty verdict.[3] The district court entered its verdict on January 22, 2016 and Brioady filed his motion on February 10, 2016. The Court concluded that because neither Brioady nor his counsel were made aware of Juror Three's potential misconduct until February 4, 2016, any information related to that misconduct was newly discovered evidence and thus complied with the NRS.[4] The district court did not err in considering Brioady's motion because he filed it within two years of his guilty verdict.

The district court abused its discretion in denying the motion for a new trial

     A defendant must demonstrate a juror failed to answer a material question honestly during voir dire and then show a correct answer would have given a valid basis for a for cause challenge.[5] Regarding honesty, only reasons that affect the impartiality of a juror can affect the fairness of a trial,[6] and the determination turns on whether the juror intentionally concealed information.[7] The Court concluded Juror Three's conduct "indicate[d] a level of intentional concealment not present in either *Edmond* or *Lopez*." Juror Three's belief that she could remain impartial "was not a determination for her to make." Her testimony at the district court's hearing showed that she "knowingly failed to honestly answer a question during voir dire", and had she answered honestly, her response would have been a valid basis for a for cause challenge.

Conclusion

     Brioady complied with the provisions of the NRS § 176.515 when he filed his motion for a new trial because he filed it within two years of his guilty verdict and it was based on newly discovered evidence. Additionally, because Juror Three intentionally concealed information during voir dire and those answers would have provided Brioady a valid basis for a for cause challenge distinguished, the Court found the district court abused its discretion. The Court reversed the district court's ruling and remanded the case for a new trial.

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[2] NEV. REV. STAT. § 176.515(3) (2015).

[3] NEV. REV. STAT. § 176.515(4) (2015).

[4] NEV. REV. STAT. § 176.515(3) (2015).

[5] McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 556 (1984); *see also* Lopez v. State, 105 Nev. 68, 89, 769 P.2d 1276, 1290 (1989).

[6] United States v. Edmond, 43 F.3d 472, 473 (9th Cir. 1994) (quoting *McDonough*, 464 U.S. at 55).

[7] *Lopez*, 105 Nev. at 89, P.2d at 1290 (quoting Walker v. State, 95 Nev. 321, 323, 594 P.2d 710, 711 (1979)).