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## Jeremias v. State, 134 Nev. Adv. Op. 8 (Mar. 01, 2018)

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CRIMINAL LAW: DEATH SENTENCE APPEAL

**Summary**

The Nevada Supreme Court determined that a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit robbery and burglary while in possession of a deadly weapon and two counts each of robbery with the use of a deadly weapon and murder with the use of a deadly weapon, commands a death sentence.

**Background**

On June 8, 2009, Brian Hudson and Paul Stephens were robbed and found murdered in an apartment they shared. A witness who lived in the victims' same apartment complex told law enforcement that she saw two men, one with light skin and one with darker skin, near the scene around the time of the murders. Another witness said that, after hearing gunshots, he saw a red truck speed away from the complex.

During their post-crime investigation, detectives learned that the victims' credit cards were used at various locations. After obtaining surveillance videos from those locations, the detectives identified a potential suspect and a vehicle that he was driving, that they later determined to be a rental car. Following a search of rental car records, the detectives were led to Ralph Jeremias, who matched the person from the surveillance footage.

Thereafter, one of the witnesses from the apartment complex identified Jeremias as the darker-skinned man that she had seen the night of the murders. Additionally, once detectives learned that that Jeremias' friend, Carlos Zapata, drove a red truck, the other crime-scene witness identified the vehicle as that which had left the complex after the shooting.

Concluding that Jeremias committed the murders in the course of a robbery that he planned with Zapata and a third individual, Ivan Rios, each of the men were separately charged for their roles in the crime. Zapata pleaded guilty and testified on behalf of the prosecution at Jeremias' trial, and Rios was ultimately acquitted.

Testifying in his own defense at trial, Jeremias admitted that he was in the victims' apartment the night of the murder and that he stole their property, but he denied any involvement in their deaths. The jury found Jeremias guilty of conspiracy to commit robbery, burglary while in possession of a deadly weapon, two counts of robbery with the use of a deadly weapon, and two counts of first-degree murder with the use of a deadly weapon.

Resultantly, the jury imposed a death sentence for each murder and unanimously concluded that Jeremias' alleged mitigating circumstances did not outweigh the aggravating circumstances: (1) the murders were committed in the course of a robbery, (2) the murders were committed to prevent a lawful arrest, and (3) Jeremias was convicted of more than one murder. Jeremias appealed.

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<sup>1</sup> By Maliq Kendricks.

## **Discussion**

### *Exclusion of Jeremias' family from the courtroom during jury selection*

On appeal, Jeremias first contended that the district court violated his right to a public trial by excluding his family from the courtroom during voir dire with the pretext that there was limited seating space. Jeremias based his argument on precedent, which decrees that courts cannot rely on inadequate reasons, such as limited seating space, to close its proceedings to the public, without considering reasonable alternatives.<sup>2</sup> Furthermore, in the event that a court does so, a structural error is committed, warranting automatic reversal and remand for a new trial.<sup>3</sup> The Court concluded, however, that because Jeremias did not object to the closed proceedings at trial, he failed to preserve the structural error and forfeited his right to assert it on appeal.

Nonetheless, because Nevada law provides a mechanism for an appellant to seek review of an error he forfeited,<sup>4</sup> the Court conducted a ‘forfeited error’ analysis, considering whether: (1) there was an "error"; (2) the error was "plain," meaning that it was clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights.<sup>5</sup> Here, the Court assumed Jeremias satisfied the first two elements under the ‘forfeited error’ analysis, because the district court closed the courtroom to members of the public (his family) for an inadequate reason (courtroom congestion) without balancing other interests or exploring reasonable alternatives.

As to the third element, and through examining precedent, the Court found that Jeremias had failed to establish that the exclusion of his family for a small portion of voir dire had prejudiced him or rendered his trial unfair. Accordingly, his forfeited error was only trivial, not having caused him “actual prejudice or a miscarriage of justice,”<sup>6</sup> and thus, his substantial rights were not violated. Furthermore, the Court held that because Jeremias failed to object, his forfeited error could be seen as intentional and that correcting his error under the circumstances would encourage future defendants who are aware their rights are being violated to do nothing to prevent it, which would resultantly “erode confidence in the judiciary and undermine the integrity of the criminal justice system.”

### *Questioning of Zapata*

Second, Jeremias contended that reversal was warranted because the State did not follow correct procedures to refresh Zapata's recollection during his testimony. After acknowledging that the prosecutor erred in referring Zapata to a transcript to read aloud from instead of testifying from his memory, without first establishing that Zapata's memory needed refreshing, the Court determined that the district court erred in overruling Jeremias' objections to both occurrences. Nonetheless, because Zapata

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<sup>2</sup> Presley v. Georgia, 558 U.S. 216 (2010).

<sup>3</sup> *Id.*

<sup>4</sup> NEV. REV. STAT. § 178.602 (1967).

<sup>5</sup> Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

<sup>6</sup> Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

directly inculpated Jeremias, in the portions of his testimony where he was not inappropriately guided, the Court held that the error was harmless.

#### *Testimony of a substitute coroner*

Third, Jeremias contended that reversal was warranted because the district court violated his right to confront an adverse witness by permitting the testimony of a coroner who had not conducted the victims' autopsies. The Court concluded that because the substitute coroner testified about independent conclusions that she made based on photographs from the victims' autopsies, her testimony did not violate the Confrontation Clause, and thus Jeremias' claim failed.

#### *Testimony regarding plastic fragments*

Fourth, Jeremias contended that reversal was warranted because the district court abused its discretion by allowing law enforcement members to testify about plastic fragments found strewn about the crime scene without first being qualified as experts. The Court found that no relief was warranted for his claim despite Jeremias' objections on this basis at trial, because he had not "lodge[d] objections to the specific portions of the testimony that he believed required an expert," at trial or on appeal.

#### *Video of Jeremias' interrogation*

Fifth, Jeremias contended that his right to confrontation was violated when the district court overruled his objection to the State's motion to admit a video recording of his interrogation, because the overruling allowed the jury to take the video into deliberations without first playing it in open court. The Court found that because the video was admitted into evidence and Jeremias failed to demonstrate how its admittance prejudiced his substantial rights, no relief was warranted for his claim.

#### *Reasonable doubt instruction*

Sixth, Jeremias contended that reversal was warranted because the district court erred by giving a reasonable doubt instruction to the jury that stated that the State bore the burden of proving every "material element" of the crime, without actually defining what constitutes a material element. Nonetheless, Jeremias conceded that his claim failed under precedent,<sup>7</sup> and argued that *Burnside* should be overruled. The Court declined to reconsider its precedent and held that no relief was warranted for Jeremias' claim.

#### *Challenge to an aggravating circumstance*

Seventh, Jeremias contended that reversal was warranted because the aggravating circumstance—that he committed the murder to avoid or prevent a lawful arrest pursuant

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<sup>7</sup> *Burnside v. State*, 131 Nev. Adv. Op. 40, 352 P.3d 627, 638 (2015) (holding that the "material element" language is superfluous and should be omitted in future cases, but is not so misleading or confusing to warrant reversal).

to NRS 200.033W—was unconstitutional. The Court reiterated that NRS 200.033W “does not require an arrest to be imminent, and the aggravating circumstance applies when the facts indicate that a defendant killed the victim because the defendant committed a crime and the victim could identify him if he were left alive,”<sup>8</sup> as such there was no reason to reconsider firmly established precedent.

#### *Other penalty-phase claims*

Eighth, in seeking reversal, Jeremias raised three challenges to his penalty phase and claimed that: (1) the district court violated his rights to confrontation and notice by admitting Rios' statements to law enforcement; (2) the district court violated his Second Amendment right to bear arms by admitting evidence that he was found in possession of firearms during several arrests; and (3) the prosecutor committed misconduct during the penalty phase. The Court disregarded Jeremias' first two challenges, on the grounds that he failed to demonstrate plain error that affected his substantial rights.

As to Jeremias' third challenge, regarding the penalty phase, he raised two arguments. First, Jeremias contended that the prosecutor's line of questioning of a defense-witness on cross-examination was misleading and constituted as prosecutor misconduct. Although the Court noted that it disapproved of the prosecutor's various remarks during cross-examination, it ultimately determined that the prosecutor's questioning did not violate Jeremias' substantial rights.

Also, Jeremias contended that the prosecutor's closing remarks during rebuttal argument were improper. Here, the Court concluded that the prosecutor's remarks did not affect the outcome of the proceeding, and therefore, Jeremias failed to demonstrate plain error affecting his substantial rights that could result in reversal of his death sentences.

#### *Instruction regarding aggravating and mitigating circumstance*

Ninth, Jeremias contended that the district court's jury instruction, regarding the weighing of aggravating against mitigating circumstances, was unconstitutional and warranted reversal because it did not specify that the aggravating circumstances had to outweigh the mitigating circumstances beyond a reasonable doubt. Determining that Jeremias structured his argument on his misinterpretation of precedent, the Court rejected his claim and clarified that a defendant is death-eligible so long as the jury finds the elements of first-degree murder and the existence of one or more aggravating circumstances.<sup>9</sup> The Court further explained that once the State has proven first-degree murder and one statutorily-defined aggravating circumstance beyond a reasonable doubt, each juror is tasked with determining whether to impose a death sentence.<sup>10</sup>

#### *Nevada's death penalty scheme*

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<sup>8</sup> *E.g.*, Blake v. State, 121 Nev. 779, 793–94, 121 P.3d 567, 576–77 (2005).

<sup>9</sup> Lisle v. State, 131 Nev., Adv. Op. 39, 351 P.3d 725, 732 (2015), alteration in original (quoting Sawyer v. Whitley, 505 U.S. 333, 343 (1992)).

<sup>10</sup> *Id.*

Tenth, Jeremias contended that reversal was warranted because Nevada's death penalty scheme was unconstitutional. Jeremias premised his argument on three grounds, that the death penalty: (1) does not adequately narrow the class of persons eligible for the death penalty; (2) constitutes cruel and unusual punishment; and (3) fails to provide executive clemency. Concluding that Jeremias' first claim was a generalized assertion, his second was unsupported by any cogent argument or authority, and his third was irrelevant, the Court dismissed each of Jeremias' contentions.

#### *Cumulative error*

Eleventh, Jeremias contended that reversal was warranted because cumulative error deprived him of due process. The Court explained that although it identified several arguable errors made by the district court, each occurred at different portions of the proceedings. Resultantly, the Court rejected Jeremias' claim because he proffered no explanation as to whether, or how, the Court should cumulate errors across different phases of a criminal trial.

#### *Mandatory review of Jeremias' death sentences*

Finally, the Court conducted its review of the death sentence as required by NRS 177.055(2). The Court considered whether: (1) the evidence of the case supported the aggravating circumstances; (2) the verdict of death was imposed under the influence of passion, prejudice, or any arbitrary factor; and (3) the death sentence was excessive considering the defendant and his committed crime. Factors (1) and (2) were answered in the affirmative. As to factor (3), the Court concluded that although Jeremias was relatively young at the time of the crime, the evidence reflected his advance planning and cold, deliberate calculation to kill two people who he claimed were his friends. Thus, the death sentences imposed by the lower court were supported by the Court's review of the record.

#### **Conclusion**

The Nevada Supreme Court rejected Ralph Jeremias' entire appeal, affirming the lower court's death sentence.