

SUPREME COURT OF NEVADA

Rimer v. State

2015 NV 36 (2015) · No. 58711 · Decided June 11, 2015

SUMMARY

The Nevada Supreme Court affirmed Stanley Earnest Rimer’s convictions for involuntary manslaughter, child abuse or neglect resulting in substantial bodily harm, and five additional counts of child abuse or neglect. The court held that child abuse and neglect based on the cumulative effect of multiple acts over time is a continuing offense for statute-of-limitations purposes. It also held that multiple abuse and neglect charges may be joined when evidence of the charges would be admissible in separate trials for a relevant, nonpropensity purpose, including to show intent or lack of accident or mistake.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Douglas, J.; Hardesty, C.J.; Parraguirre, J.; Cherry, J.; Saitta, J.; Gibbons, J.
JURISDICTION	Nevada
DECIDED	June 11, 2015
DOCKET	58711
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction entered after a jury trial for involuntary manslaughter, child abuse or neglect resulting in substantial bodily harm, and five counts of child abuse or neglect.
STANDARD OF REVIEW	Joinder and severance decisions are reviewed for abuse of discretion; improperly joined charges are reviewed for harmless error. Sufficiency of the evidence is reviewed under whether a rational trier of fact could find the essential elements beyond a reasonable doubt, viewing the evidence in the light most favorable to the prosecution. Constitutional challenges to an indictment and to a statute are reviewed de novo. Evidentiary rulings and decisions concerning severance of codefendants, continuances, and sentencing are reviewed for abuse of discretion. Batson factual determinations are reviewed for clear error.
PRECEDENTIAL VALUE	published precedential en banc opinion

TOPICS

criminal procedure

statutory interpretation

evidence

appellate procedure

harmless error

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether child abuse and neglect based on the cumulative effect of multiple acts over time is a continuing offense for statute-of-limitations purposes.
2. Whether multiple child-abuse and neglect charges and charges arising from Jason's death were connected together and properly joined because evidence of each would be admissible for a relevant, nonpropensity purpose in a separate trial on the other.
3. Whether the joinder was nevertheless so unfairly prejudicial that severance was required.
4. Whether the evidence was sufficient to support the convictions.
5. Whether the indictment provided constitutionally and statutorily adequate notice and improperly included surplusage.
6. Whether NRS 200.508 was unconstitutionally vague as applied.
7. Whether the joint trial with codefendant Colleen deprived Rimer of a fair trial.
8. Whether denial of a continuance violated Rimer's right to counsel of choice.
9. Whether the prosecutor's peremptory challenge violated Batson.
10. Whether the district court abused its discretion in its evidentiary rulings and in restricting negative-inference argument.
11. Whether the indictment and convictions were improperly classified as felonies.
12. Whether the involuntary-manslaughter and child-abuse convictions violated double jeopardy or were redundant.
13. Whether unpreserved errors constituted plain error or cumulative reversible error.

HOLDINGS

1. Under the legislative-intent test from *Toussie v. United States*, child abuse and neglect based on the cumulative effect of multiple acts over time is a continuing offense. The statute of limitations therefore does not begin to run until the last alleged act of abuse or neglect is completed.
2. Charges are connected together when evidence of either charge would be admissible for a relevant, nonpropensity purpose in a separate trial concerning the other charge. The district court need not apply the other-crimes-evidence requirements concerning clear and convincing proof or balancing probative value against unfair prejudice when deciding whether charges are connected for joinder.

3. The abuse and death charges were properly joined because evidence of the charges demonstrated a pattern of abuse and neglect relevant and admissible in separate trials to show intent or absence of accident or mistake.
4. Severance was not required because Rimer failed to demonstrate manifest prejudice or a due-process violation. Properly joined charges need not be severed merely because separate trials might improve the defendant's chances of acquittal.
5. Substantial evidence supported Rimer's convictions for child abuse and neglect and involuntary manslaughter.
6. The convictions did not violate the Double Jeopardy Clause or constitute redundant punishments because each offense required proof of an element that the other did not, and neither statute precluded cumulative punishment.

KEY QUOTATIONS

“Under this test, we will consider an offense to be a continuing offense only when “the explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that [the Legislature] must assuredly have intended that it be treated as a continuing one.”” (at 10)

“for two charged crimes to be ‘connected together’ under NRS 173.115(2), a court must determine that evidence of either crime would be admissible in a separate trial regarding the other crime.” (at 14)

“However, the district court must still consider whether the evidence of either charge would be admissible for a relevant, nonpropensity purpose in a separate trial for the other charge” (at 16)

“To require severance, the defendant must demonstrate that a joint trial would be manifestly prejudicial. The simultaneous trial of the offenses must render the trial fundamentally unfair, and hence, result in a violation of due process.” (at 18)

FACTUAL BACKGROUND

Stanley and Colleen Rimer had eight children, including Jason, a four-year-old child with congenital myotonic dystrophy who required extensive assistance with breathing, feeding, movement, and hygiene. The family home was persistently cluttered and unsanitary, and the children experienced recurring lice, corporal punishment, and inadequate supervision. On June 8, 2008, Jason was left restrained and unable to escape inside a vehicle; he was discovered dead the next morning, and the medical examiner attributed his death to environmental heat stress. Evidence at trial also concerned Rimer's treatment of his other children and his response to child-protective-services investigations.

PROCEDURAL HISTORY

Rimer was convicted by a jury in the Eighth Judicial District Court of Clark County and received aggregate consecutive and concurrent sentences totaling 8 to 30 years in prison. He appealed, challenging, among other matters, the statute of limitations, joinder and severance, sufficiency of the evidence and indictment, constitutional vagueness, evidentiary rulings, prosecutorial conduct, double jeopardy, and sentencing classification. The Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Toussie v. United States, 397 U.S. 112 (1970)
- Campbell v. Griffin, 101 Nev. 718, 710 P.2d 70 (1985)
- United States v. Musacchio, 968 F.2d 782 (9th Cir. 1991)
- Perelman v. State, 115 Nev. 190, 981 P.2d 1199 (1999)
- Woolsey v. State, 111 Nev. 1440, 906 P.2d 723 (1995)
- People v. Ewing, 140 Cal. Rptr. 299 (Ct. App. 1977)
- Weber v. State, 121 Nev. 554, 119 P.3d 107 (2005)
- Tinch v. State, 113 Nev. 1170, 946 P.2d 1061 (1997)
- Solomon v. State, 646 A.2d 1064 (Md. Ct. Spec. App. 1994)
- Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985)
- Thomas v. State, 120 Nev. 37, 83 P.3d 818 (2004)
- Brown v. State, 114 Nev. 1118, 967 P.2d 1126 (1998)
- United States v. Harris, 661 F.2d 138 (10th Cir. 1981)
- United States v. Merriweather, 22 M.J. 657 (A.C.M.R. 1986)
- State v. Widdison, 4 P.3d 100 (Utah Ct. App. 2000)
- State v. Taylor, 701 A.2d 389 (Md. 1997)
- People v. Boyde, 758 P.2d 25 (Cal. 1988)
- People v. Brawley, 461 P.2d 361 (Cal. 1969)
- Tabish v. State, 119 Nev. 293, 72 P.3d 584 (2003)
- Zafiro v. United States, 506 U.S. 534 (1993)
- Honeycutt v. State, 118 Nev. 660, 56 P.3d 362 (2002)
- Mitchell v. State, 124 Nev. 807, 192 P.3d 721 (2008)
- Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981)
- West v. State, 119 Nev. 410, 75 P.3d 808 (2003)
- Jennings v. State, 116 Nev. 488, 998 P.2d 557 (2000)
- Clancy v. State, 129 Nev., Adv. Op. 89, 313 P.3d 226 (2013)
- Smith v. State, 112 Nev. 1269, 927 P.2d 14 (1996)
- City of Las Vegas v. Eighth Judicial Dist. Court, 118 Nev. 859, 59 P.3d 477 (2002)
- State v. Castaneda, 126 Nev. 478, 245 P.3d 550 (2010)
- Chartier v. State, 124 Nev. 760, 191 P.3d 1182 (2008)
- Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002)
- Bruton v. United States, 391 U.S. 123 (1968)

- United States v. Gonzales-Lopez, 548 U.S. 140 (2006)
- Morris v. Slappy, 461 U.S. 1 (1983)
- Nunnery v. State, 127 Nev., Adv. Op. 69, 263 P.3d 235 (2011)
- Purkett v. Elem, 514 U.S. 765 (1995)
- Johnson v. California, 545 U.S. 162 (2005)
- Mclellan v. State, 124 Nev. 263, 182 P.3d 106 (2008)
- Crane v. Kentucky, 476 U.S. 683 (1986)
- Chambers v. Mississippi, 410 U.S. 284 (1973)
- Walker v. State, 116 Nev. 670, 6 P.3d 477 (2000)
- Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (1998)
- Glover v. Eighth Judicial Dist. Court, 125 Nev. 691, 220 P.3d 684 (2009)
- Davis v. State, 107 Nev. 600, 817 P.2d 1169 (1991)
- Valdez v. State, 124 Nev. 1172, 196 P.3d 465 (2008)
- Miller v. State, 121 Nev. 92, 110 P.3d 53 (2005)
- Evans v. State, 117 Nev. 609, 28 P.3d 498 (2001)
- Ramirez v. State, 126 Nev. 203, 235 P.3d 619 (2010)
- North Carolina v. Pearce, 395 U.S. 711 (1969)
- State v. Adams, 24 S.W.3d 289 (Tenn. 2000)