

SUPREME COURT OF NEBRASKA

State v. Gonzalez

313 Neb. 520 (2023) · No. No. S-22-053 · Decided February 17, 2023

SUMMARY

The Nebraska Supreme Court affirmed Jake J. Gonzalez’s convictions for intentional child abuse resulting in death and making terroristic threats. The court held that the district court did not abuse its discretion in denying a change-of-venue motion based on pretrial publicity. Although involuntary manslaughter is a lesser-included offense of intentional child abuse resulting in death, any error in omitting that instruction was harmless because the jury was instructed on negligent child abuse resulting in death, which provided an equivalent less serious alternative under the circumstances.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	February 17, 2023
DOCKET	No. S-22-053
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jake J. Gonzalez appealed his convictions for intentional child abuse resulting in death and making terroristic threats, challenging the denial of his motion to change venue and the trial court's refusal to instruct the jury on involuntary manslaughter as a lesser-included offense.
STANDARD OF REVIEW	Whether an offense is lesser-included and whether jury instructions are correct are questions of law reviewed independently. A ruling on a motion to change venue is reviewed for abuse of discretion; denial constitutes an abuse only when the defendant establishes that local conditions and pretrial publicity made it impossible to secure a fair and impartial jury.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jake J. Gonzalez v. State of Nebraska

TOPICS

lesser included offense instructions

jury instructions

criminal procedure

due process

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate law

constitutional law

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Gonzalez's motion to change venue based on alleged pretrial publicity and prospective-juror bias.
2. Whether involuntary manslaughter was a lesser-included offense of intentional child abuse resulting in death under the circumstances.
3. Whether the failure to instruct on involuntary manslaughter required reversal or was harmless because the jury was instructed on negligent child abuse resulting in death and convicted on the intentional offense.

HOLDINGS

1. The district court did not abuse its discretion in denying the motion to change venue because Gonzalez failed to demonstrate pervasive and misleading pretrial publicity that made it impossible to obtain a fair and impartial jury, and the jury ultimately selected stated that it could be fair and impartial.
2. Involuntary manslaughter is a lesser-included offense of intentional child abuse resulting in death when negligent child abuse is the predicate offense.
3. Any error in refusing to instruct on involuntary manslaughter was harmless and did not require reversal.

KEY QUOTATIONS

“Mere exposure to news accounts of a crime does not presumptively deprive a criminal defendant of due process.” (at 528-529)

“The U.S. Supreme Court explained the rationale for requiring instructions on lesser-included offenses in Beck v. Alabama.” (at 531-532)

“It violates due process to refuse to instruct the jury on a lesser-included offense where such refusal enhances the risk of unwarranted conviction.” (at 532)

“Therefore, the district court’s refusal to instruct on involuntary manslaughter was not reversible error because it could not have prejudiced Gonzalez.” (at 537)

FACTUAL BACKGROUND

Gonzalez lived with B.S. and her young child, H.S., in Jefferson County. B.S. testified that Gonzalez was controlling and physically abusive and that he became irritated with H.S.'s crying. On February 26, 2021, after Gonzalez cared for H.S. while B.S. and another child went to buy groceries, B.S. found H.S. bruised and severely injured; H.S. later died from blunt-force trauma that caused lethal liver damage. During jury selection,

numerous prospective jurors acknowledged exposure to information or opinions about the case, but the jurors ultimately selected stated that they could be fair and impartial.

PROCEDURAL HISTORY

Gonzalez was charged in Jefferson County and tried before a jury. Before the final jury panel was selected, he moved for a change of venue based on pretrial publicity; the district court denied the motion. The court instructed the jury on negligent child abuse resulting in death but not involuntary manslaughter. The jury convicted Gonzalez of intentional child abuse resulting in death and making terroristic threats, and the district court imposed concurrent sentences. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Sinica, 277 Neb. 629, 764 N.W.2d 111 (2009)
- State v. Rodriguez, 272 Neb. 930, 726 N.W.2d 157 (2007)
- State v. Strohl, 255 Neb. 918, 587 N.W.2d 675 (1999)
- State v. Bradley, 236 Neb. 371, 461 N.W.2d 524 (1990)
- State v. Erickson, 281 Neb. 31, 793 N.W.2d 155 (2011)
- State v. Parks, 253 Neb. 939, 573 N.W.2d 453 (1998)
- Beck v. Alabama, 447 U.S. 625 (1980)
- State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006)
- State v. Huff, 282 Neb. 78, 802 N.W.2d 77 (2011)
- State v. Blair, 272 Neb. 951, 726 N.W.2d 185 (2007)