

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
LINDA MARIE FIELDS,
Respondent.

No. 57117

FILED

JUN 19 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order dismissing one count in a criminal information. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

Respondent Linda Fields was convicted of murder pursuant to a jury verdict. On appeal, this court reversed and remanded for a new trial based on the erroneous admission of prior bad act evidence. Fields v. State, 125 Nev. 776, 220 P.3d 724 (2009). Before the start of Fields' second trial, the district court dismissed count one of the information charging Fields with murder as the direct actor based on its conclusion that the State was pursuing inconsistent prosecutorial theories;¹ an

¹Fields' husband, Vern, was previously convicted of first degree murder with the use of a deadly weapon and conspiracy to commit murder in a separate trial concerning the same homicide. The district court found that it was inconsistent for the State to argue that Vern struck the fatal blows in his trial, then to later charge Fields with open murder based upon evidence that she actually struck the fatal blows.

alternative charge based on another theory remains pending. The district court also excluded testimony about an incriminating statement made by Fields because it found that the prejudicial effect of the testimony was outweighed by any probative value it may have. On appeal, the State argues that (1) the district court abused its discretion by dismissing count one of the information; and (2) the district court abused its discretion by excluding the testimony regarding Fields' incriminating statement. We agree and reverse the order of the district court.

The parties are familiar with the facts, so we do not recount them further except as pertinent to our disposition.

The district court abused its discretion in dismissing count one of the information charging Fields with murder as the direct actor

The State argues that the district court erred in dismissing count one of the information charging Fields with murder as the direct actor. The State contends that it did not pursue inconsistent theories in prosecuting Fields and her husband, Vern, separately for the same offense. Fields responds that it would be a due process violation to charge her as the direct actor because key elements of that theory are inconsistent with those presented in Vern's trial.²

We review a district court's decision to dismiss a count of a charging document for an abuse of discretion. See Hill v. State, 124 Nev.

²Fields also contends that the State manipulated material evidence in the two trials, pointing to the testimony of the forensic pathologist and the State's arguments. However, a review of the testimony of the forensic pathologist reveals that it was similar at each trial. Moreover, statements of an attorney are not evidence. See Rudin v. State, 120 Nev. 121, 138, 86 P.3d 572, 583 (2004). This argument is without merit.

546, 550, 188 P.3d 51, 54 (2008). Prosecutors may rely on alternative theories, provided that there are no inconsistencies at the “core” of their presentations where they try two defendants separately for the same offense. Smith v. Groose, 205 F.3d 1045, 1052 (8th Cir. 2000). However, inconsistent prosecutorial theories will rise to the level of a due process violation when the prosecutor manipulates evidence and witnesses, and argues inconsistent motives. Thompson v. Calderon, 120 F.3d 1045, 1057-59 (9th Cir. 1997), rev'd on other grounds, 523 U.S. 538 (1998).

We conclude that there were no inconsistencies at the core of the prosecutor’s theories in Fields’ and Vern’s respective trials. Both Fields and Vern were charged in the alternative with murder and aiding and abetting the murder. In each of their trials, an appropriate jury instruction was given, explaining that the jurors could find the defendant guilty under either alternative theory.³ It is not inconsistent to charge

³In Field’s first trial, the instruction read

Thus, you do not have to agree on the theory of Murder in the First Degree, it is sufficient that each of you find beyond a reasonable doubt that the murder, under either of the two theories, was Murder of the First Degree.

. . . It is sufficient that each of you find beyond a reasonable doubt that the crime of which you convict the Defendant was directly committed by the Defendant or that she aided and abetted another person as principal in the commission of the crime.

At Vern’s trial, the same instruction was given, with the exception that the pronoun “he” was substituted for “she” and the words “as principal” were removed.

defendants in the alternative with both murder and aiding and abetting the murder. Accordingly, we conclude that the district court abused its discretion in dismissing count one of the information charging Fields with murder as a direct actor.

The district court abused its discretion in excluding testimony about an incriminating statement made by Fields

The State asserts that the district court abused its discretion by excluding the testimony about a statement by Fields that she killed the victim by hitting him on the head with a pipe and then dumping his body by Salt Lake City, because she caught him molesting her grandson. It argues that this testimony “was clearly factually relevant within the meaning of NRS 48.015” and is admissible as a statement by Fields offered against her.⁴

This court reviews a district court’s evidentiary ruling for an abuse of discretion. Rodriguez v. State, 128 Nev. __, __, 273 P.3d 845, 848 (2012). All relevant evidence is admissible at trial unless otherwise excluded by law or the rules of evidence. NRS 48.025. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” NRS 48.015. Relevant evidence may be excluded if its “probative value is substantially outweighed by the danger

⁴Linda also argues that this court has no jurisdiction to consider this argument and that the State waived its right to appeal the exclusion of this testimony. However, the exclusion of testimony is a question of law and an intermediate order reviewable under NRS 177.015(1)(b) and 177.045; moreover, the State specifically appealed this evidentiary exclusion when it filed its notice of appeal as to all legal issues. NRS 177.025; State v. Shade, 111 Nev. 887, 892, 900 P.2d 327, 329-30 (1995).

of unfair prejudice, of confusion of the issues or of misleading the jury.”
NRS 48.035(1).

Here, the district court explained that it excluded the testimony regarding Fields’ admission because it found this testimony relevant at Fields’ first trial but was reversed; it interpreted this reversal to mean that this court questioned the relevance of this testimony.

In Fields, this court held that bad act evidence pertaining to a prior uncharged conspiracy was not similar enough to the alleged circumstances leading to the murder to be relevant as proof of a common plan or scheme. 125 Nev. at 783, 220 P.3d at 728. We explained that this evidence was “not at all in line with” the State’s theory that Fields’ motive was the victim’s alleged molestation of her grandson and noted that the circumstances surrounding the alleged murder differed significantly from those in the prior uncharged conspiracy; thus, the probative value of the evidence related to the prior uncharged conspiracy was “substantially outweighed by the danger of unfair prejudice, and its admission led to serious jury confusion.” Id. at 783-84, 220 P.3d at 728-29. Contrary to the district court’s interpretation, this court recognized that one of the State’s arguments was that “[Fields’] motive was based upon the alleged molestation.” Id. at 784, 220 P.3d at 729. Nowhere in the opinion does it suggest that we found this testimony irrelevant.

Testimony regarding Fields’ admission that she killed the victim is highly relevant evidence in her trial for his murder. This admission tends to make the State’s theory that Fields committed murder more probable and the details given in this testimony were corroborated

by other sources.⁵ Furthermore, because this admission is related to the State's alternative theory that Fields was the direct actor, its probative value outweighs any prejudicial effect it may have. Accordingly, the district court abused its discretion by excluding this testimony.

Based on the foregoing, we

ORDER the judgment of the district court REVERSED.

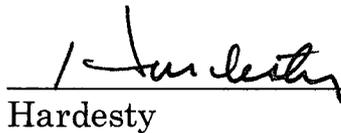
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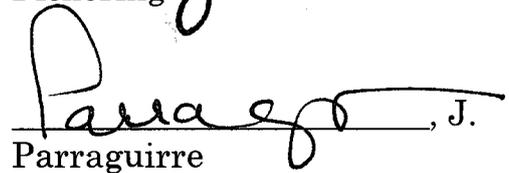
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Douglas

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Saitta

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Gibbons

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Pickering

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Hardesty

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Parraguirre

⁵The excluded testimony indicated that Fields admitted that she hit the victim on the head with a pipe, which matched expert testimony regarding the cause of death. Additionally, Fields' admission that she dumped the body by Salt Lake City matched the location where the body was found.

cc: Fourth Judicial District Court Dept. 1, District Judge
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Elko County Clerk