WENATCHEE WORLD

Court: Threat to kill ‘snitches’ doesn’t amount to intimidation

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OLYMPIA — A Grant County gangmember’s promise to murder “snitches” who saw him fire on a police officer did not meet the definitions of witness intimidation required to convict him, the Washington Court of Appeals ruled Tuesday.

The court’s Spokane-based Division III said José Luis Nieves, 21, of Royal City was wrongly convicted of three charges of witness intimidation in 2011, after shooting at pursuing Soap Lake Police Officer Dustin Slabach and then warning fellow passengers, “Whoever snitches me out, when I come out, I’m going to kill you guys.”

Nieves’s appeal argued that the jury instructions asked jurors to find him guilty of six different statutory definitions of “witness intimidation,” rather than selecting one. The appellate court ruled that because Grant County prosecutors didn’t select just one definition, they needed to prove Nieves guilty under each one — including influencing court testimony, forcing a witness to avoid a court summons, and prompting a witness not to come to court.

Appellate Judge Kevin Korsmo wrote for the court that “While the evidence supports some of the alternative instructional theories,” such as inducing a witness to give false or incomplete information to police, “it does not support all of them.”

Nieves is serving a 41-year sentence for first-degree assault, intimidating a public servant, drive-by shooting and unlawful possession of a firearm, in addition to the witness intimidation charges. The appellate court upheld every other conviction but remanded the latter charges for a new trial in Grant County Superior Court. His use of a gun and membership in the South Side Locos contributed to the lengthy sentence.

Nieves was riding to a Soap Lake Halloween party with three male friends and four young women. Slabach noticed a broken taillight on the vehicle, driven by one of Nieves’s male companions, and attempted a traffic stop.

The driver sped up at Nieves’s urging, and Nieves fired several shots out the window at Slabach’s car. Reports from Slabach and the passengers interviewed by police put the figure at five to 10 gunshots. Slabach’s car suffered engine trouble unrelated to the shooting, and he ended the pursuit.

Parting company with the other people in the car, Nieves reloaded his pistol and warned them all against snitching, according to court testimony.

“A threat to kill people who snitch immediately after the crime has been committed is not an attempt to induce them to elude a summons ... because no summons had been issued,” Korsmo wrote. Also, the threat “was not an attempt to induce someone to absent themselves from an official proceeding that does not yet, and might never, exist.”

The driver of the fleeing car contacted police two days later and named Nieves as the gunman. He was arrested at his home in Royal City, and a 9mm pistol and bullets matching casings found near the shooting site were recovered there. At trial, Nieves claimed he was not in the car, but the Grant County jury found him guilty on all counts.

Two of the girls in the car, sisters aged 13 and 16, contradicted their original statements to police when they testified against Nieves. The recorded interviews introduced at trial showed that detectives lied and threatened the 16-year-old, saying Slabach had suffered a gunshot wound and Nieves had identified her as the shooter.

“Do you understand that what the rest of your life is might as well be being dead?” the detective told her. They likewise told the 13-year-old girl that her sister was in danger of going to jail.

Nieves claimed the statements to police were involuntarily given. The judges wrote that the voluntariness “is questionable due to the coercive tactics applied here,” but said the jury was fully informed of the methods used before reaching its verdict.

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