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Washington v. State, 132 Nev. Adv. Op. 65 (Aug. 12, 2016)

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CRIMINAL LAW: REDUNDANCY

Summary

The Court determined that 1) multiple convictions under NRS 202.285(1)[2] are not redundant because the word discharges illustrates the legislatures intent to separately punish each violation of the statute; 2) the State sufficiently proved beyond a reasonable doubt to the jury the charges against Washington; and 3) using the term "unnamed coconspirator" is allowed in a conspiracy charge and the identity of the unnamed does not need to be proven in order to charge other individuals.

Background

On November 5, 2013, an apartment complex was startled by multiple gunshots in the early morning. Marque Hill was uninjured, Ashely Scott was shot in the foot, LaRoy Thomas was shot in the ankle, and Nathan Rawls was killed. The neighboring apartment tenants, Darren and Lorraine DeSoto, were awakened, but uninjured. They spotted a silver Dodge Magnum driving by their apartment and they called 911. A Las Vegas Metropolitan Police Department (LVMPD) officer received notification of the shooting and encountered a vehicle that matched the DeSotos' description. When the LVMPD officer conducted a traffic stop on this vehicle, he discovered Matthew Washington in the driver's seat and Martell Moten in the passenger seat. Washington said he was just picking up a friend and going home. The DeSotos were taken to identify the vehicle and they confirmed it was the vehicle that drove past their apartment. Washington and Moten were taken into custody. A nine millimeter Smith and Wesson was found in the vehicle at that time. After a search warrant was obtained and the vehicle was towed to the crime lab, there was another discovery of a .40 caliber Glock. Both the Smith and Wesson and Glock were connected to the casings found back at the apartment where the shooting occurred. Washington was charged with conspiracy to commit murder, murder with the use of a deadly weapon, three counts of attempted murder with the use of a deadly weapon, two counts of battery with the use of a deadly weapon, ten counts of discharging a firearm at or into a structure, and possession of a firearm by a felon. A jury found Washington guilty on all counts.

Discussion

Washington's charges for discharging a firearm at or into a structure

The issue of whether Washington can be charged with multiple counts under NRS 202.285(1)[3] is an issue of redundancy, not double jeopardy. NRS 202. 285(1)[4] allows for multiple convictions if there were multiple shots. The unit of prosecution is the word "discharges" in this statute. The legislative intent is that each time a bullet leaves the barrel, it is a punishable offense.[5] Thus, Washington's multiple convictions were not redundant.

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[1] By Elise Conlin.
[2] NEV. REV. STAT. § 202.285(1) (2015).
[3] *Id.*
[4] *Id.*
[5] Wilson v. State, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005).

Sufficiency of the evidence

When reviewing sufficiency of the evidence, the Court must look in a light most favorable to the prosecution in regards to whether or not a reasonable juror could have found the elements of a crime beyond a reasonable doubt.

First-degree murder

A reasonable juror could believe Washington acted willfully and with express malice because he fired multiple shots in an occupied apartment in the early morning. A jury could believe that he acted with deliberation and premeditation when he drove to that occupied apartment with a handgun and fired multiple shots without cause.

Attempted murder

Based on the Court's findings under first-degree murder, the jury reasonably concluded that Washington acted with express malice when he fired multiple shots but did not kill the three other occupants of the apartment.

Conspiracy to commit murder

The Court already established the intent to kill. The State proved beyond a reasonable doubt to the jury of the conspiracy charge because of the evidence that when Washington and Moten were pulled over in the car, there were two guns in the vehicle that matched the casings at the apartment. The vehicle was also identified as the car that drove past the apartment before the traffic stop. There was sufficient evidence for the jury to find Washington guilty on this charge.

Discharging a firearm

There was sufficient evidence that the apartment was occupied and even if the State had to prove that Washington had knowledge that the apartment was occupied, then the facts that the apartment was in a populated area and the television was on are sufficient. Discharging a firearm in an occupied building is a category B felony.[6] The State adequately proved to the jury that the apartment was occupied.

The criminal information

Unnamed coconspirators are allowed to be listed in the indictment. The State does not need to prove the identity of those unnamed coconspirators in order to charge Washington.[7] Therefore, the State did not err in not identifying the unnamed coconspirator.

Conclusion

Overall, Washington's multiple convictions for multiple shots being fired in a building were not redundant, the State provided sufficient evidence on all charges, and the State's use of

[6] NEV. REV. STAT. § 202.285(1) (2015).
[7] Rogers v. United States, 340 U.S. 367, 375 (1951).

the phrase “unnamed coconspirator” was valid and the State did not need to prove the identity of the unnamed coconspirator. The Court affirmed the judgment of conviction.