

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

3-27-2014

Summary of Davis v. State, 130 Nev. Adv. Op. 16

Danielle Barraza
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Barraza, Danielle, "Summary of Davis v. State, 130 Nev. Adv. Op. 16" (2014). *Nevada Supreme Court Summaries*. 7.

<https://scholars.law.unlv.edu/nvscs/7>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

CRIMINAL LAW: JUSTIFIABLE BATTERY

Summary

The Court clarified two issues: [1] whether battery is justifiable in self-defense under the same conditions that would justify homicide, and [2] when proposed jury instructions should be accepted by the trial court regarding justifiable battery.

Disposition

First, battery is justifiable in self-defense under the same conditions that would justify homicide. Second, when proposed instructions are legally correct and in accordance with state statutes, supported by evidence, and not substantially covered by other instructions, a court errs in refusing to give the proposed instructions.

Factual and Procedural History

Appellant Keonis Davis and Damien Rhodes had an altercation that resulted in Davis shooting Rhodes in the chest. Before the incident, Davis had heard from others that Rhodes wanted to cause him physical harm. Davis had previously witnessed Rhodes violently beating someone. Davis was also aware that Rhodes carried a gun, and he previously witnessed Rhodes shoot at someone. Davis had also heard from others that Rhodes wanted to kill him.

According to Davis, the altercation occurred after Davis informed Rhodes that he did not have the money he owed him. Rhodes then attempted to start a fight, and both men indicated to each other that they had guns. Davis tried walking away, but Rhodes chased after him and punched Davis in the head, continuing to attack him even after Davis tried to walk away again. Davis then pulled his gun out and tried to chamber the round, but the gun jammed. Davis tried unjamming the gun, but it fired and the bullet hit Rhodes in the chest. Davis fled the scene.

Rhodes claimed Davis initiated the physical altercation by shooting his gun and that Davis stood over him and attempted to shoot him two more times but his gun jammed. Witnesses testified to both versions of the incident, and the firearms expert could not discern whether the gun jammed before or after Davis fired the single bullet. Rhodes survived the shooting.

During the jury trial, Davis proposed two jury instructions regarding justifiable infliction of bodily harm. The district court rejected the proposed instructions as confusing even though the instructions mirrored Nevada's self-defense statutory language nearly verbatim. The district court only provided the instructions set forth in *Runion v. State*,² which addressed murder and attempted murder in self defense, but not justifiable battery.

Discussion

The district court erred in refusing to give Davis' proposed justifiable battery instructions

¹ By Danielle Barraza.

² 116 Nev. 1041, 1051-52, 13 P.3d 52, 59 (2000).

Davis argues that by rejecting his proposed instructions on justifiable infliction of bodily harm, the district court committed reversible error. The State claims that the instructions were properly denied because “1) there was no evidence to support a self-defense instruction; 2) the instructions misstated the law because deadly force cannot be used where no threat of a felony involving substantial bodily harm or death exists; and 3) Davis’ theory of self-defense theory was substantially covered by the given instructions.”

The district court has discretion to review jury instructions for abuse of discretion or judicial error.³ Reviews of whether an instruction was an accurate statement of law are conducted de novo.⁴

Davis presented evidence of self-defense

It is not necessary for death to occur in order to garner a self-defense instruction.⁵ NRS 200.275 unambiguously provides that “[i]n addition to any other circumstances recognized as justification at common law, the infliction or threat of bodily injury is justifiable and *does not constitute mayhem, battery or assault*, if done under circumstances which would justify homicide.”⁶ (emphasis in opinion).

A defendant also has the right to have the jury instructed on his theory of the case regardless of how weak the evidence may be.⁷ Davis’ theory was that he was afraid Rhodes would shoot or beat him to death and that shooting his gun was a necessary act. Davis testified to this theory by contending that he had previously witnessed Rhodes punch another person; that Rhodes had previously challenged Davis to a fight; that Davis had heard Rhodes wanted to kill him; that Davis knew Rhodes carried a gun; that Rhodes instigated the argument; that Rhodes indicated he was carrying a gun at the incident; that Rhodes instigated the fight even after Davis informed him he was armed and was trying to walk away; and that Rhodes punched Davis in the head. Based on this evidence, the Court concluded Davis was entitled to self-defense instructions, as “evidence from the defendant alone need not be supported by other independent evidence.”⁸

The State asserts that Davis was barred from claiming self-defense because Rhodes’ conduct did not amount to a felony. However, a person may use a sufficient amount of resistance to prevent an offense against his or her person, and if the resistance is homicide, it is justifiable if “the circumstances were sufficient to excite the fears of a reasonable person.”⁹ Also, as a question of fact, it was for the jury to determine if Davis believed he was in fear of death or bodily harm, or whether he was defending against an attempt by Rhodes to commit a felony.

³ *Crawford v. State*, 121 Nev. 744, 121 P.3d 582, 585 (2005).

⁴ *Funderburk v. State*, 125 Nev. 260, 263, 212 P.3d 337, 339 (2009).

⁵ *Rosas v. State*, 122 Nev. 1258, 1262, 147 P.3d 1101, 1104 (2006); *Barone v. State*, 109 Nev. 778, 779-81, 858 P.2d 27, 28-29 (1993).

⁶ NEV. REV. STAT. § 200.275. See also NEV. REV. STAT. § 193.230 (“Lawful resistance to the commission of a public offense may be made . . . [b]y the party about to be injured.”); NEV. REV. STAT. § 193.240 (“Resistance sufficient to prevent the offense may be made by the party about to be injured . . . [t]o prevent an offense against his or her person . . .”).

⁷ *Crawford*, 121 Nev. at 751, 121 P.3d at 586.

⁸ *Williams v. State*, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983).

⁹ NEV. REV. STAT. §§ 193.240, 200.130.

Davis' proposed jury instructions did not misstate Nevada law

The district court only put forth the *Runion* instructions, which address self-defense for attempted murder, whereas here both attempted murder and battery were before the jury. Davis' first proposed instruction stated that infliction of bodily injury is justifiable if done under circumstances that would justify homicide. Davis' second proposed instruction expanded on the definition of justifiable homicide, such as self-defense against an individual who intends to commit a felony. The district court concluded that although the proposed instructions mirrored Nevada's justifiable homicide statutes, the statutes were overbroad because deadly force is not justifiable when exercised to prevent nonviolent felonies.

However, this case did not present the question of whether battery is justifiable when used to defend against a nonviolent felony, as Davis thought Rhodes was going to attack him, causing bodily injury or death if he did not act. Davis' interpretation was legally correct and aligned with the current statutes.¹⁰ Thus, there was no misstatement of Nevada law.

Davis' justifiable battery theory was not substantially covered by other instructions

The district court may refuse a jury instruction on the defendant's theory of the case if other instructions substantially cover the refused instruction.¹¹ The State claims that language in the jury instructions for "attempted killing" included conduct that formed the basis for the battery charge, making a separate self-defense instruction unnecessary. The State contends that Davis unlawfully attempting to shoot Rhodes more than once was the factual basis for both the attempted murder charge and the battery charge.

However, the State pleaded that the battery charge arose because Davis fired the gun at Rhodes, striking him in the chest. Therefore, the jury instructions would have been insufficient if the jury believed that Davis only meant to shoot Rhodes in self-defense — not to kill him — as only justifiable killing was covered in the instructions, not justifiable battery. The first proposed instruction would have informed the jury that infliction of bodily harm is not a battery if done in self-defense.¹² The second proposed instruction would have illuminated the justifiable homicide circumstances in connection with the first instruction, which states that battery is justified "if done under circumstances which justify homicide." Thus, the proposed instructions were not already covered in the accepted instructions.

The district court's rejection of Davis' proposed jury instructions was not harmless and constitutes reversible error

An error is harmless if the court determines that, beyond a reasonable doubt, it did not contribute to the defendant's conviction.¹³ The court could not conclude beyond a reasonable doubt that rejection of the instructions did not contribute to Davis' conviction. While the approved self-defense instructions only referenced "killing" and "attempted killing," the proposed instructions would have informed the jury about justifiable battery. The jurors might

¹⁰ NEV. REV. STAT. §§ 200.120, 200.275.

¹¹ *Runion*, 116 Nev. at 1050, 13 P.3d at 58.

¹² *Williams*, 99 Nev. at 531, 665 P.2d at 261.

¹³ *Hernandez v. State*, 124 Nev. 639, 653, 188 P.3d 1126, 1136 (2008).

have found that Davis acted in self-defense on the attempted murder charge because that was the only charge available for a self-defense finding, or they might have specifically rejected Davis' self-defense theory regarding battery, but found he lacked the specific intent to kill necessary for the attempted murder charge. Because of this ambiguity, the district court's error in dismissing Davis' proposed jury instructions was not harmless and thus constitutes reversible error.

Conclusion

The district court erred here because Davis' proposed jury instructions were in accordance with NRS, supported by evidence, and not substantially covered in other instructions. Thus, the jury should have been given instructions regarding justifiable infliction of bodily harm. Reversed and remanded to the district Court for a new trial.