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Summary of Truesdell v. State, 129 Nev. Adv. Op. No. 20

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CRIMINAL LAW AND PROCEDURE – CHALLENGING A PROTECTIVE ORDER

Summary

The Court considered an appeal from a judgment of conviction, pursuant to a jury verdict, of invasion of the home in violation of a temporary protection order.

Disposition/Outcome

The Court affirmed the district judgment of conviction, holding that a party may not collaterally attack a temporary protection order (TPO) in a criminal proceeding for violation of the order. It also found that the home invasion statute of NRS 205.067(1) was constitutional and concluded the remainder of issues on appeal lacked merit.

Factual and Procedural History

Joseph Truesdell (“Truesdell”) was arrested, jailed, and later pled no contest to domestic violence charges for striking Mika Bennet (“Bennet”), the woman he lived with. Two days later Bennet telephoned Safenest, a domestic violence organization, to obtain a temporary protective order against Truesdell. The same day, the district court issued a five-day TPO that required Truesdell to stay at least 100 yards away from Bennet’s apartment, but allowed him to return once with a police officer to collect his belongings. The TPO was based on a typed application which detailed the information that Bennet relayed to Safenest, but the TPO did not state who completed the application or how the application was received by the district court. Truesdell was served the same day with the TPO while still in custody at the Clark County Detention Center.

While still under the restrictions of the TPO, Truesdell twice went to Bennett’s apartment unaccompanied by police. On his first visit, Bennet allowed Truesdell to enter despite the TPO, an argument ensued, and Truesdell left at Bennet’s request an hour and a half later. Truesdell returned to the apartment the following day. Bennet refused to give Truesdell permission to enter and called 911. Truesdell eventually kicked in the locked door and proceeded into Bennet’s bedroom, but left shortly thereafter when neighbors approached the apartment. Police officers subsequently found and arrested Truesdell.

The State filed charges against Truesdell for invasion of the home in violation of the TPO. At trial, Truesdell requested a continuance in order to litigate the validity of the TPO. Truesdell argued that he was unaware of the existence of the TPO until it was provided to him a day or two before trial, and he argued that the procedure the district court followed for obtaining the TPO by phone violated his due process rights. The district court denied Truesdell’s motion and informed the parties that the constitutionality of the TPO was a question of law which could be addressed prior to sentencing.

¹ By Sean Africk

Truesdell failed to file a motion with the district court to address the validity of the TPO, and he did not address the issue during his sentencing. The district court imposed a 12- to 48-month sentence for the home invasion charge and a concurrent, enhanced sentence of 12- to 36-months under NRS 193.166 for violating the TPO in the commission of felony.² The court also ordered Truesdell to pay \$500 to the Indigent Defense Fund. Truesdell appealed.

Discussion

Justice Gibbons wrote the unanimous opinion of the court sitting in a three-justice panel. He was joined by Justices Parraguirre and Douglas. The court primarily focused on the issue of whether a party could collaterally attack a TPO in a subsequent criminal proceeding based on the violation of the TPO. The court also addressed several other issues brought by Truesdell on appeal including the constitutionality of the home invasion statute, errors by the district court at trial and sentencing, and prosecutorial misconduct.

Validity of the TPO

Nevada law provides that a party may collaterally attack prior convictions that are offered by the State to prove that a defendant is a habitual criminal or to enhance a criminal charge to a felony.³ However, the collateral bar rule prevents a party from attacking the validity of a TPO or the constitutionality of the statute authorizing the protection order in a subsequent action for violation of the order. The bar applies even when violation of the TPO results in an enhanced sentence for another crime.

The Court distinguished collateral attacks on court orders from collateral attacks on prior convictions, noting that proving the validity of prior convictions is an element of the offense in cases involving attacks on prior convictions.⁴ In contrast, the validity of the TPO is not an element the State must prove for the crime of home invasion or for a sentence enhancement for the violation of the TPO.

The Court also noted that contesting a prior conviction does not undermine the policy behind the collateral bar rule — obedience to a court order. Nevada law provides that a TPO must be obeyed until the order is dissolved, modified or expires by its terms and may only be challenged before the court that issued the order. NRS 33.080(2) affords parties with the means to challenge a TPO issued in the State and guarantees the opportunity to parties who wish to dissolve or modify a TPO to be heard by the court “as expeditiously as the ends of justice require.”⁶

Accordingly, Justice Gibbons concluded that the collateral bar rule prevented Truesdell from challenging the propriety of the district court procedures for issuing the TPO because he failed to contest its validity under NRS 33.080(2) before the issuing court.

² NEV. REV, STAT § 193.166 (2011).

³ See *Hobbs v. State*, 127 Nev. ___, ___, 251 P.3d 177, 181-82 (2011).

⁴ See, e.g., NEV. REV, STAT § 200.485(4) (2011).

⁶ NEV. REV, STAT § 33.080(2) (2011).

Other Issues

Constitutionality of NRS 205.067(1)

Among his additional appeals, Truesdell argued that the home invasion statute of NRS 205.067(1) was unconstitutionally vague because it did not contain an intent element and because it failed to state that a person must enter the home of another. A criminal statute is only void for vagueness if it fails to provide sufficient notice of the conduct that is prohibited or if it fails to provide definitive standards that result in arbitrary enforcement.

The Court emphasized that home invasion is a crime of general intent,⁹ and reasoned that a lawful occupant or resident of a home could not commit the crime because the statute required forcible entry “without permission of the owner, resident or occupant.”¹⁰ The Court concluded that the statute provided sufficient notice of the prohibited conduct and did not lead to arbitrary enforcement.

Remaining Claims

The court considered a number of other issues brought forth by Truesdell in his appeal. Specifically, it reviewed the sufficiency of the evidence that existed to convict Truesdell of home invasion, the discretion exercised by the district court in denying Truesdell’s jury instructions for lesser included offenses, evidence of prosecutorial misconduct, and errors in sentencing implicating due process, the Double Jeopardy clause, and the Indigent Defense Fund. The court determined that all of these claims lacked merit.

Conclusion

A party served with a protective order cannot challenge its validity in a collateral attack during a subsequent action for violation of the order. In order to challenge the validity of a protective order, a party must initially proceed under NRS 33.080(2) before the court that issued the order.

⁹ Bolden v. State, 121 Nev. 908, 923, 124 P.3d 191, 201 (2005).

¹⁰ NEV. REV. STAT § 205.067(1) (2011).