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Summary of Adam v. State, 127 Nev. Adv. Op. No. 54

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Adam v. State, 127 Nev. Adv. Op. No. 54 (Sept. 22, 2011)¹
CRIMINAL LAW AND PROCEDURE- Procuring Agent Defense

Summary

An appeal from a judgment of conviction, pursuant to a jury verdict, for trafficking in a controlled substance.

Disposition/ Outcome

The Supreme Court of Nevada affirmed the conviction because the procuring agent defense is inapplicable to trafficking charges. Furthermore, the Court overruled its prior cases to the extent that they have allowed a defendant to use the procuring agent defense against a charge of trafficking in a controlled substance based on a possession theory.

Factual and Procedural History

A confidential informant told Las Vegas Metropolitan Police Detective Mike Wilson that Ramon Dinkha Adam (“Adam”) had the ability to procure drugs. Detective Wilson, working undercover, sought out a friendship with Adam. At some point during their friendship, Detective Wilson claimed Adam said he had “connects” to purchase illegal drugs. Detective Wilson subsequently asked Adam to procure methamphetamine. Adam helped Detective Wilson purchase 12.64 grams, or \$500 worth of methamphetamine. Consequently, the State of Nevada charged Adam with trafficking in a controlled substance pursuant to NRS 453.3385.

During his jury trial, Adam requested permission to give the jury an instruction entailing the procuring agent defense. The district court denied his request, reasoning that it was not supported by the evidence, as Adam initiated the sale when he said he had “connects” to purchase drugs. The court also concluded that Adam’s request was untimely. The jury returned a guilty verdict for Adam, and he was sentenced to forty-eight months in prison. This appeal followed.

Discussion

The Supreme Court began its analysis by evaluating its prior decisions that allowed the procuring agent defense for charges of trafficking based on possession, as opposed to trafficking based on selling, manufacturing, delivering, or bringing a controlled substance into the state. The procuring agent defense originally prevented a defendant from being convicted of selling controlled substances if the jury found that the defendant was only acting on behalf of a buyer when procuring drugs. This initial analysis was made more complex once Nevada adopted drug trafficking statutes in 1983. Early decisions interpreting the trafficking statutes allowed this defense in cases of trafficking based on possession, if “the facts reveal a sale was contemplated.”²

¹ By Matthew Vantusko

² *Love v. State*, 111 Nev. 545, 548-49, 893 P.2d 376, 387 (1995); *See Hillis v. State*, 103 Nev. 531, 535, 746 P.2d 1092, 1095 (1987).

The Court requires compelling reasons to not follow stare decisis. In the instant case, the Court decided not to abide by its prior precedents because the Uniform Controlled Substances Act, which Nevada drug trafficking law is based on, requires that all actors in the illicit drug deal equally culpable when a trafficking quantity of a controlled substance is involved. Furthermore, the purpose of trafficking laws is not to distinguish between the sellers and the buyers of controlled substances if the amount is greater than the proscribed trafficking quantity. Consequently, it would be inappropriate to allow the normal leniency of the procuring agent defense because the agent is guilty of the same crime as the principal.

Additionally, the Court reasoned that the procuring agent defense functions to defend against sale convictions by not allowing the required element of a sale to be proven. Such a defense would not work against crimes such as simple possession or trafficking where a sale is not a required element. Accordingly, the Court concluded that allowing the procuring agent defense in the trafficking context not only defeats the purpose of trafficking laws, but also is structurally inadequate as it does not prohibit a showing of a required element of the crime of trafficking. For these reasons, the Court affirmed the district court. In addition, the Court explicitly overruled its prior cases to the extent they have allowed a defendant to use the procuring agent defense to defend against a charge of trafficking in a controlled substance based on a possession theory.

Conclusion

The procuring agent defense is inapplicable to trafficking charges, regardless of the theory under which the defendant is charged. The Court further overruled prior cases to the extent they have allowed a defendant to use the procuring agent defense to defend against a charge of trafficking in a controlled substance based on a possession theory. Thus, the Court held that the district court's refusal to allow a procuring agent jury instruction was not in error, affirming Adam's conviction.