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10-7-2010

### Summary of Hoagland v. State, 126 Nev. Adv. Op. 37

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*Nevada Law Journal*

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## Hoagland v. State, 126 Nev. Adv. Op. 37 (Oct. 7, 2010)<sup>1</sup>

### CRIMINAL LAW—DEFENSES

#### Summary

The district court rejected appellant Richard William Hoagland's argument that necessity is a defense to driving under the influence of alcohol (DUI). The judge did not permit Hoagland to submit jury instructions on the defense or to present evidence to the jury to support the defense. In this case, the Nevada Supreme Court considered whether a defendant may assert a necessity defense to DUI.

#### Disposition/Outcome

The Court affirmed the district court's decision not to instruct the jury on the necessity defense, but provided an alternate reasoning for its conclusion. The Court held that necessity is available as a defense to a charge of DUI. However, because Hoagland's offer of proof was insufficient as a matter of law, the court held that the district court did not commit error by refusing to instruct the jury on necessity as a defense.

#### Factual and Procedural History

Hoagland appeals his conviction of DUI, pursuant to an *Alford* plea,<sup>2</sup> based on the district court's decision that necessity is not a defense to DUI in Nevada.

Hoagland was sleeping in his truck in a prohibited parking stall at the Salvation Army in Las Vegas. A security officer approached the truck and informed Hoagland that he could not sleep in his vehicle on the property and requested that Hoagland move his truck. Hoagland was living in his truck at the time and believed that, if he did not move his truck, it would be towed and impounded with all of his belongings. While attempting to comply with the security officer's request, Hoagland backed into a parked vehicle.

The security officer called the Las Vegas Metropolitan Police Department (Metro). When the Metro officer arrived, he conducted a field sobriety test, which Hoagland failed. Hoagland was arrested and charged with DUI.

During trial, Hoagland asserted a necessity defense and informed the jury that he had no other choice but to operate his truck while intoxicated. Accordingly, Hoagland offered a necessity jury instruction patterned after jury instructions from other jurisdictions. The State contested the jury instruction, arguing that the defense of necessity was not applicable in Nevada. The district court agreed and reasoned that Nevada had no case law allowing necessity as a

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<sup>1</sup> By Meredith Still

<sup>2</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970) (permitting a plea of guilt even though the defendant still maintains his claim of innocence).

defense. As a result, the district court did not permit Hoagland to offer the jury instruction or present evidence to the jury to support the defense.

Based on the district court's decision, Hoagland entered an *Alford* plea on the condition that his right to appeal the district court's decision would be preserved. Hoagland made an offer of proof that it was necessary for him to move his truck while intoxicated.

## **Discussion**

Appellant argued that the district court violated his due process rights by refusing to instruct the jury on a necessity defense and prohibiting him from offering evidence to support his defense theory. The State argued that a DUI violation is a strict liability offense, which would preclude Hoagland from presenting a necessity defense.<sup>3</sup>

The Court held that the necessity defense is available and can be asserted as a defense to a DUI violation, because the Nevada Legislature has not precluded the use of necessity as a defense.<sup>4</sup> However, the Court declined to formulate all of the elements required to support a necessity defense because the facts of this case did not support a necessity defense as a matter of law. Nevertheless, the Court recognized one consistent element of the necessity defense among all jurisdictions: whether the defendant presented sufficient evidence to show that he did not substantially contribute to the emergency or create the situation.<sup>5</sup>

Because Hoagland parked his truck in a prohibited parking stall at the Salvation Army, he created the situation requiring him to operate his truck while under the influence. Therefore, Hoagland's cannot satisfy the element of necessity that he did not substantially contribute to the situation.

## **Conclusion**

The Court concluded that the district court was not required to instruct the jury on the necessity defense because Hoagland's offer of proof was insufficient as a matter of law to satisfy the necessity defense. Accordingly, the Court affirmed the judgment of conviction.

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<sup>3</sup> The State relied on *Whisler v. State*, 121 Nev. 401, 116 P. 3d 59 (2005), where the appellant made two arguments concerning a jury instruction on the defense of voluntary intoxication: (1) that the defendant was knowingly or willingly intoxicated and (2) that a DUI violation is not a strict liability offense. Here, the Court held that the State's argument was misplaced and that the Court is silent on whether DUI is a strict liability offense.

<sup>4</sup> The Court recognized that common law necessity is generally applicable unless specifically limited by the Legislature. *See Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 491 (2001) (explaining that a "defense cannot succeed when the legislature itself has made a determination of values").

<sup>5</sup> *See U.S. v. Ridner*, 512 F.3d 846, 850 (6<sup>th</sup> Cir. 2008) (a supporting element of the necessity defense is whether sufficient evidence was presented showing that the defendant did not place himself in a situation requiring him to choose to commit a criminal act).