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Summary of *Ramet v. State*, 125 Nev. Adv. Op. No. 19

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Ramet v. State, 125 Nev. Adv. Op. No. 19 (June 4, 2009)¹

CRIMINAL LAW – FOURTH AMENDMENT RIGHT TO REFUSE SEARCH AND SEIZURE

Summary

Appellant Daniel Anthony Ramet was convicted of first-degree murder. On appeal, Ramet contended that the testimony concerning his refusal to consent to a search of his home, taken together with the prosecutor's comment on it, was violative of his Fourth Amendment rights. The Court concluded that the district court erred in allowing testimony and argument regarding Ramet's invocation of his Fourth Amendment right. However, they further concluded that the error in admitting the statements was harmless. The Court therefore affirmed Ramet's conviction.

Disposition/Outcome

Affirmed appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder.

Factual and Procedural History

Ramet killed his 20-year-old daughter, Amy, in the home they shared. He then proceeded to live with her body for three weeks. In order to allay the fears of his ex-wife Bernadette and younger daughter Delsie, he sent text messages with Amy's phone. Concerned, Bernadette and Delsie broke into Ramet's house and immediately smelled a foul scent. They called the police. The police arrived at Ramet's home and asked to perform a welfare check on Amy. Ramet refused, claiming it was a "search and seizure issue." The police obtained a search warrant and discovered Amy's badly decomposed body. Ramet was arrested and he confessed to killing his daughter.

Prior to trial, the defense sought to preclude any reference to Ramet's statements about search and seizure, arguing that the fact that Ramet had exercised a constitutional right was irrelevant and more prejudicial than probative. The district court denied the motion, finding Ramet's statement relevant and more probative than prejudicial.

At trial, Officer Yant testified that Ramet's statements made the police even more suspicious. Officer Yant repeated Ramet's statement two more times. Officer Bertges also repeated Ramet's statement during his testimony. Also, the Prosecutor used Ramet's statement to incriminate him during closing argument.

Discussion

Ramet contended that the introduction of evidence that he refused to submit to a search of his home and reference to this incident in the State's closing argument violated his rights under the Fourth Amendment. The Court agreed.

¹ By Tara C. Zimmerman

The Court acknowledged that there are no Nevada cases on point. Consequently, the Court looked to decisions in numerous other jurisdictions, including, primarily, the Ninth Circuit. The Ninth Circuit, in United States v. Prescott, held that “refusal to consent to a warrantless search is privileged conduct which cannot be considered as evidence of criminal wrongdoing.” 581 F.2d at 1351. That court reasoned that “[t]he right to refuse [entry] protects both the innocent and the guilty, and to use its exercise against the defendant would be. . . a penalty imposed by courts for exercising a constitutional right.” Prescott, 581 F.2d at 1352.

The Court agreed with the reasoning of the Ninth Circuit, and held that the State may not introduce evidence of a defendant’s refusal to submit to a warrantless search, or argue it to the jury as evidence of guilt. Accordingly, the Court concluded that the district court abused its discretion by admitting this evidence. However, the Court subsequently determined that the error by the district court was harmless beyond a reasonable doubt.² This conclusion was based on the fact that there was overwhelming evidence that Ramet was guilty, including his confession.

Conclusion

The Court concluded that the State may not introduce evidence of or reference a defendant’s invocation of his Fourth Amendment right to refuse to consent to a search of his home without a warrant. However, they concluded that in this case the error was harmless beyond a reasonable doubt. Accordingly, the Court affirmed the judgment of conviction.

² Chapman v. California, 386 U.S. 18, 24 (1967) (Held that because the error involved a violation of a federal constitutional guarantee, courts may not consider it harmless unless they can say “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained”).