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Summary of Davidson v. State, 124 Nev. Adv. Op. 76

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Katz, Moorea, "Summary of Davidson v. State, 124 Nev. Adv. Op. 76" (2008). *Nevada Supreme Court Summaries*. 403.

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Davidson v. State, 124 Nev. Adv. Op. 76 (October 2, 2008)

CRIMINAL LAW-DOUBLE JEOPARDY AND SENTENCING¹

Summary

Appeal from a criminal conviction of two counts of burglary, two counts of robbery, two counts of battery, and adjudication as a habitual criminal.

Disposition/Outcome

Affirmed in part, reversed in part, and remanded.

Factual and Procedural History

The State charged Davidson with eight criminal counts arising from two separate incidents. After a consolidated trial, the court clerk read the jury's verdict, which found Davidson guilty on five counts, not-guilty on three. After the verdict reading, the court asked the jurors if the reading was accurate, and all the jurors responded affirmatively. The court also polled the jurors as to their verdict, but inadvertently only polled 11 out of the 12 jurors. Ten minutes after discharging the jurors, the court recommenced the proceedings. The prosecution and defense counsel were present as well as 10 of the 12 jurors, but Davidson was not present.

At the recommencement proceeding, the State informed the court that upon asking several of the discharged jurors why they had found Davidson not-guilty on one of the charges, the jurors told them that the clerk had incorrectly read that charge, and the jurors *had* found Davidson guilty. The discharged jury foreman then told the court that he had mismarked the verdict form not-guilty, but had re-marked it guilty and initialed his change. The jury members present affirmed that they had found Davidson guilty on the charge in question, and claimed the non-present jury members had also found him guilty on the charge. The district court told counsel they could submit arguments as to whether the verdict could be changed to guilty.

At sentencing, the court changed the verdict to guilty. In addition, the court found that Davidson had three prior felonies, and was therefore a habitual criminal. For the three guilty charges relating to one of the incidents, the court sentenced Davidson under the "small habitual criminal statute."² For the three guilty charges relating to the other incident, the court sentenced Davidson under the "large habitual criminal statute."³ Davidson appealed.

Discussion

¹ By Moorea Katz

² NEV. REV. STAT. §207.010(1)(a) (2007).

³ NEV. REV. STAT. §207.010(1)(b) (2007).

Davidson appealed on multiple grounds and the Court affirmed the district court's ruling on most of them, relegating its discussion regarding these claims to a footnote at the beginning of the case. The Court only developed its discussion on the two grounds upon which it reversed the district court, the Double Jeopardy claim, and the habitual criminal sentencing claim.

Double Jeopardy Claim

Under a de novo review, the court first addressed Davidson's claim that the district court violated the Double Jeopardy Clause of the U.S. and Nevada Constitutions when it changed a verdict from not-guilty to guilty after the jury had been discharged.⁴ The Court discussed the rationale behind the Double Jeopardy clause saying that it prevented the State from repeatedly attempting to convict an individual on the same charge and prevented individuals from having to live in a constant state of anxiety that the State would continue to harass them upon a matter of which they had already been acquitted. Based upon this reasoning, the court held that a court could not change a charge from not-guilty to guilty after the jury had been discharged.

The Court distinguished the present case from *Stauffer*⁵, the case upon which the State based its case. *Stauffer* held that a court that changed a not-guilty verdict to guilty after the jury had been discharged did not violate the Double Jeopardy Clause because the change merely corrected a clerical error to reflect the jury's true intent. The Court distinguished this case because whereas in *Stauffer* all the jurors had asserted mistake, here, only 10 of the 12 jurors asserted mistake and so there was doubt as to the jury's true intent. Moreover, the altered verdict in *Stauffer* did not increase the conviction, but merely switched one guilty count for another. The verdict alteration here increased Davidson's convictions.

The Court also found that the district court erred in changing the verdict based upon the testimony of only 10 of the 12 jurors when Nevada requires a unanimous verdict by a twelve person jury for a criminal conviction. The Court emphasized that no juror had objected to the accuracy of the verdict reading at trial and in fact, each had confirmed it. Lastly, the Court held that the district court violated notions of due process because Davidson was not present "at a critical stage of his trial."⁶

Judgment and sentence on battery conviction

The Court found that the district court erred in increasing Davidson's sentence under the small habitual criminal statute for one of his convictions. According to Nevada law, only felonies or crimes involving fraud, an intent to defraud or petit larceny may receive enhanced sentences under the "small" habitual criminal statute. Although the jury had found the Defendant guilty of a misdemeanor as to one of the charges, the

⁴ U.S. CONST. AMEND. V., NEV. CONST. ART. 1, §8(1).

⁵ U.S. v. STAUFFER, 922 F.2D 508, 511 (9TH CIR. 1990).

⁶ DAVIDSON V. STATE, 124 NEV. ADV. OP. NO. 76 AT 11 (OCT. 2, 2008).

conviction contained a clerical error showing that the verdict had been for a felony. The district court therefore erred in enhancing Davidson's sentence under the habitual criminal statute as to this charge, because the charge was not a felony, nor did it involve fraud or petit larceny. Accordingly, the Court remanded the matter so the district court could impose a proper sentence.

Conclusion

The Court reversed the district court's decision to alter a verdict after the jury had been discharged because there was uncertainty as to the jury's intent and changing the verdict would violate the Double Jeopardy Clause. Furthermore, the district court violated Davidson's due process rights by holding the post-trial proceeding, a critical stage of his conviction, without Davidson present.

The Court also reversed the district court's sentencing of Davidson under the habitual criminal statute as to one of the counts because the conviction contained a clerical error showing a conviction of a felony when the jury had returned a verdict for a misdemeanor. The Court remanded the sentencing back to the district court.