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Summary of Dozier v. State, 124 Nev. Adv. Op. No. 12

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Dozier v. State, 124 Nev. Adv. Op. No. 12 (March 13, 2008)¹

CRIMINAL LAW – STATUTE-OF-LIMITATIONS DEFENSE

Summary

Appeal from the district court’s denial of a post-conviction petition for writ of habeas corpus.

Disposition/Outcome

The Nevada Supreme Court affirmed the order of the district court denying Dozier’s post-conviction petition for writ of habeas corpus.

When a defendant is charged with a criminal offense that affirmatively raises a statute-of-limitations defense, if the State seeks to disprove that defense by showing that the offense was committed in a secret manner under NRS 171.095(1)(a), the State must do so by a preponderance of the evidence.

The district court did not err in rejecting Dozier’s claim that his trial counsel was ineffective for failing to object to the jury instruction providing that the State only had to prove he committed the sexual offenses in a secret manner by a preponderance of the evidence.

Factual and Procedural History

On November 15, 2000, Dozier surreptitiously sedated his ex-girlfriend and then videotaped himself performing sexual acts with her as she lay unconscious. The woman awoke to discover Dozier videotaping her and called 911. When the police arrived, Dozier signed a written consent form authorizing a search of his truck. In Dozier’s truck, officers found a videotape hidden underneath the driver’s seat and a canister with residue from a sleeping medication called triazolam. The videotape depicted scenes of Dozier engaged in sexual contact with his unconscious and unresponsive ex-girlfriend, as well as similar scenes of Dozier engaged in sexual contact with another unidentified woman.

Dozier’s ex-wife viewed the videotape at the district attorney’s office and confirmed that she was the unidentified woman on the videotape. Dozier’s ex-wife later testified at Dozier’s trial that she did not consent to or have knowledge of the various acts. Dozier’s ex-wife further testified that the three videotaped scenes occurred (1) between May 1993 and January 1995 (2) between January 1995 and December 1997 and (3) during the spring of 1998.

The State subsequently charged Dozier with a total of 27 felony counts. Prior to trial, Dozier filed a motion to dismiss, arguing that all 19 counts regarding separate incidents of sexual assault involving his ex-wife were barred by the four-year statute of limitations defined in NRS 171.085. The State argued that under NRS 171.095, the statute of limitations was tolled because Dozier committed the sexual assaults in a secret manner.

The district court denied Dozier’s motion and later instructed the jury that, in order to toll the statute of limitations, the prosecutor needed only to prove by a preponderance of the evidence that Dozier committed the acts in a secret manner.

The jury found Dozier guilty of all counts. Dozier appealed, and the Nevada Supreme Court affirmed the judgment of conviction. Dozier then filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition without appointing counsel to represent Dozier and without conducting an evidentiary hearing. A timely appeal followed.

¹ By Alissa Macomber.

Discussion

Clarence James Dozier, charged with a criminal offense, raised an affirmative statute-of-limitations defense. The State sought to disprove the defense by showing that the crime was committed in a secret manner under NRS 171.095(1)(a). The jury was instructed that the State only had to prove Dozier committed the offenses in a secret manner by a preponderance of the evidence, rather than beyond a reasonable doubt. Dozier, in his petition, claimed that his trial counsel ineffectively assisted him by failing to challenge the jury instruction.

NRS 171.085(1) provides that an indictment, information, or complaint charging the crime of sexual assault must be filed “within 4 years after the commission of the offense.” Under NRS 171.095(1)(a), however, if the crime of sexual assault “is committed in a secret manner,” an indictment, information, or complaint must be filed within four years “after the discovery of the offense.” Thus, NRS 171.095 provides for the tolling of the statute of limitations when certain felonies, including sexual assault, are committed in such a way that prevents or delays discovery.

The Nevada Supreme Court considered the State’s burden of proof on this exception to the statute of limitations in *Walstrom v. State*.² In *Walstrom*, the Nevada Supreme Court held that the statute of limitations was a “jurisdictional” requirement, and because it did not involve an element of an offense, the State was only required to prove the crime was committed in a secret manner by a preponderance of the evidence, rather than beyond a reasonable doubt.³ The court reasoned in *Walstrom* that proving the exception to the statute of limitations addressed the issue of the court’s jurisdiction, whereas proving an element of a crime concerns the issue of a defendant’s guilt or innocence.⁴ Consequently, the considerations that require proof beyond a reasonable doubt do not apply when the State is merely attempting to prove jurisdiction.⁵

However, the Nevada Supreme Court subsequently overruled *Walstrom*’s holding in *Hubbard v. State*.⁶ The court in *Hubbard* held that the statute of limitations was jurisdictional and that “the best reasoned approach is to treat criminal statutes of limitation as non-jurisdictional, affirmative defenses.”⁷ The Nevada Supreme Court did not address in *Hubbard*, or in any subsequent decision, whether the preponderance standard approved in *Walstrom* survived the *Hubbard* holding.

In the instant case, the Nevada Supreme Court clarifies that despite its holding in *Hubbard* that the statute of limitations is an affirmative, non-jurisdictional defense, the State’s burden of proof is still governed by the preponderance of the evidence standard.

There is split authority among jurisdictions regarding the government’s burden of proof when the statute of limitations is asserted as an affirmative defense. For example, a Texas appellate court in *Farrar v. State*,⁸ and the Hawaii Revised Statutes both require the State to prove that a criminal prosecution for an offense is not barred by the statute of limitations beyond a reasonable doubt.⁹

By contrast, the Ninth Circuit in *U.S. v. Gonsalves*,¹⁰ and the California appellate court in *People v. Linder*,¹¹ held that a preponderance of the evidence standard is appropriate. The Ninth Circuit, in *U.S. v. Gonsalves*, reasoned that because a statute-of-limitations defense did not involve the issue of guilt, the

² 752 P.2d 225 (Nev. 1988), *overruled by* *Hubbard v. State*, 920 P.2d 991 (Nev. 1996).

³ *Id.* at 227.

⁴ *Id.* at 227-28.

⁵ *Id.*

⁶ 920 P. 2d 991, 993 (Nev. 1996).

⁷ *Id.*

⁸ 95 S.W.3d 648, 650 (Tex. App. 2002).

⁹ HAW. REV. STAT. § 701-114(1)(e) (1993).

¹⁰ 675 F.2d 1050, 1054 (9th Cir. 1982).

¹¹ 42 Cal. Rptr. 3d 496 (Cal. Ct. App. 2006).

government's burden to disprove such a defense was only by a preponderance of the evidence, whereas all "essential elements of the crime" must be proven beyond a reasonable doubt.¹² Similarly, the California appellate court explained, in *People v. Linder*, that "the statute of limitations is not an 'element' of the offense insofar as the 'definition' of criminal conduct is concerned."¹³

In the instant case, the Nevada Supreme Court concludes that the jurisdictions endorsing the preponderance standard present the better reasoned approach. Therefore, the statute of limitations is not an element of the offense that the State should be required to prove beyond a reasonable doubt. Here, the trial court properly instructed the jury on the State's burden of proof regarding the secret manner in which Dozier committed the sexual offenses involving his ex-wife. The trial counsel's failure to object to the instruction was not deficient performance, and the habeas court did not err in denying this claim.

Hardesty, Parraguirre and Saitta Concur

Maupin and Cherry Concur in Part and Dissent in Part

Honorable Maupin and Honorable Cherry would hold the State to its traditional burden of proof beyond a reasonable doubt in all criminal contexts, including the State's obligation to establish the secret manner exception to the statute of limitations. In the instant case, the proof presented by the State was so overwhelming that no reasonable jury could have found that the State failed to meet the higher burden of proof beyond a reasonable doubt. Therefore, Honorable Maupin and Honorable Cherry would affirm the district court's denial of the petition in the instant case because any error with respect to the burden of proof instruction was harmless beyond a reasonable doubt.

Conclusion

When a defendant charged with a criminal offense affirmatively raises a statute-of-limitations defense, if the State seeks to disprove that defense by showing that the offense was committed in a secret manner under NRS 171.095(1)(a), the State must do so by a preponderance of the evidence. The district court did not err in rejecting Dozier's claim that his trial counsel was ineffective for failing to object to the jury instruction providing that the State had the burden to prove by a preponderance of the evidence that some of the charges at issue were committed in a secret manner and were therefore not barred by the statute of limitations. The Nevada Supreme Court affirmed the district court's denial of Dozier's post-conviction petition for a writ of habeas corpus.

¹² 675 F.2d at 1054 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¹³ 42 Cal. Rptr. 3d at 503 (quoting *People v. Frazer*, 982 P.2d 180, 195 n.22 (Cal. 1999), abrogated by *Stogner v. California*, 539 U.S. 607, 609-10 (2003)).