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Summary of Santana v. State, 122 Nev. Adv. Op. No. 121

Robert Stephens
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Santana v. State, 122 Nev. Adv. Op. No. 121 (Dec. 28, 2006)¹

CRIMINAL LAW - COERCION

Summary

Appeal from a conviction in the Eighth Judicial District Court of 19 counts of coercion resulting in five consecutive life sentences without the possibility of parole and fourteen concurrently running life sentences. Appellant argues that the jury instructions did not instruct the jury to apply the reasonable person test and therefore seeks a new trial.

Disposition/Outcome

Reversed and remanded. The Nevada Supreme Court, extending their holding in *Deshler v. State*,² held that because the district court did not instruct the jury to apply the reasonable person test, the defendant did not receive a fair trial.

Factual and Procedural History

While Vincent Mark Santana (Santana), appellant, was incarcerated at the Clark County Detention Center he used the Detention Center's telephone to make several random phone calls to a variety of women and children in California. Each phone call began with a pre-recorded message notifying that the call was collect and that the call was coming from the Clark County Detention Center.

Once the woman or child accepted the call, Santana told the victims that the pre-recorded message was not real. After some congenial conversation, Santana told each person that he was nearby with a weapon. Santana then commanded each victim to participate in a sexual conversation or he would harm her.

Eventually the State filed 19 counts of coercion against Santana. Many of the victims testified at trial. The jury found Santana guilty of 19 counts of coercion and sentenced Santana to five consecutive life terms without parole and fourteen life sentences to run concurrently.

Santana appealed arguing that the jury instructions were erroneous because the instructions did not inform the jury as to what viewpoint to analyze coercion under NRS 207.190.³ Santana argues that this error harmed his case.

Discussion

First, the Nevada Supreme Court must determine the appropriate viewpoint for analysis. Second, the Court must determine whether the failure to explain the appropriate viewpoint to the jury was harmless.

¹ By Robert Stephens

² 106 Nev. 253 (1990).

³ NEV. REV. STAT. § 207.190 (2005).

Viewpoint

NRS 207.190 separates coercion into felonies and misdemeanors. A defendant is guilty of felony coercion when the defendant uses or threatens to use immediate physical force “to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing.”⁴ Coercion is a misdemeanor when the threats are future oriented. Santana argues that under *Deshler*, when the defendant cannot immediately execute his threats then the defendant must have intended for future harm, if any harm at all.

In *Deshler*, the police, responding to a bar fight, found Deshler in need of medical treatment.⁵ Deshler fought with the police and paramedics when they tried to help him.⁶ The officers eventually loaded Deshler into the ambulance and Deputy Crawford (Crawford) rode with him to the hospital.⁷ While riding to the hospital, Deshler threatened Crawford and his family several times with lethal harm.⁸ Although strapped to a gurney, Deshler managed to free himself of the leg restraints, which required Crawford to physical hold Deshler down.⁹

The Nevada Supreme Court in *Deshler* determined that because there was no real immediate threat the reasonable person could only believe that Deshler intended future harm and therefore could only be guilty of a misdemeanor.¹⁰ However, the Court never stated which viewpoint the jury should apply in determining a defendant’s guilt for coercion. The Court now extends *Deshler* to require juries to analyze coercion applying the reasonable person test.

Harmlessness of Error

Because the immediacy of the threat distinguishes felony and misdemeanor coercion, the viewpoint that the jury utilized to determine the defendant’s guilt is crucial. With an objective viewpoint, the jury would decide how a reasonable person would perceive the immediacy of the threats, whereas under a subjective viewpoint the jury would decide based on how the victims perceived the immediacy of the threats. It is unclear which standard the jury applied and therefore the error might have changed the outcome of the case.

Conclusion

The Nevada Supreme Court extended *Deshler* to conclude that the appropriate standard for juries to determine the immediacy of threats involving coercion is the reasonable person standard. Further, it is uncertain whether the jury would have found Santana guilty if they applied the reasonable person standard and therefore the error to instruct the jury to apply the reasonable person test in coercion cases is a harmful error. Reversed and remanded

⁴ *Id.*

⁵ *Deshler*, 106 Nev. at 254.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 255.

¹⁰ *Id.* at 256.

Justice Rose's Concurrence

This Court should diligently review excessive criminal sentences, rather than habitually dismissing the reviews unless it “shock[s] the conscience.”¹¹ Simply because the sentence is within the statutory limit does not necessarily mean that the sentence is not excessive.

¹¹ Allred v. State, 120 Nev. 410, 420 (2004). *See also* Sims v. State, 107 Nev. 438 (1991) (Rose, J., dissenting).