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### Summary of Garcia v. State

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*Garcia v. State*, 113 P.3d 836 (Nev. 2005)<sup>1</sup>

**CRIMINAL LAW- FALSE IMPRISONMENT, KIDNAPPING,  
MOTION TO DISMISS COUNSEL, REASONABLE DOUBT  
STANDARD, CROSS-EXAMINATION OF NON-ADVERSE  
WITNESS, & DOUBLE JEOPARDY**

**Summary**

Ramon Garcia appealed his convictions for: (1) burglary while in possession of a firearm, (2) robbery with the use of a deadly weapon, (3) first-degree kidnapping, 4. conspiracy to commit burglary, (5) another burglary while in the possession of a firearm, 6. conspiracy to commit robbery, (7) attempted robbery with the use of a deadly weapon, and 8. false imprisonment. Garcia argued that: (1) the jury instruction on false imprisonment was improper, (2). the state presented insufficient evidence to support a verdict on kidnapping and false imprisonment, (3) the district court erroneously failed to hold a hearing on his motion to dismiss counsel, (4) the statutory reasonable doubt instruction is unconstitutional, (5) the district court erroneously failed to permit cross-examination of non-adverse witnesses, and (6) the convictions for conspiracy to commit robbery and conspiracy to commit burglary violate the double jeopardy clause.

**Disposition/Outcome**

The Nevada Supreme Court held that: (1) the conviction for false imprisonment must be set aside, (2) the state presented sufficient evidence to support the conviction for kidnapping, (3) the district court did not abuse its discretion in failing to hold a hearing on the defendant's motion to dismiss counsel, (4) the statutory reasonable doubt instruction is not unconstitutional, (5) the record is insufficient to establish that the district court erred by not allowing cross-examination of non-adverse witnesses, and 6. the conviction for conspiracy to commit burglary is affirmed, but the conviction for conspiracy to commit burglary is set aside as the evidence introduced at trial was insufficient to support that charge.

**Factual & Procedural History**

Garcia, his brother Juan, and two other defendants, Cota and Castaneda, were all charged with multiple counts of robbery, kidnapping and other related offenses stemming from four separate robberies. The first robbery occurred on July 23, 2001. In that incident, Garcia and another unidentified person robbed the automotive shop Fuel Injection Systems. Garcia pointed a gun at the owner and an employee, ordered them to the back of the store, bound them, robbed them and then ransacked the store. Two other robberies occurred on July 26 and 27 of 2001, but it was Garcia's brother Juan who was identified as the assailant. A fourth robbery occurred on July 31, 2001 at the Silver Dollar Store. In that robbery, Garcia and two others entered the store and pointed a gun at the owner, Mr. Stuckert. Garcia ordered the owner, his wife, and a customer to a back

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<sup>1</sup> By Justin L. Carley

room in the store. Garcia dead-bolted them in the room but the three were able to get out through another door. Garcia and his accomplices then stole the cash register.

Eventually the police arrested all four men. Garcia was charged for his involvement in the first and fourth robberies. A few days before trial in open court, Garcia filed a motion to dismiss his counsel. Garcia alleged, among other things, that his attorney failed to communicate with him, failed to investigate, and attempted to force plea bargaining. Garcia declined to speak on his motion and wanted only to turn it in. The judge allowed his counsel to answer and counsel then explained the extent of his communication and his reasons for taking certain actions. The judge then denied the motion. At trial, Garcia was convicted of multiple offenses and filed this appeal.

## **Discussion**

### *False Imprisonment*

Garcia argued that to convict him of false imprisonment for the Silver Dollar Store robbery, the jury had to find that the detention of the victims was not incidental to the robbery. *Id.* Garcia conceded that false imprisonment was a lesser-included offense of kidnapping, but argued that conviction of false imprisonment and robbery is double punishment for the same crime. *Id.*

The court held that convicting Garcia of attempted robbery and of false imprisonment violates the directive laid down in *Jefferson v. State*.<sup>2</sup> In *Jefferson*, the court laid down the rule that a charge of kidnapping will lie only where the movement of the victim is over and above that required to complete the associated crime charged. Here, the Nevada Supreme Court held that the facts that created the basis of the false imprisonment were part of and incidental to the conviction of the attempt to rob the three individuals taken to the back room.<sup>3</sup> Thus, the court reversed the conviction for false imprisonment must be reversed.

### *Sufficiency of the Evidence for the Kidnapping Charges*

Garcia argued that similar to the false imprisonment facts, the charges of kidnapping for the Fuel Injection Systems robbery must be supported by evidence that the movement of the victim was beyond that required to complete the robbery.

The Nevada Supreme Court first noted the standard of review for challenges to the sufficiency of the evidence in criminal cases is whether, in a light most favorable to the prosecution, a reasonable jury could have been convinced of the defendant's guilt.<sup>4</sup> The court then held that the facts established in this case could convince a reasonable juror that the kidnapping was not incidental to the robbery because Garcia ordered the two victims out of the store to the back of his truck where they were held at gunpoint for fifteen minutes. Thus, the court sustained the conviction for kidnapping.

### *Failure to Hold a Hearing on the Motion to Dismiss Counsel*

Garcia argued that the district court abused its discretion by failing to hold a hearing.

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<sup>2</sup> 599 P.2d 1043 (Nev. 1979).

<sup>3</sup> *Garcia*, 113 P.3d at 841.

<sup>4</sup> *Id.*

The Nevada Supreme Court noted the rule laid down in *Young v. State*,<sup>5</sup> that where such a motion is made, the court may not summarily deny the motion but must adequately inquire into the grounds. The court addressed three factors to consider when reviewing a district court's denial of a motion to dismiss counsel: (1) the extent of the conflict, (2) the timeliness of the motion and its possibility for delay, and (3) the adequacy of the court's inquiry.<sup>6</sup> The court held that here the conflict was not irreconcilable because Garcia's counsel spoke to him several times and turned over the information Garcia requested. The motion was filed in open court in an untimely fashion, which suggested a dilatory motive. Finally, Garcia chose not to explain himself in open court and his counsel did. The court's inquiry was limited, but was adequate under the circumstances. Thus, the court held that the district court did not abuse its' discretion in denying the motion.

#### *Constitutionality of the Reasonable Doubt Instruction*

Garcia argued that the statutorily defined instruction is unconstitutional. The Nevada Supreme Court summarily rejected this argument and held that Nevada's statutory instruction is proper.<sup>7</sup>

#### *Cross-Examination of Adverse Witnesses*

Garcia argued that the district court erred by not allowing him to cross examine witnesses called by the state in regards to the second and third robberies in which Garcia was not charged. Garcia argued that this violated his Sixth Amendment right to confrontation because his theory of the case was that of his identity being mistaken for his brother's. Because his brother was charged in those two robberies Garcia sought to examine those witnesses.

The court noted that Garcia is allowed to present any relevant evidence that someone else committed the offense. However, the court held that the denial of cross-examination was not an infringement on his Sixth Amendment rights because Garcia could have called those witnesses as part of his case in chief. The record shows no evidence of any denial of these witnesses for use in this manner so the court saw no violation.

#### *Double Jeopardy*

Garcia argued that the charges of conspiracy to commit robbery and conspiracy to commit burglary for the Silver Dollar Store robbery violate the double jeopardy clause of the Fifth Amendment.

The court first held that it is permissible to convict on both conspiracy charges provided that the state proves that there are two separate agreements to commit two separate crimes. However, the facts elicited at trial indicate that there was an only agreement between Garcia and the coconspirators to commit a burglary. There were no facts speaking to whether there was another agreement to rob the customer in the store. Garcia and the others did not know there was a customer in the store when they entered

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<sup>5</sup> 102 P.3d 572 (Nev. 2004).

<sup>6</sup> *Id.*

<sup>7</sup> *see* NEV. REV. STAT. § 175.211(1) (2004).

it. Without separate proof of a further agreement the conspiracy to commit robbery conviction must be reversed.

**Conclusion**

First, the court reversed the false imprisonment convictions because they were based on facts that were part of and incidental to the attempted robbery conviction. Second, the State presented sufficient evidence to sustain Garcia's convictions for kidnapping because there was evidence of detainment that was not necessary for the associated crime. Third, the district court did not err in failing to hold a hearing on Garcia's motion to dismiss counsel because the conflict was not irreconcilable, the motion was filed in an untimely manner, and the court's inquiry was adequate. Fourth, Garcia's challenge to the reasonable doubt instruction required by NRS 175.211 was without merit. Fifth, because no offer of proof was made at trial, the record was insufficient to establish that the district court erred in denying Garcia the opportunity to cross-examine certain non-adverse witnesses called by the State. Finally, the evidence produced at trial was insufficient to support Garcia's conviction on the charge of conspiracy to commit robbery for his actions in the Silver Dollar robbery because the State failed to present evidence of a separate agreement to rob (in addition to the first agreement to burglarize) was presented.