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Summary of Vest v. State, 120 Nev. Ad. Op. 75

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***Vest v. State*, 120 Nev. Ad. Op. 75 (2004).¹**

CRIMINAL PROCEDURE – APPEALS

Summary

This case was an appeal from a judgment of conviction, entered pursuant to a jury verdict of one count of burglary, one count of obtaining and using personal identification information of another, one count of fraudulent use of a credit or debit card, and eight counts of possession of a credit card without the cardholder's consent.

Disposition/Outcome

The Nevada Supreme Court remanded the case to the district court for further proceedings and granted appellant's motion for leave to file a reply to the State's response. The court agreed with appellant that the appeal on his written judgment of conviction is moot due to the district court's granting a motion for a new trial.

Factual and Procedural History

On March 2, 2004, the district court entered the written judgment of conviction against appellant Noel Vest ("Vest"). Vest filed notice of appeal on March 29, 2004.

On May 5, 2004, Vest filed a motion for a new trial in the district court based on newly discovered evidence. The district court entered a written order granting the motion on July 27, 2004. The State did not appeal from the district court's order.

On September 7, 2004, Vest filed a motion requesting the Nevada Supreme Court to remand his appeal. In the motion, Vest argued that the appeal was now moot in light of the district court's order. The State filed an opposition to Vest's motion on the same day.

On September 10, 2004, Vest filed a motion for leave to file a reply to the State's response.

Discussion

The State claimed that the appeal should not be remanded and that the district court's order should be deemed a nullity. Relying on *Layton v. State*², the State argued that the district court lacked jurisdiction to grant a motion for a new trial after the notice of appeal had been filed.³

At the time *Layton* was decided, NRS 176.515(3) provided: "A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, *but if an appeal is pending the court may grant the motion only on remand of the case.*" (Emphasis added.)

¹ By Amanda Yen

² 89 Nev. 252, 510 P.2d 864 (1973).

³ In *Layton*, the Nevada Supreme Court held that "[t]he district court has no authority to grant a new trial once the notice of appeal has been filed." *Id.* at 254, 510 P.2d at 865.

However, in 1983, NRS 176.515(3) was amended and the emphasized language was removed.⁴ The statute now provides that “[a] motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.”⁵ Based on the plain language of the statute as it presently reads, the court concluded that it was no longer necessary to remand an appeal in order for the district court to grant a post-judgment motion for a new trial based on newly discovered evidence.⁶

Conclusion

Based on NRS 176.515(3), the court determined that Vest’s motion for a new trial based on the ground of newly discovered evidence was proper and that the district court’s order granting the motion in the case was a final independently appealable order and therefore, the appeal on convicted judgment was moot.

⁴ 1983 NEV. STAT., ch. 571 § 2, at 1671.

⁵ *Id.*

⁶ The court further noted that pursuant to NRAP 4(b)(1): “[a] motion for a new trial based on . . . newly discovered evidence will . . . extend the time for appeal from a judgment of conviction if the motion is made before or within thirty (30) days after entry of judgment.” In the instant case, the motion did not extend the appeal period because it was not filed within 30 days after the entry of the judgment of conviction.