

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

1-1-2003

Summary of Salazar v. State

Rick Rawson
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Rawson, Rick, "Summary of Salazar v. State" (2003). *Nevada Supreme Court Summaries*. 743.
<https://scholars.law.unlv.edu/nvscs/743>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Salazar v. State, 70 P.3d 749 (Nev. 2003).¹

Double Jeopardy – Criminal Law

Summary

Appeal from district court judgment of conviction on one count of battery with use of a deadly weapon with substantial bodily harm, one count of battery with a deadly weapon, and one count of mayhem with use of a deadly weapon.

Disposition/Outcome

Reversed in part, with respect to conviction for battery with use of deadly weapon with substantial bodily harm. Affirmed in part, with respect to the convictions for battery with a deadly weapon and for mayhem with use of a deadly weapon. The case was remanded to the district court to amend the judgment.

Factual and Procedural History

After being asked to leave a party, Gabriel Salazar began fighting with other party guests, Amber Brown and Paul Clark. During the course of the melee, Salazar cut both Brown and Clark with a box cutter. Brown received cuts to her side and neck. Clark sustained three cuts, one of which severed a nerve resulting in permanent numbness from his ear to his jaw, and partial loss of control over a muscle controlling his lip.

Salazar was convicted of one count of battery with use of a deadly weapon with substantial bodily harm and one count of mayhem with use of a deadly weapon for his actions towards Clark. He was also convicted of one count of battery with use of a deadly weapon for his actions towards Brown. On appeal, Salazar argued that he should not have been convicted of both battery with use of deadly weapon with substantial bodily harm and mayhem with a deadly weapon for Clark's injuries.

Issue

Are Salazar's convictions for battery with use of deadly weapon with substantial bodily harm and mayhem with a deadly weapon redundant convictions in violation of the Double Jeopardy Clause of the Fifth Amendment, and contrary to legislative intent?

Disposition

Yes. Where a defendant is convicted of two offenses that, as charged, punish the exact same illegal act, the convictions are redundant, thus constitute double jeopardy.

¹ By Rick Rawson

Discussion

The Double Jeopardy Clause of the Fifth Amendment protects a defendant from being punished multiple times for the same offense.² The Nevada Supreme Court uses the test outlined in *Blockburger v. United States*³ to determine if multiple convictions are permissible from the same act.⁴ In *Barton v. State* the court stated “if the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense and the Double Jeopardy Clause prohibits a conviction for both offenses.”⁵

The court determined that battery with use of a deadly weapon with substantial bodily harm and mayhem with a deadly weapon are separate offenses under the *Blockburger* test.⁶ However, the court also stated that redundant convictions that do not comport with legislative intent will be reversed.⁷

To determine whether multiple convictions are redundant, the court examined “whether the material or significant part of each charge is the same even if the offenses are not the same.”⁸ Because the court held that battery with use of a deadly weapon with substantial bodily harm and mayhem with a deadly weapon “punish the exact same illegal act, the convictions are redundant.”⁹ Based on this finding, the court reversed Salazar’s conviction of battery with use of a deadly weapon with substantial bodily harm.

Conclusion

The holding in *Salazar* is consistent with Nevada case law. In *Albitre v. State*, the court found that involuntary manslaughter and reckless driving convictions were redundant to a conviction of causing the death of another while driving a vehicle while intoxicated.¹⁰ Similarly, in *Skiba v. State*, the court found that battery causing substantial bodily harm was redundant to battery with a deadly weapon.¹¹

Authorities Cited

Cases Cited by the Court

- Albitre v. State, 738 P.2d 1307 (Nev. 1987).
- Barton v. State, 30 P.3d 1103 (Nev. 2001).
- Blockburger v. United States, 284 U.S. 299 (1932).
- State v. Koseck, 936 P.2d 836 (Nev. 1997).

² *Williams v. State*, 50 P.3d 1116, 1124 (Nev. 2002).

³ 284 U.S. 299 (1932).

⁴ *Williams*, 50 P.3d at 1124.

⁵ 30 P.3d 1103, 1107 (Nev. 2001).

⁶ *Salazar v. State*, 70 P.3d 749, 751 (Nev. 2003).

⁷ *Id.* (citing *State v. Koseck*, 936 P.2d 836, 837 (1997)).

⁸ *Id.*

⁹ *Id.*

¹⁰ 738 P.2d 1307, 1309 (Nev. 1987).

¹¹ 959 P.2d 959, 961 (Nev. 1998).

- Miranda v. Arizona, 384 U.S. 436 (1966).
- State of Nevada v. District Court, 994 P.2d 692 (Nev. 2000).
- Skiba v. State, 959 P.2d 959 (Nev. 1998).
- Williams v. State, 50 P.3d 1116 (Nev. 2002).

Other Sources Cited by the Court

- NEV. REV. STAT. 0.060
- NEV. REV. STAT. 177.015(3).
- NEV. REV. STAT. 193.165
- NEV. REV. STAT. 200.280
- NEV. REV. STAT. 200.481(2)(e)(2)