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Summary of LaChance v. State, 130 Nev. Adv. Op. 29

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CRIMINAL LAW: LESSER INCLUDED OFFENSES, DOUBLE JEOPARDY & HABITUAL
CRIMINAL STATUTES

Summary

The Court determined whether (1) the sufficiency of the evidence supported the defendant's domestic battery by strangulation and domestic battery causing substantial bodily harm convictions; (2) the convictions and sentences for possession with intent to sell and simple possession based on possession of the same controlled substance violates the Double Jeopardy Clause; (3) the defendant received adequate notice of the State's intent to seek habitual criminal status; and (4) the district court properly adjudicated the defendant as a habitual criminal.

Disposition

Double jeopardy analysis is based solely on the elements of the principal offense, and simple possession is the lesser-included offense to possession with intent to sell. Even if a defendant is adjudicated as a habitual criminal and could be sentenced to a lengthier punishment for the lesser-included offense, this conviction must be vacated if also found guilty of possession with intent to sell.

Factual and Procedural History

Appellant, LaChance got into an argument with his girlfriend at his home. After slapping, punching, and choking her, she tried to escape. LaChance chased her down and continued to beat her. After a neighbor said she was calling the police, LaChance fled the scene. The girlfriend was treated at a hospital and suffered significant injuries to her ear, neck, abdomen, pelvis, and extremities. She now suffers from permanent shin splints, can no longer run, and also suffers from ongoing pain. Upon his arrest, LaChance had in his possession 4.6lbs of marijuana and several scales. A jury convicted LaChance of domestic battery by strangulation, domestic battery causing substantial bodily harm, possession of a controlled substance for the purpose of sale, possession of a controlled substance, false imprisonment, and unlawful taking of a motor vehicle.

LaChance appeals, claiming the evidence was insufficient to support conviction for domestic battery by strangulation and domestic battery causing substantial bodily harm.

Discussion

Sufficiency of the evidence

The Court considers sufficiency of the evidence attacks by reviewing the evidence in the light most favorable to the prosecution to determine whether a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."²

¹ By Brian Vasek.

² *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Domestic battery by strangulation

The Court rejected LaChance's challenge to the sufficiency of the evidence supporting the conviction for domestic battery by strangulation. LaChance argued that only speculation and ambiguous statements support this conviction and any difficulty in breathing resulted from the victim's anxiety. Noting the Legislature defined strangulation as "impeding the normal breathing . . . by applying pressure on the throat or neck," the Court concluded that a rational trier of fact could have found beyond a reasonable doubt that LaChance strangled the victim and affirmed the conviction.

Domestic battery causing substantial bodily harm

The Court also rejected LaChance's challenge of the sufficiency of the evidence supporting the "substantial bodily harm" element of the domestic battery causing substantial bodily harm conviction. LaChance argued that where this element is based on prolonged pain, the pain must also be substantial. The Court rejected this contention observing that existing case law states that liability for "prolonged physical pain" arises when "some physical suffering or injury . . . lasts longer than the pain immediately resulting" from the battery.³ Noting the severity of the victim's injuries, including permanent shin splints and hearing loss in one ear, the Court concluded that the State presented sufficient evidence to establish that the victim suffered prolonged physical pain and affirmed the conviction.

Lesser-included offenses

The Court agreed with LaChance's double jeopardy argument and vacated his conviction for simple possession. LaChance argued that the convictions and sentences for possession with intent to sell and the lesser-included offense of simple possession based on the possession of the same controlled substance violated the Double Jeopardy Clause. The State responded that because the first offense includes a weight element and the second offense includes an intent element, simple possession is not a lesser-included offense of possession with intent to sell. The Court reviewed this claim for constitutional or plain error.⁴

The Double Jeopardy Clause protects against multiple punishments for the same offense, but it does not prohibit multiple punishments if the Legislature clearly authorizes them.⁵ If legislative intent is unclear, the *Blockburger* test determines the permissibility of multiple punishments for the same offense.⁶ Under *Blockburger*, a person cannot be convicted of a greater- and lesser-included offense when "the offense in question cannot be committed without committing the lesser offense."⁷

In Nevada, the statute for possession with an intent to sell states that "it is unlawful for a person to possess for the purpose of sale. . . any controlled substance classified in schedule I or II."⁸ The simple possession statute states that "[a] person shall not knowingly or intentionally possess a controlled substance."⁹

The Court concluded the elements of simple possession are included in the elements for possession with intent to sell, and if convicted of possession with intent to sell, the defendant

³ Collins v. State, 125 Nev. 60, 64, 203 P.3d 90, 92–93 (2009).

⁴ Mclellan v. State, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008).

⁵ Missouri v. Hunter, 459 U.S. 359, 366 (1983).

⁶ Jackson v. State, 128 Nev. __, __, 291 P.3d 1274, 1278 (2012).

⁷ Estes v. State, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127 (2006)

⁸ NEV. REV. STAT. § 453.337(1).

⁹ NEV. REV. STAT. 453.336(1).

would also be convicted of simple possession. Therefore, the Court determined the conviction for both offenses violates double jeopardy.¹⁰

Having determined that the dual conviction violated double jeopardy, the Court vacated LaChance's conviction for simple possession, the lesser included offense. While the Court typically vacates the conviction with the lesser sentence, LaChance's adjudication as a habitual criminal complicated this case. The State argued that because the simple possession conviction, enhanced pursuant to the habitual criminal adjudication, yielded a longer sentence than the possession of a controlled substance for the purpose of sale, the latter sentence should be vacated. The Court rejected this argument, noting that double jeopardy doctrine requires comparing the range of punishments only for the principle offense.

Notice of intent to seek habitual criminal adjudication

The Court rejected LaChance's argument that the district court committed plain error and violated his constitutional rights by allowing habitual criminal adjudication without an arraignment indicating that the State was seeking habitual criminal treatment. The Court rejected this argument for two reasons. First, LaChance agreed to the procedure used in this case. Second, the clear purpose of the habitual criminal statute is to ensure that the defendant has notice that the State will request this status. In the present case, LaChance had written notice. Moreover, habitual criminal adjudication is not an offense but a status determination not subject to jury determination. Therefore, there is no need for a preliminary hearing or arraignment. Since LaChance did not have those rights as to habitual criminal allegation, the error could not have substantially affected those rights.

Adjudicating La Chance as a habitual criminal

The Court affirmed the district court's decision to adjudicate LaChance as a habitual criminal. Adjudicating a defendant as a habitual criminal is "subject to the broadest kind of judicial discretion."¹¹ In determining if a finding of habitual criminal is proper, "this court looks to the record as a whole to determine whether the sentencing court actually exercised its discretion."¹² A sentencing court meets its obligations so long as it "was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication."¹³ Moreover, in considering the enhancement, the "court may consider facts such as a defendant's criminal history, mitigation evidence, victim impact statements and the like."¹⁴

The court may "dismiss a count under NRS 207.010 when the prior offenses are stale or trivial, or in other circumstances where an adjudication of habitual criminality would not serve the purposes of the statute or the interests of justice."¹⁵ The "habitual criminality statute exists to

¹⁰ Though the State relies on the additional weight element for possession with intent to sell to distinguish the offenses, the weight element is a factor to be considered at sentencing and is not an element of the offense for purposes of *Blockburger*. The weight does not affect guilt but determines the sentence for simple possession of a controlled substance. All of the elements of simple possession are included in the elements of possession with intent to sell. It is irrelevant that possession with intent to sell has an additional intent element that is not an element of simple possession for purposes of a double jeopardy analysis.

¹¹ *Tanksley v. State*, 113 Nev. 997, 1004, 946 P.2d 148, 152 (1997).

¹² *O'Neill v. State*, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *French v. State*, 98 Nev. 235, 237, 645 P.2d 440, 441 (1982).

enable the criminal justice system to deal determinedly with career criminals who pose a serious threat to public safety.”¹⁶

LaChance finally argued that he has a constitutionally protected liberty interest under the due process clause of the Fourteenth Amendment to have the State adhere to the habitual criminal statute. Concerned with the requisite number of previous felonies required for the habitual criminal adjudication, LaChance suggested that the Court should adopt the majority rule that multiple punishments entered during the same time period are considered only one felony. Due to the time periods between his felonies, he was only imprisoned twice. The State argued that the habitual criminal enhancement is not concerned with the number of times the individual passes through the prison system but is concerned with the number of convictions. The State suggested that the Court should not usurp the legislative function and recognize that the habitual criminal statute as written, which makes no references to prison sentences.

Nevada’s habitual criminal statute states that a person who has been convicted of at least three felonies is a habitual criminal and shall be punished for a category A felony. However, “[t]he trial judge may, at his or her discretion, dismiss a [habitual criminal] count[,] . . . which is included in any indictment or information.”¹⁷

Based on the language and intent of the statute, the Court has held “that where two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single 'prior conviction' for purposes of applying the habitual criminal statute.”¹⁸ This rule “is consistent with the policy and purpose of the recidivist statute. By enacting the habitual criminal statute, the legislature sought to discourage repeat offenders and to afford them an opportunity to reform.”¹⁹

LaChance gave the Court no reason to depart from its prior interpretation of the statutory scheme and impose additional time-period constraints on prior convictions that are not provided for in the statute. The statute permits reform between crimes, and this time for reform does not hinge on arrests. Therefore, the Court refused to impose additional constraints on the district court's discretionary determination of whether habitual criminal adjudication is warranted.

LaChance had been convicted of five prior felonies, and at least three separate and distinct prior felony convictions for the purpose of applying the habitual criminal statute. The Court concluded that the district court was well within its discretion to adjudicate LaChance as a habitual criminal.

Conclusion

The Court reversed the conviction for the simple possession conviction, the lesser-included offense in this instance, and affirmed the remaining convictions. Furthermore, the defendant had received adequate notice of the State’s intent to seek habitual criminal status, and the district court was within its broad discretion to adjudicate the defendant as a habitual criminal.

¹⁶ Sessions v. State, 106 Nev. 186, 191, 789 P.2d 1242, 1245 (1990).

¹⁷ NEV. REV. STAT. § 207.010(2).

¹⁸ Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

¹⁹ *Id.* at 462–63.