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Spring 5-4-2017

### Stewart v. State, 133 Nev. Adv. Op. 20 (May 4, 2017)

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*Nevada Law Journal*

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#### Recommended Citation

Elias, Margarita, "Stewart v. State, 133 Nev. Adv. Op. 20 (May 4, 2017)" (2017). *Nevada Supreme Court Summaries*. 1039.

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CRIMINAL LAW: DUAL CONVICTIONS & *MIRANDA* WARNINGS

**Summary**

Before his interrogation, Tommy Laquade Stewart (“Stewart”) was given LVMPD’s *Miranda* warning pursuant to *Miranda v. Arizona*.<sup>2</sup> Stewart then agreed to speak with detectives without an attorney. He was subsequently charged and convicted of kidnapping and robbery. On appeal, Stewart argued that there was insufficient evidence to support the convictions and that the *Miranda* warning was legally insufficient. The Court disagreed and affirmed the district court’s judgment of conviction.

**Background**

In 2015, Stewart and an unidentified man approached Natasha Lumba (“Lumba”) as she entered her apartment and demanded entry at gunpoint. Once inside, the men told Lumba to lie face down on the ground in the back bedroom, and took turns guarding her while the other ransacked her apartment. The men left with cash and other personal items. Lumba called 911, and Las Vegas Metropolitan Police Department (LVMPD) personnel arrived on the scene.

During the investigation, evidence technicians found Stewart’s fingerprints. Detectives also conducted an interview and photo line-up, wherein Lumba identified Stewart as a suspect. LVMPD located Stewart. Prior to questioning, a detective read Stewart the warning from the LVMPD *Miranda* card:

You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to have the presence of an attorney during the questioning. If you cannot afford an attorney one will be appointed before questioning. Do you understand these rights?

Stewart indicated the he understood his rights and agreed to speak with the detective. Stewart admitted to being in Lumba’s apartment with another man on the night in question and stealing her personal effects, but Stewart denied entering Lumba’s bedroom.

Stewart was charged with robbery with use of a deadly weapon and first-degree kidnapping with use of a deadly weapon, among other charges. The district court denied Stewart’s pretrial motions to suppress his statements to detectives. The jury found Stewart guilty on all counts. Stewart was sentenced to life with the possibility of parole, and he then filed an instant appeal.

**Discussion**

*Sufficient evidence exists to support Stewart’s dual convictions of first-degree kidnapping and robbery*

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<sup>1</sup> By Margarita Elias.

<sup>2</sup> 384 U.S. 436 (1966).

To determine “whether a verdict was based on sufficient evidence to meet due process requirements” it must be determined whether “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>3</sup> Accordingly, “[t]he jury’s verdict will not be disturbed on appeal when there is substantial evidence supporting it.”<sup>4</sup>

Stewart was convicted for first degree kidnapping under NRS 200.310(1)<sup>5</sup> and robbery under NRS 200. 380.<sup>6</sup> However, to sustain convictions for both kidnapping and robbery arising from the same course of conduct:

[A]ny movement or restraint must stand alone with independent significance from the act of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery, or involve movement, seizure or restraint substantially in excess of that necessary to its completion.<sup>7</sup>

Whether Lumba’s movement was incidental to the robbery, and whether the risk of harm to her was substantially increased, are questions of fact to be determined by the jury in “all but the clearest of cases.”<sup>8</sup> Here, a reasonable jury could conclude that Stewart forcing Lumba from her front door into her back bedroom substantially exceeded the movement necessary to complete the robbery and that guarding Lumba at gunpoint substantially increased the harm to her.

*The district court did not err in denying Stewart’s motion to suppress statements made to police because the Miranda warning given to Stewart was sufficient.*

*Miranda* prescribed the four now-familiar warnings.<sup>9</sup> To be constitutionally adequate, *Miranda* warnings must be “sufficiently comprehensive and comprehensible when given a commonsense reading.”<sup>10</sup>

Stewart first argues the *Miranda* warning given to him did not inform him that he could consult an attorney before and during questioning. However, the *Miranda* warning given to Stewart stated, “You have the right to have the presence of an attorney during questioning. If you cannot afford an attorney one will be appointed before questioning.” Given a commonsense reading, these two clauses provide a constitutionally adequate warning—the warning informed

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<sup>3</sup> Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (internal quotation marks omitted).

<sup>4</sup> Brass v. State, 128 Nev. 748, 754, 291 P.3d 145, 150 (2012).

<sup>5</sup> A conviction for first-degree kidnapping requires that a “person . . . willfully seizes, confines, . . . conceals, kidnaps or carries away a person by any means whatsoever . . . for the purpose of committing. . . robbery upon or from the person. NEV. REV. STAT. § 200.310(1) (2016).

<sup>6</sup> A conviction for robbery requires “the unlawful taking of personal property from the person of her. . . against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property.” NEV. REV. STAT. § 200.380 (2016).

<sup>7</sup> Mendoza v. State, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006).

<sup>8</sup> Curtis D. v. State, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982).

<sup>9</sup> Florida v. Powell, 559 U.S. 50, 59–60 (2010). “[A suspect] must be warned prior to any questioning [1] that he has the right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Id.* (quoting *Miranda*, 384 U.S. at 479).

<sup>10</sup> *Powell*, 559 U.S. at 63.

Stewart he had the right to counsel before and during questioning, as specifically required by *Miranda*.<sup>11</sup>

Stewart further argues that the warning only advised him that he had the right to an attorney but not that he could actively consult with that attorney throughout the questioning. However, the right to an attorney is the right to consult with that attorney, and argument to the contrary relies on an absurd interpretation of the *Miranda* warning.<sup>12</sup>

### **Conclusion**

The Court concluded that there was sufficient evidence to support Stewart's convictions for first-degree kidnapping and robbery and that the *Miranda* warning was legally sufficient. Accordingly, the Court affirmed the district court's judgment of conviction.

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<sup>11</sup> *See Id.*

<sup>12</sup> *See Powell*, 559 U.S. at 62–63.