

SUPREME COURT OF NEBRASKA

State v. Moore, 276 Neb. 1

751 N.W.2d 631 (2008) · No. S-06-1001 · Decided July 3, 2008

SUMMARY

The Nebraska Supreme Court reviewed a challenge to jury instructions in Jonathan Moore's convictions for first degree assault and use of a weapon to commit a felony. The court held that although a requested definition of "recklessly" was legally correct, it was unwarranted and nonprejudicial because recklessness was not an element of the charged offense or otherwise explained in the instructions. The court nevertheless affirmed the Court of Appeals' reversal and remand for a new trial because the State did not challenge the separate holding that another instruction was confusing and misleading.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	July 3, 2008
DOCKET	S-06-1001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State petitioned for further review of a Nebraska Court of Appeals decision reversing Moore's convictions and remanding for a new trial based on erroneous jury instructions.
STANDARD OF REVIEW	The correctness of a jury instruction is a question of law reviewed independently. On further review, the Nebraska Supreme Court's review is limited to matters assigned and argued in the briefs, absent plain error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jonathan Moore v. State of Nebraska

TOPICS

- jury instructions
- standard of review
- appellate procedure
- criminal procedure
- instructions objections

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the trial court committed prejudicial error by refusing Moore's requested instruction defining recklessness.
2. Whether the Nebraska Supreme Court could review the Court of Appeals' determination that the natural-and-probable-consequences instruction was confusing and misleading when the State did not assign that issue as error in its petition for further review.

HOLDINGS

1. The trial court did not commit reversible error by refusing Moore's requested definition of recklessly. Although the definition was legally correct, it was unwarranted and potentially confusing because recklessness was not an element of first degree assault under Neb. Rev. Stat. § 28-308(1), and Moore did not request an instruction explaining recklessness as a defense or otherwise placing the definition in legal context.
2. Because the State did not assign and argue error concerning the Court of Appeals' conclusion that instruction No. 10 was confusing and misleading, the Supreme Court could not reverse that aspect of the judgment absent plain error. The judgment reversing Moore's convictions and remanding for a new trial therefore remained correct and was affirmed.

KEY QUOTATIONS

"In short, Moore's proposed instruction on 'recklessly' was unrelated to the legal issues presented in the case, and would have been confusing to the jury." (751 N.W.2d at 635)

"Nevertheless, upon further review from a judgment of the Court of Appeals, this court will not reverse a judgment which it deems to be correct simply because its reasoning differs from that employed by the Court of Appeals." (751 N.W.2d at 635)

FACTUAL BACKGROUND

After an unfriendly exchange with his half brother Karnell Burton and a shooting by passengers in Karnell's vehicle, Jonathan Moore drove past the house where Karnell's sister Kenesha lived. Moore fired a .44 Magnum through the passenger-side window toward the house, striking Kenesha inside and leaving her paralyzed. Moore was convicted of first degree assault and use of a weapon to commit a felony.

PROCEDURAL HISTORY

Moore was convicted by a jury of first degree assault and use of a weapon to commit a felony and received two consecutive terms of 20 to 20 years' imprisonment. The Nebraska Court of Appeals reversed and remanded for a new trial, concluding that the jury was misled by the failure to define recklessness and by a natural-and-probable-consequences instruction. The Nebraska Supreme Court granted the State's petition for further review,

held that the failure to define recklessness was not prejudicial, but affirmed the Court of Appeals' judgment because the State did not challenge the separate holding concerning instruction No. 10.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Court of Appeals' judgment reversing Moore's convictions and remanding the cause for a new trial was affirmed. The opinion provides no additional remand instructions.

CASES CITED

- State v. Moore, 16 Neb. App. 27, 740 N.W.2d 52 (2007)
- State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007)
- Liming v. Liming, 272 Neb. 534, 723 N.W.2d 89 (2006)
- State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006)
- Francis v. Franklin, 471 U.S. 307, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985)
- State v. Hessler, 274 Neb. 478, 741 N.W.2d 406 (2007)
- Mumin v. Dees, 266 Neb. 201, 663 N.W.2d 125 (2003)

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