

SUPREME COURT OF NORTH DAKOTA

State v. Romero

2013 ND 77 · No. 20110337 · Decided May 14, 2013

SUMMARY

The North Dakota Supreme Court affirmed Miguel Humberto Medina Romero’s convictions for murder, unlawful possession or manufacture of marijuana, and unlawful possession of cocaine with intent to deliver. The court held that the district court properly denied a request for a jury view of the crime scene, correctly instructed the jury on self-defense, and properly denied a motion for judgment of acquittal based on sufficiency of the evidence. The court also held that remaining inaudible portions of the jury-selection transcript did not establish reversible error or prejudice.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Dale V. Sandstrom; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	May 14, 2013
DOCKET	20110337
DISPOSITION	affirmed
PROCEDURAL POSTURE	Romero appealed criminal judgments entered after a jury convicted him of murder, unlawful possession or manufacture of marijuana, and unlawful possession of cocaine with intent to deliver.
STANDARD OF REVIEW	The denial of a request for a jury view is reviewed for abuse of discretion. Jury instructions are reviewed as a whole to determine whether they correctly and adequately inform the jury of the applicable law. The denial of a motion for judgment of acquittal is reviewed to determine whether, viewing the evidence most favorably to the prosecution or verdict, substantial evidence permits a reasonable inference of guilt. Claims concerning an incomplete transcript require a showing of prejudice or affected substantial rights.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Miguel Humberto Medina Romero v. State of North Dakota

TOPICS

criminal procedure

jury instructions

self defense

evidence

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

evidence

jury instructions

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Romero's request for the jury to view the crime scene.
2. Whether the district court committed reversible error by giving a self-defense instruction using the phrase "great bodily injury" without changing it to "serious bodily injury" or separately defining the phrase.
3. Whether the evidence was sufficient to support Romero's conviction for unlawful possession of cocaine with intent to deliver.
4. Whether the remaining inaudible or indiscernible portions of the jury-selection transcript required corrective action or a new trial.

HOLDINGS

1. The district court did not abuse its discretion in denying Romero's request for a jury view because the photographs, testimony, measurements, and scale drawing adequately represented the scene and a view would serve no useful purpose in illustrating the testimony.
2. The district court did not err by using the phrase "great bodily injury" in the self-defense instruction rather than substituting "serious bodily injury" or separately defining "great bodily injury."
3. The evidence was sufficient to support Romero's conviction for unlawful possession of cocaine with intent to deliver, and the district court properly denied his N.D.R.Crim.P. 29 motion for judgment of acquittal.
4. Romero failed to establish reversible error based on the remaining indiscernible portions of the jury-selection transcript because he identified no specific jury-selection issue, demonstrated no prejudice, and did not show that his substantial rights were affected.

KEY QUOTATIONS

"Jury instructions must correctly and adequately inform the jury of the applicable law, and must not mislead or confuse the jury." (§ 16)

"When considering a motion for judgment of acquittal, 'the trial court, upon reviewing the evidence most favorable to the prosecution, must deny the motion if there is substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt.'" (§ 24)

"Where the record includes a complete transcript of the evidentiary portion of the trial, the appellant's constitutional right to a judicial review of all evidence has not been compromised." (§ 32)

FACTUAL BACKGROUND

Romero shot and killed Bryon Kalis outside Romero's home after an escalating dispute involving a failed marijuana transaction and threatening text messages. Witnesses testified that Kalis approached Romero, and Romero fired an AR-15 rifle thirteen times, striking Kalis eight times. Police found marijuana-growing materials in Romero's home and later recovered cocaine that a witness testified had belonged to Romero; additional testimony and text messages connected Romero to cocaine trafficking. The trial record also included photographs, measurements, and a scale drawing of the crime scene, while portions of the jury-selection transcript remained indiscernible after correction efforts.

PROCEDURAL HISTORY

The State initially charged Romero with marijuana and murder offenses and later amended the charges to add cocaine possession with intent to deliver and tampering with physical evidence. During the jury trial, the district court denied Romero's request for a jury view of the crime scene, denied his N.D.R.Crim.P. 29 motion on three charges, and granted the motion as to tampering with physical evidence. The jury convicted Romero on the remaining three charges. He appealed, challenging the jury view ruling, self-defense instruction, sufficiency of the cocaine evidence, and incompleteness of the jury-selection transcript.

DISPOSITION

affirmed

CASES CITED

- State v. Schlickemayer, 334 N.W.2d 196, 200 (N.D. 1983)
- State v. Kleppe, 2011 ND 141, ¶ 8, 800 N.W.2d 311
- State v. Erickstad, 2000 ND 202, ¶ 16, 620 N.W.2d 136
- State v. Barth, 2001 ND 201, ¶ 12, 637 N.W.2d 369
- City of Minot v. Rubbelke, 456 N.W.2d 511, 513 (N.D. 1990)
- State v. Leidholm, 334 N.W.2d 811, 814-19 (N.D. 1983)
- Erickson v. Brown, 2012 ND 43, ¶ 10, 813 N.W.2d 531
- State v. Bauer, 2010 ND 109, ¶ 14, 783 N.W.2d 21
- State v. Johnson, 2001 ND 184, ¶ 7, 636 N.W.2d 391
- People v. Kimbrel, 174 Cal. Rptr. 816, 820 (Cal. Ct. App. 1981)
- State v. Havican, 569 A.2d 1089, 1092-93 (Conn. 1990)
- State v. Rodriguez, 87 P.3d 1201, 1204 (Wash. Ct. App. 2004)
- State v. Hinojosa, 2011 ND 116, ¶ 16, 798 N.W.2d 634
- State v. Blunt, 2010 ND 144, ¶ 12, 785 N.W.2d 909
- State v. Maki, 2009 ND 123, ¶ 7, 767 N.W.2d 852
- State v. Hammeren, 2003 ND 6, ¶ 6, 655 N.W.2d 707
- State v. Gonzalez, 2000 ND 32, ¶ 14, 606 N.W.2d 873

- State v. Herzig, 2012 ND 247, ¶ 12, 825 N.W.2d 235
- State v. Bruce, 2012 ND 140, ¶ 16, 818 N.W.2d 747
- State v. Nakvinda, 2011 ND 217, ¶ 12, 807 N.W.2d 204
- State v. Entzi, 2000 ND 148, ¶¶ 7-8, 615 N.W.2d 145
- Hoagland v. State, 518 N.W.2d 531, 535 (Minn. 1994)
- Smith v. Knutson, 78 N.D. 43, 50, 47 N.W.2d 537, 540 (1951)

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