

SUPREME COURT OF WISCONSIN

State v. Nollie, 2002 WI 4, 249 Wis. 2d 538

638 N.W.2d 280 (2002) · No. 00-0744-CR · Decided January 23, 2002

SUMMARY

The Supreme Court of Wisconsin held that Tony Nollie could not assert the statutory privilege of self-defense as a defense to carrying a concealed weapon under the facts presented. The court concluded that the perceived threat from nearby individuals was not sufficiently actual, imminent, and specific, and affirmed the circuit court's exclusion of related evidence and Nollie's conviction. A dissent would have permitted the self-defense theory to be presented to the jury.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Jon P. Wilcox, J.; William A. Bablitch, J. (dissenting)
JURISDICTION	Wisconsin
DECIDED	January 23, 2002
DOCKET	00-0744-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nollie was convicted by a jury of carrying a concealed weapon after the Milwaukee County Circuit Court excluded his statement concerning his prior robbery victimization and refused to allow him to present a self-defense privilege. The Wisconsin Court of Appeals certified the case to the Supreme Court of Wisconsin under Wis. Stat. § (Rule) 809.61.
STANDARD OF REVIEW	Whether a crime is amenable to a privilege of self-defense is a question of law reviewed de novo. In evaluating whether the defendant's offer of proof supports the defense, the facts are viewed in the light most favorable to the defendant.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Tony Nollie v. State of Wisconsin

TOPICS

- self defense
- criminal procedure
- evidence
- statutory interpretation
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

self-defense

statutory interpretation

QUESTIONS PRESENTED

1. Whether Nollie's offer of proof supported a statutory privilege of self-defense as a defense to carrying a concealed weapon.
2. Whether the circuit court properly excluded Nollie's statement about his prior robbery victimization and prevented him from presenting self-defense to the jury.
3. What showing is required before a defendant may present a self-defense theory based on carrying a concealed weapon.

HOLDINGS

1. Nollie's offer of proof did not establish an actual and reasonable belief that an actual or imminent unlawful interference with his person existed. Generalized concerns about crime, prior victimization, and the presence of loud and profane people nearby were insufficient because the men did not threaten, accost, communicate with, or even notice Nollie.
2. A circuit court must hear the defendant's offer of proof and may exclude evidence or deny a jury instruction when the offer does not provide evidence supporting the asserted self-defense theory.
3. Any privilege that could justify carrying a concealed weapon must be applied extremely narrowly and only on extraordinary or rare facts so that it does not undermine the purpose of the concealed-weapon statute.

KEY QUOTATIONS

“To sustain a claim of self-defense the defendant must show that (1) the defendant had an actual and reasonable belief that there was an actual or imminent unlawful interference with the defendant's person; (2) the defendant had the actual and reasonable belief that the threat or use of force was necessary; and (3) that the defendant only used such threat or force as he actually and reasonably believed was necessary.” (at 547)

“As we stated in Dundon, a general and potential threat of interference is not enough to invoke the self-defense privilege; the threat must be imminent and specific.” (at 550)

FACTUAL BACKGROUND

At approximately 1:30 a.m., police found Tony Nollie in a car in a Milwaukee McDonald's parking lot while he was changing or resting after changing a flat tire. Officers saw a pistol protruding from his waistband, and Nollie admitted carrying it because he had previously been robbed. Nollie's offer of proof indicated that four young men were nearby in a high-crime neighborhood, but there was no evidence that they noticed, threatened, approached, or communicated with him; by the time police arrived, the men were gone.

PROCEDURAL HISTORY

The circuit court granted the State's motion to exclude Nollie's statement and prevented him from presenting a self-defense claim. A jury convicted Nollie of carrying a concealed weapon. The court of appeals certified Nollie's appeal to the Wisconsin Supreme Court, which affirmed the circuit court's judgment and sustained the conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Dundon, 226 Wis. 2d 654, 594 N.W.2d 780 (1999)
- State v. Coleman, 206 Wis. 2d 199, 556 N.W.2d 701 (1996)
- Cleghorn v. State, 55 Wis. 2d 466, 198 N.W.2d 577 (1972)
- State v. Paulson, 106 Wis. 2d 96, 315 N.W.2d 350 (1982)
- State v. Brown, 107 Wis. 2d 44, 318 N.W.2d 370 (1982)
- State v. Mendoza, 80 Wis. 2d 122, 258 N.W.2d 260 (1977)
- State v. Olsen, 99 Wis. 2d 572, 299 N.W.2d 632 (Ct. App. 1980)
- United States v. Perez, 86 F.3d 735, 737 (7th Cir. 1996)
- United States v. Perrin, 45 F.3d 869, 874 (4th Cir. 1995)
- State v. Asfoor, 75 Wis. 2d 411, 415, 249 N.W.2d 529 (1977)