

SUPREME COURT OF THE STATE OF NEW MEXICO

State v. Parvilus

6 N.M. 516 (2014) · No. 33,970 · Decided July 31, 2014

SUMMARY

The New Mexico Supreme Court holds that NMSA 1978, Section 40-3-3, which provides that neither spouse may be excluded from the other's dwelling, does not create immunity from prosecution for burglary of a spouse's separate residence. The Court concludes that the defendant's surreptitious entry into his estranged wife's apartment, without permission and with criminal intent, satisfied the unauthorized-entry element of aggravated burglary. The Court reverses the lower courts and remands for reinstatement of the aggravated burglary conviction.

CASE DETAILS

COURT	Supreme Court of the State of New Mexico
WRITING FOR THE COURT	Charles W. Daniels, Justice; Barbara J. Vigil, Chief Justice; Petra Jimenez Maes, Justice; Richard C. Bosson, Justice; Edward L. Chávez, Justice
JURISDICTION	New Mexico
DECIDED	July 31, 2014
DOCKET	33,970
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought certiorari review of the Court of Appeals' decision affirming the district court's judgment notwithstanding the verdict and vacation of Defendant's aggravated burglary conviction.
STANDARD OF REVIEW	De novo review of statutory interpretation and the meaning of statutory language.
PRECEDENTIAL VALUE	published precedential opinion of the New Mexico Supreme Court
PARTIES	State of New Mexico v. Gerard B. Parvilus

TOPICS

- statutory interpretation
- legislative intent
- legislative history
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether NMSA 1978, Section 40-3-3, providing that neither spouse can be excluded from the other's dwelling, precludes prosecution and conviction for burglary of a spouse's separate residence.
2. Whether the evidence established an unauthorized entry sufficient to support Defendant's aggravated burglary conviction.

HOLDINGS

1. NMSA 1978, Section 40-3-3 does not provide immunity from prosecution for burglary of a spouse's separate residence. The statute concerns marital property rights and does not authorize an unconsented criminal entry into a spouse's separate dwelling.
2. Defendant's aggravated burglary conviction was legally supported because the evidence established that the apartment was his wife's separate residence, he had agreed not to retain a key, he lacked permission to enter, and he entered surreptitiously through a window before committing the charged crimes.

KEY QUOTATIONS

“the marital property provisions of statutes such as Section 40-3-3 do not provide immunity from prosecution for burglary of a spouse’s separate residence.” (¶ 23)

“Because we conclude that the marital property provisions of Section 40-3-3 do not provide immunity from prosecution for burglary of a spouse’s separate residence, we reverse both courts below and remand to the district court with instructions to enter an amended judgment and sentence reinstating Defendant’s aggravated burglary conviction.” (¶ 25)

FACTUAL BACKGROUND

Gerard Parvilus and his wife agreed that she would live separately with their child in an apartment for which she was the sole leaseholder, and Parvilus surrendered his keys before leaving for South Korea. He later returned without telling her, entered the apartment surreptitiously through a bedroom window without permission, and committed crimes involving his wife's boyfriend and wife. The jury convicted him of aggravated burglary, among other offenses, but the burglary conviction was set aside below on the theory that the marital-property statute gave him an unrestricted right to enter his wife's separate residence.

PROCEDURAL HISTORY

A jury convicted Gerard Parvilus of several offenses, including aggravated burglary of his estranged wife's separate apartment. The district court granted judgment notwithstanding the verdict on the aggravated burglary count, concluding that NMSA 1978, Section 40-3-3 precluded conviction because a spouse could not be excluded from the other's dwelling. The Court of Appeals affirmed, and the New Mexico Supreme Court granted certiorari, reversed both lower courts, and remanded for reinstatement of the conviction.

DISPOSITION

REMAND INSTRUCTIONS

The district court was instructed to enter an amended judgment and sentence reinstating Defendant's aggravated burglary conviction.

CASES CITED

- State v. Parvilus, 2013-NMCA-025, 297 P.3d 1228
- State v. Rubio, 1999-NMCA-018, 126 N.M. 579, 973 P.2d 256
- Cooper v. Chevron U.S.A., Inc., 2002-NMSC-020, 132 N.M. 382, 49 P.3d 61
- N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105
- Chatterjee v. King, 2012-NMSC-019, 280 P.3d 283
- State v. Rivera, 2004-NMSC-001, 134 N.M. 768, 82 P.3d 939
- State ex rel. Helman v. Gallegos, 1994-NMSC-023, 117 N.M. 346, 871 P.2d 1352
- State v. Cleve, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23
- State v. Chavez, 1929-NMSC-067, 34 N.M. 258, 280 P. 241
- State v. Lilly, 717 N.E.2d 322 (Ohio 1999)
- State v. O'Neal, 721 N.E.2d 73 (Ohio 2000)
- People v. Sears, 401 P.2d 938 (Cal. 1965)
- People v. Cahill, 853 P.2d 1037 (Cal. 1993)
- People v. Davenport, 219 Cal. App. 3d 885 (Cal. Ct. App. 1990)
- McDuff v. McDuff, 187 P. 37 (Cal. Ct. App. 1919)
- People v. Johnson, 906 P.2d 122 (Colo. 1995)
- Cladd v. State, 398 So. 2d 442 (Fla. 1981)
- Vazquez v. State, 350 So. 2d 1094 (Fla. Dist. Ct. App. 1977)
- Parham v. State, 556 A.2d 280 (Md. Ct. Spec. App. 1989)
- Thompson v. Thompson, 218 U.S. 611 (1910)