

SUPREME COURT OF NORTH DAKOTA

State of North Dakota v. Steven Donald Aune

2021 ND 7 (2021) · No. No. 20200159 · Decided January 12, 2021

SUMMARY

The Supreme Court of North Dakota affirmed Steven Donald Aune’s manslaughter conviction and ten-year sentence. The court held that Aune waived any challenge to allegedly inconsistent jury verdicts by requesting the manslaughter instruction and participating in the verdict forms. The court also found no obvious sentencing error based on consideration of Aune’s criminal history, because the sentence was within the statutory maximum and was not enhanced by prior convictions.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Justice; Jon J. Jensen, C.J.; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	January 12, 2021
DOCKET	No. 20200159
DISPOSITION	affirmed
PROCEDURAL POSTURE	Aune appealed from a criminal judgment entered after a jury convicted him of manslaughter and the district court sentenced him to ten years of incarceration.
STANDARD OF REVIEW	Jury-verdict consistency is reviewed for legal inconsistency. Sentences are generally reviewed to determine whether the district court acted within statutory limits or substantially relied on an impermissible factor. Unpreserved sentencing claims are reviewed for obvious error.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Steven Donald Aune v. State of North Dakota

TOPICS

- criminal procedure
- appellate procedure
- sentencing
- preservation of error
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Aune could challenge his manslaughter conviction as inconsistent with the jury's acquittal on murder under circumstances manifesting extreme indifference to the value of human life after he requested the manslaughter instruction and participated in crafting the verdict forms.
2. Whether the district court committed obvious error by considering Aune's prior convictions as part of his criminal history without first determining whether those convictions were uncounseled, where the convictions were not used to enhance his sentence or impose a mandatory minimum.

HOLDINGS

1. A defendant may not challenge a possible inconsistency between a manslaughter conviction and a murder acquittal when the defendant invited the alleged error by requesting the manslaughter instruction and participating in the verdict forms.
2. It is not error for a sentencing court to consider prior convictions as part of a defendant's criminal history when the defendant did not object, the convictions were not used to enhance the sentence or impose a mandatory minimum, and there is no showing that the convictions were uncounseled without a valid waiver.

KEY QUOTATIONS

"It is a cardinal rule of appellate review that a party may not challenge as error a ruling or other trial proceeding invited by that party." (¶ 8)

"Aune cannot establish obvious error, because he has failed to establish an error occurred." (¶ 16)

FACTUAL BACKGROUND

During an argument with his daughter, Aune picked up a rifle that fired and struck her. He did not call 911 or attempt to render aid, and his daughter later died from the gunshot wound. A jury acquitted him of the charged murder offenses but convicted him of manslaughter after Aune requested a lesser-included-offense instruction. At sentencing, the court considered his criminal history and other personal and behavioral factors and imposed ten years of incarceration.

PROCEDURAL HISTORY

Aune was charged with murder, requested jury instructions on the lesser-included offenses of manslaughter and negligent homicide, and was convicted of manslaughter. The district court imposed the statutory maximum ten-year sentence. Aune appealed, challenging the alleged inconsistency of the verdicts and asserting that the sentencing court improperly considered his prior convictions.

DISPOSITION

affirmed

CASES CITED

- State v. Lehman, 2010 ND 134, ¶ 17, 785 N.W.2d 204
- State v. McClary, 2004 ND 98, ¶ 6, 679 N.W.2d 455
- State v. Jahner, 2003 ND 36, ¶ 19, 657 N.W.2d 266
- State v. Pavlicek, 2012 ND 154, ¶ 10, 819 N.W.2d 521
- State v. Copping, 2008 ND 134, ¶ 23, 751 N.W.2d 254
- State v. Rogers, 2007 ND 68, ¶ 10, 730 N.W.2d 859
- State v. Rende, 2018 ND 56, ¶¶ 7-9, 907 N.W.2d 361
- State v. White Bird, 2015 ND 41, ¶ 23, 858 N.W.2d 642
- State v. Gonzalez, 2011 ND 143, ¶ 6, 799 N.W.2d 402
- State v. Corman, 2009 ND 85, ¶ 15, 765 N.W.2d 530
- State v. Evanson, 2020 ND 4
- State v. Henes, 2009 ND 42, ¶¶ 7-12, 763 N.W.2d 502
- State v. Smith, 2019 ND 239, ¶ 15, 934 N.W.2d 1
- State v. Doppler, 2013 ND 54, ¶ 14, 828 N.W.2d 502
- State v. Wegley, 2008 ND 4, ¶ 14, 744 N.W.2d 284
- State v. Thompson, 2010 ND 10, ¶ 26, 777 N.W.2d 617
- State v. Woehlhoff, 473 N.W.2d 446, 450 (N.D. 1991)