

SUPREME COURT OF SOUTH DAKOTA

State v. Mesa

681 N.W.2d 84 (S.D. 2004); 2004 SD 68 · No. No. 22798 · Decided May 19, 2004

SUMMARY

The Supreme Court of South Dakota affirmed Carlos Mesa's convictions for second-degree rape and second-degree burglary. The court held that the trial court's response to a jury question did not constructively amend the indictment and that sufficient evidence supported the rape conviction.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Sabers, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	May 19, 2004
DOCKET	No. 22798
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mesa appealed jury convictions for second degree rape under SDCL 22-22-1(3) and second degree burglary under SDCL 22-32-3, challenging the trial court's response to a jury question as a constructive amendment of the indictment and challenging the sufficiency of the evidence supporting the rape conviction.
STANDARD OF REVIEW	Constitutional-violation claims are reviewed de novo. An insufficiency-of-the-evidence claim is reviewed by asking whether the record contains evidence which, if believed by the jury, is sufficient to sustain guilt beyond a reasonable doubt, accepting the evidence and the most favorable reasonable inference supporting the verdict.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Carlos Mesa v. State of South Dakota

TOPICS

- criminal procedure
- evidence
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the trial court's response to the jury's question about whether alcohol impairment could constitute mental incapacity constructively amended the indictment.
2. Whether sufficient evidence supported Mesa's conviction for second degree rape under SDCL 22-22-1(3).

HOLDINGS

1. Mesa waived the constructive-amendment and jury-instruction challenge by failing to object in the trial court. In any event, the response did not constructively amend the indictment because the jury was not instructed on subsection (4), subsection (3) broadly covered physical or mental incapacity without regard to cause, and the response correctly left the factual determination to the jury.
2. The evidence was sufficient to support Mesa's conviction for second degree rape under SDCL 22-22-1(3), and the court would not speculate about the particular factual basis the jury used for its verdict or reweigh witness credibility.

KEY QUOTATIONS

"A constructive amendment to an indictment occurs when: the terms of the indictment are altered in effect by either the admission of evidence or the use of jury instructions which modify the essential elements of the offense charged so that a substantial likelihood exists that the defendant was convicted of an offense other than that charged in the indictment." (681 N.W.2d at 87)

"This is proper guidance to the jury based on a correct statement of the law, and we find no error." (681 N.W.2d at 88)

"However, it is a function of the jury to resolve factual conflicts and weigh the credibility of witnesses." (681 N.W.2d at 89)

FACTUAL BACKGROUND

BB testified that she awoke to Mesa raping her in her boyfriend's bedroom, struggled with him, and later followed him outside until police arrived. Physical examination revealed bruises and vaginal abrasions consistent with forcible intercourse, and officers recovered clothing and Nissan keys associated with Mesa from the bedroom. Mesa initially denied contact with BB and being in the house, but later admitted having sex with her and claimed it was consensual. The jury convicted Mesa of rape under the mental- or physical-incapacity provision and of second degree burglary.

PROCEDURAL HISTORY

The State initially charged Mesa by complaint with second degree rape under SDCL 22-22-1(2). A grand jury later returned an indictment charging second degree rape under subsections (2) and (3), in the alternative, and

second degree burglary. After a jury trial, Mesa was convicted of second degree rape under subsection (3) and second degree burglary, while being acquitted of the forcible rape charge under subsection (2). The trial court denied Mesa's motion for judgment of acquittal, and the Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ball, 2004 SD 9, 675 N.W.2d 192, 198
- State v. Boston, 2003 SD 71, 665 N.W.2d 100, 103
- State v. Heftel, 513 N.W.2d 397, 399 (S.D. 1994)
- United States v. Johnson, 934 F.2d 936 (8th Cir. 1991)
- Stirone v. United States, 361 U.S. 212, 217-19, 80 S. Ct. 270, 273-74, 4 L. Ed. 2d 252 (1960)
- State v. Otto, 529 N.W.2d 193, 195 (S.D. 1995)
- State v. Moran, 2003 SD 14, 657 N.W.2d 319, 328