

SUPREME COURT OF NEVADA

Ouanbengboune v. State, 125 Nev. 763

220 P.3d 1122 (2009) · No. No. 44763 · Decided December 3, 2009

SUMMARY

The Supreme Court of Nevada affirmed Vannasone Ouanbengboune's convictions for first-degree murder and robbery, both with deadly-weapon enhancements. The court adopted procedures for reviewing post-judgment claims of inaccuracies by court-appointed interpreters and held that, although some translation errors fundamentally altered the context of the defendant's testimony, they did not prejudice him because the evidence of guilt was overwhelming. The court also held that the failure to instruct the jury on afterthought robbery was erroneous but did not constitute plain error.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, C.J.; Parraguirre, J.; Douglas, J.
JURISDICTION	Nevada
DECIDED	December 3, 2009
DOCKET	No. 44763
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a judgment of conviction for first-degree murder with use of a deadly weapon and robbery with use of a deadly weapon.
STANDARD OF REVIEW	The decision to give or refuse a particular jury instruction is reviewed for abuse of discretion. Because the defendant did not object to the failure to give an afterthought-robbery instruction, the instructional error was reviewed for plain error, requiring a clear error that adversely affected substantial rights. Translation adequacy is reviewed by considering whether the translation was adequate and accurate in its entirety, including whether inaccuracies fundamentally altered the context of the testimony and prejudiced the defendant.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Vannasone Ouanbengboune, a/k/a Vannasone Quanbengboune v. The State of Nevada

TOPICS

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jury instructions

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. What procedures govern a post-judgment challenge to inaccuracies in a court-appointed interpreter's translation of trial testimony?
2. Did the interpreter's inaccuracies fundamentally alter Ouanbengboune's testimony and prejudice him so as to warrant a new trial?
3. Did the district court abuse its discretion by instructing the jury on felony murder?
4. Did the district court's failure to instruct the jury on afterthought robbery constitute reversible plain error?

HOLDINGS

1. A defendant who discovers inaccuracies in a court-appointed interpreter's translation of trial testimony after judgment may seek a new trial under NRS 176.515 if timely, or may move to modify or correct the appellate record under NRAP 10(c) when an appeal is pending. The court adopted procedures requiring review by the parties' interpreters, proof by the challenging party that the translation is inaccurate and fundamentally alters the testimony, use of an independent certified interpreter when necessary, and preservation of the competing translations.
2. Although some interpretation errors fundamentally altered the context of Ouanbengboune's testimony concerning the firing of the gun, the errors did not prejudice him sufficiently to warrant a new trial because overwhelming evidence established premeditation and the trial result would have been the same with an accurate translation.
3. The district court erred by failing to instruct the jury on afterthought robbery, but the error was not plain error because it did not adversely affect Ouanbengboune's substantial rights. The evidence overwhelmingly established willful, deliberate, and premeditated murder under an alternative theory, so a rational jury would have convicted him of first-degree murder even with a proper afterthought-robbery instruction.

KEY QUOTATIONS

"Today we adopt similar procedures that will allow a defendant who discovers interpreter inaccuracies in the translation of trial testimony to file a post-trial motion to challenge the alleged inaccuracies made by the court-appointed interpreter." (220 P.3d at 1126)

"However, we determine that Sonny's characterization of his actions and the court-appointed interpreter's inaccuracies in translation of his testimony were not prejudicial and therefore a new trial is not warranted in this case." (220 P.3d at 1129)

“Thus, we conclude that the district court's failure to instruct the jury on afterthought robbery as it applies to felony murder, although erroneous, did not prejudice Sonny's substantial rights and therefore did not amount to plain error.” (220 P.3d at 1130)

FACTUAL BACKGROUND

Ouanbengboune went to a Las Vegas lounge to confront Raynna Bunyou, brought a revolver, shot Bunyou in the leg, and then shot her in the head after directing patrons to return inside. He then took Bunyou's car and drove away. At trial, a court-appointed Laotian interpreter translated Ouanbengboune's testimony, and an independent interpreter later identified inaccuracies, including errors concerning whether Ouanbengboune re-cocked the gun before the second shot. The jury convicted him of first-degree murder and robbery, both with deadly-weapon enhancements.

PROCEDURAL HISTORY

A jury convicted Ouanbengboune of first-degree murder and robbery, each with a deadly-weapon enhancement. After judgment, he obtained an independent translation of his trial testimony and challenged alleged inaccuracies by the court-appointed interpreter. On direct appeal, he also challenged the jury instructions, including the failure to instruct on afterthought robbery. The Supreme Court of Nevada affirmed the judgment of conviction.

DISPOSITION

affirmed

CASES CITED

- Baltazar-Monterrosa v. State, 122 Nev. 606, 137 P.3d 1137 (2006)
- Ton v. State, 110 Nev. 970, 878 P.2d 986 (1994)
- U.S. v. Gomez, 908 F.2d 809 (11th Cir. 1990)
- U.S. v. Long, 301 F.3d 1095 (9th Cir. 2002)
- Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005)
- Vincent v. State, 97 Nev. 169, 625 P.2d 1172 (1981)
- Emmons v. State, 107 Nev. 53, 807 P.2d 718 (1991)
- Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000)
- Nay v. State, 123 Nev. 326, 167 P.3d 430 (2007)
- Anderson v. State, 121 Nev. 511, 118 P.3d 184 (2005)
- Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)
- Cortinas v. State, 124 Nev. ___, 195 P.3d 315 (2008), cert. denied, ___ U.S. ___, 130 S. Ct. 416 (2009)
- Archanian v. State, 122 Nev. 1019, 145 P.3d 1008 (2006)
- U.S. v. Joshi, 896 F.2d 1303 (11th Cir. 1990)
- U.S. v. Lim, 794 F.2d 469 (9th Cir. 1986)
- Valladares v. U.S., 871 F.2d 1564 (11th Cir. 1989)

