

SUPREME COURT OF WYOMING

Johns v. State

409 P.3d 1260 (Wyo. 2018) · Decided February 9, 2018

SUMMARY

The Wyoming Supreme Court affirmed Don Wesley Johns’s first-degree murder conviction and sentence for killing his roommate. The court held that alleged errors in self-defense instructions, the sudden-heat-of-passion instruction, the stepped verdict form, and the definition of recklessness did not constitute reversible plain error, principally because Johns failed to show prejudice and the evidence did not support his asserted defenses.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Kautz, Justice; Burke; Davis; Fox; Hill; Kautz
JURISDICTION	Wyoming
DECIDED	February 9, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Johns appealed his jury conviction for first-degree murder and life-without-parole sentence, challenging multiple jury instructions and the use of a stepped verdict form.
STANDARD OF REVIEW	Because Johns did not object to the challenged instructions or verdict form at trial, the court applied plain-error review. The defendant had to show that the record clearly reflected the alleged error, that the error violated a clear and unequivocal rule of law, and that it denied a substantial right resulting in material prejudice. The court also noted that trial courts have wide latitude in instructing juries when the instructions correctly state the law and, viewed as a whole, cover the relevant issues.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential.
PARTIES	Don Wesley Johns v. State of Wyoming

TOPICS

- jury instructions
- self defense
- lesser included offense instructions
- standard of review
- appellate procedure

PRACTICE AREAS

criminal procedure

criminal appeals

jury instructions

homicide

QUESTIONS PRESENTED

1. Whether the district court improperly instructed the jury regarding self-defense and the duty to retreat.
2. Whether the district court improperly instructed the jury regarding the State's burden of proof concerning sudden heat of passion as an element of voluntary manslaughter.
3. Whether the stepped verdict form improperly prevented the jury from considering sudden heat of passion as a mitigating circumstance before considering greater offenses.
4. Whether the district court plainly erred by failing to define recklessness or enhanced recklessness in the instruction defining malice for second-degree murder.

HOLDINGS

1. Johns failed to establish plain error from the self-defense instructions because he did not present a prima facie case of self-defense. The evidence did not support findings that Wickersham was the aggressor, that Johns reasonably believed he faced imminent death or serious bodily harm, or that no reasonable alternative existed.
2. The voluntary-manslaughter instruction was legally deficient under Shull because it did not inform the jury that the State had to disprove sudden heat of passion, but Johns failed to establish plain error because the instructional error was trial error and he could not show material prejudice.
3. The stepped verdict form did not constitute plain error because Johns failed to show prejudice. He did not argue sudden heat of passion or present evidence supporting voluntary manslaughter, so a different verdict form would not have changed the result.
4. The district court did not commit reversible plain error by failing to define recklessness or enhanced recklessness because the jury convicted Johns of first-degree murder and therefore never considered the second-degree-murder instructions.

KEY QUOTATIONS

“A trial court is given wide latitude in instructing the jury and, as long as the instructions correctly state the law and the instructions in their entirety sufficiently cover the relevant issue, reversible error will not be found.” (¶ 12)

“Before a jury must be instructed regarding self-defense, the defendant “must first present a prima facie case of each element of the affirmative defense ... including that the victim acted as the aggressor.”” (¶ 14)

FACTUAL BACKGROUND

Johns and his roommate, Don Wickersham, argued at their apartment while both had been drinking. Witnesses generally described Johns as belligerent and Wickersham as nonaggressive, although one witness saw Wickersham posture while holding knives from his collection. Later that evening, Wickersham was found dead in the apartment with twenty-nine sharp-force injuries, and Johns admitted to acquaintances that he had killed

him. At trial, Johns asserted self-defense, but the evidence did not establish how the fatal encounter began or provide evidence supporting the elements of self-defense or sudden heat of passion.

PROCEDURAL HISTORY

The State charged Johns with first-degree murder. A jury convicted him, and the district court sentenced him to life imprisonment without the possibility of parole. Johns filed a timely appeal, and the Wyoming Supreme Court reviewed his unpreserved instructional and verdict-form claims for plain error.

DISPOSITION

affirmed

CASES CITED

- Schmuck v. State, 2017 WY 140, ¶¶ 31-37, 69, 406 P.3d 286, 297-299, 308 (Wyo. 2017)
- Collins v. State, 2015 WY 92, ¶ 10, 354 P.3d 55, 57 (Wyo. 2015)
- Hawes v. State, 2014 WY 127, ¶¶ 15, 19, 335 P.3d 1073, 1078-79 (Wyo. 2014)
- Gonzalez-Ochoa v. State, 2014 WY 14, ¶ 18, 317 P.3d 599, 605 (Wyo. 2014)
- Brown v. State, 2014 WY 104, ¶ 16, 332 P.3d 1168, 1174 (Wyo. 2014)
- Drennen v. State, 2013 WY 118, ¶ 39, 311 P.3d 116, 129 (Wyo. 2013)
- Ramos v. State, 806 P.2d 822, 825 (Wyo. 1991)
- Haire v. State, 2017 WY 48, ¶ 25, 393 P.3d 1304, 1311 (Wyo. 2017)
- United States v. Barrett, 797 F.3d 1207, 1217 (10th Cir. 2015)
- Bruce v. State, 2015 WY 46, ¶ 85, 346 P.3d 909, 934 (Wyo. 2015)
- State v. Graham, 371 N.W.2d 204, 209 (Minn. 1985)
- Shull v. State, 2017 WY 14, ¶¶ 39, 45, 388 P.3d 763, 772, 774 (Wyo. 2017)
- Dean v. State, 2003 WY 128, ¶ 19, 77 P.3d 692, 699 (Wyo. 2003)
- Wilkerson v. State, 2014 WY 136, 336 P.3d 1188 (Wyo. 2014)
- Toth v. State, 2015 WY 86A, ¶ 45, 353 P.3d 696, 710 (Wyo. 2015)