

SUPREME COURT OF NEW MEXICO

State v. Baroz

2017-NMSC-030 (N.M. 2017) · No. S-1-SC-34839 · Decided October 5, 2017

SUMMARY

The New Mexico Supreme Court held that shooting at or from a motor vehicle cannot serve as the predicate felony for felony murder. It vacated the felony murder conviction and ordered entry of a second-degree murder conviction, while affirming rulings denying a self-defense instruction, upholding a firearm sentencing enhancement against a double-jeopardy challenge, and permitting voluntary statements obtained after a Miranda violation to be used for impeachment.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Barbara J. Vigil, Justice; Petra Jimenez Maes, Justice; Edward L. Chávez, Justice; Charles W. Daniels, Justice; Judith K. Nakamura, Chief Justice
JURISDICTION	New Mexico
DECIDED	October 5, 2017
DOCKET	S-1-SC-34839
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed his jury convictions for felony murder, aggravated assault with a deadly weapon, and possession of drug paraphernalia, challenging the felony-murder predicate, sufficiency of the evidence, denial of a self-defense instruction, firearm sentencing enhancements, and use of post-Miranda statements for impeachment.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed under the substantial-evidence standard, viewing disputed facts and reasonable inferences in favor of the State. Denial of a preserved jury instruction is reviewed for reversible error, with the legal propriety of the instruction reviewed de novo. Legislative intent and voluntariness of confessions are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Benjamin David Baroz III v. State of New Mexico

TOPICS

criminal procedure

double jeopardy

self defense

miranda rights

statutory interpretation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether shooting at or from a motor vehicle may serve as the predicate felony for felony murder.
2. Whether the evidence was sufficient to support a second-degree murder conviction.
3. Whether Baroz was entitled to a jury instruction on self-defense.
4. Whether a one-year firearm enhancement for aggravated assault with a deadly weapon violated double jeopardy.
5. Whether statements obtained after Baroz invoked his right to remain silent were voluntary and admissible for impeachment.

HOLDINGS

1. Shooting at or from a motor vehicle cannot serve as the predicate felony for felony murder because it is an elevated form of aggravated battery. The felony-murder conviction therefore could not stand, and a conviction of second-degree murder was ordered instead.
2. The evidence was sufficient to support second-degree murder because the jury could reasonably find that Baroz fired the shots from the passenger-side window, caused the victim's death, and knew that shooting toward a group of people in a residential area created a strong probability of death or great bodily harm.
3. Baroz was not entitled to a self-defense instruction because the evidence was insufficient to permit reasonable minds to differ on whether his use of deadly force was objectively reasonable.
4. The one-year firearm enhancement imposed on each aggravated-assault conviction did not violate double jeopardy because the Legislature expressly authorized increased punishment for a noncapital felony committed with a firearm.
5. Although detectives made implied promises of leniency after Baroz invoked his right to remain silent, the statements were voluntary under the totality of the circumstances and could be used to impeach his trial testimony.

KEY QUOTATIONS

“shooting at or from a motor vehicle is an elevated form of aggravated battery, and thus cannot be used as a predicate for felony murder.” (¶ 6)

“However, unlike an express promise of leniency, which can render a confession inadmissible as a matter of law, evidence of an implied promise is only [one] factor in the totality of the circumstances that courts consider in determining whether a confession is voluntary.” (¶ 35)

“We conclude that any implied promises did not overwhelm Defendant’s will or impair his capacity for self-determination such that his statements were involuntary.” (¶ 49)

FACTUAL BACKGROUND

Baroz was riding in the passenger seat of his father's truck when the truck passed and then returned slowly to a residence where several people were in the backyard. Multiple shots were fired from the passenger-side window, killing Matthew Cordova. The State argued that Baroz fired the weapon; Baroz claimed that his father was the shooter and that he did not know or intend that anyone would be shot. Baroz also claimed that people approached the truck with their hands behind their backs, but he did not testify that he saw a weapon.

PROCEDURAL HISTORY

A jury convicted Baroz of felony murder predicated on shooting at or from a motor vehicle, two counts of aggravated assault with a deadly weapon, and possession of drug paraphernalia. The district court vacated the shooting-at-or-from-a-motor-vehicle conviction on double-jeopardy grounds, imposed one-year firearm enhancements on the aggravated-assault sentences, denied a self-defense instruction, and permitted the State to use statements obtained after invocation of the right to remain silent for impeachment. The Supreme Court of New Mexico vacated the felony-murder conviction, ordered entry of a second-degree murder conviction, and affirmed the remaining challenged rulings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The felony-murder conviction was vacated and the court ordered that a conviction of second-degree murder be entered instead. The remaining challenged rulings were affirmed.

CASES CITED

- State v. Frazier, 2007-NMSC-032, ¶ 1, 142 N.M. 120, 164 P.3d 1
- State v. Marquez, 2016-NMSC-025, ¶¶ 1, 23, 376 P.3d 815
- State v. Meadors, 1995-NMSC-073, ¶¶ 1, 12, 45, 121 N.M. 38, 908 P.2d 731
- State v. Hernandez, 1999-NMCA-105, ¶¶ 25-28, 127 N.M. 769, 987 P.2d 1156
- State v. Flores, 2010-NMSC-002, ¶ 2, 147 N.M. 542, 226 P.3d 641
- State v. Largo, 2012-NMSC-015, ¶ 30, 278 P.3d 532
- State v. Duran, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515
- State v. Ortega, 1991-NMSC-084, ¶ 25, 112 N.M. 554, 817 P.2d 1196
- State v. Suazo, 2017-NMSC-011, ¶ 23, 390 P.3d 674
- State v. Gaines, 2001-NMSC-036, ¶¶ 4, 10, 131 N.M. 347, 36 P.3d 438
- State v. Ellis, 2008-NMSC-032, ¶ 14, 144 N.M. 253, 186 P.3d 245

- State v. Gonzales, 2007-NMSC-059, ¶¶ 19-20, 143 N.M. 25, 172 P.3d 162
- State v. Coffin, 1999-NMSC-038, ¶ 15, 128 N.M. 192, 991 P.2d 477
- State v. Rudolfo, 2008-NMSC-036, ¶ 27, 144 N.M. 305, 187 P.3d 170
- State v. Swick, 2012-NMSC-018, ¶ 60, 279 P.3d 747
- State v. Pruett, 1918-NMSC-062, ¶ 9, 24 N.M. 68, 172 P. 1044
- State v. Sutphin, 2007-NMSC-045, ¶¶ 22-24, 142 N.M. 191, 164 P.3d 72
- State v. Lopez, 2000-NMSC-003, ¶¶ 24-26, 128 N.M. 410, 993 P.2d 727
- State v. Parish, 1994-NMSC-073, ¶¶ 2, 5, 118 N.M. 39, 878 P.2d 988
- Witte v. United States, 515 U.S. 389, 395-96 (1995)
- Swafford v. State, 1991-NMSC-043, ¶¶ 25, 30, 32, 112 N.M. 3, 810 P.2d 1223
- State v. Carrasco, 1997-NMSC-047, ¶¶ 22-23, 124 N.M. 64, 946 P.2d 1075
- Blockburger v. United States, 284 U.S. 299, 304 (1932)
- Garrett v. United States, 471 U.S. 773, 793 (1985)
- Ohio v. Johnson, 467 U.S. 493, 499 (1984)
- Brown v. Ohio, 432 U.S. 161, 165 (1977)
- Missouri v. Hunter, 459 U.S. 359, 368-69 (1983)
- State v. Montoya, 2013-NMSC-020, ¶ 29, 306 P.3d 426
- State v. Maestas, 2007-NMSC-001, ¶ 25, 140 N.M. 836, 149 P.3d 933
- Miranda v. Arizona, 384 U.S. 436, 444-45 (1966)
- Harris v. New York, 401 U.S. 222, 224 (1971)
- State v. Omar-Muhammad, 1987-NMSC-043, ¶ 26, 105 N.M. 788, 737 P.2d 1165
- State v. Evans, 2009-NMSC-027, ¶¶ 32, 34, 42-43, 146 N.M. 301, 210 P.3d 198
- State v. Sanders, 2000-NMSC-032, ¶¶ 6, 10, 129 N.M. 728, 13 P.3d 460
- State v. Tindle, 1986-NMCA-035, ¶ 25, 104 N.M. 195, 718 P.2d 705
- State v. Gutierrez, 2011-NMSC-024, ¶ 25, 150 N.M. 232, 258 P.3d 1024
- State v. Munoz, 1998-NMSC-048, ¶¶ 24, 34, 126 N.M. 535, 972 P.2d 847
- Mincey v. Arizona, 437 U.S. 385, 398-401 (1978)
- State v. Barr, 2009-NMSC-024, ¶ 24, 146 N.M. 301, 210 P.3d 198
- State v. Fekete, 1995-NMSC-049, ¶ 34, 120 N.M. 290, 901 P.2d 708
- State v. Cooper, 1997-NMSC-058, ¶ 30, 124 N.M. 277, 949 P.2d 533
- State v. Gabaldon, 1978-NMCA-101, ¶¶ 25, 28, 92 N.M. 230, 585 P.2d 1352
- State v. Charlton, 1992-NMCA-124, ¶ 26, 115 N.M. 35, 846 P.2d 341
- State v. Lobato, 2006-NMCA-051, ¶ 18, 139 N.M. 431, 134 P.3d 122
- State v. Wickman, 1935-NMSC-035, ¶ 31, 39 N.M. 198, 43 P.2d 933

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