

SUPREME COURT OF THE STATE OF DELAWARE

Dordell v. State

Dordell v. State · No. No. 437, 2014 · Decided May 15, 2015

SUMMARY

The Delaware Supreme Court affirmed Freeman Dordell’s convictions for theft and second-degree criminal trespass. The Court held that the trial court did not commit plain error by failing to sua sponte instruct the jury on the statutory affirmative defense of claim of right, which Dordell had not raised or established at trial.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Per Curiam; signed by Justice Karen L. Valihura; Leo E. Strine, Jr., Chief Justice; Randy J. Holland, Justice; Karen L. Valihura, Justice
JURISDICTION	Delaware
DECIDED	May 15, 2015
DOCKET	No. 437, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dordell appealed his jury convictions for theft and second-degree criminal trespass after the Superior Court sentenced him to two years at Level V incarceration, suspended after three months for decreasing levels of supervision, restitution, and a fine. On appeal, he argued for the first time that the trial court plainly erred by failing to instruct the jury sua sponte on the statutory affirmative defense of claim of right.
STANDARD OF REVIEW	Unpreserved claims are generally reviewed only for plain error. Plain error requires an error that is clearly prejudicial to substantial rights and jeopardizes the fairness and integrity of the trial process, or a material defect apparent on the face of the record that is basic, serious, and fundamental and causes substantial prejudice or manifest injustice.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; precedential status beyond the opinion’s published designation is not stated in the source.
PARTIES	Freeman Dordell v. State of Delaware

TOPICS

jury instructions

preservation of error

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

criminal law

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appellate practice

QUESTIONS PRESENTED

1. Whether the trial court committed plain error by failing to instruct the jury sua sponte on the statutory affirmative defense of claim of right under 11 Del. C. § 847(a), where the defendant did not raise the defense or request the instruction at trial.
2. Whether the record established the claim-of-right affirmative defense by a preponderance of the evidence such that the defendant was entitled to a jury instruction under 11 Del. C. § 304(b).

HOLDINGS

1. The trial court did not commit plain error by failing to instruct the jury sua sponte on the statutory claim-of-right affirmative defense when Dordell neither raised the defense nor requested the instruction in the Superior Court.
2. Dordell was not entitled to reversal based on the absence of a claim-of-right instruction because he did not establish the affirmative defense by a preponderance of the evidence and did not preserve the issue for appellate review.

KEY QUOTATIONS

“Notably, neither the statute nor the common law requires the trial court to instruct the jury sua sponte on all potentially available affirmative defenses when counsel has not requested a particular instruction.” (5)

“Under the plain error standard of review, “[t]he error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”” (4)

FACTUAL BACKGROUND

Dordell owned a house financed through Shallcross Mortgage Company and had signed a deed in lieu of foreclosure. After mortgage payments stopped, Shallcross recorded the deed, obtained an order ejecting Dordell, and secured a writ of possession stating that the defendant could not harm the property. Despite the writ, Dordell and a friend removed kitchen appliances, cabinets, plumbing, and other fixtures from the house, and Dordell gave some of the items to his friend. A jury convicted Dordell of theft and second-degree criminal trespass.

PROCEDURAL HISTORY

Dordell was convicted in the Delaware Superior Court for New Castle County. The Superior Court sentenced him on July 18, 2014. He appealed, asserting that the trial court should have instructed the jury on the claim-of-right affirmative defense despite his failure to raise the defense or request an instruction below. The Delaware Supreme Court rejected the unpreserved claim and affirmed.

DISPOSITION

affirmed

CASES CITED

- Zimmerman v. State, 628 A.2d 62 (Del. 1993)
- Dougherty v. State, 21 A.3d 1, 2 (Del. 2011)
- Turner v. State, 5 A.3d 612, 615 (Del. 2010)
- Canty v. State, 394 A.2d 215, 217 (Del. 1978)
- Hand v. State, 354 A.2d 140 (Del. 1976)

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