

SUPREME COURT OF NEBRASKA

State v. Wells

300 Neb. 296 (2018) · No. No. S-17-359 · Decided June 22, 2018

SUMMARY

The Nebraska Supreme Court affirmed Anthony L. Wells’ convictions for first degree murder, use of a firearm to commit a felony, possession of a firearm by a prohibited person, and unlawful discharge of a firearm. The court held that the jury instructions on transferred intent, read as a whole, correctly stated the law and were not misleading. It also concluded that sufficient evidence supported the unlawful-discharge conviction and addressed Wells’ ineffective-assistance claims under the applicable direct-appeal standards.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Harder, District Judge; Noakes, District Judge
JURISDICTION	Nebraska
DECIDED	June 22, 2018
DOCKET	No. S-17-359
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions and sentences for first degree murder, use of a firearm to commit a felony, possession of a firearm by a prohibited person, and unlawful discharge of a firearm.
STANDARD OF REVIEW	Jury-instruction issues are reviewed independently as questions of law, with reversal requiring a showing of prejudice or adverse effect on a substantial right; jury instructions are considered as a whole. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt, without reweighing evidence or resolving credibility conflicts. Whether an ineffective-assistance claim can be resolved on direct appeal is a question of law determined by the sufficiency of the record.
PRECEDENTIAL VALUE	published
PARTIES	Anthony L. Wells v. State of Nebraska

TOPICS

jury instructions

ineffective assistance

criminal procedure

standard of review

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

constitutional law

QUESTIONS PRESENTED

1. Whether the transferred-intent jury instruction, when read with the other instructions, misstated the law or was misleading regarding the elements of first degree murder.
2. Whether the evidence was sufficient to support Wells' conviction for unlawfully discharging a firearm at an occupied building.
3. Whether Wells' claims that trial counsel failed to object to prior-bad-acts testimony, elicited and failed to object to hearsay, failed to move for a mistrial, and failed to investigate established ineffective assistance on direct appeal.
4. Whether Wells adequately stated his investigative ineffective-assistance claims to preserve them for a future postconviction proceeding.

HOLDINGS

1. The transferred-intent instruction did not misstate the law or mislead the jury because, read together with the instructions defining first degree murder and intent, it did not relieve the State of proving that Wells acted purposely and with deliberate and premeditated malice.
2. The evidence was sufficient to support the conviction because a rational jury could find beyond a reasonable doubt that Wells intentionally discharged a firearm at an occupied building.
3. By presenting defense evidence after the district court overruled his directed-verdict motion, Wells waived appellate review of the correctness of that ruling, but he could still challenge the sufficiency of the evidence; treated as a sufficiency challenge, the assignment failed.
4. The claims concerning prior-bad-acts testimony, hearsay testimony, and failure to seek a mistrial were either meritless or could not establish prejudice on the record, while the investigative claims could not be determined on direct appeal because the record was insufficient.
5. Appellate counsel seeking to avoid a future procedural bar must state an ineffective-assistance claim with enough particularity for the appellate court to determine whether it can be resolved on the trial record and for a later postconviction court to identify the claim; an insufficiently stated claim is treated as not stated.

KEY QUOTATIONS

“Our conclusion is merely that the specific instructions given in this case, when read as a whole, correctly state the law, are not misleading, and are supported by the evidence, and there is no prejudicial error necessitating reversal.” (307)

“The statute requires a finding that the defendant intentionally discharged a firearm at an occupied building; we do not read the statute as requiring that the firearm be aimed at a specific part of the building such as a specific apartment or at a door or window.” (309)

“A claim insufficiently stated is no different than a claim not stated at all.” (316)

FACTUAL BACKGROUND

After an altercation between Wells and Rhani Henry outside Henry's apartment building, Wells left after residents told him to leave and reportedly said he would return. Ten to fifteen minutes later, a masked man approached the residents outside the building and fired numerous shots, killing Joshua Hartwig and striking the building and nearby vehicles. Witness identifications, surveillance footage, shell casings, a firearm-related cartridge found in Wells' bedroom, and DNA evidence from a discarded mask connected Wells to the shooting, although the defense presented alibi and identification evidence.

PROCEDURAL HISTORY

Wells was convicted in the Lancaster County District Court of four firearm- and homicide-related offenses and received consecutive prison sentences, including life imprisonment for first degree murder. He appealed, challenging a transferred-intent jury instruction, the sufficiency of the evidence supporting his unlawful-discharge conviction, and the effectiveness of trial counsel. The Nebraska Supreme Court affirmed the convictions and sentences.

DISPOSITION

affirmed

CASES CITED

- State v. Schwaderer, 296 Neb. 932, 898 N.W.2d 318 (2017)
- State v. Hinrichsen, 292 Neb. 611, 877 N.W.2d 211 (2016)
- State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018)
- State v. Olbricht, 294 Neb. 974, 885 N.W.2d 699 (2016)
- State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007)
- State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016)
- State v. Morrow, 237 Neb. 653, 467 N.W.2d 63 (1991)
- State v. Pierce, 231 Neb. 966, 439 N.W.2d 435 (1989)
- Strickland v. Washington, 466 U.S. 668 (1984)