

NORTH DAKOTA SUPREME COURT

State v. Aguero and Moncada

2010 ND 210 · No. Nos. 20090241 & 20090254 · Decided November 9, 2010

SUMMARY

The North Dakota Supreme Court affirmed the criminal judgments against Billy Joe Valdez Aguero and Joseph Daniel Moncada for two counts each of murder and conspiracy to commit murder. The court held that any error involving courtroom restraints, admission of a nontestimonial statement, delay under the Interstate Agreement on Detainers, and testimony concerning post-Miranda silence was harmless or otherwise did not warrant reversal. The opinion also addressed the admission of a prior consistent statement under North Dakota evidence rules.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Mary Muehlen Maring, Justice; Gerald W. VandeWalle, Chief Justice; Carol Ronning Kapsner, Justice; Daniel J. Crothers, Justice
JURISDICTION	North Dakota
DECIDED	November 9, 2010
DOCKET	Nos. 20090241 & 20090254
DISPOSITION	affirmed
PROCEDURAL POSTURE	Aguero and Moncada appealed criminal judgments entered after a jury convicted each defendant of two counts of murder and two counts of conspiracy to commit murder.
STANDARD OF REVIEW	Abuse of discretion for the use of physical restraints, decisions concerning continuances for good cause under the Interstate Agreement on Detainers, and evidentiary rulings; de novo for constitutional confrontation claims; harmless-error review for constitutional and other trial errors affecting substantial rights.
PRECEDENTIAL VALUE	published state supreme court opinion
PARTIES	Billy Joe Valdez Aguero, Joseph Daniel Moncada v. State of North Dakota

TOPICS

criminal procedure

sixth amendment

right to counsel

hearsay

speedy trial

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether requiring Aguero and Moncada to wear leg restraints during trial violated their constitutional right to a fair trial.
2. Whether admission of Damien Belgarde's statement that he was meeting Moncada violated Moncada's Sixth Amendment confrontation right.
3. Whether the district court violated the Interstate Agreement on Detainers by granting a continuance beyond the 180-day speedy-disposition period.
4. Whether testimony concerning Aguero's post-Miranda silence violated his constitutional rights and required reversal.
5. Whether testimony concerning Shannon Clauthier's prior consistent statements was inadmissible hearsay.
6. Whether the district court's failure to admonish the jury at every break required reversal.

HOLDINGS

1. The defendants waived a constitutional challenge to the absence of required restraint findings by requesting restraints, and any error in using leg restraints without findings concerning the change from non-visible restraints was harmless because the record did not show that the jury saw the restraints or that the restraints interfered with the defense.
2. Admission of Damien Belgarde's statement that he was meeting Moncada did not violate the Sixth Amendment because the statement was a casual, non-testimonial remark to a friend or acquaintance.
3. The district court did not abuse its discretion by granting a continuance beyond the IAD's 180-day period because good cause existed and Moncada was responsible for substantial portions of the delay and showed no legally significant prejudice.
4. Even assuming the admission of testimony concerning Aguero's post-Miranda silence was improper, any error was harmless.
5. The testimony concerning Shannon Clauthier's prior statements was not hearsay under N.D.R.Ev. 801(d) (1) because Clauthier testified and was subject to cross-examination, the statements were offered to rebut charges of fabrication or improper motive, and they were made before those charges arose.
6. The court's failure to admonish the jury at every break was harmless and had to be disregarded because Aguero did not object or demonstrate prejudice affecting a substantial right.

KEY QUOTATIONS

“the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.” (¶ 9)

“The Confrontation Clause does not apply to non-testimonial statements.” (¶ 16)

“Brandy Clauthier’s testimony is not hearsay under N.D.R.Ev. 801(d).” (¶ 40)

FACTUAL BACKGROUND

Robert Belgarde and his son, Damien Belgarde, were found dead in a rural area near Grand Forks, each having suffered multiple gunshot wounds; Robert also had a blunt-force head injury. The State alleged that the victims met Aguero and Moncada to purchase drugs, were taken to the rural location, and were attacked there. Trial evidence included eyewitness testimony, surveillance footage, vehicle and tire evidence, ammunition and firearms evidence, DNA evidence, and statements implicating the defendants.

PROCEDURAL HISTORY

The defendants' cases were joined for trial in the District Court of Grand Forks County. After a jury trial held June 15–25, 2009, both defendants were convicted as charged. The district court denied a post-appeal motion to amend the record concerning the visibility of restraints, and the defendants appealed.

DISPOSITION

affirmed

CASES CITED

- State v. Kunze, 2007 ND 143, ¶¶ 14, 18, 21, 24, 738 N.W.2d 472
- Deck v. Missouri, 544 U.S. 622, 628-35 (2005)
- State v. Klose, 334 N.W.2d 647, 651 (N.D. 1983)
- People v. McWhorter, 212 P.3d 692, 732 (Cal. 2009)
- Mendoza v. Berghuis, 544 F.3d 650, 654-55 (6th Cir. 2008)
- Crawford v. Washington, 541 U.S. 36, 51, 68 (2004)
- State v. Sorenson, 2009 ND 147, ¶¶ 16, 20, 770 N.W.2d 701
- Giles v. California, 128 S. Ct. 2678, 2681-84, 2692-93 (2008)
- State v. Foster, 1997 ND 8, ¶¶ 6, 12, 560 N.W.2d 194
- State v. Moore, 2007 ND 7, ¶¶ 6-9, 725 N.W.2d 910
- Doyle v. Ohio, 426 U.S. 610, 619 (1976)
- Fletcher v. Weir, 455 U.S. 603, 606 (1982)
- Anderson v. Charles, 447 U.S. 404, 407-08 (1980)
- Jenkins v. Anderson, 447 U.S. 231, 239-40 (1980)
- State v. Greybull, 1998 ND 102, ¶ 15, 579 N.W.2d 161

- United States v. Jumper, 497 F.3d 699, 704-06 (7th Cir. 2007)
- Berghuis v. Thompson, 130 S. Ct. 2250, 2260 (2010)
- State v. Hill, 1999 ND 26, ¶ 17, 590 N.W.2d 187
- State v. Stoppleworth, 2003 ND 137, ¶ 6, 667 N.W.2d 586
- State v. Wegley, 2008 ND 4, ¶ 17, 744 N.W.2d 284
- State v. Leinen, 1999 ND 138, ¶ 9, 598 N.W.2d 102
- State v. Ripley, 2009 ND 105, ¶ 27, 766 N.W.2d 465

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