

SUPREME COURT OF NORTH DAKOTA

State v. Johnson

2001 ND 184 (N.D. 2001) · No. Nos. 20010025-20010027 · Decided December 5, 2001

SUMMARY

The Supreme Court of North Dakota held that lack of criminal responsibility is an ordinary defense rather than an affirmative defense because it is not explicitly designated as an affirmative defense by statute. The trial court therefore erred by instructing the jury that Robert Johnson bore the burden of proving lack of criminal responsibility. The court treated the instructional error as obvious error affecting substantial rights, reversed the convictions, and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Vande Walle, Chief Justice; Dale V. Sandstrom; William A. Neumann; Mary Muehlen Maring; Carol Ronning Kapsner
JURISDICTION	North Dakota
DECIDED	December 5, 2001
DOCKET	Nos. 20010025-20010027
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Johnson appealed from judgments of conviction for simple assault of a correctional facility employee and two counts of contact by bodily fluids or excrement with a correctional facility employee. The Supreme Court considered an unpreserved challenge to the jury instruction allocating the burden of proof on lack of criminal responsibility.
STANDARD OF REVIEW	Because Johnson failed to object to the instruction at trial or raise the issue on appeal, the court reviewed the alleged instructional error for obvious error under N.D.R.Crim.P. 52(b). The court examined the entire record and the probable effect of the error in light of all the evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert L. Johnson v. State of North Dakota

TOPICS

criminal procedure

jury instructions

due process

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether lack of criminal responsibility under N.D.C.C. § 12.1-04.1-01(1) is an affirmative defense that the defendant must prove by a preponderance of the evidence.
2. Whether instructing the jury that Johnson bore the burden of proving lack of criminal responsibility constituted obvious error under N.D.R.Crim.P. 52(b), despite the absence of a trial objection and appellate issue assignment.

HOLDINGS

1. Lack of criminal responsibility is an ordinary defense, not an affirmative defense, because North Dakota law does not explicitly designate it as an affirmative defense. When evidence is sufficient to raise the defense, the State must prove the nonexistence of the defense beyond a reasonable doubt as an element of the offense.
2. The trial court's instruction placing the burden of proving lack of criminal responsibility on Johnson was obvious error under N.D.R.Crim.P. 52(b), and Johnson was entitled to a new trial.

KEY QUOTATIONS

“We cannot imagine an error more fundamental than incorrectly instructing the jury on the burden of proof.”
(636 N.W.2d at 394)

“The trial court's instructions erroneously placed the burden of proof of an element of the crime upon Johnson, rather than upon the State.” (636 N.W.2d at 395)

FACTUAL BACKGROUND

While incarcerated at the James River Correctional Center, Robert Johnson was placed on suicide watch and was not permitted to keep a towel in his cell. After a confrontation with prison guards over a towel, Johnson kicked and spit on guards and later threw a cup of urine at a guard. Johnson was charged with simple assault and two counts involving contact by bodily fluids or excrement, asserted lack of criminal responsibility, and presented expert evidence at trial.

PROCEDURAL HISTORY

Johnson was tried and convicted after asserting lack of criminal responsibility and presenting expert evidence. The trial court instructed the jury that Johnson had to prove that defense by a preponderance of the evidence. Johnson did not object to the instruction at trial or raise the issue in his appellate brief; the issue arose during oral argument, after which the Supreme Court requested supplemental briefing. The Supreme Court noticed obvious error, reversed the judgment, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial with appropriate jury instructions placing the burden of proving the nonexistence of lack of criminal responsibility on the State beyond a reasonable doubt.

CASES CITED

- State v. Olander, 1998 ND 50, 575 N.W.2d 658
- State v. Trieb, 315 N.W.2d 649 (N.D. 1982)
- Sollin v. Wangler, 2001 ND 96, 627 N.W.2d 159
- State v. Erickstad, 2000 ND 202, 620 N.W.2d 136
- State v. Mathre, 1999 ND 224, 603 N.W.2d 173
- State v. Glass, 2000 ND 212, 620 N.W.2d 146
- State v. Kraft, 413 N.W.2d 303 (N.D. 1987)
- DeRoo v. United States, 223 F.3d 919 (8th Cir. 2000)
- Silber v. United States, 370 U.S. 717 (1962)
- Fisher v. United States, 328 U.S. 463 (1946)
- State v. Miller, 2001 ND 132, 631 N.W.2d 587
- State v. Rue, 2001 ND 92, 626 N.W.2d 681
- City of Beach v. Kryzsko, 434 N.W.2d 580 (N.D. Ct. App. 1989)
- United States v. Olano, 507 U.S. 725 (1993)