

SUPREME COURT OF NEVADA

Pascua v. State

122 Nev. 1001 (2006) · Decided November 9, 2006

SUMMARY

The Nevada Supreme Court held that dual convictions for kidnapping and murder arising from a single course of conduct are permissible when the victim’s seizure, restraint, or movement substantially exceeds that required to complete the associated crime. The court affirmed Pascua’s kidnapping, robbery, and murder convictions, concluding that the movement and restraint of the victim had independent significance and that alleged prosecutorial misconduct did not constitute plain or cumulative error.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, J.; Rose, C.J.; Becker, J.; Maupin, J.; Gibbons, J.; Douglas, J.; Parraguirre, J.
JURISDICTION	Nevada
DECIDED	November 9, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pascua appealed her jury convictions for first-degree kidnapping, robbery with the use of a deadly weapon, and murder with the use of a deadly weapon, challenging the kidnapping conviction, alleged prosecutorial misconduct, and cumulative error.
STANDARD OF REVIEW	Unpreserved claims of error are reviewed for plain error affecting substantial rights. Prosecutorial comments warrant reversal only if they deprived the defendant of a fair trial. Whether movement was incidental to an associated offense and whether it increased the risk of harm are generally questions of fact for the trier of fact.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Pascua v. State

TOPICS

- criminal procedure
- prosecutorial misconduct
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether dual convictions for kidnapping and murder may be sustained when both arise from a single course of conduct.
2. Whether the movement and restraint of Upson substantially exceeded that required to complete the associated robbery and murder.
3. Whether alleged prosecutorial misconduct constituted plain error requiring a new trial.
4. Whether the alleged errors, considered cumulatively, deprived Pascua of a fair trial.

HOLDINGS

1. Dual convictions for kidnapping and murder arising from a single course of conduct are proper when the victim's seizure, restraint, or movement substantially exceeds that required to complete the associated murder.
2. The kidnapping and robbery convictions were proper because the jury could find that moving Upson from the kitchen to the bed had independent significance apart from the robbery and substantially exceeded movement required to complete the robbery.
3. The alleged prosecutorial misconduct did not constitute plain error affecting Pascua's substantial rights and did not warrant a new trial.
4. The alleged errors, viewed collectively, did not constitute cumulative error requiring reversal.

KEY QUOTATIONS

“where the seizure, restraint or movement of the victim substantially exceeds that required to complete the associated crime charged, dual convictions under the kidnapping and murder statutes are proper.” (122 Nev. at 1006)

“We conclude that dual convictions for kidnapping and murder, arising out of a single course of conduct, may exist if the seizure, restraint, or movement of the victim substantially exceeds that required to complete the associated crime charged.” (122 Nev. at 1009)

FACTUAL BACKGROUND

Pascua and two accomplices entered Doyle Upson's apartment intending to rob him of a casino sports book ticket. After obtaining Upson's wallet and the combination to his safe, the perpetrators dragged him from the kitchen to his bed, where they continued beating, choking, and torturing him for approximately eight hours until he died. The movement away from a broken window and the restraint and assaults at the bed supported the jury's finding that the kidnapping had significance beyond the robbery and murder.

PROCEDURAL HISTORY

Pascua was charged in the district court with first-degree kidnapping with the use of a deadly weapon, robbery with the use of a deadly weapon, and murder with the use of a deadly weapon. After a Faretta hearing, the district court permitted her to represent herself at trial. The court denied her motion to dismiss the kidnapping charge, the jury found her guilty on all counts, and the Nevada Supreme Court affirmed the judgment of conviction.

DISPOSITION

affirmed

CASES CITED

- Faretta v. California, 422 U.S. 806 (1975)
- Wright v. State, 94 Nev. 415, 581 P.2d 442 (1978)
- Mendoza v. State, 122 Nev. 267, 130 P.3d 176 (2006)
- Sheriff v. Medberry, 96 Nev. 202, 606 P.2d 181 (1980)
- Gallego v. State, 117 Nev. 348, 23 P.3d 227 (2001)
- Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997)
- Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003)
- Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002)
- Ross v. State, 106 Nev. 924, 803 P.2d 1104 (1990)
- Greene v. State, 113 Nev. 157, 931 P.2d 54 (1997)
- Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)
- Ennis v. State, 91 Nev. 530, 539 P.2d 114 (1975)
- Big Pond v. State, 101 Nev. 1, 692 P.2d 1288 (1985)