

SUPREME COURT OF NORTH DAKOTA

State of North Dakota v. De’Jonte Lavon Smith

State v. Smith, 2023 ND 6 (2023) · No. No. 20220063 · Decided January 5, 2023

SUMMARY

The North Dakota Supreme Court affirmed De’Jonte Lavon Smith’s conviction for reckless endangerment, holding that any error concerning the self-defense instruction was invited or waived. The court reversed his felony conviction for tampering with physical evidence because the jury was not instructed on the essential felony-level element requiring substantial obstruction, impairment, or perversion of felony prosecution. The court remanded for entry of a judgment of acquittal on the tampering charge.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Justice; Jon J. Jensen, C.J.; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	January 5, 2023
DOCKET	No. 20220063
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Smith appealed from a criminal judgment entered after a jury convicted him of reckless endangerment and felony tampering with physical evidence and acquitted him of attempted murder.
STANDARD OF REVIEW	Jury instructions are reviewed as a whole to determine whether they correctly and adequately inform the jury of the law. Unpreserved instructional errors are reviewed, if at all, for obvious error under N.D.R.Crim.P. 52(b); obvious-error review does not apply to waived or invited errors. Whether the evidence was sufficient to support the felony tampering conviction was reviewed under the rational-jury standard.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	De’Jonte Lavon Smith v. State of North Dakota

TOPICS

jury instructions

criminal procedure

appellate procedure

preservation of error

double jeopardy

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the district court committed reversible error by failing to include the nonexistence of self-defense as an essential element in the reckless-endangerment jury instruction.
2. Whether the district court committed obvious error by failing to instruct the jury that felony tampering with physical evidence requires proof that the defendant substantially obstructed, impaired, or perverted prosecution for a felony.
3. Whether the appropriate remedy for the deficient felony-tampering instruction was entry of a judgment of acquittal because the evidence was insufficient for a rational jury to find the omitted felony-level element.

HOLDINGS

1. Smith could not obtain reversal based on the omission of the self-defense language from the reckless-endangerment instruction because he requested the instruction that was given and neither objected nor requested the additional language. The alleged instructional error was therefore waived or invited.
2. The jury instruction for felony tampering with physical evidence was erroneous because it did not require the jury to find that Smith substantially obstructed, impaired, or perverted prosecution for a felony.
3. The omission of the felony-level tampering element was an obvious error affecting Smith's substantial rights because the jury did not find every element of the charged felony beyond a reasonable doubt.
4. The felony tampering conviction had to be reversed and the case remanded for entry of a judgment of acquittal because, on the trial record, no rational jury could have found that Smith substantially obstructed, impaired, or perverted prosecution for a felony.

KEY QUOTATIONS

“Smith invited any error related to the instruction on reckless endangerment, and he may not now seek reversal for an error he invited.” (¶ 8)

“Under the plain language of the statute, the essential elements of the felony level tampering offense include that the actor substantially obstructs, impairs, or perverts prosecution for a felony.” (¶ 11)

“Sustaining a conviction based on jury instructions that did not require findings on every essential element of the charged crime violated due process.” (¶ 18)

“We therefore conclude Smith’s conviction for the felony of tampering with physical evidence must be reversed, and we remand for the district court to enter a judgment of acquittal.” (¶ 26)

FACTUAL BACKGROUND

The charges arose from a 2019 shooting outside Outlaws' Bar and Grill in Williston. The State alleged that Smith fired shots toward the occupied bar and later removed or concealed a gun, clothing, and personal electronics. Witnesses and officers testified that a gun, headphones, an apron, and an Outlaws shirt were found along Smith's path or in nearby locations; Smith testified that he discarded or removed the items while attempting to get away and turn himself in.

PROCEDURAL HISTORY

Smith was charged in the District Court of Williams County with attempted murder, reckless endangerment, and tampering with physical evidence arising from a shooting. The jury acquitted him of attempted murder but convicted him of reckless endangerment and felony tampering with physical evidence. The district court sentenced him to concurrent five-year prison terms. The North Dakota Supreme Court affirmed the reckless-endangerment conviction, reversed the felony tampering conviction, and remanded for entry of a judgment of acquittal on the tampering charge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the District Court of Williams County to enter a judgment of acquittal on the felony tampering-with-physical-evidence charge. The reckless-endangerment conviction and the criminal judgment are affirmed in part.

CASES CITED

- State v. Landrus, 2022 ND 107, 974 N.W.2d 676
- State v. Dahl, 2022 ND 212
- State v. Pemberton, 2019 ND 157, ¶ 9, 930 N.W.2d 125
- State v. Patterson, 2014 ND 193, ¶ 4, 855 N.W.2d 113
- State v. Houle, 2022 ND 96, ¶ 7, 974 N.W.2d 401
- State v. Rende, 2018 ND 56, ¶¶ 7, 9-10, 907 N.W.2d 361
- State v. Gaddie, 2022 ND 44, ¶ 4, 971 N.W.2d 811
- State v. Barth, 2001 ND 201, ¶ 19, 637 N.W.2d 369
- Tibbs v. Florida, 457 U.S. 31, 41 (1982)