

SUPREME COURT OF NEVADA

Gonzalez v. Eighth Judicial District Court of the State of Nevada ex rel. County of Clark

129 Nev. 215 (2013) · Decided April 4, 2013

SUMMARY

The Nevada Supreme Court considers whether collateral estoppel under the Double Jeopardy Clause barred retrial on a sexual-assault charge after the defendant was acquitted of a related lewdness charge and the jury deadlocked on the sexual-assault charge. The court holds that the district court must apply the analysis from *Ashe v. Swenson* by examining the prior trial record and determining whether a rational jury could have based its verdict on another issue of fact, without considering the hung count. The court grants a writ of mandamus directing the district court to vacate its order and reconsider the motion to dismiss, while denying the alternative request for a writ of prohibition.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Cherry; Hardesty; Parraguirre
JURISDICTION	Nevada
DECIDED	April 4, 2013
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for extraordinary writ relief challenging the district court's denial of a motion to dismiss a sexual-assault charge on Double Jeopardy Clause and collateral-estoppel grounds.
STANDARD OF REVIEW	Extraordinary writ relief is discretionary. Mandamus may issue to control a manifest abuse of discretion, including a clearly erroneous interpretation or application of law, when no plain, speedy, and adequate remedy exists and the petition presents an important issue of law requiring clarification.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	Leopoldo Gonzalez v. Eighth Judicial District Court of the State of Nevada ex rel. County of Clark

TOPICS

double jeopardy

criminal procedure

appellate procedure

remedies

constitutional law

PRACTICE AREAS

Criminal procedure

Constitutional law

Appellate procedure

Extraordinary writs

QUESTIONS PRESENTED

1. What analysis governs whether an acquittal on one count bars relitigation of an ultimate fact in a subsequent trial on a separate count under the Double Jeopardy Clause's collateral-estoppel doctrine?
2. May a court consider the jury's inability to reach a verdict on another count when determining whether an ultimate fact was necessarily decided by the acquittal?
3. Was mandamus appropriate to correct the district court's erroneous collateral-estoppel analysis?

HOLDINGS

1. A court determining whether an issue of ultimate fact was decided by a prior acquittal must examine the record of the first trial and determine whether a rational jury could have grounded its verdict on some other issue of fact.
2. The court may not consider the jury's inability to reach a verdict on another count when determining whether the acquittal necessarily decided an ultimate fact.
3. Mandamus was appropriate because the district court's reliance on the hung count constituted a manifest abuse of discretion and ordinary appellate review was not an adequate remedy for the asserted Double Jeopardy right.

KEY QUOTATIONS

"The district court must examine the record of the first trial and determine whether a rational jury could have grounded its verdict on some other issue of fact." (129 Nev. at 215)

"The court may not consider a jury's inability to reach a verdict on some of the counts" (129 Nev. at 218)

"Because a jury speaks only through its verdict," its inability to reach a verdict is a "nonevent," and "consideration of [the] hung counts has no place in the issue-preclusion analysis." (129 Nev. at 218)

FACTUAL BACKGROUND

Gonzalez was charged with sexual assault of a child under fourteen and lewdness with a child under fourteen based on the same alleged act of sexual touching. The jury acquitted him of lewdness but deadlocked on sexual assault, resulting in a mistrial on the sexual-assault count. The district court denied Gonzalez's motion to dismiss the sexual-assault charge, relying on the jury's inability to reach a verdict on that count.

PROCEDURAL HISTORY

Gonzalez was tried on charges of sexual assault of a minor and lewdness with a child. The jury acquitted him of lewdness but deadlocked on sexual assault, and the district court declared a mistrial on that count. The district

court denied Gonzalez's motion to dismiss the sexual-assault information, relying on the jury's inability to reach a verdict; Gonzalez then petitioned the Nevada Supreme Court for a writ of mandamus or prohibition. The Supreme Court granted mandamus and directed the district court to vacate its order and reconsider the motion under the proper collateral-estoppel analysis.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The clerk was directed to issue a writ of mandamus instructing the district court to vacate its order denying Gonzalez's motion to dismiss and reconsider the motion under the controlling legal authority set forth in the opinion. The alternative request for a writ of prohibition was denied.

CASES CITED

- Ashe v. Swenson, 397 U.S. 436, 443-46 (1970)
- Harris v. Washington, 404 U.S. 55, 56 (1971)
- Yeager v. United States, 557 U.S. 110, 119-22 (2009)
- Dowling v. United States, 493 U.S. 342, 350 (1990)
- State v. Dist. Ct. (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 779-80 (2011)
- Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989)
- Taylor v. Sturgell, 553 U.S. 880, 892 n.5 (2008)
- Glover v. Dist. Ct., 125 Nev. 691, 701, 220 P.3d 684, 692 (2009)

OPINION

PER CURIAM.

OPINION Per Curiam: At issue in this petition for extraordinary writ relief is the proper analysis of a Double Jeopardy Clause claim when it is based upon the doctrine of collateral estoppel. We conclude that Ashe v. Swenson, 397 U.S. 436, 444 (1970), sets forth the proper analysis for determining whether an issue of ultimate fact has been decided and cannot be relitigated in a subsequent trial: The district court must examine the record of the first trial and determine whether a rational jury could have grounded its verdict on some other issue of fact.

And, in conducting this analysis, the district court may not consider the jury's inability to reach a verdict on the other counts. Because the district court improperly analyzed petitioner's double jeopardy claim, we grant the petition for a writ of mandamus. **FACTS AND PROCEDURAL HISTORY** Petitioner Leopoldo Gonzalez was charged with sexual assault of a minor under the age of 14 and lewdness with a child under the age of 14.

During the trial that followed, the jury acquitted Gonzalez of the lewdness count and deadlocked on the sexual assault count. The district court declared a mistrial on the sexual assault count and set a date for a new trial. Gonzalez subsequently moved to dismiss the information, arguing in relevant part that the Double Jeopardy Clause and collateral estoppel rule prohibit a second trial for sexual assault because he was acquitted of lewdness and both offenses were based upon the same event.¹ The State opposed the motion, asserting that lewdness and sexual assault are not the same offense for double jeopardy purposes and the collateral estoppel rule was not implicated because the jury did not necessarily determine an issue of ultimate fact as to the sexual assault count when it acquitted Gonzalez on the count of lewdness with a child.

The district court heard argument and denied the motion based on the jury's inability to reach a verdict on the sexual assault count. This original petition for a writ of mandamus or prohibition followed. DISCUSSION Gonzalez argues that he is entitled to relief from the district court order denying his motion to dismiss the information because the district court failed to apply the analysis required by *Ashe v. Swenson*, 397 U.S. 436 (1970), when determining whether the jury's verdict on the lewdness count estopped the State from relitigating the issue of sexual touching in the sexual assault count.

We have original jurisdiction to issue writs of mandamus and prohibition. Nev. Const. art. 6, § 4. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control a manifest abuse of discretion. *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011).

The writ will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. And, because a writ of mandamus is an extraordinary remedy, the decision to entertain a petition for the writ lies within our discretion. *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

In deciding whether to exercise that discretion, we may consider, among other things, whether the petition raises an important issue of law that needs clarification. *Armstrong*, 127 Nev. at 931, 267 P.3d at 779-80. Here, Gonzalez asserts that the district court failed to apply the controlling legal authority. If true, this is a classic example of a manifest abuse of discretion that may be controlled through a writ of mandamus.

See *id.* at 932, 267 P.3d at 780 (explaining that "[a] manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule" (internal quotation marks and brackets omitted)).

Although Gonzalez has another remedy because he could raise the double-jeopardy issue on appeal from a judgment of conviction, NRS 177.015; NRS 177.045, that remedy is not adequate to

protect the right afforded by the Double Jeopardy Clause—to not be placed twice in jeopardy. And the petition raises an important issue of law that needs clarification.

Accordingly, we exercise our discretion to consider the merits of the petition. “ [Collateral estoppel in criminal trials is an integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth Amendments.” *Harris v. Washington*, 404 U.S. 55, 56 (1971); see *Ashe*, 397 U.S. at 445-46. “ ‘[W]hen an issue of ultimate fact has once been determined by a valid and final judgment’ of acquittal, it ‘cannot again be litigated’ in a second trial for a separate offense.” *Yeager v. United States*, 557 U.S. 110, 119 (2009) (quoting *Ashe*, 397 U.S. at 443).

An “ultimate fact” is “[a] fact essential to the claim or the defense.” *Black’s Law Dictionary* 671 (9th ed. 2009). The defendant has the burden to demonstrate that the issue of fact that he seeks to foreclose from consideration was actually decided by the jury in the first trial. *Dowling v. United States*, 493 U.S. 342, 350 (1990).

To determine whether an issue of ultimate fact was decided by the jury during the first trial, the court must “examine the record of [the] prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.” *Ashe*, 397 U.S. at 444 (internal quotations omitted); see also *Yeager*, 557 U.S. at 119-20 (same); *Dowling*, 493 U.S. at 350 (same).

The court may not consider a jury’s inability to reach a verdict on some of the counts; “[b]ecause a jury speaks only through its verdict,” its inability to reach a verdict is a “nonevent,” and “consideration of [the] hung counts has no place in the issue-preclusion analysis.”² *Yeager*, 557 U.S. at 120-22.

The district court order denying Gonzalez’s motion to dismiss the information does not contain any findings of fact or conclusions of law. However, it is clear from the transcript of the hearing on the motion that the district court erroneously based its analysis of *219the collateral estoppel claim on the jury’s inability to reach a verdict on the sexual assault count.

Because the district court’s decision to deny Gonzalez’s motion was clearly based on an incorrect interpretation or application of controlling legal authority, we conclude that extraordinary relief in the form of a writ of mandamus is appropriate. See *Armstrong*, 127 Nev. at 932, 267 P.3d at 780.3
CONCLUSION We grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying petitioner’s motion to dismiss and reconsider the motion based on the controlling legal authority as set forth in this opinion.

The information alleged that Gonzalez committed sexual assault by “placing his mouth and/or tongue on or in the [victim’s] genital opening,” and he committed lewdness “by licking the

[victim's] genital area." It is clear from the record that both offenses were based on the same act of sexual touching.

The Supreme Court now generally uses the term "issue preclusion" instead of "collateral estoppel." See *Taylor v. Sturgell*, 553 U.S. 880, 892 n.5 (2008). We have stated that a writ of prohibition will be issued to preclude a retrial that would violate the Double Jeopardy Clause. *Glover v. Dist. Ct.*, 125 Nev. 691, 701, 220 P.3d 684, 692 (2009).

Here, however, we cannot determine on the record before us whether retrial is precluded. The issue is better resolved in the first instance by the district court, applying the controlling legal authority. For this reason, we deny Gonzalez's alternative request for a writ of prohibition.