



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



STATE OF ARIZONA v. SERGIO FIERRO, JR. CR-20-0435-PR

PARTIES:

Petitioner: Sergio Fierro Jr.

Respondent: State of Arizona

FACTS:

On the evening of April 28, 2018, Fierro and two other men were drinking and waiting for Fierro's brother in a RV trailer next to Fierro's parents' house. One of the two other men testified he stated his intent to leave and Fierro "started acting all weird," by "posturing" and asking who he was "running with," and armed himself with a drill bit and stabbed the victim in the neck. As the two men struggled, the second victim—a friend of Fierro's brother and Victim 1—opened the trailer door and saw Fierro stabbing Victim 1. Fierro then turned to Victim 2 and chased him with the drill bit, stabbing him in the face piercing his cheek and tongue. During the altercation, both victims were able to flee in opposite directions to neighbor's homes, where residents provided first aid and called 911.

While a responding deputy sheriff was attending to Victim 1, Fierro approached and did not comply with the deputy's commands to stop and get on the ground. The deputy deployed his taser and Fierro fell to the ground, where other deputies took Fierro into custody and placed him in the back of a patrol car. In a statement to a detective, Fierro claimed he "beat [Victim 1] to the punch ... by getting something from the drawer, and ... he ended up running." Victim 1 was treated for his stab wounds and required hospitalization for almost a week. Fierro was charged with one count of attempted second-degree murder (Victim 1), two counts of aggravated assault with a deadly weapon or dangerous instrument, and two counts of aggravated assault causing temporary but substantial disfigurement.

At trial, Fierro raised justification defenses of self-defense and defense of property and maintained that his intent was only to get the two men away, not to kill them. The trial court properly instructed the jury on the law of attempt and the elements of intentional second-degree murder. However, as the State conceded below, the trial court committed fundamental error by instructing the jury that a person could commit attempted second-degree murder if:

The defendant caused the death of another person by conduct which he knew would cause death or serious physical injury; or
Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct which created a grave risk of death. The risk must

be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done.

Fierro was convicted of all charges, and on appeal raised a single claim that the trial court erred in instructing the jury on attempted second-degree murder. He contended that the trial court committed error because the instructions permitted the jury to convict Fierro of attempted second-degree murder with a *mens rea* of recklessness or based on conduct that he knew would result in serious physical injury. The court of appeals agreed that instructing the jury on nonexistent theories of criminal liability constituted fundamental error. However, the court of appeals held that Fierro "failed to demonstrate prejudice as a result of the improper jury instructions" and affirmed Fierro's conviction and sentence for attempted second-degree murder. On review, Fierro argues, as he did on appeal, that although the jury rejected his justification defense, it could have believed he did not intend to kill Victim 1 and only intended to cause serious physical injury. He claims the court of appeals erred in its prejudice analysis because it did not account for the possibility the jury may have found that he was the initial aggressor justifying the aggravated assault convictions, but that does not mean the jury necessarily found that he formed the specific intent to kill given the fundamentally flawed jury instructions.

ISSUES:

1. How should trial courts instruct juries on attempted second-degree murder?
2. Did the trial court's fundamental error in instructing the jury on attempted second-degree murder prejudice the defendant?

DEFINITIONS:

In Arizona, attempted second-degree murder can be committed only if the defendant intended to kill the victim or knew that his conduct would cause the victim's death. *State v. Dickinson*, 233 Ariz. 527, 530 ¶ 11 (App. 2013).

"[T]here is no offense of attempted second-degree murder based on knowing merely that one's conduct will cause serious physical injury." *State v. Ontiveros*, 206 Ariz. 539, 542 ¶ 14 (App. 2003).

In *Escalante*, the Court noted that "whether 'substantial evidence of guilt' exists is not the standard for deciding prejudice." Instead, "the proper inquiry is whether, without the error, a reasonable jury could have reached a different result, even if substantial evidence of guilt exists." *State v. Escalante*, 245 Ariz. 135, 144 ¶ 34 (2018) (citations omitted).

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