2018

Benjamin Arriaga, Petitioner and Appellant, v. State of Utah, Respondent and Appellee. : Reply Brief

Utah Supreme Court

Emily Adams, Adams Legal LLC; attorney for appellant.
Mark C. Field, Sean Reyes; attorney for appellee.

No. 20180870-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

Benjamin Arriaga,
***Petitioner and Appellant*,**

v.

State of Utah,
***Respondent and Appellee*.**

PETITIONER'S REPLY BRIEF

On certiorari from *Arriaga v. State*, 2018 UT App 160 (August 23, 2018)

Petitioner Benjamin Arriaga is currently incarcerated.

Mark C. Field
ASSISTANT SOLICITOR GENERAL
Sean Reyes
UTAH ATTORNEY GENERAL
160 East 300 South
6th Floor
P.O. Box 140854
Salt Lake City, UT 84114

Attorney for Respondent/
Appellee State of Utah

Emily Adams (14937)
ADAMS LEGAL LLC
P.O. Box 1564
Bountiful, UT 84011
eadams@adamslegalllc.com
(801) 309-9625

Attorney for Petitioner/
Appellant Benjamin Arriaga

ORAL ARGUMENT REQUESTED

Table of Contents

Table of Authorities

CASES

RULES

Argument

A native Spanish-speaker with a fifth-grade education who asserted self-defense during his guilty plea hearing, even after his trial counsel assured the court that they had discussed imperfect self-defense, did not knowingly plead guilty to murder. His assertions of self-defense negated an essential element of murder. And no one resolved his self-defense assertions on the record.

With these facts, Petitioner Benjamin Arriaga's petition for postconviction relief should have survived summary judgment. But it did not. This Court should reverse the Court of Appeals and reverse the district court's order granting summary judgment in favor of the State.

The State disagrees. It argues that Mr. Arriaga's argument on appeal is not preserved and that Mr. Arriaga's plea met all the constitutional requirements for a valid guilty plea. But none of the State's arguments have merit.

1. Mr. Arriaga's Guilty Plea Claim Is Preserved

The State argues that Mr. Arriaga's claim that his plea was not knowing or voluntary was not preserved in the district court. It asserts that the plea issue was raised for the first time in Mr. Arriaga's summary judgment opposition. But the State is incorrect.

In his Second Amended Petition, Mr. Arriaga claimed that his plea was not knowing or voluntary. In that petition, Mr. Arriaga asserted that "during the plea colloquy, [Mr. Arriaga] told the Court that he acted in self-defense, manifesting that he did not agree that he had committed the crime of murder." (R. 448.)

Accordingly, he listed as a ground for relief that his "conviction was obtained by a plea of guilty that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea." (R. 450.)

The State argues that Mr. Arriaga's guilty-plea claim in his petition was not specific enough; it seems to argue that Mr. Arriaga's guilty-plea issue was not preserved because the State did not understand the full nature of Mr. Arriaga's legal arguments until the summary judgment stage. The State seems to advocate for a higher pleading standard than is required. Postconviction petitioners are only required to state in their petitions "in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief." Utah R. Civ. P. 65C(d)(3). Petitioners are not allowed to "set forth argument or citations or discuss authorities in the petition." Utah R. Civ. P. 65C(f).

The pleading standards for postconviction petitions are like those in civil complaints. Civil complaints "must contain a short and plain . . . statement of the claim showing that the party is entitled to relief." Utah R. Civ. P. 8(a). Utah's pleading standard is a "liberal notice pleading standard," where "the plaintiff must only give the defendant fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved." *City of Grantsville v. Redevelopment Agency of Tooele City*, 2010 UT 38, ¶ 35, 233 P.3d 461 (quotation omitted).

In this case, Mr. Arriaga stated in "plain and concise terms," without "argument or citations or . . . authorities," that his guilty plea was not knowing and voluntary because he asserted self-defense during the plea colloquy. Utah R. Civ. P. 65C(d)(3), (f); R. 448, 450. He gave the State fair notice of his guilty-plea issue.

Mr. Arriaga certainly fleshed out his guilty-plea issue in his opposition to the State's summary judgment motion. He had to. The summary judgment stage demands thorough analysis. He articulated how a claim of self-defense renders a guilty plea to murder not knowing because it negates an essential element of the plea. (R. 1109–11.) He discussed how trial counsel's and the district court's discussion on the record about the elements of murder did not resolve his self-defense assertions. (R. 1110–11.) And he explained how imperfect self-defense could apply to his situation. (*Id.*) But all these discussions boil down to one simple issue, the one Mr. Arriaga summarized in his petition: his guilty plea was not knowing or voluntary because he asserted self-defense during his plea colloquy.

The preservation rule requires a party "to raise the issue in the trial court in such a way that the trial court has an opportunity to rule on that issue." *State v. Bird,* 2015 UT 7, ¶ 10, 345 P.3d 1141 (quotation omitted). "To properly preserve an issue at the district court, the following must take place: (1) the issue must be raised in a timely fashion; (2) the issue must be specifically raised; and (3) a party must introduce supporting evidence or relevant legal authority." *O'Dea v. Olea*,

2009 UT 46, ¶ 18, 217 P.3d 704 (quotation omitted). Mr. Arriaga satisfied all three factors.

Mr. Arriaga raised his guilty-plea issue in a timely matter: in his petition and in his opposition to the State's summary judgment motion. (R. 448, 450, 1108–1112.) He discussed the issue specifically in his opposition, he supported his issue with legal authority, and the State replied to it. (R. 1108–12, 1202.) Mr. Arriaga then argued at length in the summary judgment hearing that his plea was not knowing or voluntary. (R. 1323–41.) And the district court rejected that argument in its order; it concluded that all "the constitutional prerequisites for a valid guilty plea were satisfied in Mr. Arriaga's case." (R. 1270.) The district court had the opportunity to thoroughly assess and consider Mr. Arriaga's guilty-plea issue.

The preservation doctrine prevents appellants from raising issues on appeal that were inadequately raised in the district court; the doctrine promotes judicial efficiency by allowing district courts to correct errors and make reasoned decisions before the issues are brought to the appellate courts, and the doctrine prevents appellants from surprising appellees with arguments on appeal never before raised.

Addressing the merits of this case upholds the purposes of the preservation doctrine. Mr. Arriaga gave the district court evidence and legal authority supporting his guilty-plea issue in his summary judgment opposition, and he argued about his issue at length in the summary judgment hearing. (R. 1108–

1112, 1323–41.) The district court was well aware of Mr. Arriaga's guilty-plea issue before it issued its order. Likewise, the State was well aware of Mr. Arriaga's guilty-plea issue during the summary judgment proceedings and had an opportunity to respond. Mr. Arriaga's guilty-plea issue in his appeal comes as no surprise to the State.

2. Mr. Arriaga's Plea Was Not Knowing or Voluntary

Mr. Arriaga's guilty plea was not knowing or voluntary. Twice during the plea hearing he made self-defense claims that negated an essential element of the murder charge and provided objective evidence that he did not understand the proceedings.

The State's arguments to the contrary are unpersuasive. In fact, the State does not address the case law that holds that a defendant's statements during a plea colloquy that negate an element of a crime can render a plea not knowing or voluntary. *See United States v. Culbertson*, 670 F.3d 183, 190 (2d Cir. 2012) (vacating guilty plea when the defendant persistently disavowed responsibility for a certain amount of drugs during the colloquy, and the amount of drugs was an essential element of the crime); *United States v. Pineda-Buenaventura*, 622 F.3d 761, 771 (7th Cir. 2007) (holding that Spanish-speaking defendant did not understand the nature of the conspiracy charges against him when he made statements during his plea hearing that showed he did not understand the concept of conspiracy or the specific acts to which he was pleading guilty); *United*

States v. Fernandez, 205 F.3d 1020, 1026, 1030 (7th Cir. 2000) (holding that Spanish-speaking defendant did not understand charges he was pleading to when he made statements during the colloquy that showed he was confused and the district court did not clear up his confusion); *People v. Ramirez*, 839 N.Y.S.2d 327, 329 (N.Y. Sup. Ct. 2007) (holding that plea was not voluntary when defendant made statements during the colloquy that negated his plea and district court did not conduct a sufficient inquiry); *State v. Thurman*, 911 P.2d 371, 375 (Utah 1996) (holding that even though defendant acknowledged at one point he had the appropriate mental state, he made repeated comments that negated his admission and consequently did not admit to the requisite mental state).

Instead, the State incorrectly asserts that the absence of self-defense is not an essential element of murder, citing an old Utah Supreme Court case (*State v. Knoll*, 712 P.2d 211 (Utah 1985)) for support. But much more recently, this Court held that "[a] *necessary element of a murder conviction is the absence of affirmative defenses*." *State v. Low*, 2008 UT 58, ¶ 45, 192 P.3d 867 (emphasis added). "It is fundamental that the State carries the burden of proving beyond a reasonable doubt each element of an offense, including the absence of an affirmative defense once the defense is put into issue." *Id.* (quotation omitted). Mr. Arriaga put the affirmative defense of imperfect self-defense at issue when he twice asserted self-defense during the plea colloquy. Consequently, "the absence of affirmative defenses [was] an element of murder" in Mr. Arriaga's case. *Id.*

The State also asserts that the plea affidavit and Mr. Arriaga's one-worded answers to the district court's questions rendered the plea knowing and voluntary. But the plea affidavit did not mention self-defense. (R. 79–89.) And Mr. Arriaga's monosyllabic answers to the district court's questions are far less indicative of his understanding of the plea than his multi-worded assertions in his native Spanish that he acted in self-defense.

Finally, the State improperly relies on Mr. Arriaga's experience with the criminal justice system to assume that Mr. Arriaga knew what he was doing in this case. The State argues that because Mr. Arriaga pleaded guilty in 2003 and 2004 to misdemeanors and third-degree felonies that he knew how his first-degree murder plea would pan out. But that claim is entirely speculative. The record does not give any indication about what type of representation Mr. Arriaga received in those cases. And those pleas occurred about seven years before the plea in this case, and those earlier pleas were to crimes far less serious. Assuming Mr. Arriaga knew what he was doing because he had pleaded guilty seven years before is a speculative leap this Court should not take.

This Court need not worry that a ruling in Mr. Arriaga's favor would open the floodgates for other criminal defendants to challenge their guilty pleas. This case presents a unique situation where a non-English-speaking defendant made self-defense claims during the plea colloquy that were not resolved by the district court or trial counsel.

Had anyone explained on the record the implications of and burden of proof for the self-defense claim, had the plea affidavit included information about self-defense, had Mr. Arriaga recanted his self-defense claim—had any of those things happened, Mr. Arriaga's postconviction appeal would not be meritorious. But none of those things happened. And because they did not, Mr. Arriaga's guilty plea was not knowing or voluntary. Mr. Arriaga respectfully requests that this Court reverse the judgment of the district court and the Court of Appeals.

Conclusion

Viewing the evidence in the light most favorable to Mr. Arriaga, this Court should conclude that Mr. Arriaga's plea was not knowing or voluntary and was the result of ineffective assistance of counsel. Mr. Arriaga requests that this Court reverse the Court of Appeals and reverse the district court's order granting summary judgment in favor of the State.

DATED this 9th day of May 2019.

ADAMS LEGAL LLC

/s/ Emily Adams
Emily Adams (14937)
ADAMS LEGAL LLC
PO Box 1564
Bountiful, UT 84011
eadams@adamslegalllc.com
(801) 309-9625

Attorney for Petitioner/Appellant Benjamin Arriaga

Certificate of Compliance With Rule 24(f)(1)

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(a)(11) and 24 (g) because this brief contains 1,941 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with Utah R. App. P. 21.

DATED this 9th day of May, 2019.

/s/ Emily Adams

Certificate of Service

This is to certify that on May 9, 2019, I emailed a true and correct copy of this brief, and caused two true and correct copies of the foregoing to be served on the following via first class mail:

Utah State Attorney General's Office
Appeals Division
160 East 300 South
6th Floor
P.O. Box 140854
Salt Lake City, UT 84114
criminalappeals@agutah.gov

/s/ Emily Adams