NEW MEXICO LAW REVIEW

Volume 24
Issue 3 *Summer 1994*

Summer 1994

Criminal Procedure - A Criminal Defendant Is Entitled to a Specific Jury Instruction When Supporting Evidence Exists: State v. Arias

Alison I. Arias

CRIMINAL PROCEDURE—A CRIMINAL DEFENDANT IS ENTITLED TO A SPECIFIC JURY INSTRUCTION WHEN SUPPORTING EVIDENCE EXISTS: *STATE V. ARIAS*

I. INTRODUCTION

In *State v. Arias*, the New Mexico Court of Appeals addressed the question of when a criminal defendant is entitled to a specific jury instruction.[1] The court held that in a criminal trial, the court must instruct the jury on every theory of the case which is supported by sufficient evidence.[2] In other words, a jury instruction on a specific theory is proper when "the evidence is sufficient to raise a reasonable doubt in the minds of the fact finder."[3] Additionally, in deciding whether a particular instruction is warranted, the trial court must not weigh the evidence.[4] Further, failure to give such an instruction which is supported by the evidence cannot be deemed a harmless error.[5] *State v. Arias* has clarified the jury instruction test after an uncertain and ambiguous history. This Note examines the history of the test and the reasoning by the *Arias* court in adopting the new test.

II. STATEMENT OF THE CASE

Rito Antonio Arias (Defendant) was a passenger in Vincent Vasquez's (Vasquez) automobile.[6] The two were parked outside their girlfriends' home waiting for the women. Next door a party was going on. Two men, David Wages (Wages) and Eddie Franco (Franco), walked out from the party and approached the Defendant's automobile. Franco and Vasquez had previously met. An argument ensued between Franco and Vasquez.

Defendant and Vasquez got out of the automobile. Vasquez and Wages began arguing. Vasquez punched Wages in the face. After the attack, Wages and Franco went back into the party to get weapons. Meanwhile, Vasquez got a rifle out of the car.

At this point, the victim, Mike McKee (McKee), left the party to see what was happening outside. McKee was unarmed. McKee and Vasquez spoke. Vasquez then took the rifle and pointed it between McKee's eyes. McKee pushed the rifle aside and shoved Vasquez. Vasquez gave the rifle to Defendant and began a physical fight with McKee. During the

---

1. 115 N.M. 93, 847 P.2d 327 (Ct. App. 1993).
2. *Id.* at 95, 847 P.2d at 329.
3. *Id.*
4. *Id.* at 97, 847 P.2d at 331.
5. *Id.* at 97-98, 847 P.2d at 331-32.
6. *Id.* at 94, 847 P.2d at 328. Unless noted, all subsequent facts refer to this cite.

fight, Franco, and another party guest, Mendoza, exited the party carrying boards. They approached the two men who were fighting.

The testimony at trial from this point on conflicted. Franco and Mendoza testified that Defendant fired the first shot at them as they approached the brawl. Defendant testified he initially fired the rifle at Vasquez and McKee. Defendant further testified that he fired a second time at Franco and Mendoza because he believed Franco and Mendoza were going to attack him; Defendant believed he was in fear for his life. After the first shot McKee began to retreat into the party. Mendoza testified that Defendant fired the second shot at McKee while McKee was running away. Defendant testified he did not intend to shoot anyone, and in fact, he did not realize anyone had been shot.[7] Defendant, however, was convicted of voluntary manslaughter in the death of McKee.[8]

Defendant appealed on the grounds that the trial court erred in not instructing the jury on involuntary manslaughter under Defendant's proffered "imperfect self-defense" theory.[9] The court of appeals reversed Defendant's voluntary manslaughter conviction, holding that Defendant's requested instruction should have been submitted to the jury based on the evidence at trial.[10]

III. HISTORY AND BACKGROUND OF THE ISSUE

The history of the criminal jury instruction test in New Mexico has been tumultuous and vague. New Mexico courts have continuously struggled to determine what threshold of evidence must be met in order to send a particular instruction to the jury. The early cases outlined a minimal threshold standard which cases in the middle period modified. Later, modern case law took a stricter and more rigorous approach to the sufficient evidence requirement to obtain a particular jury instruction. *Arias* represents a return to a lower standard.

A. The Early Cases: A Minimal Standard

Early New Mexico cases required the trial court to give jury instructions whenever a defendant offered "any evidence to support a given theory."[11] In *Territory v. Watson*, the defendant was indicted for assault with a loaded pistol, with intent to murder.[12] The New Mexico Supreme Court held that there was evidence tending to support the defendant's imperfect self-defense theory.[13] Even though the court acknowledged it had "grave

---

7. *Id.* at 95, 847 P.2d at 329.

8. *Id.* at 93, 847 P.2d at 327. Defendant was also convicted of criminal trespass, shooting at an inhabited dwelling and tampering with evidence. Defendant appealed only the voluntary manslaughter conviction. *Id.*

9. *Id.*

10. *Id.*

11. State v. Branchal, 101 N.M. 498, 500, 684 P.2d 1163, 1165 (Ct. App.), *cert. denied*, 101 N.M. 419, 683 P.2d 1341 (1984).

12. 12 N.M. 419, 78 P. 504 (1904).

13. *Id.* at 421, 78 P. at 505.

doubts" about whether or not the defendant actually acted in self-defense, the court held the defendant was entitled to the instruction because some pertinent evidence in the case had been presented.[14]

In another early case, *State v. Martinez*, the defendant was charged with murder and was found guilty of voluntary manslaughter.[15] The defendant, a married woman, claimed that the victim had made repeated advances towards her and that she had killed him in self-defense.[16] There were no witnesses to the murder. On appeal, the defendant alleged that the trial court erred when it failed to instruct the jury upon all theories of law.[17] In particular, where there were several elements of justification, the defendant argued that the trial court should have instructed the jury as to each element.[18] The supreme court held that a defendant in a criminal case was entitled to have instructions given upon every material issue raised by the evidence presented, if there was *any* competent evidence reasonably tending to substantiate that material issue.[19] Based solely on the defendant's testimony as to how the events transpired between the victim and herself, the court reversed the defendant's conviction and remanded the case for a new trial with the proper jury instructions.[20] Thus, early New Mexico cases required only a minimal threshold of evidence for the defendant to obtain a desired jury instruction, even based solely on the defendant's testimony.

B. The Middle Era: The Minimal Standard Revisited

In cases following the early period, New Mexico courts raised the evidentiary threshold necessary to obtain a jury instruction, but the augmented requirement was barely evident. The new test referred to "substantial evidence though slight" as entitling a criminal defendant to an instruction on a particular theory.[21]

Typical of middle period rulings in New Mexico, *State v. Heisler* effectively took the fairly low standard of the early period, but applied it more harshly.[22] The defendant was convicted of first degree murder and sentenced to death.[23] The victim picked up the defendant while the

---

14. *Id.* at 421-22, 78 P. at 505.
15. 30 N.M. 179, 230 P. 379 (1924).
16. *Id.* at 180, 230 P. at 380.
17. *Id.* at 181, 230 P. at 381.
18. *Id.* at 183, 230 P. at 382.
19. *Id.* at 183-84, 230 P. at 383-84.
20. *Id.*
21. State v. Branchal, 101 N.M. 498, 500, 684 P.2d 1163, 1165 (Ct. App.) (citing State v. Jones, 52 N.M. 235, 195 P.2d 1020 (1948)), *cert. denied* (1984).
22. 58 N.M. 446, 272 P.2d 660 (1954). The court in *Heisler* quoted with approval from Walker v. State:

> It is the law in most jurisdictions that if there is evidence appearing in the record which would raise a reasonable doubt as to whether the homicide with which the defendant is charged was committed in self-defense, it is the duty of the trial court to instruct upon that issue . . . and a failure to so instruct is error.

Id. at 454, 272 P.2d at 665 (quoting Walker v. State, 83 P.2d 994, 994 (Ariz. 1938)).
23. *Id.* at 446, 272 P.2d at 660.

defendant was hitchhiking. On the second night the two were together, they stopped to sleep. The defendant claimed he caught the victim going through defendant's suitcase. A fight broke out, at which time the victim began to strangle the defendant. The defendant grabbed a gun and fired several shots at the victim.[24]

On appeal the supreme court affirmed the conviction, holding that the defendant was not entitled to a jury instruction on self-defense.[25] However, the victim had a large advantage over the defendant and the medical evidence could have shown self-defense. Nevertheless, based on the defendant's own testimony in which he stated that the victim threatened him, that he, the defendant, had possession of the gun at all times and that the defendant took the deceased's money and watch, the court found the evidence was not sufficient to tender a self-defense instruction.

The middle era cases like *Heisler* raised the threshold of evidence needed by a criminal defendant from *any* evidence to a *substantial evidence test, however slightly met.* By adopting this new test, the court made it somewhat more difficult for a defendant to get a requested jury instruction. In the pre-*Arias* modern cases, however, New Mexico criminal defendants would find it considerably more difficult to obtain such requested instructions in similar cases.

C. *The Modern Cases: The Ambiguous Period*

In the 1980s, the jury instruction test in New Mexico became confusing and convoluted. The court formulated a number of different tests for determining the appropriate threshold of evidence required for a requested jury instruction. First, in *State v. Martinez*, the court articulated the standard by requiring evidence "sufficient to raise a reasonable doubt in the minds of the jury" to warrant an instruction.[26] In that case, the defendant was convicted of felony murder.[27] The crime was committed in an auto sales shop where the victim was employed. The defendant requested voluntary manslaughter and self-defense jury instructions but the court denied the request, even though the record reflected evidence that a struggle had taken place. Both the victim and defendant were wounded and both suffered gun shot wounds. The supreme court held, however, that this evidence was also consistent with the State's theory of the case, and affirmed the defendant's conviction.[28] Thus, despite the standard of "sufficient to raise a reasonable doubt in the minds of the jury," the court actually weighed the credibility of both parties and decided whose story was most believable, taking the fact finding function away from the jury.

---

24. *Id.*
25. *Heisler*, 58 N.M. at 448, 272 P.2d at 661.
26. 95 N.M. 421, 423, 622 P.2d 1041, 1043 (1981) (citing State v. Cochran, 78 N.M. 292, 430 P.2d 863 (1967)).
27. 95 N.M. at 422, 622 P.2d at 1042.
28. *Id.* at 423, 662 P.2d at 1043.

On the other hand, *State v. Chavez* indicated that the standard required evidence to support a finding by the jury in favor of defendant on all elements of self-defense.[29] In *Chavez*, the defendant and a companion entered a convenience store.[30] The defendant threatened the store clerk with a knife and then proceeded to fight with a customer in the store who was ultimately killed by the defendant.[31] According to the defendant, the customer had his own knife which he brandished. The defendant asked for a self-defense instruction which the court refused, citing the lack of any self-defense evidence other than the defendant's own testimony. The court of appeals upheld the defendant's conviction.[32]

In 1984, the court of appeals redefined the test in *State v. Branchal*.[33] In that case, the defendant was once again denied a self-defense jury instruction which the higher court upheld.[34] The test defined in *Branchal* required an instruction "whenever a defendant presents evidence sufficient to allow reasonable minds to differ as to all elements of the defense."[35]

Despite the developments in the last decade, the threshold requirement as to what was sufficient evidence to warrant a jury instruction has remained clouded. For example, a recent case held that an instruction should be given when there is sufficient evidence to sustain a conviction on the charge,[36] while another case maintained that an instruction should be given when it is merely "raised and supported by the evidence."[37] In *State v. Arias*, the court has once again attempted to clarify what the threshold of evidence must be to get an instruction submitted to the jury in a criminal case.

D. The Arias Rationale: Looking to California for Guidance

As discussed above, the evolution of the jury instruction standard in New Mexico was ambiguous and uncertain. The *Arias* court looked to two California cases for guidance.[38] The court found the California rationale persuasive because of its "virtually identical involuntary manslaughter statutes"[39] to New Mexico and because both New Mexico and California adhere to the legal principle that "a defendant is entitled to a jury instruction on his theory of the case as long as there is sufficient evidence to support it."[40] With this second proposition in mind, the New

---

29. 99 N.M. 609, 611, 661 P.2d 887, 889 (1983).
30. *Id.* at 610, 661 P.2d at 888.
31. *Id.* at 611, 661 P.2d at 889.
32. *Id.* at 610, 661 P.2d at 888.
33. 101 N.M. 498, 684 P.2d 1163 (Ct. App.), *cert. denied*, 101 N.M. 419, 683 P.2d 1341 (1984).
34. *Id.*
35. *Id.* at 500, 684 P.2d at 1165.
36. *See* State v. Benavidez, 94 N.M. 706, 616 P.2d 419 (1980).
37. *See* State v. Privett, 104 N.M. 79, 81, 717 P.2d 55, 57 (1986).
38. State v. Arias, 115 N.M. 93, 96, 847 P.2d 327, 330 (citing People v. Glenn, 280 Cal. Rptr. 609 (Ct. App. 1991), People v. Welch, 187 Cal. Rptr. 511 (Ct. App. 1982)).
39. *Arias*, 115 N.M. at 97, 847 P.2d at 331 (comparing CAL. PENAL CODE § 192(b) (West 1988) and N.M. STAT. ANN. § 30-2-3(B) (Repl. Pamp. 1984)).
40. *Arias*, 115 N.M. at 97, 847 P.2d at 331.

Mexico court looked again to California to determine what constitutes sufficient evidence.

In *People v. Glenn*, the defendant and the victim were having breakfast in a restaurant.[41] The defendant was in possession of a large knife, one he claims was too big to put in his pocket. The defendant and victim finished eating and the victim left a tip on the counter. Defendant picked it up. An argument erupted between the two. The defendant testified that as he walked away he heard the victim coming up behind him and he stabbed the victim. The prosecution alleged that the defendant intended to kill the victim.[42]

At trial, the court denied the defendant's request for an involuntary manslaughter jury instruction.[43] The court stated there was lack of sufficient evidence to support such an instruction. On appeal, the *Glenn* court reversed the defendant's conviction, holding that even though the defendant's own testimony was conflicting as to the different theories, the court had a duty to instruct the jury on all theories substantially supported by the evidence.[44]

The facts in *People v. Welch* are similar to those in *Glenn*.[45] In *Welch*, the defendant and the victim were arguing in a bar.[46] The defendant was taking a blood thinner, and fearing an attack by the victim who was lunging at him, the defendant shot the victim. The defendant testified he did not intend to shoot the victim; just stop the attack.[47]

The *Welch* court held that the defendant had, in fact, introduced sufficient evidence to support an involuntary manslaughter jury instruction.[48] Based on the defendant's own testimony and the substantiating facts which went along with this testimony, the California Court of Appeals reversed the defendant's conviction because of the failure to give the requested jury instruction, and remanded to case for a new trial.[49]

IV. DISCUSSION/ANALYSIS

By adopting the new test set forth in *State v. Arias*, the New Mexico Court of Appeals has found a middle ground in the amount of evidence required before a proper jury instruction is submitted to the jury. The *Arias* decision has determined the standard of evidence that a criminal defendant must meet in order to get certain instructions submitted to the jury to be that of sufficient evidence. A specific jury instruction meets the sufficient evidence requirement whenever "a defendant presents

41. *Glenn*, 280 Cal. Rptr. at 610.
42. *Id.* at 611.
43. *Id.* at 610.
44. *Id.* at 611.
45. *Welch*, 187 Cal. Rptr. at 512-13.
46. *Id.* at 513.
47. *Id.*
48. *Id.* at 512.
49. *Id.*

evidence which is sufficient to allow reasonable minds to differ with respect to all the elements of the defense."[50]

Essentially, the *Arias* standard allows submission to a jury of any instruction which is substantiated in court. A bare testimonial by the defendant would be inadequate.[51] But, if that testimony can be substantiated through other testimony, past conduct of the parties, or a reasonable and competent explanation by the defendant himself which is enough to raise a reasonable doubt in the minds of the fact finder, the sufficiency standard is met.[52] Thus, the trial court must submit an instruction based on this evidence.

The new test adopted in *Arias* appears to provide a fair and equitable result. Any standard other than the "reasonable doubt" evidence test would likely result in extreme hardship to criminal defendants. Furthermore, the courts might be burdened with time-consuming instructions to the jury and lengthy jury deliberations, or appeals based on violations of the defendant's constitutional rights.[53]

A. The Reasonable Doubt Standard: A Fair and Equitable Approach

A trial court must instruct the jury on every theory of the case which is supported by sufficient and competent evidence.[54] The evidence is said to be sufficient when it is capable of raising a reasonable doubt in the minds of the fact finder concerning the defendant's theory of the case.[55]

In deciding whether to instruct the jury on a particular theory the trial court must not weigh the credibility of the witness.[56] That task should be left solely to the jury.[57] Even if the evidence does not spur belief, the trial court is not authorized to refuse the tendered instruction.[58] To the contrary, if the evidence is minimal and cannot be substantiated in any way, the trial court may disregard the requested instruction.[59] The *Glenn* court, for example, cited *People v. Ibarra*,[60] which held that a bare testimonial by the defendant was not substantiated enough to warrant a sua sponte instruction on that theory of the case.[61] The *Ibarra* court reasoned where a single piece of evidence supporting a defendant's theory was a "one-line explanation," but the defendant's own version of events, taken together with all the other evidence, only implied a particular theory, no instruction should be given.[62] The *Glenn* court noted, however,

---

50. *Arias*, 115 N.M. at 95, 847 P.2d at 329.
51. *See Glenn*, 280 Cal. Rptr. at 612.
52. *Id.*
53. Further, the failure to give an instruction which is founded in substantial evidence will result in automatic error. *Arias*, 115 N.M. at 97-98, 847 P.2d at 331-32.
54. *Id.* at 97, 847 P.2d at 331.
55. *Id.* at 329.
56. *Glenn*, 280 Cal. Rptr. at 611.
57. *Id.*
58. *Id.*
59. *Id.*
60. 184 Cal. Rptr. 639 (1982).
61. *Id.* at 643.
62. *Id.* at 644.

that if the evidence is borderline as to sufficiency, the decision should always be made in favor of the defendant.[63]

The *Arias* decision provides a middle ground as far as the threshold requirement of evidence is concerned. By allowing instructions based on evidence sufficient to raise a reasonable doubt in the minds of the fact finder, the court of appeals is ensuring that the criminal defendant receives a fair trial, without placing unnecessary time constraints on the trial court.

B. Public Policy Considerations: Reconciling the Interest of the State, Criminal Defendant and Trial Court

A number of public policy considerations are persuasive for requiring evidence to be sufficient to raise a reasonable doubt in the minds of the fact finder before allowing courts to determine if an instruction should go to the jury. These public policy considerations are important to the state, the defendant in a criminal proceeding, and the trial court itself. By adopting the California court's reasoning in *Glenn* and *Welch*, the New Mexico Court of Appeals has struck an evenhanded and impartial balance among these interests.

The state has no interest in allowing a criminal defendant to go free when the defendant is innocent of the higher charged crime, but guilty of a lesser offense.[64] Furthermore, the state has no interest in acquiring a conviction when the defendant is innocent of the higher charged crime, but guilty of a lesser offense, solely because the "jury is unwilling to acquit where it is satisfied that the defendant has been guilty of some wrongful conduct."[65]

A criminal defendant has a legitimate interest in seeing all the evidence which meets the sufficient evidence requirement go to the jury.[66] The risk of error increases exponentially when the trier of fact is afforded only the opportunity to convict or acquit. The criminal defendant risks conviction on the primary offense, although there may be reasonable doubts in the minds of the triers of fact.[67] This result threatens the reasonable doubt standard.[68] Under the *Arias* decision, the defendant would have an opportunity to be convicted or acquitted of a lesser offense, instead of risking a jury which may choose to convict the defendant of a greater crime not proven, rather than allow him to "get away" without a sentence.[69]

Neither the minimal standard expressed in the early cases nor the stricter standard stated in the middle and modern eras appear to be viable options for the criminal court system. The standard articulated in the

63. *Glenn*, 280 Cal. Rptr. at 611.
64. *Id.* at 612-13.
65. *Id.* at 613.
66. *Id.* at 613.
67. *Id.*
68. *Id.*
69. *See id.*

early cases of allowing *any* evidence or the *slightest* evidence was too lenient.[70] Under such a minimal standard, a criminal defendant might attempt to convolute the material issues of the case and mislead and confuse the jury. For example, a whole slew of theories and defenses could be tossed out to the jury when the defendant merely presents the slightest bit of evidence barely hinting at that particular theory. Furthermore, by employing this standard, precious court time could be wasted. Many hours would be spent instructing the jury as to theories or defenses which were only peripherally brought out in trial. Additionally, the time taken for jury deliberations could increase. A jury might be compelled to examine every jury instruction given, even though some are founded on clearly insufficient evidence. The minimal standard of evidence required by the *slightest* evidence test could obstruct the pursuit of truth and prove highly inefficient.

A more exacting standard could also prove obstructing and inept. Requiring that the evidence be sufficient to convict the defendant of the crime charged could often be too strict a standard for the courts to employ. The jury should be allowed to deliberate on all theories and defenses presented at trial if they are substantiated in any way by the evidence.[71] This deliberation would facilitate the search for truth. Further, the higher standard might, in certain circumstances, appropriate an inordinate amount of discretion to the court. In essence, under a strict standard, the court could weigh the evidence and determine if the defendant could be convicted of that charge, thus taking the decision out of the hands of the jury.

For example, in *State v. Benavidez*, the prosecution argued that the more stringent rule was the most reasonable to adopt.[72] The court reasoned that if any lower standard were applied, and a defendant was convicted under an instruction given without sufficient evidence to sustain a conviction, the court of appeals would be placed in the position of having to acquit the defendant.[73] By employing the stricter standard, the decision would be taken out of the hands of the jury and given to the judge, thus breaking the cardinal rule of jury instruction—that a defendant is entitled to have a jury decide any material issues which arise in his case.[74] By submitting to the jury an instruction which is capable of raising a reasonable doubt in the mind of the trier of fact, the court is prevented from becoming "a gambling hall and becomes a forum for the discovery of truth."[75]

The *Arias* test entitles a criminal defendant to have an instruction offered to the jury if sufficient evidence is presented at trial.[76] Further-

70. *See id.*
71. *See id.* at 611.
72. *See* 94 N.M. 706, 708, 616 P.2d 419, 421 (1980).
73. *Id.*
74. State v. Arias, 115 N.M. 93, 96, 847 P.2d 327, 330 (Ct. App. 1993).
75. *Glenn*, 280 Cal. Rptr. at 613 (quoting People v. Geiger, 673 P.2d 1303, 1308 (Cal. 1984)).
76. *Arias*, 115 N.M. at 95, 847 P.2d at 329.

more, in determining whether a requested instruction should be submitted, the trial court must not weigh the evidence but simply decide whether it is sufficient to raise a reasonable doubt in the minds of the fact finder.[77]

V. CONCLUSION

In terms of an equitable and fair result, the decision in *State v. Arias* was correct in that adoption of any other standard could result in extreme hardship to criminal defendants and burden the courts with time-consuming jury instructions and lengthy jury deliberations. Basically, the *Arias* standard allows submission to a jury of any instruction which is capable of raising a reasonable doubt in the mind of the trier of fact. Testimony by the defendant alone would generally prove insufficient. However, if that testimony can be substantiated through other testimony, past conduct by the parties, or a reasonable and competent explanation by the defendant himself, the trial court must submit an instruction based on this evidence. Conversely, if the evidence is minimal and insufficient, the court need not instruct on its effect.

ALISON I. ARIAS

77. *Id.*