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Summary of State v. Hughes, 127 Nev. Adv. Op. 56

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State v. Hughes, 127 Nev. Adv. Op. 56 (September 29, 2011)¹
CRIMINAL LAW – STATUTORY INTERPRETATION

Summary

Appeal from a district court order dismissing a production of child pornography charge, based on the conclusion that NRS 200.710 is unconstitutionally vague.

Disposition/Outcome

The Court reversed the district court's order, holding that NRS 200.710 is not unconstitutionally vague because the term "minor" as used in the statute refers to a person under eighteen years of age.

Factual and Procedural History

The State of Nevada charged respondent Aaron Taylor Hughes ("Hughes") with several criminal charges related to the production of child pornography involving a seventeen year old. At trial, Hughes filed a motion to dismiss the pornography charge under NRS 200.710 on the grounds that the word "minor" as used in the statute is unconstitutionally vague. Under NRS 200.710, a person who knowingly uses a minor in the production of sexual portrayals or performances is guilty of a felony. However, the applicable definition section of the statute did not define whether the term "minor" applies to persons under the age of eighteen, or some other age.

The district court concluded that NRS 200.710 was unconstitutionally vague, and that "minor" applied to individuals under sixteen years of age. Consequently, the court dismissed the pornography charge. The State appealed.

Discussion

Constitutionality of a statute is a question of law that the Court reviews de novo.² A court may find enough clarity to defeat a vagueness challenge by giving the words their "well-settled and ordinarily understood meanings."³ Accordingly, the Court determined that the term "minor" had a well-settled and ordinarily understood meaning: an individual under eighteen years of age.

To support this conclusion, the Court examined the dictionary definition of minor, which is "[a] person who has not reached full legal age."⁴ NRS 129.010 defines legal age as eighteen years; therefore the term "minor" refers to those under the age of eighteen years. Further, the

¹ By Brandon Sendall.

² *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006).

³ *State v. Castaneda*, 126 Nev. ___, ___, 245 P.3d 550, 554 (2010) (*quoting* *Berry v. State*, 125 Nev. 265, 280, 212 P.3d 1085, 1095 (2009), *abrogated on other grounds by* *Castaneda*, 126 Nev. at ___ n.1, 245 P.3d at 553 n.1).

⁴ BLACK'S LAW DICTIONARY 1017 (9th ed. 2009); *See also* WEBSTER'S NEW COLLEGE DICTIONARY 715 (3d ed. 2008).

Court noted that the Legislature has regularly defined “minor” as a person under the age of eighteen.⁵ Additionally, the Legislature has been consistently explicit when it adopted age thresholds other than eighteen years of age.⁶ The Legislature’s consistency demonstrates that when it intends a meaning for “minor” other than a person under eighteen years old, it explicitly modifies the age threshold.

Conclusion

NRS 200.710 is not unconstitutionally vague because the term “minor” as used in the statute has a “well-settled and ordinarily understood meaning” of being under eighteen years old. Therefore, under NRS 200.710, it is a felony to use a person under eighteen years of age to produce a pornographic performance.

⁵ See, e.g., NEV. REV. STAT. § 609.440(1) (2007) (defining “minor” for employment provisions as an individual “less than 18 years of age”); NEV. REV. STAT. § 201.259 (2007) (defining “minor” for proscription against exhibition and sale of obscene materials as “any person under the age of 18 years”).

⁶ See, e.g., NEV. REV. STAT. § 201.195 (creating more severe penalties for soliciting a minor who is “less than 14 years of age”); NEV. REV. STAT. § 202.020-.055, 202.060 (establishing alcohol-related offenses for those under 21 years of age).