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Summary of State v. Castaneda_swm, 126 Nev. Adv. Op. No. 45

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State v. Castaneda, 126 Nev. Adv. Op. No. 45 (November 24, 2010)[1]
CRIMINAL LAW AND PROCEDURE—INDECENT EXPOSURE

Summary

Appeal from order of dismissal of indecent exposure charges, after the district court judge concluded the state indecent exposure statute was unconstitutionally vague and overbroad.

Disposition/Outcome

A unanimous Court reversed and remanded because the statute is neither unconstitutionally vague nor overbroad.

Factual and Procedural History

Marty Castaneda ("Castaneda"), was arrested for intentionally and repeatedly exposing his genitals and buttocks while standing on a public sidewalk in front of the county jail in Las Vegas. The State charged Castaneda with indecent exposure under NRS 201.220. Castaneda did not deny the allegations, but rather challenged the constitutionality of the statute. The district court dismissed the charges, agreeing with Castaneda's claims. The State appealed.

Discussion

Standard of Review

The Court reviews questions of a statute's constitutionality *de novo*. Statutes are presumed constitutional and the party challenging a statute has "the burden of making a 'clear showing of invalidity.'"[2] Further, the Court attempts to construe a statute so as to avoid constitutional infirmity.[3]

Vagueness

A criminal statute may be invalidated for vagueness for one of two independent reasons:[4] (1) if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited;" or (2) if it "is so standardless that it authorizes or encourages seriously discriminatory enforcement."[5] Constitutional vagueness may be defeated when courts construe the statute in light of "the common law definitions of the related term or offense."[6]

Applying the vagueness standard, the Court held that the indecent exposure statute must be read so as to incorporate the common law understanding of the offense, as required under

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[1] By Sean W. McDonald.
[2] Berry v. State, 125 Nev. ___, ___, 212 P.3d 1085, 1095 (2009) (quoting Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).
[3] Virginia & Truckee R.R. Co. v. Henry, 8 Nev. 165, 174 (1873).
[4] The Court noted some Nevada cases have used a conjunctive forumulation in stating the vagueness test, but stated the tests are "independent and alternative, not conjunctive."
[5] Holder v. Humanitarian Law Project, 561 U.S. ___, ___, 130 S. Ct. 2705, 2718 (2010) (quoting United States v. Williams, 553 U.S. 285 (2008)).
[6] Nelson v. State, 123 Nev. 534, 540-41, 170 P.3d 517, 522 (2007) (citing Ranson v. State, 99 Nev. 766, 767, 670 P.2d 574, 575 (1983)).

NRS 193.050.[7] The challenged statute states: "A person who makes any open and indecent or obscene exposure of his or her person…is guilty" of a gross misdemeanor for the first offense or a category D felony for any subsequent offense.[8] The Court rejected Castaneda's argument that the euphemistic use of "person" renders the statute vague. The Court relied on two District of Columbia cases, as the District's statute resembles Nevada's.

In *Duvallon v. District of Columbia*, the court stated that when a statute is ill-defined the common law definition is controlling.[9] After canvassing the English common law, the court concluded indecent exposure was limited to exposure of genitals, and thus mere exposure of the defendant's buttocks was insufficient to constitute indecent exposure.[10] In *Parnigoni v. District of Columbia*, the defendant asserted a vagueness challenge after being charged for removing his clothes to play nude Ping-Pong with the host's boy.[11] The court held that Parnigoni could not assert lack of notice given the court's holding in *Duvallon*, which defined indecent exposure to incorporate the common law offense.[12]

Here, the Court concluded that Castaneda's had fair notice that the statute incorporates the common law definition of indecent exposure because the Court previously held in *Young v. State*that "indecent exposure of one's genitals was punishable at common law."[13] The Court also noted that numerous other jurisdictions and authorities prohibit the intentional exposure of one's "person" or "private parts."

Ultimately, the Court held that a statute's reliance on "case- and common-law definitions to establish the conduct it forbids…does not render it impermissibly vague." The Court finally stated that although some discretion is required to determine when genital exposure is open and indecent or obscene, the discretion is not enough to sustain a vagueness challenge.

Overbreadth

The Court dismissed Castaneda's overbreadth challenge because the Court limited the statute's scope to the common law prohibition against open and indecent or obscene exposure of one's genitals or anus, and thus the statute does not catch a substantial amount of constitutionally protected expressive conduct within its sweep.[14]

Conclusion

Nevada's indecent exposure statute is not unconstitutionally vague or overbroad because it incorporates the offense's common law definition, limiting the meaning to open and indecent or obscene exposure of one's genitals or anus.

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[7] The statute provides "provisions of the common law relating to the definition of public offenses apply to any public offense which is so prohibited but is not defined, or which is so prohibited but is incompletely defined." NEV. REV. STAT. § 193.050(3).
[8] *Id.* § 201.220(1).
[9] Duvallon v. District of Columbia, 515 A.2d 724, 725 (D.C. 1986).
[10] *Id.* at 725-26.
[11] Parnigoni v. District of Columbia, 933 A.2d 823, 825 (D.C. 2007).
[12] *Id.* at 827.
[13] Young v. State, 109 Nev. 205, 215, 849 P.2d 336, 343 (1993).
[14] *See* Barnes v. Glen Theatre, Inc., 501 U.S. 560, 567-68 (1991) (plurality) (upholding enforcement of Indiana's public indecency law against nude dancers and their employers).