

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

5-13-2004

Summary of State v. Dist. Ct. (Epperson), 120 Nev. Adv. Op. 30

Angela Morrison
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Morrison, Angela, "Summary of State v. Dist. Ct. (Epperson), 120 Nev. Adv. Op. 30" (2004). *Nevada Supreme Court Summaries*. 654.

<https://scholars.law.unlv.edu/nvscs/654>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

State v. Dist. Ct. (Epperson), 120 Nev. Adv. Op. 30 (May 13, 2004).¹

Criminal Law & Procedure – Discoverable Evidence

Summary

The State sought a writ of mandamus or prohibition to prevent the district court from ordering the State, as part of discovery pursuant to a criminal case, to turn over a copy of a child pornography videotape to the defense counsel.

Disposition/Outcome

Petition granted in part. The court issued the writ to the district court permitting discovery of the videotape but subject to restrictions.

Factual & Procedural History

This case arose out of a party held at one of the real party in interest's, Britannia Larae Todd ("Brittania"), apartment. On January 19, 2003, the thirteen year-old victim, E.R., met up with Britannia and accompanied her to Britannia's apartment where the party already had commenced. While there, E.R. drank alcohol. E.R. passed out and two of her friends took her home. E.R.'s mother attempted to revive her but could not. The mother called emergency services, which transported E.R. to the hospital. Hospital staff conducted a blood alcohol test on E.R. and a sexual assault exam. The nurse who conducted the sexual assault exam found evidence consistent with sexual assault. E.R. claimed she had no memory of most of the party but did tell the nurse she thought she had been sexually assaulted.

While investigating the case, in addition to Britannia and E.R.'s friends who took E.R. home, detectives interviewed three other people who were at the party – Claude Epperson, Ryan Barnes, and Doni Hodge. Claude told a detective about a videotape. Doni said Claude and Ryan had sex with E.R. The police then arrested Claude, Ryan, Doni and Britannia. During their inventory search when they booked into Claude into jail, police officers found a videotape in Claude's clothing. The videotape depicted sexual activity between the males and females at the party on January 19, 2003, including E.R.

Claude was indicted on two counts of sexual assault with a child or two counts of lewdness with a minor under the age of fourteen years. Doni was indicted for one count of lewdness with a minor under the age of fourteen years. Additionally, Doni and Ryan were indicted for three counts of sexual assault on a child or three counts of lewdness with a child under the age of fourteen. Britannia, Ryan, Doni, and Claude all were indicted on one count of unlawfully using a minor in producing pornography.

Following the indictments, all of the defendants moved to compel discovery of the videotape on August 8, 2003. The State opposed the motion because it argued that Nevada Revised Statutes ("NRS") 200.10 to 200.735 prohibit the reproduction of child

¹ By Angela Morrison.

pornography. The district court granted a hearing but delayed deciding the motion until the court could view the videotape. The court granted the motion on September 11, 2003, provided the videotape “be viewed by those only necessary for preparation of said defense.”² As a result, the state filed a petition for a writ of mandamus or prohibition with the Nevada Supreme Court and the district court stayed the proceedings on September 12, 2003.

Discussion

On appeal, the Nevada Supreme Court considered whether the pertinent child pornography statutes³ prohibit the state from copying child pornography videotapes as discoverable evidence to the defense. The court recognized that NRS 200.375, while excluding “law enforcement personnel during the investigation or prosecution of a violation of the provisions of NRS 200.710 to 200.730, inclusive,” does not mention defense attorneys.⁴ However, the court found that nothing in the statutory scheme precludes the state from copying child pornography and delivering it to defense counsel for the purposes of defending criminal charges.

In addition, the court reasoned the United States Constitution, in particular the Fifth Amendment, protects a defendant’s right to adequately prepare for trial. In this instance, the court determined the evidence could be material to the defendants. Some of the defendants intended to use the videotape to enhance certain images to prove their defense of consent. Likewise, the court held that “denying defense counsel copies of the child pornography hinders the defendants right to ineffective assistance of counsel.”⁵ The court also found the purpose of child pornography statutes – to prevent the spread of child pornography – is not served by denying discovery for defense purposes. Therefore, the court held that the district court did not abuse its discretion when it compelled discovery of the videotapes.

Finally, the court placed certain restrictions⁶ on defense counsel’s use of the videotape. In doing this, it stated that district courts must address such situations on a case-by-case basis. Additionally, the court determined “the district court may impose greater restrictions based on the circumstances.”⁷

Conclusion

The court conducted a balancing test between criminal defendants’ rights and societal interests, but left some loopholes. For instance, the State could avoid copying child pornography for defense counsel, if it allows complete and adequate access to defense counsel; and a district court could place such burdensome restrictions on defense counsel that, in effect, it has denied the motion for discovery.

² State v. Dist. Ct. (Epperson), 120 Nev. Adv. Op. 30, 5 (May 13, 2004).

³ NEV. REV. STAT. 200.710 - 200.730, 200.735.

⁴ State v. Dist. Ct., 120 Nev. Adv. Op. at 7 (quoting NEV. REV. STAT. 200.735).

⁵ Id. at 12 (citing Westerfield v. Superior Ct., 121 Cal. Rptr.2d 402 (Ct. App. 2002)).

⁶ See id. at 12-13.

⁷ Id. at 13.