8-12-2016

Mary Lou Cornella v. Churchill County, et al., 132 Nev. Adv. Op. 58 (August 12, 2016)

Stephanie Glantz
Nevada Law Journal

Mary Lou Cornella v. Churchill County, et al., 132 Nev. Adv. Op. 58 (August 12, 2016)[1]

CONSTITUTIONAL LAW: VAGUENESS

Summary

The Court considered constitutional challenges to NRS 484B.657(1),[2] which provides that a defendant is guilty of vehicular manslaughter if "while driving or in actual physical control of any vehicle, [the defendant] proximately causes the death of another person through an act or omission that constitutes simple negligence."[3] Petitioner Mary Lou Cornella ("Cornella") challenged the phrases "an act or omission" and "simple negligence" as unconstitutionally void for vagueness. Additionally, Cornella challenged that a showing of "simple negligence", rather than criminal intent, violates her right to due process. The Court held that so long as "an act or omission", as used in NRS 484B.657(1), is read to require an unlawful act or omission, like a traffic violation, and "simple negligence", as used in NRS 484B.657(1), is read as ordinary negligence, the terms are not unconstitutionally vague. Further, vehicular manslaughter closely resembles a traditional public welfare offense, and thus does not violate due process even without a criminal intent requirement. The district court, however, erroneously upheld the constitutionality of NRS 484B.657(1) without interpreting the phrase "act or omission" so the Court directed the district court to reconsider Cornella's direct appeal.

Background

Cornella ran over and killed 12-year old Brittany Cardella, who was riding her bicycle, when Cornella drove through an intersection controlled by a four-way stop sign in Fallon, Nevada. The State charged Cornella with two misdemeanor counts: (1) failure to yield the right of way under NRS 484B.257,[4] and (2) vehicular manslaughter under NRS 484B.657(1).

In a bench trial, the justice court dismissed count one because a bicycle is not a vehicle pursuant to NRS 484A.320.[5] However, the justice court denied Cornella's motion challenging the vehicular-manslaughter statute as unconstitutionally vague at trial and found her guilty of vehicular manslaughter under NRS 484B.257. Cornella appealed to the district court, which upheld Cornella's convictions without addressing Cornella's arguments regarding vagueness. Thereafter, Cornella filed her petition for a writ of certiorari to the Nevada Supreme Court.

Discussion

I.

A criminal law may be vague for two reasons: "(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

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[1] By Stephanie Glantz.

[2] In 2009, the Nevada Legislature modified the title of the chapter governing this statute, but the language remains unchanged. The court referred to the current codification in its opinion.

[3] Nev. Rev. Stat. 484B.657.

[4] In 2009, the Nevada Legislature substituted NRS 484.319 for the present statute, but since the language remains unchanged, the court referred to the current codification in its opinion.

[5] In 2009, the Legislature substituted NRS 484.217 for the present statute, but since the language remains unchanged, the court referred to the current codification in its opinion.

authorizes or encourages seriously discriminatory enforcement."[6] When applying this two prong test to a criminal penalty, the court looks to whether "vagueness permeates the text," in which case the statute is "void in most circumstances."[7] The court first looked to see if the phrases "an act or omission" and "simple negligence" as used in NRS 484B.657(1) make the statute void for vagueness.

"An act or omission" denotes an unlawful act or omission

To sustain a negligent-vehicular-homicide conviction, there must be evidence of a traffic violation. Traffic laws establish the degree of care required by drivers. A violation of a traffic law is a deviation from the degree of care, and therefore an "act or omission" as used in NRS 484B.657(1). Also, Nevada is one of a few states to criminalize simple negligence without requiring an underlying unlawful act, even though it would be difficult for people to abide by a negligence statute that didn't require an unlawful act or omission.

"Simple negligence" denotes "ordinary negligence"

The Nevada Supreme Court recognizes three types of negligence: ordinary, gross, and criminal.[8] "When the Legislature does not specifically define a term, 'this Court presume[s] the Legislature intended to use words in their usual and natural meaning.'"[9] Since Black's Law Dictionary notes that "ordinary negligence" and "simple negligence" are coextensive terms with the same meaning as negligence,[10] and other jurisdictions equate simple negligence with ordinary negligence,[11] the Court concluded "simple negligence," as used in NRS 484B.657(1), denotes ordinary negligence.

Under the second prong of the vagueness analysis, the unlawful act or omission requirement is not so "standardless" to result in "seriously discriminatory enforcement" because it is an objective standard. Therefore, NRS 484B.657(1) is not void for vagueness.

II.

The Court first noted that some level of intent or culpability is required to punish someone for a crime, but that despite that, some crimes are punished in the absence of this

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[6] State v. Castaneda, 126 Nev. 478, 481–82, 245 P.3d 550, 553 (2010) (internal quotations omitted).
[7] Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 512–13, 217 P.3d 546, 553–54 (2009).
[8] Hart v. Kline, 61 Nev. 96, 100–01, 116 P.2d 672, 673–74 (1941).
[9] Cornella v. Churchill Cty., 132 Nev. Adv. Op. 58, 9 (August 12, 2016) (quoting Wyman v. State, 125 Nev. 592, 607, 217 P.3d 572, 583 (2009).
[10] *Negligence, Black's Law Dictionary* (10th ed. 2014).
[11] *See, e.g.*, State v. Hazelwood, 946 P.2d 875, 885 (Alaska 1997) (noting that the term "'negligence' always denotes ordinary, civil negligence"); Commonwealth v. Heck, 491 A.2d 212, 217 (Pa. Super. Ct. 1985) (noting that, in Pennsylvania, "vehicular homicide is a crime predicated on 'civil,' 'simple,' or 'ordinary' negligence" and citing a definition of "[o]rdinary [n]egligence"); State v. Jenkins, 294 S.E.2d 44, 45 (S.C. 1982) (holding that unlawful neglect of a child required "simple negligence, rather than criminal negligence"); *see also* Haw. Rev. Stat. § 707-704(2)(d) (2014) (defining "[s]imple negligence" as it applies to negligent homicide, which includes "a deviation from the standard of care that a law-abiding person would observe in the same situation").

requirement, including "public welfare offenses".[12] In Nevada, vehicular manslaughter under is considered a public welfare offense. Therefore, simple or ordinary negligence is sufficient to meet due process requirements.

A crime may be treated as a public welfare offense requiring only ordinary negligence when it: (1) is not rooted in the common law, (2) involves a small penalty, (3) does not tarnish the character of the offender, and (4) is of a type that a person could reasonably be expected to abide by.[13] Under this test, Nevada's vehicular manslaughter statute closely resembles a public welfare offense, and therefore does not require criminal intent. First, negligent vehicular manslaughter was not a crime at common law. Second, vehicular manslaughter in Nevada is only a misdemeanor and generally carries relatively light punishment. Further, Nevada has a separate offense to vehicular manslaughter which includes a criminal intent closer to criminal or gross negligence and carries with it a greater punishment.[14] Third, the Court noted that although serving a brief sentence in a county jail may slightly harm the character of the offender, vehicular manslaughter does not encompass "evil conduct."[15] Finally, since NRS 484B.657(1) requires an unlawful act, a person could reasonably be expected to abide by the conduct required of them. Additionally, since traffic laws are akin to public welfare offenses, the public should be able to reasonably comply with their terms.

Conclusion

Previously, the district court failed to correctly interpret the phrase "an act or omission" as requiring an unlawful act or omission. Thus, the Court ordered the district court to reconsider Cornella's direct appeal by applying NRS 484B.657(1) consistent with the underlying opinion.

[12] Morissette v. United States, 342 U.S. 246, 250, 255, 257 (1952).
[13] *See* Holdridge v. United States, 282 F.2d 302, 310 (8th Cir. 1960); Haxforth v. State, 786 P.2d 580, 582 (Idaho Ct. App. 1990); *Heck*, 491 A.2d at 220–21.
[14] *See* NRS 484B.653(6) (requiring "willful or wanton disregard of the safety of persons or property" and is punishable as a category B felony)
[15] Cornella v. Churchill Cty., 132 Nev. Adv. Op. 58, 18 (August 12, 2016).