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Austin Maul

University of Nevada, Las Vegas – William S. Boyd School of Law

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State v. Plunkett, 134 Nev. Adv. Op. 88 (Nov. 15, 2018) (en banc)¹

CRIMINAL LAW: VICARIOUS LIABILITY UNDER NRS 212.165(4)

Summary

The Court held that NRS 212.165(4) imposes criminal liability on nonprisoners who assist prisoners in jail possessing cellphones.

Background

Plunkett, an attorney who represents numerous clients housed at the Clark County Detention Center (CCDC), allowed two clients to use her cellphone on twelve separate occasions. Plunkett was indicted on two counts of conspiracy to unlawfully possess a portable communication device by a prisoner and twelve counts of possession of a portable telecommunication device by a prisoner. The latter charges were brought pursuant to NRS 212.165(4),² which prohibits prisoners in jail from possessing a cellphone or other portable communication devices. Additional charges included aiding and abetting as well as conspiracy theories of liability.

Plunkett moved to dismiss the charges against her, arguing that she could not be charged with or convicted of violating NRS 212.165(4) because the statute only criminalizes conduct by jail prisoners. Specifically, she argued that the Legislature only intended NRS 212.165 to punish those who furnish a phone to prisoners within a prison, not those who aid and abet a prisoner's possession of a cellphone in jail. The district court granted the Plunkett's motion, finding that only prisoners could be sentenced under NRS 212.165(4). This appeal followed.

Discussion

The Court considered whether Plunkett, a nonprisoner, could be held liable for possession of a cellphone by a prisoner.

In Nevada, aider and abettor liability applies broadly, and "pursuant to NRS 195.020, anyone who aids and abets in the commission of a crime is liable as a principal."³ The Court rejected Plunkett's argument that the Legislature did not intend for NRS 195.020 to apply to NRS 212.165(4).

The Court looked to the plain language of the statute to interpret the Legislature's intent and found that nothing in the statute limits vicarious liability under NRS 212.165. Accordingly, NRS 195.020 applies to NRS 212.165(4), and a person, including a nonprisoner, can be held liable as an aider or abettor under NRS 212.165(4).

Conclusion

Because the attorney is subject to liability as an aider and abettor under NRS 212.165(4), the Court reversed the ruling of the district court granting the attorney's motion to dismiss and remanded the case to the district court for further proceedings consistent with its opinion.

¹ By Austin Maul.

² NEV. REV. STAT. § 212.165(4) (2017).

³ *Randolph v. State*, 117 Nev. 970, 978, 36 P.3d 424, 429–30 (2001). *See also* NEV. REV. STAT. § 195.020 (2017).