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State v. Second Jud. Dist. Ct. (Radonski), 136 Nev. Adv. Op. 23 (Apr. 30, 2020)

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CRIMINAL LAW: ARSON

Summary

The Court, here, clarified the *mens rea* required to convict a person of arson. Under the NRS, the State must prove that arson was done both “willfully *and* maliciously,” meaning there was both a volitional act and specific intent to cause harm.²

Background

David Charles Radonski was arrested in July of 2018 in connection with the Perry Fire just north of Reno, which burned over 51,000 acres and caused as much as \$4.8 million dollars in damage. He was charged with two counts of first-degree arson, two counts of third-degree arson, and one count of destruction by fire of timber, crops, or vegetation.³ Radonski admitted to setting off fireworks which caused the fire but plead not guilty. He argued that because he did not intend to start the fire and that he tried to put it out once it started, he did not have the requisite specific intent for the charge of arson.

The State made a preliminary motion for the jury instruction on *mens rea* for arson. They argued that they could prosecute arson as *either* a general or specific intent crime. Their proposed instruction for the word “maliciously” expressed this by allowing the jury to find a person guilty if he either acted with the “specific intent to injure” or if he “willfully cause[d] a fire without legal justification.” Radonski, relying on *Batt v. State* and *Ewish v. State*, argued that arson is a specific intent crime in Nevada.⁴

The district court agreed with the defendant and ruled that arson is a specific intent crime. They relied on the cases cited by defendant and on the NRS definition of “maliciously.”⁵ The district court denied the State’s motion to reconsider and stayed the proceedings when the State filed a petition based off the denial of their proposed instruction.

Discussion

The Court first noted that a writ of mandamus, which the State requested, is available only to control an arbitrary or capricious exercise of discretion and when the petitioner has no adequate remedy at law.⁶ The Court further recognized that this is an “extraordinary” remedy,⁷ but that they had entertained mandamus petitions in the past when a proposed jury instruction was “manifestly

¹ By Mia Bacher.

² NEV. REV. STAT. §§ 205.010, 205.020 (2013).

³ NEV. REV. STAT. §§ 205.010, 205.020 (2013), NEV. REV. STAT. § 475.040 (2017).

⁴ *Batt v. State*, 111 Nev. 1127, 1130–31, 901 P.2d 664, 666 (1995); *Ewish v. State*, 110 Nev. 221, 228, 871 P.2d 306, 311 (1994).

⁵ NEV. REV. STAT. § 193.0175 (2010).

⁶ NEV. REV. STAT. §§ 34.160, 34.170 (2017).

⁷ *State v. Eighth Jud. Dist. Ct. (Taylor)*, 116 Nev. 374, 379–80, 997 P.2d 126, 130 (2000).

incorrect as a matter of law.”⁸ Here, they determined review to be appropriate both because the State lacked an adequate remedy at law (as they cannot appeal a jury verdict based on an incorrect theory of crime) and because they raised a significant issue that needs to be clarified (as the current law is unclear on the required *mens rea* for arson).

The Court began their analysis by looking at the plain meaning of Nevada’s arson statute. If a statute is clear on its face, it should be read so as to match its plain meaning.⁹ If a statute gives an express definition, said definition controls the interpretation no matter where it appears in the statute.¹⁰ As the statute reads, first- and third-degree arson are defined as “willfully and maliciously set[ting] fire to or burn[ing] or caus[ing] to be burned” any property.¹¹ The use of the word “and” between willfully and maliciously, the Court noted, means that these two words are separate and distinct. Because these two words are meant to be read independent from one another, the Court then looked at the meanings of both of these words.

A defendant acts willfully when he acts intentionally or deliberately as opposed to accidentally.¹² Maliciously, on the other hand, as defined by statute is “import[ing] an evil intent, wish or design to vex, annoy, or injure another person.”¹³ Thus, to act with malice is to act with the evil intent to annoy or injure another, i.e. specific intent. Because the crime of arson is defined to be *both* willful and malicious, arson is a specific intent crime. A defendant must not only willfully start a fire, but they must also intend for the fire to cause harm. Many other jurisdictions which define arson as “willfully causing a fire with the intent to cause harm” have also deemed it to be a specific intent crime.¹⁴

The Court next looked at *Ewish v. State*, the case on which the district court relied in making their ruling.¹⁵ The State tried to distinguish *Ewish* from the case at hand because one of the defendants in *Ewish* was charged with arson under a theory of accomplice liability. In the alternative, the State argued that *Ewish* should be overturned, citing California and Ninth Circuit decisions that contradict it. The Court dismissed both of these arguments. They noted that the *Ewish* court did not allow intoxication as a defense to specific intent for the crime of aiding and abetting, but they did allow it as a defense to specific intent for the crime of arson.¹⁶

The Court also refused to overturn *Ewish* on the basis of a Ninth Circuit case that interpreted a federal arson statute using the words “willfully and maliciously” as a general intent crime.¹⁷ The Court distinguished the federal statute from the Nevada statute because the Nevada statute clearly defines maliciously as “import[ing] an evil intent” where the federal statute did not define the term at all. They also refused to overturn *Ewish* on the basis on California law, which

⁸ State v. Second Jud. Dist. Ct. (Garcia), 108 Nev. 1030, 1034, 842 P.2d 733, 735–36 (1992).

⁹ Davis v. Eighth Jud. Dist. Ct., 129 Nev. 116, 118, 294 P.3d 415, 417 (2013).

¹⁰ Williams v. Clark Cty. Dist. Att’y, 118 Nev. 473, 485, 50 P.3d 536, 544 (2002).

¹¹ NEV. REV. STAT. §§ 205.010, 205.020 (2013).

¹² Robey v. State, 96 Nev. 459, 461, 611 P.2d 209, 210 (1980).

¹³ NEV. REV. STAT. §193.0175 (2010).

¹⁴ See Commonwealth v. Pfeiffer, 121 N.E.3d 1130, 1140–41 (Mass. 2019); Holbrook v. State, 772 A.2d 1240, 1248 (Md. 2001); Keats v. State, 64 P.3d 104, 107 (Wyo. 2003).

¹⁵ *Ewish*, 110 Nev. at 228.

¹⁶ *Id.* at 235.

¹⁷ See United States v. Doe, 136 F.3d 631, 635–36 (9th Cir. 1998).

the State argued was “identical” to Nevada law. The Court noted that California defines maliciously without the term “evil,” making it markedly different than the Nevada Statute.

Because the plain language of the statute is clear and case law supports this interpretation, the State must prove a defendant acted with specific intent in order to support a conviction. Nevada does allow for an inference of malice from the circumstances surrounding an act, but that does not relieve the State of their burden to prove specific intent.¹⁸

Conclusion

Based on the plain language of the statute, a charge of arson requires proof of specific intent to cause harm. For that reason, the Court affirmed the district court’s denial of the State’s proposed jury instruction. Therefore, the State must prove that Radonski had the specific intent to cause harm in order to convict him.

¹⁸ NEV. REV. STAT. § 193.0175 (2010).