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### Lofthouse v. State of Nevada, 136 Nev. Adv. Op. 44 (Jul. 16, 2020)

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CRIMINAL: FIRST-DEGREE KIDNAPPING: PREDICATE OFFENSE

**Summary**

The Court held that the plain language of NRS § 200.310(1) cannot be interpreted to mean that an adult teacher who engaged in sexual conduct with a minor student in violation of NRS § 201.540 had committed the predicate offense for first-degree kidnapping—perpetrating an unlawful act upon the person of the minor—when the minor was otherwise of sufficient age to consent and engage in sexual conduct with adults.

The Court also briefly discussed and denied appellant’s remaining claims arguing for reversal of the convictions for sexual conduct between a minor and teacher under NRS § 200.310(1) on the grounds of improper conviction, prosecutorial misconduct, violation of the right to confrontation, and cumulative error.

**Background**

Appellant, Jason Lofthouse (“Lofthouse”), a 32-year-old high school teacher, initiated a sexual relationship with one of his 17-year-old students. The two engaged in sexual conduct at school several times and, on two occasions, Lofthouse brought her to hotels to have sex. Authorities found out about their relationship after the student revealed it to a friend.

Lofthouse was later charged with ten counts of violating NRS § 201.540, which criminalizes sexual conduct between a teacher and student as a category C felony, two counts of first-degree kidnapping under NRS § 200.310(1), a category A felony, based on the hotel encounters, and two counts of open or gross lewdness. A pretrial petition for a writ of habeas corpus challenged the kidnapping and lewdness charges. The district court granted in part and denied in part, dismissing the lewdness charges but refusing to dismiss the kidnapping charge. A jury found Lofthouse guilty of all twelve remaining charges. Lofthouse appealed.

**Discussion**

Lofthouse argued his first-degree kidnapping conviction was improper as a matter of law because sexual conduct with a student in violation of NRS § 201.540 is not a predicate offense for first degree kidnapping under NRS § 200.310(1). Here, the Court agreed with the appellant. Whether or not Lofthouse was properly convicted for first-degree kidnapping was a matter of statutory interpretation.

The Court noted that when interpreting a statute, courts begin with the plain and ordinary meaning of the words, unless the context suggests a different or technical meaning.<sup>2</sup> When a word has more than one plain and ordinary meaning, the context and structure inform which of those meanings applies.<sup>3</sup> In cases where the statute lends itself to two or more reasonable interpretations, Courts may look beyond the statute’s language.<sup>4</sup>

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<sup>1</sup> By Chapman Noam.

<sup>2</sup> See *Blackburn v. State*, 129 Nev. 92, 95, 294 P.3d 422, 425 (2013).

<sup>3</sup> *Id.* at 97, 294 P.3d at 426.

<sup>4</sup> See *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

NRS § 200.310(1) states, “a person who leads, takes, entices, or carries away or detains any minor with the intent to . . . perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree.”<sup>5</sup> The legislature did not define what constitutes “an unlawful act” or “perpetrated upon the person of the minor.”

The Court found the plain and ordinary meaning of an “unlawful act” to be “an act contrary to law” and the plain and ordinary meaning of “perpetrate” to be “to commit.” The Court also found the term “person” to refer to a natural person’s body because it is modified by the phrase “of the minor” and the direct object of the verb “perpetrate.” The Court therefore concluded that the predicate offense for first-degree kidnapping under NRS § 200.310(1) is limited to crimes upon or against the body of a minor.

Lofthouse pointed out that rather than placing NRS § 201.540 in the NRS Chapter titled “Crimes Against the Person,” the legislature placed it in the NRS Chapter titled “Crimes Against Decency and Morals.” The Court found this indicative, but not dispositive, that the Legislature considered the statute to be a crime against public morals rather than a given person.

The Court then looked to the elements of the statute and the overall statutory context to determine whether it constituted a crime against the minor’s body. NRS § 201.540(1) prohibits (1) sexual conduct between (2) a school employee who is (a) 21 years of age or older and (b) in a position of authority at a public school and (3) a student who is (a) 16 or 17 years of age and (b) enrolled at the same public school. The statute criminalizes sexual conduct between an adult and minor that would otherwise be legal under state law absent the teacher-student relationship. In Nevada, adults may legally engage in sexual conduct with consenting minors aged 16 or older.<sup>6</sup>

The Court found that the focus of NRS § 201.540 was not on harm to the individual student because it criminalized sexual conduct regardless of whether the student actually consented or the offender actually exploited the student as opposed to other statutes criminalizing sexual conduct that are aimed at addressing harm to the person.

Lofthouse also raised several arguments that his other convictions should be reversed. However, the Court rejected these remaining arguments.

## **Conclusion**

The Court concluded that sexual conduct with a minor student and an adult teacher in violation of NRS § 201.540 was not a predicate offense sufficient to establish guilt for first-degree kidnapping. While the Court affirmed the convictions for engaging in sexual conduct between a teacher and student, the Court’s conclusion as to the predicate offense resulted in their decision to reverse the convictions for first-degree kidnapping and remand for further proceedings.

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<sup>5</sup> NEV. REV. STAT. § 200.310(1) (2020).

<sup>6</sup> NEV. REV. STAT. § 200.364(10) (2020).