3-2024

Willson v. First Jud. Dist. Ct., 140 Nev. Adv. Op. 7 (Feb. 22, 2024)

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Willson v. First Jud. Dist. Ct., 140 Nev. Adv. Op. 7 (Feb. 22, 2024)[1]

NRS 197.190 IS NOT OVERBROAD, VAGUE, OR OTHERWISE UNCONSTITUTIONAL BECAUSE THE STAUTE REQUIRES BOTH SPECIFIC INTENT AND EITHER PHYSICAL CONDUCT OR FIGHTING WORDS

Summary

The Nevada Court of Appeals ruled on the proper interpretation of a Nevada statute prohibiting obstruction of an officer's activities. Previously, the rule simply stated that no one could "willfully hinder, delay, or obstruct" an officer exercising police powers or duties. The court ruled that the intent must be specific to disrupting the officer, and that the acts must be either physical conduct or fighting words. After the court's construal of the rule, the court ruled the statute was not unconstitutionally overbroad or vague, neither on its face nor as applied to the facts in this case. Although the court ruled that Willson's constitutionality claim failed, the court instructed the district court to reconsider whether the Court of Appeals' interpretation of the statute changed the sufficiency of the evidence against Willson.

Background

In March 2021, a 15-year-old walked down a residential road in Carson City with a knife in his hands. He displayed signs of suicidal intent to the point that local police were called. Officers arrived in two waves. During the first, Sergeant Mike Cullen attempted to de-escalate from his police vehicle, following the teenager and attempting to build rapport from a distance. The teenager then stopped, at which point Sergeant Cullen exited his vehicle. The teenager made physical gestures and statements suggesting he was ready to use the knife to kill himself. This prompted the second wave of officers, where Deputy Nicholas Simpson stood at a distance with a beanbag shotgun, in case the teenager became a threat to the public or nearby officers. Soon after, the teenager dropped the knife. The encounter lasted fifteen minutes total.

During those fifteen minutes, Petitioner Lina Marie Willson tried multiple times to engage with the officers from her front lawn near the scene. Willson shouted multiple times at the officers and teenager, stating she was a witness. Her yelling was disruptive to the point where Deputy Simpson had to put down his beanbag shotgun to engage with her, and two deputies had to ask her to stop several times. At no point did Willson leave her yard or act violently in any way. After the teenager had dropped the knife, Willson was arrested for obstruction of an officer.

At Willson's bench trial in Carson City Justice Court, officers testified to their beliefs that (1) Willson's shouting caused Deputy Simpson to put his weapon down; and (2) the officers could only get the teenager to drop the knife after Willson stopped shouting. The judge convicted Willson, Willson appealed to the district court. In her appeal, she argued that the statute was unconstitutionally overbroad and vague, both facially and as applied to the facts of her case. Judge James E. Wilson denied her appeal, finding no issues of overbreadth or vagueness, due to the statute's specific intent and due notice requirements, respectively. Willson then filed a petition for writ of certiorari, which the Supreme Court of Nevada granted, then transferred to the Nevada Court of Appeals.

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Discussion

NRS 197.190 Prohibits Physical Conduct or Fighting Words that are Specifically Intended to Hinder, Delay, or Obstruct a Public Officer in the Discharge of Official Powers or Duties

Before ruling on the merits of Willson's constitutionality claims, the court had to first interpret what the statute covered.[2] The court looked to the (1) legislative intent at the time of enactment;[3] (2) clarity and ambiguity of the statute's plain language;[4] and, only if the plain language has multiple reasonable interpretations,[5] (3) particular statutory language and design of the statute as a whole.[6]

Willson argued that the statute extended to protected speech in her case, while the State argued the due notice and specific intent requirements limited the statute's scope. As a result, the court considered three issues: (1) whether the statute required officers to give "due notice" to civilians who appear to hinder, delay, or obstruct an officer; (2) whether the statute required specific intent to hinder, delay, or obstruct; and (3) whether the statute prohibited speech that hinders, delays, or obstructs an officer.

NRS 197.190 does not require that a person receive "due notice" that they are hindering, delaying, or obstructing a public officer

Although both the State and the district court agreed that due notice was required by the statute, the Court of Appeals held that that interpretation was inconsistent with the statute's structure. To interpret the statute as requiring due notice would produce nonsensical and absurd results for the rest of the statute's language.[7] Therefore, the due notice requirement is limited to those who refuse or neglect to furnish a statement or report information to an officer.

NRS 197.190 requires that a person have the specific intent to hinder, delay, or obstruct a public officer

Obstruction of an officer could require either general intent or specific intent.[8] General intent would only require an intention to perform an act, whereas specific intent requires the intent to produce a particular consequence by performing that act.[9]

Looking at the plain language, the court reasoned that there were two reasonable interpretations: (1) the term "willfully" referred to general intent, as other state statutes had; (2) the verbs "hinder," "delay," and "obstruct" only refer specifically to the officer, and therefore require specific intent. The court found no existing or relevant state legislative history or case

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[2] Ford v. State, 127 Nev. 608, 612, 262 P.2d 1123, 1126 (2011); United States v. Hansen, 599 U.S. 762, 770, 143 S. Ct. 1932, 1940 (2023).

[3] Ramos v. State, 137 Nev. 721, 722, 499 P.3d 1178, 1180 (2021). *See* Crimes and Punishments Act of 1911, *reprinted in* NEV. REV. LAWS § 6805, at 1928 (1912).

[4] *Id.*

[5] *Id.*; State v. Catanio, 102 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

[6] K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291, 108 S. Ct. 1811, 1818 (1988).

[7] *See* NEV. REV. STAT. § 197.190, which only contains the phrase "after due notice" after the first "who" clause.

[8] *Intent*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[9] *Id.*; *accord* Bolden v. State, 121 Nev. 908, 923, 124 P.3d 191, 201 (2005).

law to rely upon, and that other jurisdictions were split on the issue.[10] Nevertheless, the court found that not only had jurisdictions leaned toward interpreting similar statutes to require specific intent,[11] but that a specific intent requirement would create fewer constitutional issues of overbreadth and vagueness than general intent.[12] Specifically, the specific intent requirement would provide a narrower and objective standard for criminal activity,[13] so Nevadans will not receive arbitrary arrests for simply annoying or accidentally obstructive conduct.[14]

NRS 197.190 only applies to physical conduct and fighting words

Although Willson argued that the statute prohibited some expressive speech, the court interpreted the statute to exclude protected speech. Looking at the plain language, the court determined the statute could be interpreted two ways: either (1) because speech can hinder, delay, or obstruct an officer, [15] the statute prohibits some speech; or (2) because the statute does not explicitly include or refer to speech, but rather implies some action being taken apart from just a verbal expression,[16] only physical conduct would apply.
The court was obligated by the canon of constitutional avoidance to limit the statute to conduct unprotected by the First Amendment: physical conduct and fighting words.[17] Although the statute does not require one to use force or violence to obstruct an officer, the statute will only punish physical conduct or fighting words in accordance with other state's interpretations of similar statutes.[18] These violations can apply to actions (such as blocking an officer's path) or inactions (refusing to obey a lawful order), so long as they hinder, delay, or obstruct an officer.[19] Therefore, the statute does not apply to protected speech.

NRS 197.190 is not facially overbroad

A statute is considered to be facially overbroad if "the impermissible applications of the law are substantial when 'judged in relation to the statute's plainly legitimate sweep.'"[20] Willson argues that the statute infringes on protected speech, citing other ordinances similar to NRS

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[10] *Compare* People v. Roberts, 182 Cal. Rptr. 757, 760–61 (App. Dep't Super. Ct. 1982) (holding that a similar statute only required general intent), *and* People v. Gleisner, 320 N.W.2d 340, 341–42 (Mich. Ct. App. 1982), *with* Harris v. State, 726 S.E.2d 455, 457–58 (Ga. Ct. App. 2012) (holding that a similar statute required specific intent), *and* State v. Singletary, 327 S.E.2d 11, 13 (N.C. Ct. App. 1985).
[11] Cover v. State, 466 A.2d 1276, 1284 (Md. 1983); Commonwealth v. Adams, 125 N.E.3d 39, 51 (Mass. 2019).
[12] City of Houston v. Hill, 482 U.S. 451, 461, 466–67, 107 S. Ct. 2502, 2509, 2512–13 (1987); *see also* Scott v. First Jud. Dist. Ct., 131 Nev. 1015, 1022–23, 363 P.3d 1159, 1164–65 (2015).
[13] *See* Stubbs v. Las Vegas Metro. Police Dep't, 792 F. App'x 411, 444–45 (9th Cir. 2019) (Tashima, J., dissenting) (holding that for NRS 197.190 to survive constitutional scrutiny, the intent requirement must be specific); *see also Ford*, 127 Nev. at 621–22, 262 P.3d at 1132.
[14] *Id.*; Scott v. First Jud. Dist. Ct., 131 Nev. 1015, 1022–23, 363 P.3d 1159, 1164–65 (2015).
[15] *See id.*
[16] *See, e.g.*, State v. Snodgrass, 570 P.2d 1280, 1286 (Ariz. Ct. App. 1977); Wilkerson v. State, 556 So. 2d 453, 455 (Fla. Dist. Ct. App. 1990); Bennett v. St. Louis Cnty., 542 S.W.3d 392, 401 (Mo. Ct. App. 2017).
[17] *Hill*, 482 U.S. at 463 n.12, 107 S. Ct. at 2510 n.12. *see also Snodgrass*, 570 P.2d at 1286–87.
[18] *See id.*; State v. Williams, 534 A.2d 230, 236, 239 (Conn. 1987); *Wilkerson*, 556 So. 2d at 454–56; People v. Raby, 240 N.E.2d 595, 597, 599 (Il. 1968); State v. Krawsky, 426 N.W.2d 875, 876–77 (Minn. 1988); State v. Williams, 251 P.3d 877, 879, 883 (Wash. 2011). *See also* Christopher Hall, Annotation, *What Constitutes Obstructing or Resisting Officer, in Absence of Actual Force*, 66 A.L.R.5th 397 (1999).
[19] State v. Hudson, 784 P.2d 533, 537 (Wash. Ct. App. 1990); Hall, *supra* note 18.
[20] *Ford*, 127 Nev. at 612, 262 P.3d at 1125 (*quoting* City of Chicago v. Morales, 527 U.S. 41, 52, 119 S. Ct. 1849, 1857 (1999)).

197.190.[21] The court holds that the statute is distinguished from Willson's cited ordinances because the court's interpretation of the statute limits its scope only to physical conduct or fighting words with the specific intent to obstruct. Therefore, the statute is not facially overbroad.

NRS 197.190 is not Facially Vague

Willson argues that the statute is facially vague because the statute fails the void-for-vagueness doctrine. A statute is facially vague if the statute (1) "fails to provide a person of ordinary intelligence fair notice of what is prohibited"; or (2) "is so standardless that it authorizes or encourages seriously discriminatory enforcement."[22]

NRS 197.190 provides sufficient notice of what is prohibited

Willson argues that the statute does not provide fair notice to someone with ordinary intelligence that they could be arrested for protected speech. In addition to the statute's conduct requirement, the court holds that the language of the statute (specifically the words "hinder," "delay," and "obstruct") are words that people with ordinary intelligence would recognize and understand.[23] Furthermore, the specific intent requirement provides more context as to what conduct is permissible.[24] Therefore, the law provides fair notice for someone with ordinary intelligence.

NRS 197.190 is not so standardless so as to authorize or encourage seriously discriminatory or arbitrary enforcement

Willson argues that the statute gives officers "unfettered discretion" to make arrests based on "subjective belief[s]." Police officers are, however, expected to exercise judgment in their everyday duties, and a narrower statutory standard would risk the law's obsolescence due to "easy evasion."[25] Similar to the overbreadth issue, the specific intent and conduct requirements prevent discriminatory enforcement because the standards are too narrow to enforce against someone arbitrarily for simply annoying or offending an officer.[26] By definition, officers do not have discretion to arrest anyone for protected speech or with general intent. Therefore, the statute does not authorize or encourage discriminatory or arbitrary enforcement.

The Statute is not Unconstitutional as Applied to Willson

Willson argues that the statute was (1) overbroadly applied to her protected speech; and (2) vague as applied because Willson had no notice that her protected speech would be

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[21] *See Hill*, 482 U.S. at 460–67, 107 S. Ct. at 2508–12; Lewis v. City of New Orleans, 415 U.S. 130, 132–34, 94 S. Ct. 970, 972–973 (1974); *Scott*, 131 Nev. at 1018–21, 363 P.3d at 1161–63.

[22] State v. Castaneda, 126 Nev. 478, 481–82, 245 P.3d 550, 553 (2010).

[23] *See* Newton v. State, 698 P.2d 1149, 1152 (Wyo. 1985); *Krawsky*, 426 N.W.2d at 876, 878.

[24] *Ford*, 127 Nev. at 621, 262 P.3d at 1132; *see also* Hoffman Ests. v. Flipside, Hoffman Ests., 455 U.S. 489, 499, 102 S. Ct. 1186, 1193–94 (1982).

[25] *Krawsky*, 426 N.W.2d at 878–79; Smith v. Goguen, 415 U.S. 566, 581, 94 S. Ct. 1242, 1251 (1974).

[26] *Ford*, 127 Nev. at 622–23, 262 P.3d at 1132; City of Las Vegas v. Eighth Jud. Dist. Ct., 122 Nev. 1041, 1051, 146 P.3d 240, 247 (2006).

actionable. The court acknowledges the relevant inquiry to be not whether the statute was constitutional, but whether Willson's speech had been protected. The court reasoned that if Willson's speech had been protected, that no other person would be in Willson's position based on the court's new interpretation. Therefore, the constitutionality claim necessarily fails, becoming instead an evidence sufficiency challenge.[27] The court declined to rule on the sufficiency of the evidence,[28] instead opting to petition the district court to apply the Court of Appeals' interpretation and reconsider whether the evidence was sufficient to support Willson's conviction.

Conclusion

The Nevada Court of Appeals construed the official interpretation for the obstruction of a public officer statute, holding that if the statute requires (1) specific intent, and (2) either physical conduct or fighting words, the statute is neither overbroad nor vague. The court directed the district court to reconsider whether the evidence sufficiently supported conviction according to the official interpretation.

[27] *See* Ex parte Carter, 514 S.W.3d 776, 780 (Tex. App. 2017); *see also* in re Mental Commitment of K.E.K., 954 N.W.2d 366, 380 (Wis. 2021).
[28] *See* Cornella v. Just. Ct. of New River Twp., 132 Nev. 587, 600 n.14, 377 P.3d 97, 106 n.14 (2016).