

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

4-18-2024

Sisolak v. Polymer 80, Inc., 140 Nev. Adv. Op. 30, 546 P.3d 819 (Apr. 18, 2024)

Keegan Davis

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

Recommended Citation

Davis, Keegan, "Sisolak v. Polymer 80, Inc., 140 Nev. Adv. Op. 30, 546 P.3d 819 (Apr. 18, 2024)" (2024).
Nevada Supreme Court Summaries. 1671.
<https://scholars.law.unlv.edu/nvscs/1671>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

COMMON PARLANCE OR UNCONSTITUTIONALLY VAGUE?
NEVADA SUPREME COURT REVERSES DISTRICT COURT DECISION
ENJOINING ENFORCEMENT OF GHOST GUN STATUTE
ON THE BASIS OF STATUTORY LANGUAGE

Summary

In 2021, the Nevada Legislature promulgated, and Governor Sisolak signed into law, NRS 202.253(9), NRS 202.3625, and NRS 202.363 as an extension to the federal Gun Control Act (“GCA”). The statute criminalizes the sale or transfer of unfinished firearms lacking serial numbers, known as “ghost guns.” Respondent, Polymer80, Inc., is a Nevada company whose primary business is the sale of unfinished firearm components. Respondent sued Governor Sisolak and other named defendants claiming that the new ghost gun statute was vague and therefore unconstitutional.² The district court agreed with Polymer80, granted summary judgment, and declared the statute unconstitutional. Appellants appealed to the Nevada Supreme Court arguing the statute was enforceable because it was easily understood in common firearm parlance. The Justices agreed with Appellants and in a 7-0 decision reversed the district court ruling enjoining use of the statute. Finally, the Court determined the district court erred in its concern of arbitrary or discriminatory enforcement on the basis of being general intent statutes.

Background

To provide context on the statutes informing this case, the federal Gun Control Act (“GCA”), 18 U.S.C. §§ 921-934, requires federal firearm licensees (sellers and dealers) to “serialize each firearm” among other regulations not relevant to this action.³ Firearms lacking serial numbers pose a growing and significant risk to public safety “because they circumvent background checks and are untraceable.”⁴ Firearm assembly kits fall outside the GCA’s purview because at the time they are shipped, the frame or receiver is not considered a firearm.⁵ Polymer80 is a manufacturer of “gun-related products[,] aftermarket accessories,” and firearm assembly kits.⁶ Because the kit leaves the factory as a “non-firearm” for GCA purposes, adherence to background checks and serial numbers is not required.

In 2021, the Nevada Legislature put forward Assembly Bill 286 (“A.B. 286”) to “regulate firearm components that are not imprinted with a serial number.”⁷ Advocates on both sides of the bill’s passage spoke to a broad range of considerations: proponents for the bill’s passage characterized ghost guns as an open secret circumventing the conventions of firearm compliance while opponents of the bill argued the wording “raised vagueness concerns, arguing that... ‘there is not a clear definition of when [the] frame or receiver [of a gun] becomes a firearm.’”⁸ The Legislature subsequently passed A.B. 286 and Governor Sisolak approved the law on June 7,

¹ By Keegan Davis, Executive Managing Editor – NLJ Vol. 25.

² *Sisolak v. Polymer80, Inc.*, 140 Nev. Adv. Op. 30, 546 P.3d 819, 823 (2024).

³ *Id.* (citing 18 U.S.C. § 922).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 824.

⁷ *Id.* at 823.

⁸ *Id.* at 824.

2021.⁹ A.B. 286 became codified (in part) as NRS 202.253(9), NRS 202.3625, and NRS 202.363(1), entailing definitions for “unfinished frame or receiver,” penalties for selling an unfinished gun component, and penalties for possessing an unfinished gun component, respectively.¹⁰

Echoing sentiments made by the law’s opponents, Polymer80 asserted the law was “unconstitutionally vague and sought declaratory and injunctive relief against [Gov. Sisolak, Attorney General Ford, Director Togliatti of Nev. Department of Public Safety, and Administrator McKay of the Records, Communications, and Compliance Division of Nev. Department of Public Safety]”.¹¹ The case was heard before the Third Judicial District Court, Lyon County.¹² At the close of discovery both parties moved for summary judgment.¹³ In its motion, Polymer80 asserted a triumvirate of claims: “(1) NRS 202.253(9)’s definition of unfinished frame or receiver is vague” for failure to describe and define what a finished product is; “(2) the statute’s definition of unfinished frame or receiver does not define ‘blank,’ ‘casting,’ or ‘machined body;’” and (3) there is no fixed definition of when a piece of metal becomes an unfinished firearm component.¹⁴ On December 10, 2021, the district court ruled in Polymer80’s favor, granting summary judgment for the manufacturer and issuing a permanent injunction enjoining enforcement of NRS 202.3625 and NRS 202.363.¹⁵ Sisolak timely appealed.

On March 2, 2023, the case was heard before the Nevada Supreme Court en banc.¹⁶ On April 18, 2024, the Court issued its opinion authored by Justice Stiglich:

Discussion

The Court reviews the constitutionality of a statute de novo.¹⁷ In assessing unconstitutional vagueness, the Court determines whether the statute “‘(1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited’ or (2) ‘lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement.’”¹⁸ If either of these ring true, the statute is invalidated.¹⁹ Clarity and common knowledge are touchstones of the Court’s test. Within this case’s context, Justices contoured their analyses through the lens of parties affected by Nevada’s ghost gun laws. The Justices therefore contemplated whether the average Polymer80 consumer would be confused by the statutory language controlling ghost guns.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 822.

¹³ *Id.* at 824.

¹⁴ *Id.* at 824-25.

¹⁵ *Id.* at 825. *See also* Polymer80, Inc. v. Sisolak, 2021 WL 12257164 (Nev. Dist. Ct. 2021).

¹⁶ 83999 *Sisolak v. Polymer80 Incorporated* 03/02/2023, NEV. SUPREME CT., https://nvcourts.gov/supreme/arguments/recordings/83999_sisolak_vs_polymer80_incorporated_03022023 (June 7, 2024).

¹⁷ *Sisolak*, 546 P.3d at 825 (citing *Silvar v. Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

¹⁸ *Id.* (citing *Gallegos v. State*, 123 Nev. 289, 293, 163 P.3d 456, 458 (2007); *see also Sisolak*, 546 P.3d at 829 n. 3).

¹⁹ *Id.* (citing *State v. Castaneda*, 126 Nev. 478, 482 n. 1, 245 P.3d 550, 553 n. 1 (2010)).

Ordinary Meaning in Context and Trade Usage.

To the contemplation posed *supra*, the Justices ruled no. “Where a statute targets a group engaging with a specifically regulated subject, resources specific to that subject may provide additional guidance.”²⁰ Relying on *Vill. of Hoffman Estates*, the Court determined that trade materials akin to “specialized dictionaries and industry association publications” are highly instructive in gathering the meaning of a term.²¹ The Court then pivoted its analysis in the spirit of common sense given that ample statutes in the United States Code use similar language found in Nevada’s statute. In determining that there is no statutory silver bullet,²² the Court reminds the parties that “[i]n recognizing that statutes need not provide mathematical precision and that ‘the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions... one who deliberately goes perilously close to an area of proscribed conduct *shall take the risk that he may cross the line.*’”²³ In short, the Court warns that while statutes cannot warn citizens every time an infraction is imminent, they can put people on notice to use their best judgment and common sense.

An “unfinished frame or receiver.”

With trade usage in mind, the Court next looked to NRS 202.253(9) and its definition of “unfinished frame or receiver.”²⁴ In ruling for Polymer80, the district court determined the statute “does not specifically define blank, casting, machined body, frame or lower receiver, major machining operations, and fire-control cavity area.”²⁵ Further, the district court ruled that “NRS 202.3625 and NRS 202.363 lack a scienter requirement.”²⁶ Justices quickly dismissed the district court’s claims on vagueness and scienter requirement because “the terms [and meanings] contested... are readily ascertainable” via the methods discussed *supra*.²⁷ The Court continued its analysis of the terms in contention.

A “blank,” a “casting,” or a “machined body.”

With the aid of The New Oxford Dictionary, firearm trade materials, and literature by the Bureau of Alcohol, Tobacco, Firearms and Explosives (commonly known as “ATF”), the Court quickly gathered definitions for blank, casting, and machined body as found in NRS 202.253(9).²⁸ From their research, Justices found that these terms “are used in describing firearm components in guidance provided for these specific products.”²⁹ The opinion noted that Polymer80’s own counsel drafted “letters to the ATF [using] ‘blank,’ ‘casting,’ and ‘machined’ in reference to its own products” as evidence “that these terms are commonly understood.”³⁰ Simply, Polymer80 cannot argue vagueness on one hand while using the same terms on the other.

²⁰ *Id.* at 825 (citing *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 501 & n.18 (1982)).

²¹ *Id.* at 826.

²² Pun not intended.

²³ *Sisolak*, 546 P.3d at 826 (citing *Boyce Motor Lines v. U.S.*, 342 U.S. 337, 340 (1952) (emphasis added)).

²⁴ *Id.*

²⁵ *Id.* at 826-27.

²⁶ *Id.* at 827.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

The “frame or lower receiver of a firearm.”

Referring to the dictionary again, the Court determined that the words frame and receiver “may be understood by their ordinary meanings, which accord with and are given greater specificity by the firearms industry.”³¹ The opinion also cited the Glossary of the Association of Firearm & Tool Mark Examiners and Sporting Arms and Ammunition Manufacturers’ Institute Glossary to demonstrate context provided by trade literature.³² Finally, the Court cited to the record when “Polymer80’s own counsel used and described [the terms] as ‘ordinary nomenclature’ in a letter to the ATF.”³³ The record further reflected the district court’s remark “that ‘frame or lower receiver’ were not vague but were instead ‘common terms in relation to firearms.’”³⁴

“Most of the major machining operations.”

The Court’s language is the clearest recount of this section: “Here too, dictionaries provide critical notice.”³⁵ The opinion proceeds by stating the district court’s preoccupation with hypotheticals rather than the plain reading of the statute cut against its own vagueness analysis. Instead of relying on a plain reading of the statutes, the Court cautioned that the district court’s error here “highlights the difficulty of analyzing vagueness when considering a facial challenge to the statutory definition of an object.”³⁶ Finally, the Court recognized that the challenger of an unconstitutional action, here Polymer80, “bears the burden of showing that a statute is unconstitutional.”³⁷ Reviewing the definition of “most of the major machining operations,” the Court found that Polymer80 has not carried its burden warranting invalidation.³⁸

“Fire-Control Cavity Area.”

In closing out its analysis of the terms defined in NRS 202.253(9), the Court cited The New Oxford dictionary of English to find that the “ordinary meanings of ‘fire-control cavity area’ provide sufficient guidance to interpret this terminology in context.”³⁹ No further analysis was required. In summarizing the Court’s NRS 202.253(9) review, Justices found “sufficient notice, and vagueness does not permeate its text” in toto.⁴⁰ Hence, invalidating the statute is off the table.

A defendant must know that the object is intended to be turned into a firearm to be subject to potential criminal liability under NRS 202.3625 and NRS 202.363.

Going back to the Court’s discussion of the *Boyce* decision,⁴¹ this opinion held that there was no scienter requirement under NRS 202.3625 and NRS 202.363. The statutes themselves “set forth the conduct that is criminalized”—the sale or possession of a ghost gun.⁴² The legislature did not affix a required mental state, nor did it mandate strict liability or specific intent.⁴³ Flowing

³¹ *Id.* at 827.

³² *Id.* at 828.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 828-29.

³⁷ *Id.* at 829 (citing *Silvar*, 122 Nev. at 292, 129 P.3d at 684).

³⁸ *Id.* (“[w]e conclude that Polymer80 has not shown vagueness in this regard”).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Supra* note 23.

⁴² *Sisolak*, 546 P.3d at 829.

⁴³ *Id.* at 830.

from this law's unspecified facets, the Court determined the statutes required general intent.⁴⁴ Therefore, in order to successfully prosecute a criminal case under these statutes, "the State must show that the defendant willfully sold, offered to sell, transferred, possessed, purchased, transported, or received an unfinished frame or receiver and that the defendant knew that the object at issue had the objective characteristics of being intended to be turned into a firearm."⁴⁵

Risk of Arbitrary Enforcement.

The Court determined that the district court's concerns of arbitrary enforcement of Nevada's ghost gun laws was unfounded. Through its extensive research of dictionary definitions and trade literature/trade usage, the opinion held that none of the terms are so vague inasmuch as they would "allow the police, prosecutors, and juries to pursue their personal predilections."⁴⁶ In short, each of the terms defined in NRS 202.253(9) are founded in common firearm parlance that a jury and court can be apprised of and use for comparison rather than a jumping off point for arbitrary judgments. As concluded by the Court, "[w]hatever discretion [these statutes] leave is no greater than any other criminal statute."⁴⁷ Hence, a succinct roadmap for District Attorneys demonstrates what prosecutors must show in order to obtain a conviction. Conversely, a would-be offender can read the statute and know what is expected of them to be in compliance with this law.

Conclusion

The Court's holding reversed the district court's issuance of summary judgment for Polymer80 because (1) NRS 202.253(9) is not vague, and (2) NRS 202.3625 and NRS 202.363 constitute general intent statutes. Based on the foregoing, the Court further determined the district court's permanent injunction of NRS 202.3625 and 202.363 an abuse of discretion.⁴⁸

⁴⁴ *Id.* at 830 (citing *Busefink v. State*, 128 Nev. 525, 535-36, 286 P.3d 599, 606-07 (2012)).

⁴⁵ *Id.* (see, e.g., *Hamling v. U.S.*, 418 U.S. 87, 119-21 (1974); *Staples v. U.S.*, 511 U.S. 600, 611-12, 620 (1994)).

⁴⁶ *Id.* (citing *Silvar*, 122 Nev. at 293, 129 P.3d at 685 (internal citations omitted)).

⁴⁷ *Id.* at 831.

⁴⁸ *Id.*