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## Ditech Financial, LLC vs. Buckles, 133 Nev. Adv. Op. 64 (September 14, 2017)

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*Ditech Financial, LLC vs. Buckles*, 133 Nev. Adv. Op. 64 (September 14, 2017)<sup>1</sup>

## CONSTITUTIONAL LAW: Interception of Wire Communications

### **Summary**

In an en banc opinion, the Court determined that NRS 200.620<sup>2</sup> does not apply to telephone recordings made by a party outside of Nevada who uses equipment outside of Nevada to record a conversation with a person in Nevada without that person's consent.

### **Background**

This case arose out of a class action suit brought by Sanford Buckles against Ditech Financial LLC, a home mortgage services headquartered in Florida with calling centers in both Arizona and Minnesota. Buckles, a customer of Ditech and resident of Nevada, alleged in his complaint that Ditech violated NRS 200.620 by unlawfully recording conversations without his consent.

### **Discussion**

*NRS 200.620 does not apply to telephone conversations intercepted out of state*

The core of Ditech's argument is that NRS 200.620 does not apply because the "interception" took place outside of Nevada. NRS 179.430 defines "[i]ntercept" as "the aural acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device or of any sending or receiving equipment" On the other hand, Buckles argued that the statute applies because there are no location-based limitations in the statute and Ditech's conduct caused harm in Nevada.

The Court held that NRS 200.620 does not apply when the interception takes place outside of Nevada. Rather, "[i]nterceptions and recordings occur where made."<sup>3</sup> Whether the recordings of Buckles and other class members is not determined by Nevada law, which is where the calls were received. Instead, whether the recordings were lawful is determined under Arizona and Minnesota law, the places where the calls were intercepted and recorded.

### **Conclusion**

Ultimately, NRS 200.620 is inapplicable to the recording of interstate calls, between a person and Nevada and out-of-state caller, when the recording takes place outside of Nevada.

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<sup>1</sup> By Landon Littlefield

<sup>2</sup> NRS 200.620 prohibits the interception and attempted interception of wire communication.

<sup>3</sup> *Kadoranian v. Bellingham Police Dep't*, 829, P.2d 1061, 1065 (Wash. 1992)