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Coleman v. State, 134 Nev. Adv. Op. 28 (May. 3, 2018)

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CRIMINAL LAW: STATUTORY INTERPRETATION APPEAL

Summary

The Nevada Supreme Court determined that a judgment of conviction pursuant to NRS 200.604(1) is only valid when a person captures or disseminates an image of another's private parts, taken without their consent, under circumstances in which that person has a reasonable expectation of privacy.

Background

Solomon Coleman, a Las Vegas police officer, responded to a scene where he and another officer detained L.M. and a friend of hers. During the detention, in addition to L.M. confessing that she had outstanding warrants, the police found drugs in L.M.'s friend's purse. Consequently, the police arrested both women. During the arrest, L.M. gave Coleman permission to go through her cell phone, where he found sexual videos of her and her boyfriend. Thereafter, by recording a video while it was playing on L.M.'s cell phone, Coleman copied the video onto his own cell phone.

After searching Coleman's cell phone, police found the video of L.M. and her boyfriend, and resultantly, arrested and charged Coleman with several crimes against L.M. Following a five-day trial, Coleman was acquitted of all charges except one: capturing an image of the private area of another person in violation of NRS 200.604. Coleman appealed.

Discussion

II.

On appeal, Coleman argued that the State did not put forth sufficient evidence to convict him under NRS 200.604, because he did not take a video of L.M.'s physical body directly—which is defined as voyeurism prohibited by the statute—but rather, merely copied an existing video. Conversely, the State argued that the statute prohibited Coleman's conduct because his copying captured an image of L.M.'s private area from a video on her cell phone, in which she had a reasonable expectation of privacy. To resolve the conflict between the parties, the Court interpreted the statute to discern a clear meaning of its prohibited conduct.

A.

First, looking at the text of NRS 200.604(1)², which provides that a person shall not "...capture an image of the private area of another person without [their] consent and under circumstances in which the other person has a reasonable expectation of privacy," the Court determined that the phrase "capture an image" was susceptible to two reasonable interpretations. The Court explained that the phrase "capture an image" under the statute

¹ By Maliq Kendricks.

² NEV. REV. STAT. § 200.604(1) (2015).

“could be limited to videotaping, photographing, filming, or recording a physical person in real time, or it could also include the copying of a pre-existing image that displays a private area.” Discerning no clear meaning from the statute’s text, the Court reasoned that it had to look to the statute’s legislative history and other relevant extrinsic aids for guidance.

B.

Looking at NRS 200.604(1)’s legislative history, the Court explained that the Nevada Legislature created the statute “to criminalize the act of taking photos or video of a person’s private area in real time, either in a public or private physical location, when that person had a reasonable expectation of privacy” and not to “criminaliz[e] the republication of consensually captured images of a person’s private areas.”

C.

Looking even deeper into NRS 200.604(1)’s origin, the Court consulted federal law to disambiguate the state statute, because of its similarity to a federal act. The Court clarified that the state statute derived from the Video Voyeurism Prevention Act of 2004³, which was created “to thwart video voyeurism.” The Court concluded that the federal act supported reading the state statute to prohibit “the act of taking photos or video of a person’s private area in real time, a type of voyeurism, [and] not to prohibit the copying or dissemination of a person’s pre-existing consensual pictures and videos.” Resultantly, the Court found that NRS 200.604(1) was ambiguous.

D.

With finding NRS 200.604(1) ambiguous, the Court imposed the rule of lenity, which requires that “ambiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant’s favor.” In light of NRS 200.604(1)’s history, federal model interpretation, and the rule of lenity, the Court set forth a clarified meaning of the statute, explaining that it “prohibits capturing or disseminating an image of a person’s private parts, taken without consent, under circumstances in which that person has a reasonable expectation of privacy.”

III.

After clarifying NRS 200.604(1)’s meaning, the Court looked to determine whether the State provided sufficient evidence to convict Coleman for violating the statute. The Court explained that in order for the State to prevail on Coleman’s conviction, it needed to show that he took a video of L.M.’s private parts without her consent, under circumstances in which she had a reasonable right to privacy. The Court reasoned that because Coleman only copied a pre-existing video, and did not capture an image of L.M.’s private area in real time, his conduct in doing so was not prohibited by the statute.

Conclusion

Finding NRS 200.604(1) ambiguous, the Nevada Supreme Court rejected the State’s interpretation of the statute and reversed the lower court’s conviction of Solomon Coleman.

³ 18 U.S.C. § 1801 (2006).