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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE

STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN

GLENN CAMPBELL,
Appellant, NO. 33-4-95 LCR

--vs--

THE STATE OF NEVADA,

Respondent.

---/

RESPONDENT'S ANSWERING BRIEF

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STATUTES

NRS 48.015
NRS 197.190
NRS 175.011

OTHER AUTHORITY

Black's Law Dictionary Special Deluxe Fifth Edition, 1979

STATEMENT OF_THE CASE

On July 19, 1994, Appellant, GLENN CAMPBELL, was arrested on a charge of Obstructing Public Officer in violation of NRS 197.190.~ After a bench trial on March 3, 1995, Appellant was found guilty and sentenced to pay a Two Hundred Fifty Dollar ($250.00) fine and to perform five (5) days of community service. This appeal followed.

STATEMENT OF THE FACTS

On July 19, 1994, Sgt. LAMOREAUX of the Lincoln County Sheriff's Office was dispatched to investigate a film c~ew on a hilltop near the Nellis Bombing Range, called Freedom Ridge. (Reporter'S Transcript, p. 5, lines 17-27, hereinafter referred to as RT, 5:17-27). Freedom Ridge is approximately one hundred (100) yards from the boundary of the Nellis Range. (RT, 6:14-15). LAMOREAUX was investigating whether unlawful photographing of the military installation had occurred. (RT, 5:24-27).

As he approached the ridge, LAMOREAUX saw a white vehicle and three (3) individuals, and he saw a woman point a movie camera in the direction of LAMOREAUX. (RT, 6:19-28, 7:1-3). Appellant CAMPBELL was present (RT, 7:18-20). LAMOREAUX believed he had seen a crime committed when the camera was pointed in his direction because of the restricted military base in the background. (RT ! 8:21-24). LAMOREAUX requested the tape from the reporter, however before the tape could be turned over, lightening in the area caused the officer to advise all those present to drive down off the ridge. (RT! 9:3-11).

Once on safe ground, LAMOREAUX requested that the video tapes be turned over as possible evidence of a crime. (RT, 11:1-7, 11:16-24). No judge was available in Lincoln County to issue a search warrant. (Rt, 12:2-11).

LAMOREAUX told the reporters he was going to seize the tapes, and CAMPBELL locked the door to the vehicle where the tapes were located. (RT, 12:15-28). CAMPBELL refused to unlock the doors and he was arrested. (RT, 13:1-8).

A video depicting the events leading up to Appellant's arrest was admitted into evidence and played for the Court. (RT, 22:4-22). The video showed Appellant locking the doors of the vehicle and his refusal to unlock them. (RT, 23:1-19).

Deputy KELLY BRYANT observed the arrest of Appellant and corroborated the testimony of Sgt. LAMOREAUX. (RT, 62:2-28).

Under cross-examination, Appellant admitted that he knew LAMOREAUX wanted the tapes and that he locked the

vehicle doors. (RT, 126:9-16).

III.

STATEMENT OF THE ISSUES PRESENTED

1. Whether sufficient evidence was presented to find Appellant guilty beyond a reasonable doubt?

2. Whether the Court erred in excluding testimony regarding prior warrantless film and video tape seizures?

3. Whether the Court erred by excluding testimony regarding an officer's definition of probable cause?

4. Whether the Court erred by denying Appellant's request for a trial by jury?

I.V.

Argument

A. SUFFICIENT EVIDENCE WAS PRESENTED TO FIND APPELLANT GUILTY BEYOND A REASONABLE DOUBT

NRS 197.190 provides in part that any person:

> "who shall willfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall...be guilty of a misdemeanor."

As demonstrated above in the recitation of facts, Sgt. LAMOREAUX believed he had seen the unlawful filming of a military installation when the camera was pointed at him. LAMOREAUX then requested the tapes be turned over to him.

Even though the owner of the tapes (Mr. HENRY, the reporter) agreed to turn over the tapes, Appellant then locked the vehicle doors to stop the seizure. Assuming arguendo, that Appellant merely wanted to discuss the "unresolved issues," the violation still occurred: his act was willful and intended to delay or hinder the seizure of the film.

Appellant argues that "evil intent" is required as an element of the offense. No Nevada law supports this argument. In fact, the plain language of the statute indicates that the offense is more analogous to a strict liability or general intent crime: when a person willfully does the act that hinders or delays the officer, the crime has been committed. Specific intent of the Defendant is not an element of the offense.

Appellant next argues that a search issue was present in this case. His analysis, however, does not address the issue of probable cause, but rather is concerned with the Appellant's subjective belief or confusion about the existence of prcbable cause. The point is clear: since the officer had probable cause to seize the tapes from the vehicle, Appellant's belief about the "fate" of the tapes is irrelevant and does not raise a Fourth Amendment issue. The State submits that the testimony and the videotape admitted into evidence provide overwhelming evidence of guilt.

B.

THE COURT PROPERLY EXCLUDED TESTIMONY REGARDING THE FILM AND VIDEO SEIZURES

The court disallowed Appellant's efforts to present testimony regarding prior warrantless seizures of film and videotapes. The Court correctly ruled that such testimony was not relevant to the present case.

In order to be relevant to the present case, the testimony would have to tend to prove or disprove a fact in issue, (see

generally NRS 48.015). The main issue in this case was simply whether or not Appellant willfully did an act that delayed or hindered the officer in the discharge of his duty. Whether or not prior seizures had occurred simply has no tendency to prove or disprove the Appellant's guilt, or whether he did the unlawful act. Therefore, the Court properly excluded this evidence.

C.

THE COURT PROPERLY EXCLUDED TESTIMONY REGARDING THE OFFICER'S DEFINITION OF PROBABLE CAUSE

Appellant sought to elicit testimony from LAMOREAUX as to how LAMOREAUX would "define" probable cause. The Court sustained objections to this evidence. How the officer would generally define probable cause is irrelevant. The only issue in this area would be whether or not the officer had probable cause to believe a crime had been committed. The evidence is undisputed that as LAMOREAUX drove up Freedom Ridge, he saw the television camera point at him, (with the restricted military base behind him). The reporter admitted that the camera had a wide-angle lens, supporting the officer's objective belief that the base could have been filmed.

The testimony supporting the officer's observations was not disputed, and supports a finding that the officer had probable cause to seize the video tapes.

Appellant's primary argument in this regard is, in essence, that since Appellant, did not understand that the officer had probable cause, or if he did not understand the legal basis of the officer's authority to act, the Appellant has the right to obstruct the officer. No applicable law is cited to support this proposition, and if such were the law, police investigation efforts would become entirely ineffective.

D.

THE COURT PROPERLY DENIED APPELLANT'S REOUEST FOR A JURY TRIAL

Prior to trial, Appellant demanded a jury trial pursuant to NRS 175.011. Appellant's request was initially granted by the Court, but later vacated in response to a motion filed by the State and opposed by Appellant. It is conceded by Appellant that he does not have a constitutional right to a jury trial; however, he cl aims a statutory right.

Defendant's claim that he is entitled to a jury trial is based upon changes to NRS 175.011 which were adopted in 1983. The key change was the substitution of the word "must" in place of the word "shall." This change, however, merely substituted a synonym for the word shall. The definition of "must" in Black's Law Dictionary Special Deluxe Fifth Edition, 1979, is as follows:

> "Must. This word, like the word "shall" is primarily of mandatory effect..." p. 919. Court's that have considered the question have also found "must" and "shall" to by synonyms. See generally **~te ex rel Macy v. Freeman**, 814 P.2d 147 (OKL 1991); **State ex rel ~cCabe v. ~i~5Lis~ 5S~**, 76 P.2d 634 (MONT).

In **Blanton vs. North Las Vegas Municipal Court**, 103 Nev 623 (19~7), the Nevada Supreme Court held that neither the Federal constitution nor the Nevada constitution require jury trials in misdemeanor DUI cases, since such cases are "petty".

In **s~_~e_~5__lD ~bLh=: ~9~L~/** 104 Nev 91, 752 P.2d 238 (1988) the Nevada Supreme Court specifically applied the holding in ~l~n~nn to justice court cases. In state vs, District Court, the Defendant was convicted of DUI in justice court, and the District Court reversed the conviction, holding that the Defendant was entitled to a jury trial. The State filed a petition for a writ of certiorari with the Nevada Supreme Court and the high court upheld Defendant's non-jury trial conviction, stating

> "Our holding is BLANTON applies whether the individual is charged in municipal court or justice's court" 104 Nev at 91 .

Since the year **Blanton** was decided, 1987, the legislature has met three (3) times, and except for changes regarding the use of a court reporter, no changes have been made to NRS 175.011. The legislature is presumed to know how the Supreme Court has construed a statute, and if the statute is not subsequently amended, the court assumes the legislature agrees with the court's interpretation. See generally, **Northern Nevada Assoc. of Iniured ~9~ 1~LL_~115**, 107 Nev 108, 112 (1991). The legislature has been on notice that jury trials are not provided since 1988.

Similarly, **State vs. District Court**, supra, was decided in 1988, and yet the legislature has no~ substantially amended NRS 175.011. These facts all point to the conclusion that the legislature *did not* and *does not* intend to create a right to a jury trial in all criminal cases.

Overall, it is the State's position that "if the legislature intended to grant a substantive right to a jury trial in every case, it would have said so in plain, explicit language." 55 ~ ~Y ,__9~1t~ 99 Nev at 808. The mere changing of the word "shall" to "must" did not clearly grant such a right, and therefore, no such right exists for non-serious offenses.

For the reasons stated above, Appellant's appeal should be dismissed and his conviction affirmed.

DATED this 4th day of Aug. 1995.

--*Signed*--
STEVE L. DOBRESCU, ESQ.
Deputy District Attorney
Lincoln County, Nevada
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this answering brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4th day of August, 1995.

--*Signed*--
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CERTIFICATE OF SERVICE

Pursuant to the rules of the above entitled Court, I hereby certify that I am an employee of Steve L. Dobrescu, Esq., A Professional Corporation, and that on the 4th day of August, l9g5 I deposited for mailing at Ely, Nevada, whereon first class postage was fully prepaid, a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF**, addressed to:

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Rachel, Nevada 89001

--Signed--
CAROL R. FIELDING

[End of Brief. No other attachments.]

Html by Glenn Campbell, 8/21/95