

THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

THE STATE OF NEVADA,
Respondent,
vs.
GLENN CAMPBELL,
Appellant.

ORDER DISMISSING APPEAL

Appellant, Glen Campbell, was arrested on July 19, 1994. On August 8, 1994, Appellant requested a jury trial. Respondent, the State of Nevada, filed a criminal complaint against Appellant on August 24, 1994, charging him with obstructing a public officer in violation of NRS 197.190. On October 5, 1994, Pahrnagat Valley Justice Court set a misdemeanor jury trial. Respondent filed a Motion to Vacate Order Granting Jury Trial on January 9, 1995. On January 12, 1995, Appellant filed a Response to Respondent's Motion to Vacate Order Granting Jury Trial. Pahrnagat Valley Justice Court granted Respondent's Motion to Vacate Order Granting Jury Trial on February 13, 1995, and set a bench trial for March 3, 1995. Appellant was found guilty at the bench trial held in

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Pahrnagat Valley Justice Court on March 3, 1995. On March 13, 1995, Appellant filed a Notice of Appeal to the Seventh Judicial District Court. Appellant filed an Opening Brief on July 7, 1995. Respondent filed an Answering Brief on August 7, 1995. On August 29, 1995, Appellant filed a Reply Brief. The case was argued before the Seventh Judicial District Court on September 22, 1995. The State was represented by Special Prosecutor, Steve L. Dobrescu, Esq., and Mr. Campbell appeared pro se. The matter now stands ready for decision by this Court.

The pertinent facts as adduced from the papers filed with the Court and the Reporter's Transcript (RT) are as follows. On July 19, 1994, Sgt. Lamoreaux of the Lincoln County Sheriff's Office was dispatched to investigate the presence of a film crew on a ridge overlooking Nellis Bombing Range. The ridge is approximately one hundred yards from the boundary of the Nellis Range, and Sgt. Lamoreaux was sent to investigate whether the film crew was unlawfully photographing the military installation.

When Sgt. Lamoreaux arrived on the scene, he saw three individuals and a white vehicle on the ridge: Appellant, Mr. Henry, and Ms. Yelland. As he drove up the ridge, Sgt. Lamoreaux saw that Ms. Yelland was holding a video camera and pointing it in his direction. The Nellis Bombing Range was directly behind him as he ascended the ridge; therefore, Sgt. Lamoreaux believed he had just observed Ms. Yelland unlawfully photograph the military installation. When Appellant testified at the bench trial, he

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admitted they had filmed some of the restricted access area. (RT 115).¹

Sgt. Lamoreaux approached the three people on the ridge and advised them that he believed they had committed the crime of unlawfully photographing the military installation. According to the testimony of Sgt. Lamoreaux, he asked one of the three people, Mr. Henry, for the video tape in the camera. The tape was not given to him at that time. After a short discussion about the tape, Sgt. Lamoreaux instructed everyone to follow him down off the ridge because a

lightening storm was fast approaching.

Appellant, Mr. Henry, and Ms. Yelland got in their vehicle and followed Sgt. Lamoreaux down the ridge. At the base of the ridge, they were met by Officer Kelly Bryant. All three vehicles proceeded approximately 3 to 5 miles to Groom Mine Road. Once the three vehicles reached Groom Mine Road, Sgt. Lamoreaux approached the vehicle Appellant was in and once again asked them to turn over the tape. Sgt. Lamoreaux further explained that due to the long drive from the top of the ridge, they would have to turn over all of the video tapes in the vehicle. A major discussion about the tapes followed.

Next, Sgt. Lamoreaux directed everyone to exit the vehicle and step back. All three people exited the vehicle, and Mr. Henry and Ms. Yelland stepped away from it. Appellant remained near the vehicle. Sgt. Lamoreaux informed them that according to

¹ 18 U.S.C. section 795 states that it is unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of certain vital military installations or equipment.

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United States Supreme Court rulings, he had probable cause to seize the tapes without a warrant because they were mobile and capable of being destroyed.

While Appellant and the film crew stood outside the vehicle, Sgt. Lamoreaux and Officer Kelly approached the vehicle intending to search it and seize the videotapes. At that point, Appellant said, "Wait, there are unresolved issues here." Appellant then reached in from the driver's side of the vehicle and locked the doors on the passenger side where the two officers were approaching.

At the bench trial, both Sgt. Lamoreaux and Officer Bryant testified that when Sgt. Lamoreaux instructed Appellant to unlock the doors, Appellant said no. Both officers testified that Appellant then yelled to Mr. Henry to throw him the keys to lock the vehicle. Sgt. Lamoreaux arrested Appellant for obstructing at that point. During and after his arrest, Appellant fully cooperated with the officers.

At the bench trial, Appellant explained he pushed down the door locks because he was confused. By locking the doors he was attempting to say, "hold on, let's just take time out, let's figure out what's going on here."

Appellant was convicted of violating NRS 197.190, Obstructing Public Officer. He was sentenced to pay a two hundred fifty dollar fine and to perform 5 days of community service.

Appellant raises five issues on appeal: (1) whether sufficient evidence was presented to find Appellant guilty beyond

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a reasonable doubt; (2) whether the trial court erred in disallowing testimony regarding prior warrantless film and video tape seizures; (3) whether the trial court erred in disallowing questions designed to elicit an officer's definition of probable cause; (4) whether the trial court erred in making certain final conclusions not based on evidence; and (5) whether the trial court properly denied Appellant's timely request for a trial by jury.

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

According to NRS 189.050, an appeal from justice's court, duly perfected, transfers the action to the district court to be judged on the record. Therefore, on an appeal from a justice's court finding, a district court must examine the

record to determine if there was sufficient evidence presented at trial to support the justice's court's finding. "Furthermore, when the sufficiency of the evidence is challenged on appeal in a criminal case, the relevant inquiry for this Court is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hutchins v. State*, 110 Nev. 103, 107-108, 867 P.2d 1136 (1994).

In the instant case, Appellant was convicted of violating NRS 197.190, Obstructing Public Officer. NRS 197.190 provides that "[e]very person who, after due notice, ... shall willfully hinder, delay, or obstruct any public officer in the discharge of his official powers or duties, shall, where no other provision of law

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applies, be guilty of a misdemeanor." Thus, in finding Appellant guilty of violating NRS 197.190, justice's court found that Appellant was given due notice of Sgt. Lamoreaux's intention to search the vehicle in the discharge of his official duties, and also that Appellant willfully hindered, delayed or obstructed Sgt. Lamoreaux in the discharge of those official duties.

According to the Reporter's Transcript of the bench trial, Sgt. Lamoreaux informed Appellant, Mr. Henry, and Ms. Yelland that he had seen the camera pointed in the direction of the restricted military installation and believed a crime had been committed. Sgt. Lamoreaux testified he requested the video tape while they were still up on the ridge. According to Sgt. Lamoreaux, he asked Appellant and the film crew for the tapes again when they stopped at Groom Mine Road. Sgt. Lamoreaux explained that under current United States Supreme Court rulings, he did not need a search warrant to seize the tapes. Therefore, the record supports the trial court's finding that Appellant had due notice Sgt. Lamoreaux was going to seize the tapes in the discharge of his official duties as an officer of the Lincoln County Sheriff's Office.

Both Officer Kelly and Sgt. Lamoreaux testified Appellant then stated something to the effect that there were unresolved issues, and proceeded to lock the doors to the vehicle. Further, according to both officers, when Sgt. Lamoreaux told Appellant to unlock the doors, Appellant refused.

At the bench trial, Appellant testified he understood

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that Sgt. Lamoreaux wanted to seize the videotapes. Appellant also testified that he knew the tapes were in the vehicle when he locked the doors. According to Appellant, he locked the doors "in order to obtain more explanation." At the bench trial, Appellant himself testified he saw locking the doors to the vehicle as saying, "wait, I am getting conflicting messages here. I am confused what is, what is going on here. I thought this was America, the Constitution, we have a right, so I am pushing down the door locks to say, oh hold on let's just take time out, let's figure what's going on here. ..." (RT at p.121, lines 10-17). Thus, based on the testimony presented at the bench trial, this Court also finds there was sufficient evidence to support the justice's court's finding that Appellant willfully delayed and hindered the seizure initiated by Sgt. Lamoreaux.

Based on the foregoing, this Court finds there was sufficient evidence presented for the justice's court to find Appellant guilty of violating NRS 197.190, Obstructing Public Officer beyond a reasonable doubt.

II.

THE TRIAL COURT DID NOT ERR IN DISALLOWING TESTIMONY REGARDING PRIOR WARRANTLESS FILM AND VIDEO TAPE SEIZURES OR QUESTIONS DESIGNED TO ELICIT AN OFFICER'S DEFINITION OF PROBABLE CAUSE

In order to be admissible at trial, evidence must be considered relevant. NRS 48.015 defines "Relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."

In the present case, Appellant is charged with willfully hindering, delaying, or obstructing a public officer in the discharge of his official powers or duties. Thus, the only evidence relevant to this action is that which has any tendency to make Appellant's guilt or innocence of the offense charged more or less probable than it would be without the evidence.

Appellant contends that evidence of prior warrantless video tape and film seizures by the Lincoln County Sheriff's Office is relevant. According to Appellant, such evidence tends to show he did not have the evil intent required to be convicted of violating NRS 197.190 because he was merely trying to prevent Sgt. Lamoreaux from confiscating news material.

Contrary to Appellant's belief, however, whether or not his intent was "evil" is not a fact of consequence to the determination of this action. Appellant himself testified at the bench trial that he locked the doors of the vehicle in order to say "wait", "hold on", and "time out." Therefore, Appellant intentionally delayed or hindered Sgt. Lamoreaux in the discharge of his duty in violation of NRS 197.190. While Appellant's motivations for intentionally delaying Sgt. Lamoreaux's search may be of vital importance to him, they simply do not make his actions any less culpable.

Appellant also contends the trial court erred in not allowing questions designed to elicit the officers' definition of probable cause. In his Reply Brief, Appellant summarizes his argument: "Evidence to indicate Deputy Lamoreaux's definition of

probable cause was relevant because the legality of the warrantless seizure hinged upon it. If probable cause is found to be invalid, then the seizure was unreasonable, and no obstruction could have taken place."

In the instant case, however, the record supports a finding that Sgt. Lamoreaux had probable cause to seize the video tapes. As Appellant correctly states in his Opening Brief of Defendant-Appellant, 18 U.S.C. section 795 makes it a crime to photograph certain vital military installations. Nellis Bombing Range is considered one of these vital military installations. As such, photographing it is a crime. Sgt. Lamoreaux testified that Nellis Bombing Range was directly behind him as he ascended the ridge where Appellant and his party were filming. He testified he saw Ms. Yelland point the camera in his direction, which meant she was also pointing the camera in the direction of Nellis Bombing Range. Sgt. Lamoreaux's testimony was confirmed at the bench trial when Appellant admitted that the film crew photographed some of the restricted access area when they were filming Lamoreaux's car.

The record supports a finding that Sgt. Lamoreaux had probable cause to believe that a crime had been committed, and that the videotapes were seizable evidence of that crime. As such, Sgt. Lamoreaux's personal definition of probable cause was not relevant, and therefore, was properly excluded by the trial court.

Based on the foregoing reasoning, this Court finds the trial court did not err in disallowing testimony of prior warrantless film and video tape seizures, nor did it err in

disallowing questions designed to elicit an officer's definition of probable cause.

III. THE RULINGS OF THE TRIAL COURT WERE SUPPORTED BY EVIDENCE

Appellant asserts the trial court made two rulings not based on any evidence in the record. First, Appellant contends the trial court had no basis for concluding that Appellant was not the owner of the seized video tapes. Appellant himself, however, testified, "[s]o naturally when we get to the location, Mr. Henry does not want to turn over his tapes. I at the same time am thinking, and oh I tell this to Mr. Henry, if YOU turn over your tapes without a warrant, you will never get them back." Further, Sgt. Lamoreaux testified Mr. Henry, and not Appellant, had rented the vehicle

from which the tapes were seized.

This Court finds that, based on the testimony of both Appellant and Sgt. Lamoreaux, the trial court properly concluded that Appellant was not the owner of the tapes.

Second, Appellant contends there was no evidence in the record to support that Mr. Henry consented to or was willing to assist Sgt. Lamoreaux in the seizure of the tapes. In examining the Reporter's Transcript, however, it is clear that Sgt. Lamoreaux testified Mr. Henry responded "okay" when Sgt. Lamoreaux informed Mr. Henry he intended to seize the tapes. Therefore, this Court finds that the record does support a finding that Mr. Henry consented to the search.

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IV. THE TRIAL COURT PROPERLY DENIED APPELLANT'S REQUEST FOR A JURY TRIAL

Finally, Appellant contends he has a statutory right to a jury trial in justice's court pursuant to NRS 175.011. This issue was addressed by the Nevada Supreme Court in *State v. Smith*, 99 Nev. 806, 672 P.2d 631 (1983). In *Smith*, the Court held that while persons are guaranteed the right to a jury trial by both article I, section 3 of the Nevada Constitution and the Sixth Amendment of the United States Constitution, there is no constitutional right to a jury for "petty" offenses. According to the Court, where the maximum possible penalty is six months imprisonment or less, the offense is "petty" and the right to trial by jury does not attach. Finally, the *Smith* Court held that NRS 175.011 does not create an absolute right to trial by jury upon timely demand. Rather, the statute is more accurately read as granting a right to a jury trial in cases where a jury trial is otherwise required or appropriate. The Court concluded that since driving under the influence is a petty offense, NRS 175.011 does not create a constitutional right to a trial by jury in such a case.

Appellant's claim that he is entitled to a jury trial is based upon changes to NRS 175.011 which were adopted in May of 1983. *Smith*, decided in December of 1983, was based upon NRS 175.011 read before the changes. Before May of 1983, NRS 175.011 stated: "In a justice's court a case shall be tried by a jury only if the defendant so demands in writing not less than 5

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days prior to trial." (Emphasis added). Since the amendment, NRS 175.011 states: "In a justice's court a case must be tried before a jury only if the defendant so demands in writing not less than thirty days before trial." (Emphasis added). Thus, Appellant claims *Smith* is moot because it refers to a prior version of the statute.

Based on the following, however, this Court finds that Appellant's claim has no merit. In *Blanton v. North Las Vegas Municipal Court*, 103 Nev. 623, 748 P.2d 494 (1987), decided after the 1983 amendment to NRS 175.011, the Nevada Supreme Court reaffirmed its earlier holding in *Smith*. In *Blanton*, the Court held that neither the Nevada Constitution nor the United States Constitution require jury trials in misdemeanor DUI cases, as such cases are "petty." According to the *Blanton* Court, "the federal constitution does not require us to overturn our holding in *Smith* that, under the statutory penalties for DUI in Nevada, the United States Constitution does not guarantee the right to jury trials in misdemeanor DUI cases."

Appellant argues the holding in *Blanton* does not govern the outcome in the present case because *Blanton* was decided upon charges filed in municipal court, not in justice's court. In *State v. District Court*, 104 Nev. 91, 752 P.2d 238 (1988), however, the Nevada Supreme Court stated:

In *Blanton v. North Las Vegas Mun. Ct.*, this court concluded that driving under the influence of alcohol, when charged as a misdemeanor, is a petty offense for which trial by jury is not constitutionally mandated. Our holding in *Blanton* applies

whether the individual is charged in municipal court or justice's court. (State v. District Court, 104 Nev. 91, 92, 752 P.2d 238 (1988)). (Citations omitted).

Therefore, contrary to Appellant's argument, the Nevada Supreme Court's holding in Blanton does govern the outcome in the present case, even though the present case is based on charges filed in justice's court.

A person convicted of violating NRS 197.190 is guilty of a misdemeanor. According to NRS 193.120, a misdemeanor is a crime punishable by a fine of not more than \$1,000.00, or by imprisonment in a county jail for not more than six months. Thus, according to the Nevada Supreme Court, because the maximum possible penalty for violating NRS 197.190 is six months imprisonment or less, the offense is "petty" and the right to trial by jury does not attach.

Based on the Nevada Supreme Court's ruling in Smith, the Court's reaffirmation of the Smith holding in Blanton, and the Court's extension of Blanton in State v. District Court, this Court finds the trial court properly denied Appellant's request for a jury trial. Good cause appearing;

Appellant's appeal is hereby DISMISSED.

DATED this 13th day of December, 1995.

Dan L. Papez [Signed]
DISTRICT JUDGE

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