

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
STEPHANIE RUTH HOLMES,
Respondent.

No. 55930

FILED

NOV 19 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent's motion to dismiss. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

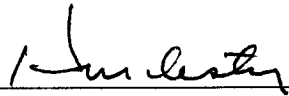
Respondent Stephanie Ruth Holmes, a hepatitis C carrier, was under arrest and handcuffed when she spat at three Nye County Sheriff's Deputies. Holmes was charged in counts VI-VIII of the criminal information with violating former NRS 212.189(1)(d), (3) (unlawful acts related to human excrement or bodily fluid). See 2007 Nev. Stat., ch. 327, § 58, at 1442-44. Holmes filed a motion to dismiss the counts and claimed that she was not a prisoner under the statute. The district court, however, granted the motion on a basis not raised by Holmes—the district court found that her conduct was not prohibited because the statute only protected prison employees. The State now appeals from the district court's dismissal of counts VI-VIII.

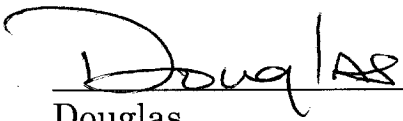
We review a district court's decision to grant or deny a motion to dismiss for an abuse of discretion. See Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008). The interpretation of a statute is a question of law

which this court reviews de novo. Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 506 (2009). We will not look beyond statutory plain language when the meaning is clear. See Sheriff v. Witzenburg, 122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006); see also Sparks Nugget v. State, Dep't of Taxation, 124 Nev. 159, 167 n.31, 179 P.3d 570, 576 n.31 (2008) (when constitutional language is not ambiguous, we will not consider legislative intent); State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (statute is ambiguous when it “lends itself to two or more reasonable interpretations”).

NRS 208.085 unambiguously defines “prisoner” to include “any person . . . under lawful arrest” and the provisions in Chapter 208 apply to Chapter 212 of the Nevada Revised Statutes. See NRS 208.015; see also Dumaine v. State, 103 Nev. 121, 125, 734 P.2d 1230, 1233 (1987) (holding that a “prisoner” is “a person deprived of his liberty and kept under involuntary restraint, confinement or custody”). Therefore, at the time Holmes committed the instant offense, NRS 212.189 proscribed conduct by individuals who were “under lawful arrest.” Further, the three victims in this case, all Nye County Sheriff’s Deputies, qualified as “officer[s]” or “any other person” within the group of individuals protected by statute. See former NRS 212.189(1)(d)(1)-(2); NRS 208.065 (defining officer). And it is undisputed that Holmes was under lawful arrest when she spat at the three officers. Therefore, we conclude that the district court abused its discretion by granting Holmes’ motion to dismiss counts VI-VIII of the criminal information. Accordingly, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Hardesty


_____, J.
Douglas

cc: Hon. John P. Davis, District Judge
Attorney General/Carson City
Gibson & Kuehn
Nye County District Attorney/Pahrump
Nye County Clerk

PICKERING, J., dissenting:

NRS 212.189 was amended effective October 1, 2009, to broaden its reach to apply to a person in the process of being arrested, like Holmes. 2009 Nev. Stat., ch. 52, § 1, at 150-52; NRS 218D.330. But the incident involving Holmes occurred before October 1, 2009, and thus the amended version of the statute doesn't apply. For this reason, I would uphold the district court's dismissal of counts VI, VII, and VIII of the information and therefore respectfully dissent.

Pickering
_____, J.
Pickering