

Bailey v. State, 91 P.3d 596 (Nev. 2004)¹

CRIMINAL LAW – STATUTE OF LIMITATIONS

Summary

The defendant appealed his conviction for lewdness with a child under the age of fourteen because he believed the charge was brought after the running of the applicable statute of limitations.²

Disposition/Outcome

Affirmed. The Nevada Supreme Court (“the court”) found that the extended statute of limitations was applicable, regardless of whether the offense was committed in a secret manner.³

Factual & Procedural History

Defendant Daniel Bailey committed a lewd act with a six-year old female child sometimes between January 1, 1995, and January 1, 1996. In June 1996, the child reported the incident to her mother, but her mother never told anyone else of the event. Several years later, in October of 2001, the child reported the incident to a school counselor, who informed the authorities. After an investigation into the allegations, Bailey was charged with lewdness with a child under the age of fourteen.

Bailey pleaded guilty to the charge, but he also reserved the right to argue for dismissal of the charge based on the running of the statute of limitations, and any other adverse ruling to the court. Bailey filed a motion to dismiss the complaint alleging that the complaint had to have been filed within three years of the date the child reported the incident to her mother citing to N.R.S. 171.095(1)(a), sometime before June 1999. The State argued that the charge could be brought any time before the victim reached twenty one according to N.R.S. 171.095(1)(b).

The district court found: 1) the offense was committed in secret; 2) the offense is subject to the extended statute of limitations for sexual abuse pursuant to N.R.S. 171.095(1)(b); and 3) under the statute of limitations the victim had until she reached twenty-one to report the incident. Bailey appealed.

Discussion

The court began its analysis by pointing out that “with respect to limitation periods and tolling statutes, the statutes in effect at the time of the offense control.”⁴ Therefore the relevant statute in this case was found to be those that were in effect from

¹ By Scott Whittemore.

² *Bailey*, 91 P.3d at 597.

³ *Id.* at 596.

⁴ *Id.* at 597. (*quoting* *Associated Bldrs. v. So. Nev. Water Auth.*, 115 Nev. 151, 156, 979 P.2d 224, 227 (Nev. 1999)).

1995 to 1996. In 1995, N.R.S. 201.230 stated that lewdness with a child under the age of fourteen was a felony governed by N.R.S. 171.085 and 171.095, the State has three years from the commission of the crime to file a charge.

Bailey argues that if those two statutes governed, the statute of limitations should have ran to June 1999, three years after the mother was notified of the abuse. Bailey cites to, a case where the court clarified what “constitutes discovery of a sexual crime.”⁵

However the court found that *Quinn* was distinguishable from the instant case because N.R.S. 171.095(1)(b) was not applicable under *Quinn*'s circumstances.⁶ Furthermore, the court found that the plain language of that statute indicates that regardless of when the crime was discovered, the State may file a claim up to the time the child victim reaches twenty-one, and that it specifically states that the statute of limitations is subject to longer periods.⁷

Conclusion

The victim was born in June 1989, and thus, the court found that the State had until 2010 to file a charge. Since the State filed its charge on May 8, 2002, Bailey was appropriately charged before the statute of limitations ran under N.R.S. 171.095(1)(b)(1).

⁵See *State v. Quinn*, 117 Nev. 709, 30 P.3d 1117 (Nev. 2001).

⁶*Id.* at 598. See also *Quinn* 30 P.3d at 1118.

⁷*Id.* at 598. See also N.R.S. 171.085 (2003) and N.R.S. 171.095 (2003).