

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE LOUIS BAINES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54400

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingersoll*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of unlawful discharge of a bodily fluid by a prisoner. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Clarence Louis Baines claims that his conviction is improper and the district court erred by denying his motion to dismiss his charge because, at the time of his incident, NRS 212.189 did not include prisoners who are “under lawful arrest” and did not specifically identify law enforcement officers as those meant to be protected.

We review a district court’s decision to 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 attribute the plain meaning to a statute that is not ambiguous. Id.

The district court found that the statute was not ambiguous and denied Baines’ motion to dismiss. Baines does not contest that he was a prisoner or under lawful arrest at the time of the incident. NRS 208.085 unambiguously defines a prisoner to include “any person . . . under lawful

arrest” and the provisions in Chapter 208 of the NRS apply to Chapter 212 of the NRS. NRS 208.015. Therefore, we conclude that at the time of the incident NRS 212.189 also included prisoners who were “under lawful arrest.” 2007 Nev. Stat., ch. 327, § 58, at 1442. Further, at the time of the incident, NRS 212.189(1)(d)(1) and (2) prohibited a prisoner from discharging a bodily fluid with the intent or under circumstances in which the bodily fluid comes “into physical contact with any portion of the body of an officer or employee of a prison or any other person.” Id. We conclude that although “law enforcement officer” was not specifically identified in NRS 212.189(1)(d)(1) at the time of the incident, a law enforcement officer qualified as “an officer” or “any other individual” under the statute and therefore was within the group of individuals protected under the statute. See NRS 208.065 (defining officer). Accordingly, we conclude that the district court did not abuse its discretion by denying Baines’ motion to dismiss, and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Washoe County Alternate Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk