

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 55124

FILED

MAR 11 2010

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

ORDER OF REVERSAL AND REMAND

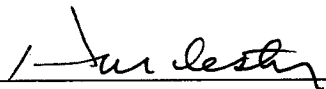
This is a sheriff's appeal from a district court order granting in part respondent's pretrial petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.


The State appeals from the district court's dismissal of counts VI-VIII (unlawful acts related to human excrement or bodily fluid). The State argued that because respondent Stephanie Ruth Holmes was under arrest and handcuffed when she spat at the three victims, probable cause existed to support the charges pursuant to former NRS 212.189. See 2007 Nev. Stat., ch. 327, § 58, at 1442-44. The district court, however, found that Holmes was not a prisoner at the time of the incident, and therefore, because her actions were not covered by former NRS 212.189, the State failed to present the requisite slight or marginal evidence necessary to support the three counts as charged. See NRS 171.206; Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980).

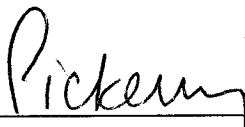
The district court's findings involved a matter of law and statutory interpretation which we review de novo. See Sheriff v. Marcus, 116 Nev. 188, 192, 995 P.2d 1016, 1018 (2000). NRS 193.022 defines a "prisoner" to include "any person held in custody under process of law, or

under lawful arrest.” In Dumaine v. State, 103 Nev. 121, 125, 734 P.2d 1230, 1233 (1987), we held that a “prisoner” is “a person deprived of his liberty and kept under involuntary restraint, confinement or custody.” In this case, Holmes was under lawful arrest, deprived of her liberty, and involuntarily restrained when the incident occurred. Therefore, we conclude that the district court erred as a matter of law by applying an improper definition of “prisoner” and dismissing the three counts. 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


_____, J.
Pickering

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