

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE BURT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57352

**FILED**

NOV 18 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea entered in accordance with North Carolina v. Alford, 400 U.S. 25 (1970), of abuse of an older person resulting in substantial bodily or mental harm. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Jacqueline Burt contends that NRS 200.5092 and NRS 200.5099 are unconstitutionally vague and overbroad because they (1) fail to provide fair notice of either “the extent to which the victim must suffer to constitute criminal liability” or “what constitutes the assumption of duty to the older/vulnerable person,” (2) provide “no guidance as to how [they] should be applied to her circumstance as a Christian Scientist caregiver of a fellow Christian Scientist in failing health,” (3) violate the First Amendment’s Establishment Clause by requiring her to seek medical care or services contrary to her religious beliefs, and (4) lack a mens rea requirement. “The constitutionality of a statute is a question of law, which this court reviews de novo.” Aguilar-Raygoza v. State, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 262, 264 (2011), petition for cert. filed, 80 U.S.L.W. \_\_\_, (U.S. Aug. 31, 2011) (No. 11-281). Statutes are presumed to be valid and the

challenger bears the burden of demonstrating their unconstitutionality. Nelson v. State, 123 Nev. 534, 540, 170 P.3d 517, 522 (2007).

Burt lived with her mother and son and grand jury testimony indicated that she was responsible for the physical care of her mother. Burt pleaded guilty to violating NRS 200.5099(1), (6), and NRS 200.5092(1), by depriving her bedridden, 86-year-old mother, of “shelter, and/or clothing, and/or services which are necessary to maintain the physical or mental health of an older person, to-wit: failing to provide sanitary and medical needs” thus causing her “to suffer unjustifiable physical pain and/or mental suffering resulting in substantial bodily harm or mental harm.”<sup>1</sup> The victim was found naked in a bug-infested bed, covered in feces and stuck to the bed sheets, with large open sores all over her body, and suffering from joint contractures in both upper and lower extremities due to a lack of movement. Grand jury testimony indicated that “her legs were actually fused together” in two places due to “many weeks to a few months” of open wounds lying on top of each other without movement. An investigating officer testified that Burt’s codefendant-son informed him that prior to medical personnel’s intervention, the victim “was screaming a lot out in pain.”

We conclude that Burt failed to satisfy her burden and demonstrate that the elder abuse statutes are unconstitutional. Burt’s failure to provide her mother with sanitary and medical needs resulted in

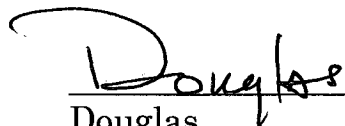
---

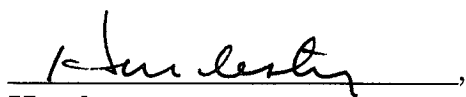
<sup>1</sup>Burt does not have standing to challenge the constitutionality of NRS 200.5099(2), (7), because she did not plead guilty to violating the “neglect” provisions of the elder abuse statutes, see Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992), and the reference to those subsections of the statute in the second amended indictment is mere surplusage, see State v. Castaneda, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 550, 558 (2010).

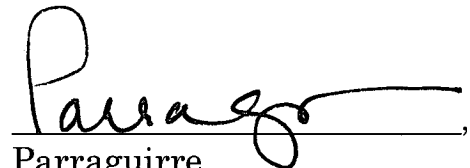
substantial bodily harm and is conduct clearly proscribed by the statutes. The statutes are not vague because the conduct proscribed is clearly defined, persons of ordinary intelligence have fair notice of what conduct is forbidden, and the statutes do not encourage discriminatory and arbitrary enforcement. See Flamingo Paradise Gaming v. Att’y General, 125 Nev. 502, 512-13, 217 P.3d 546, 553-54 (2009); Nelson, 123 Nev. at 540-41, 170 P.3d at 522; see also Holder v. Humanitarian Law Project, 561 U.S. \_\_\_, \_\_\_, 130 S. Ct. 2705, 2718 (2010).

Additionally, Burt’s overbreadth argument fails because NRS 200.5099(1), (6), and NRS 200.5092(1) do not infringe upon the exercise of her religious beliefs, but rather, require that she not willfully and unjustifiably deprive the victim of care and cause her substantial bodily harm. See Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 494-95 (1982) (an enactment which does not reach “a substantial amount of constitutionally protected conduct” is not subject to a facial overbreadth challenge); Silvar v. Dist. Ct., 122 Nev. 289, 297-98, 129 P.3d 682, 687-88 (2006). And finally, Burt’s argument that NRS 200.5092 lacks a mens rea requirement is belied by Vallery v. State, 118 Nev. 357, 367-68, 46 P.3d 66, 74 (2002) (“The plain language of the statute reflects intentional acts.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michael Villani, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk