IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL BALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39964

FILED

JAN 0 8 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving with a prohibited amount of a controlled substance in the blood resulting in death or substantial bodily harm in violation of NRS 484.3795(1)(f). The district court sentenced appellant Michael William Ball to serve a prison term of ninety-six to two hundred and forty months. Ball challenges the constitutionality of NRS 484.3795(1)(f)[1] and

[1]NRS 484.3795(1)(f) provides:

> 1. A person who:
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> . . .
>
> (f) Has a prohibited substance in his blood or urine in an amount that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379,
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> and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this state, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, a person other than himself, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20

continued on next page . . .

NRS 484.379(3) [2] as it is incorporated in NRS 484.3795(1)(f). Ball alleges that these statutes violate the Equal Protection and Due Process Clauses of the United States Constitution and that they are unconstitutionally overbroad and vague. We disagree.

Ball raises a number of arguments claiming that NRS 484.3795(1)(f) and NRS 484.379(3) violate the Equal Protection Clause. Ball argues that a heightened scrutiny should be used to analyze his equal protection challenge. Ball also argues that if this court uses a rational-basis review, NRS 484.3795(1)(f) and NRS 484.379(3) are unconstitutional as applied to him because only a single blood sample was taken to measure the amount of marijuana and marijuana metabolites in his blood and because the Legislature failed to incorporate the Substance Abuse and Mental Health Services Administration requirements into the statutes. Ball argues that NRS 484.3795(1)(f) and NRS 484.379(3) are unconstitutional under the equal protection clause because the statutes distinguish between legal and illegal users of marijuana.

We conclude that a heightened scrutiny does not apply to Ball's equal protection challenge based on our decision in Williams v.

. . . *continued*

> years and must be further punished by a fine of not less than $2,000 nor more than $5,000.

[2]NRS 484.379(3) provides: "It is unlawful for any person to drive . . . on premises to which the public has access with an amount of a prohibited substance in his blood . . . that is equal to or greater than" two nanograms per milliliter of marijuana or five nanograms per milliliter of marijuana metabolite.

State.[3] We also conclude that under Williams, Ball's equal protection challenge satisfies a rational-basis review.

In Williams, the appellant was convicted of six counts of driving with a prohibited substance in the blood in violation of NRS 484.3795(1)(f).[4] This court held that a rational basis standard applies because there is no fundamental "'right' to drive."[5]

A classification "'"must be upheld against [an] equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."'"[6] In Williams, we held that the Legislature's traffic safety objective is a rational basis to the extent that NRS 484.379(3) "treats drivers with the proscribed levels of illicit drugs in their system differently from others."[7] We conclude that under Williams, Ball's equal protection arguments lack merit.

Ball also argues that NRS 484.3795(1)(f) and NRS 484.379 violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution. We disagree. This court noted in Williams, that there are a number of ways NRS 484.379(3) could be rationally related to a legitimate state interest, even if a rationale was not

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[3]118 Nev. ___, 50 P.3d 1116 (2002).

[4]Id. at ___, 50 P.3d at 1119.

[5]Id. at ___, 50 P.3d at 1120.

[6]Id. (emphasis added) (quoting Heller v. Doe 509 U.S. 312, 320 (1993) (quoting FCC v. Beach Communications, Inc., 508 U.S. 307, 313 (1993))).

[7]Id. at ___, 50 P.3d at 1121.

considered by the Legislature.[8] In addition, this court noted "the state is not compelled to use the least restrictive means to reach the desired objective."[9] We conclude that this issue was addressed in Williams and that NRS 484.3795(1)(f) and NRS 484.379 are constitutional under the Due Process Clause.

Ball contends that NRS 484.3795(1)(f) and NRS 484.379(3) are unconstitutionally overbroad because there are legal uses of marijuana and because the statutes encompass drivers who are not impaired. We disagree. In Williams, this court noted that "[a]n overbreadth challenge may only be made if a statute infringes upon constitutionally protected conduct."[10] This court also held that because NRS 484.379(3) "does not affect constitutionally protected conduct[,]" the statute is not overbroad.[11] We conclude that NRS 484.3795(1)(f) and NRS 484.379(3) are not overbroad based on our holding in Williams.

Finally, Ball argues that NRS 484.3795(1)(f) and NRS 484.379(3) are unconstitutionally vague because individuals may reach the level proscribed by NRS 484.379(3) unknowingly. We disagree. "A statute is void for vagueness if it fails to give a person of ordinary intelligence fair notice that h[is] conduct is forbidden by statute."[12] In Williams, we held that NRS 484.379(3) is not unconstitutionally vague

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[8]Id.

[9]Id. at ___, 50 P.3d at 1122.

[10]Id. at ___, 50 P.3d at 1123.

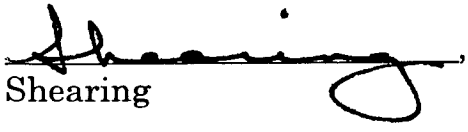
[11]Id. at ___, 50 P.3d at 1124.

[12]Id. at ___, 50 P.3d at 1122.

because "a person of ordinary intelligence has adequate notice of the meaning of marijuana, and that marijuana metabolites are those metabolites that result from ingesting marijuana."[13] In addition, this court noted that, because appellant Williams acknowledged being a regular marijuana user and turned over her pipe to a police officer, she understood the meaning of "marijuana." Similarly, in this case, Ball admitted to Trooper Walsh that he had smoked marijuana in the last twenty-four hours before the collision. Therefore, like the appellant in Williams, Ball also appeared to clearly understand the common meaning of the term "marijuana." We also conclude that Ball's vagueness challenges raised in his reply brief lack merit.

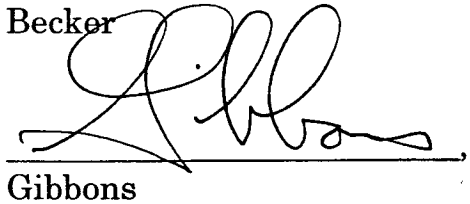
Having reviewed Ball's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Shearing

_____, J.
Becker



_____, J.
Gibbons

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[13]Id. at ___, 50 P.3d at 1123.

cc: Hon. David R. Gamble, District Judge
Allison W. Joffee
Attorney General Brian Sandoval/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk