In the Supreme Court of the State of Nevada

WILLIAM COSBY, JR.,

Appellant,

vs.

No. 89650

ANGELA LESLIE,

Respondent.

Appeal from an Order Accepting Certified Question, Directing Briefing, and Directing Submission of Filing Fee in Case Number 2:23-cv-00932-GMN-DJA
The Second Judicial District Court of the State of Nevada
Chief Justice Douglas Herndon

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the Appellant is an individual. There are no persons or entities as described in NRAP 26.1(a) that must be disclosed.

The following law firms have appeared and/or are expected to appear in this Court on behalf of Appellant:

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Dated this 2nd day of October, 2025.

By: */s/Jennifer Bonjean*

By: */s/Nicholas Woolridge*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

STANDARD OF REVIEW

The certified question before this Court involves statutory interpretation of NRS 200.364(9), that is, whether masturbatory constitutes "sexual penetration" for the purpose of establishing a violation of NRS 200.366. The Nevada Supreme Court decides certified questions of law *de novo*, "in accordance with the purpose of a certified questions, which is to clarify [Nevada's] law when 'there is no controlling precedent." This court's review "is limited to the facts provided by the certifying court, and [this court] must answer the questions of law posed to [it] based on those facts." *Zurich American Insurance Co. v. Ironshore Specialty Insurance Co.*, 137 Nev. 651, 654, 497 P.3d 625, 628 (2021) (citing *In re Fontainebleau Las Vegas Holdings*, 127 Nev. 941, 953, 267 P.3d 786, 793 (2011)). Relatedly, statutory interpretation is a question of law subject to de novo review. *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

ARGUMENT

I. Masturbation Does Not Constitute Sexual Penetration Under Any Logical Reading of NRS 200.364(9).

Appellee asks this Court to redefine "sexual penetration" nearly 50 years after the enactment of NRS 200.364 and contrary to logic, the plain language of the statute, and the Constitution – all so she can sue Bill Cosby. Appellee offers no authority for her position apart from the misguided recommendation of a Magistrate Judge that carries no precedential value.

This Court is best served by looking to authority from its own Court. In the recent case, *Alfaro v. State,* 139 Nev. Adv. Rep. 24, 145 (202), this Court endorsed Appellant's interpretation of "sexual penetration" using italics to demonstrate that the phrase "any intrusion, however slight, of any part of a person's body" was intended to be read in conjunction with its modifying prepositional phrase "into the vaginal or anal openings of the body of another." In rejecting the appellant's sufficiency of the evidence claim, this Court observed that the NRS 200.364 defined sexual penetration to mean "cunnilingus, fellatio, or *any intrusion, however, slight, of any part of a person's body or* any objected manipulated or inserted by a person *into the genital or anal openings of the body of another,* including sexual intercourse in its ordinary meaning." *Id.* (emphasis in the original) Without fanfare, this Court's use of italics plainly communicated that the italicized phrases are meant to be read together to define sexual penetration.

As set out in painstaking detail in both Appellant's opening brief and the *amicus curiae* brief*,* canons of statutory interpretation do no support Appellee's non-sensical reading of the statute. Appellee urges a mechanical application of the Rule of Last Antecedent. Never mind that the rule makes utter nonsense of the statute and would most certainly invite a swarm of Constitutional challenges.

As argued persuasively by the Nevada Attorneys for Criminal Justice, the Rule of the Last Antecedent is simply inapplicable here. As a preliminary matter, there

are no antecedents in the phrase at issue because “strictly speaking only pronouns have antecedents.” *See* Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 152 (2012). Furthermore, the last-antecedent canon applies when the syntax involves something other than a parallel series of nouns and verbs. *Id.* Appellee ignores the series qualifier cannon which instructs that when the nouns listed in a series are straightforward and parallel, postpositive modifier normally applies to the entire series. *Id.* at 147. Courts are not a slave to the Rule of Last Antecedent where structural or contextual evidence counsels against application of the rule. *Lockhart v. United States,* 136 S. Ct. 958, 965 (2016) *quoting Jama v. Immigration and Customs Enforcement,* 125 S. Ct. 694, 708 (2005). Appellee accuses Appellant of attempting to “reword” the statute’s plain language, but the courts of Nevada have read the statute consistent with Appellant’s interpretation since the statute's enactment in 1977.

Appellee insists that the definition of "intrusion," as used in NRS 200.364(9) supports her argument. It does not. When citing to the second definition of “intrusion” in Black's Law Dictionary, Appellee states that intrusion means "a highly offensive invasion of another person's seclusion or private life." This claim is misleading as the definition actually states "*'in an action for invasion of privacy*, a highly offensive invasion of another person's seclusion or private life." *Intrusion*, BLACK'S LAW DICTIONARY, 12th ed. 2024), *available at* Westlaw (emphasis added).

Even if the definition read as Appellee misrepresented, this Court would need to find that Appellee's *hand* constituted "seclusion" or "private life" and that Appellant's hand "invaded" that seclusion or private life. There is no logical reading of the statute other than the reading Courts have been giving "sexual penetration" for nearly half a century.

Appellee dismisses authority cited by Appellant from other jurisdictions, noting that Appellant has failed to cite authority from Nevada. As an initial matter, this Court in *Alfaro, supra,* strongly suggests that it is the Appellee who has the losing end of this argument. Moreover, the absence of authority in Nevada speaks only to the absurdity of Appellee's argument. Appellant's review of statutory definitions of "sexual penetration" from other states is useful in showing that without exception, courts across the country – even in states where the definition of sexual penetration is identical to that in Nevada – have found that sexual penetration does not include masturbation.

II. The Legislature Did Not Intend to Encompass Forced Masturbation into Its Definition of Sexual Penetration.

The legislative history on NRS 200.364(9) indicates the legislature intended exactly what it meant when it fashioned the definition: that penetration includes cunnilingus, fellatio, an intrusion of any part of a person's body into a genital or anal opening, or the intrusion of an object into the genital or anal opening of another, and

ordinary sexual intercourse. Relying on legislative minutes from 1977, Appellee arrives at a far-fetched interpretation of the legislature's intent.

"The leading rule for the construction of statutes is to ascertain the intention of the legislature in enacting the statute, and the intent, when ascertained, will prevail over the literal sense." *Welfare Div. v. Washoe Co. Welfare Dep't*, 503 P.2d 457, 458, 88 2 Nev. 635, 637 (1972) (*quoting State v. Ross*, 14 P 827, 828, 20 Nev. 61, 63 3 (1887)). Appellee relies on Magistrate Daniel Albregt's report and recommendation in the underlying matter where he opined that a forced masturbation should be included in the definition of sexual penetration under NRS 200.364(9) based on a review of certain legislative history. After reviewing the minutes from a 1977 Senate Judiciary Committee session, which ultimately passed a previous version of NRS 200.364(9), Magistrate Albregt concluded that penetration of a person's hand is in line with the statute because the legislature "heard statements that old laws governing rape failed to acknowledge that men were also subject to sexual assault." A186, lines 20-25; Senate Judiciary Hearing on SB 412 2 – April 5, 1977, 1977 Leg., 59th Sess.

The committee indeed heard statements that men can be sexually assaulted. However, it is unclear how Magistrate Albregt then arrived at the conclusion that the legislature's purpose was to broaden the statute to incorporate the scenario where a penis penetrates a person's hand. Men are certainly not the only people who could

theoretically be assaulted by penetration of a hand. Appellee's allegations, if true, demonstrate as much. A brief review of the legislative minutes conveys that sexual assault of men was a fleeting topic during the session. The legislature considered a wide variety of topics, such as Dr. Nicholas Groth's study of how "rape assault is symptomatic of a state of developmental internal crisis in the offender." In fact, the one paragraph referencing the definition of sexual penetration states:

> Senator Dodge stated that in the definition of sexual penetration, are we going any further with this definition as far as the things we are calling a felony than we do in the law presently? Mr. Beatty stated that we were, but he felt they were all salutory [sic] changes; cunnilingus, fellatio, in those things that are already covered.

Senate Judiciary Hearing on SB 412 2 – April 5, 1977, 1977 Leg., 59th Sess. at page 5. Based on this paragraph, and the straightforward language of the statute itself, the committee wrote precisely what it intended and did not intend to encompass any further unspecified expansion of the statute. Moreover, as argued in Appellant's opening brief and the *amicus curiae* brief, the Nevada Legislature has enacted a statute, namely NRS 201.520, that references masturbation. The Nevada Legislature can and has distinguished between penetration and masturbation.

Appellee also points to District Judge Navarro's finding that "the legislative intent [of SB 129] was to afford victims of sexual assault the ability to seek redress in civil court for the trauma caused by sexual assault." A215, lines 8-10. Notably absent from the SB 129 legislative notes is any expression of an intent to change

the definition of "sexual assault." As Judge Navarro would certainly concede, a general policy statement for the passage of a statute of limitations bill does not trump the plain language of the statute that requires a plaintiff to allege a "sexual assault" as defined by the Nevada penal code.

III. Forced Masturbation Constitutes the Offense of "Open or Gross Lewdness."

Under Nevada law, the conduct Appellee has described constitutes open and gross lewdness under NRS 201.210, an offense mutually exclusive from sexual assault under NRS 200.366. *Braunstein v. State*, 118 Nev. 68, 79, 40 P.3d 413, 421(2002) (holding that the crimes of sexual assault and lewdness are mutually exclusive and convictions for both based upon a single act cannot stand). Appellee refuses to engage with this argument, offering two meager sentences that do not rebut the ample authority of this Court finding that the type of conduct described by Appellee has been appropriately charged and prosecuted as an offense of lewdness not sexual assault. If the Legislature wishes to change that, it knows how to.

Lastly, Appellee's brief is devoid of any discussion of the constitutional ramifications of broadening the definition of sexual penetration to encompass such conduct as, for example, tickling under the arm as a violation of NRS 200. 366. This Court should at all costs avoid interpreting the statute in a manner that would invite constitutional challenges.

CONCLUSION

For the foregoing reasons, Appellant William Cosby, Jr. respectfully requests this court answer the question presented in the negative, that a person does not commit a sexual assault pursuant to NRS 200.366, when a person forces another to masturbate them with the other's hand without their consent.

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RULE 28.2 ATTORNEY CERTIFICATION

Pursuant to NRAP 28.2, undersigned counsel certifies that:

1. This Reply Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman in size 14 point font.

2. I further certify that this Reply Brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains approximately 2,090 words, which is less than the 14,000 word count available for a Reply brief.

3. Finally, I certify that I have read this Reply Brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion regarding matters in the record to be supported by a reference to the page of the record on appeal where the matter relied upon is to be found.

I understand that I may be subject to sanctions in the event that the accompanying Reply Brief is not in compliance.

DATED this 2nd day of October, 2025.

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Certificate of Compliance for Briefs

1. I hereby certify that reply brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2505 in Times New Roman, Size 14; or

☐ This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40, 40A, or 40B because it is either:

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☒ Does not exceed 15 pages.

3. Finally, I hereby certify that I have read this reply brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e)(1), if applicable, which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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