

ORIGINAL



**2022 OK CR 21
IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA**

**JOHN M. O'CONNOR, in his official
capacity as Oklahoma Attorney
General; DAVID PRATER, in his
official capacity as District
Attorney of Oklahoma County,**

Appellant - Defendants,

v.

**OKLAHOMA STATE CONFERENCE
OF THE NAACP,**

Appellee - Plaintiff.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 25 2022

**JOHN D. HADDEN
CLERK**

FOR PUBLICATION

Case No. CQ-2022-418

OPINION ANSWERING CERTIFIED QUESTIONS OF LAW

ROWLAND, PRESIDING JUDGE:

¶1 Before the Court is an Order from The Honorable Carolyn B. McHugh, Circuit Judge of the United States Court of Appeals for the Tenth Circuit, certifying the following questions of law:

1. Does Okla. Stat. tit. 21, § 1312(5) apply only to individuals who are guilty of participating in a riot and who unlawfully obstruct a roadway while participating in such riot?
2. Does Okla. Stat. tit. 21 § 1320.12 impose liability only on organizations that have been found guilty of conspiring with

others to violate one of Oklahoma's specifically enumerated anti-riot laws?

¶2 This Court has authority to respond to such requests from the federal court pursuant to the Uniform Certification of Questions of Law Act. 20 O.S.2011, § 1601. *See also Moore v. Gibson*, 2001 OK CR 8, ¶ 6, 27 P.3d 483, 485 ("This Court has the power to give the present state of the law as well as use the opportunity to create new precedents in answering a certified question of law."). We accept the certified questions as presented and answer both in the affirmative.

1. BACKGROUND

¶3 During the 2021 First Regular Session, the Oklahoma Legislature enacted House Bill 1674, amending, in Section 1, 21 O.S.2011, § 1312 and enacting, in Section 3, new law codified at 21 O.S.Supp.2021, § 1320.12. Before the effective date of this legislation on November 1, 2021, Appellees instituted a federal lawsuit in the United States District Court for the Western District of Oklahoma, challenging Sections 1 and 3 of House Bill 1674 on constitutional grounds.

¶4 Section 1, now at 21 O.S.Supp.2021, § 1312(5), provides that anyone who unlawfully obstructs the normal use of any public street, highway, or road may be punished by up to a year in jail and/or a fine. It also imposes liability for all damage to person or property resulting from such obstructing. Section 3, now at 21 O.S.Supp.2021, § 1320.12, imposes substantial fines for any organization found to be a conspirator with persons violating several enumerated sections of Title 21, generally having to do with riots, routs, or unlawful assemblies.

2. DISCUSSION

¶5 In determining whether these two challenged provisions apply only to individuals or organizations otherwise engaged in riot-related violations of the law, we employ familiar rules of statutory construction. Our ultimate goal is to determine the intent of the Legislature and to interpret the statutes in accord therewith. *State v. Silas*, 2020 OK CR 10, § 6, 470 P.3d 339, 341; *Lozoya v. State*, 1996 OK CR 55, ¶ 17, 932 P.2d 22, 28. Whenever possible, we rely upon the plain and ordinary meaning of the statutory language. *Silas*, 2020 OK CR 10, § 6, 470 P.3d at 341. *Newlun v. State*, 2015 OK CR 7, ¶ 8,

348 P.3d 209, 211. We will also look to each part of the statute in question and other statutes on related subjects. *Landrum v. State*, 96 Okla.Crim.App. 356, 359, 255 P.2d 525, 529 (1953). In deference to our sister branch of government, wherever possible we interpret statutes so as to avoid constitutional issues, *Weeks v. State*, 2015 OK CR 16, ¶ 17, 362 P.3d 650, 654, and we avoid any construction which would render any legislative act vain or superfluous. *Vilandre v. State*, 2005 OK CR 9, ¶ 5, 113 P.3d 893, 896. See also *State v. District Court of Oklahoma County*, 2007 OK CR 3, ¶ 17, 154 P.3d 84, 87, *Byrd v. Caswell*, 2001 OK CR 29, ¶ 6, 34 P.3d 647, 648-49.

¶6 With these principles in mind, we turn to the questions presented.

A. Section 1 of House Bill 1674/21 O.S.Supp.2021, § 1312

¶7 Title 21 O.S.Supp.2021, § 1312 reads, “Every person guilty of participating in any riot is punishable as follows” It then sets forth five paragraphs listing punishments depending upon the specific circumstances. For instance, the highest punishment, in Section 1312(1), is reserved for those participating in a riot where a murder, maiming, robbery, rape, or arson is committed. Section 1 of

House Bill 1674, the first of two provisions challenged in this litigation, added 1312(5), which provides:

Every person who shall unlawfully obstruct the normal use of any public street, highway or road within this state by impeding, hindering or restraining motor vehicle traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of motor vehicles or pedestrians traveling thereon shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for a term not exceeding one (1) year, or by a fine of not less than One Hundred Dollars (\$100.00) and not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. In addition, the person shall be liable for all damages to person or property by reason of the same. As used in this paragraph, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

¶8 The plain language of this statute, read in context, makes clear that this paragraph is violated only by a person who is guilty of participating in a riot and while doing so, engages in the prohibited conduct of obstructing traffic or endangering the safe movement of vehicles or pedestrians.

¶9 This narrow interpretation of Section 1312(5) is bolstered by the fact that other, more generally applicable statutes regulating motor vehicles, pedestrian traffic, and the interplay between the two,

are found in other statutes. *See, e.g.*, 47 O.S.2011, § 11-501 (pedestrians are subject to traffic regulations); 47 O.S.2011, § 11-503 (stating when pedestrians crossing roadways must yield to motorists); 47 O.S.2011, § 11-506 (governing when and where pedestrians may walk along the side of roadways).

B. Section 3 of House Bill 1674/21 O.S.Supp.2021, § 1320.12

¶10 The second question certified to us by the United States Court of Appeals for the Tenth Circuit is likewise answerable by the plain language of the statute read in context with surrounding provisions.

Title 21 O.S.Supp.2021, § 1320.12, provides as follows:

If an organization is found to be a conspirator with persons who are found to have committed any of the crimes described in Sections 1311 through 1320.5 and 1320.10 of Title 21 of the Oklahoma Statutes, the conspiring organization shall be punished by a fine that is ten times the amount of said fine authorized by the appropriate provision.

Sections 1311 through 1320.5 define and provide penalties for the crimes of rioting, rout, and unlawful assembly. Section 1320.10 sets the punishment for persons who teach or train in the use, etc. of firearms or incendiary devices, or deadly physical force, knowing or intending that such efforts further a riot or civil disorder. The new

provision at Section 1320.12 draws its penalty from the violation committed by the person with whom the organization conspires, and thus it must be read in conjunction with those sections.

¶11 The precise wording of Section 1320.12 applies to an organization “found” to be a conspirator with persons who are “found” to have committed any of the crimes specified. It penalizes such a conspiring organization with a fine that is ten times the fine attendant to the specified crime. The use of the word “found” twice in this statute when referring to conduct which begets criminal penalties leaves no doubt that this is a criminal penalty provision. Persons cannot be criminally punished until they are convicted, i.e. found guilty. Thus, 21 O.S.Supp.2021, § 1320.12 applies only to organizations that have been found guilty of conspiring with others to violate one of the provisions enumerated within this section, where the others with whom the organization has conspired are found to have violated one of the specifically enumerated anti-riot laws.¹

¹ The exact question certified to us refers to “Oklahoma’s specifically enumerated anti-riot laws,” but we note that, unlike Section 1 of the challenged Act, Section 3 applies to three different crimes: rioting, rout, and unlawful assembly. We interpret the certifying court’s use of the term “anti-riot law” to refer to all three of these individual offenses.

ANSWER

¶12 We therefore hold:

1. Okla. Stat. tit. 21 § 1312(5) applies only to individuals who are guilty of participating in a riot and who unlawfully obstruct a roadway while participating in such riot.

2. Okla. Stat. tit. 21 § 1320.12 imposes liability only on organizations that have been found guilty of conspiring with others to violate one of Oklahoma's specifically enumerated anti-riot laws, where the others with whom the organization is conspiring are found to have violated one of the specifically enumerated anti-riot laws.

¶13 Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**CERTIFIED QUESTIONS OF LAW FROM THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT,
THE HONORABLE CAROLYN B. MCHUGH, CIRCUIT JUDGE**

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OPINION BY: ROWLAND, P.J.

HUDSON, V.P.J.: Concur
LUMPKIN, J.: Concur
LEWIS, J.: Concur in Part and Dissent in Part
MUSSEMAN, J.: Concur

LEWIS, J., CONCURRING IN PART AND DISSENTING IN PART:

¶1 I respectfully dissent from the majority's answer to the first certified question. I concur in the Court's answer to the second certified question. Statutory interpretation drives my view. The plain language of the statute includes no element of riot to complete the offense defined in subsection 1312(5). The majority's contrary conclusion misreads the language in the statute, subverts Legislative authority, and disregards common rules of statutory construction.

¶2 The paramount purpose of statutory interpretation is to discern Legislative intent, "*as expressed in the statute.*" *State v. Young*, 1999 OK CR 14, ¶ 27, 989 P.2d 949, 955 (emphasis added). "[I]t is not our place" to address issues the Legislature chose not to address, or "to enlarge the meaning of words included in a statute to create a crime not defined by that statute." *Id.* This Court's commitment to the rule of strict construction requires:

A statute will not be enlarged by implication or intendment beyond the fair meaning of the language used, or what [its] terms reasonably justify, and will not be held to include offenses and persons other than those which are clearly described and provided for, although the court in interpreting and applying particular statutes may think the legislature should have made them more comprehensive.

State v. Duc Hong Pham Tran, 2007 OK CR 39, ¶ 8, 172 P.3d 199, 200. When statutory language is unambiguous, turning to additional interpretive devices, such as neighboring statutes, is unnecessary. *Newlun v. State*, 2015 OK CR 7, ¶ 8, 348 P.3d 209, 211.

¶3 It is solely within the province of the Legislature to determine the scope of subsection 1312(5). The unambiguous omission of riot and its elements conveys legislative intent to exclude any element of riot from subsection 1312(5). The elements of riot are completely absent from the entirety of subsection 1312(5); the majority's insertion of riot as an element of the offense improperly enlarges the statute wholly by implication.

¶4 Title 21, section 1311 defines a **riot** to occur when *three or more* people use force or violence without authority of law. (emphasis added). By contrast, subsection 1312(5) applies to *every person* committing unlawful **obstruction** of a defined roadway. Subsection 1312(5) also clearly omits any reference to the use of force or violence, another essential element of riot. Subsection 1312(5) is triggered regardless of whether a person commits unlawful obstruction during a riot or in a solitary act. The Legislature provided three definitions of obstruct: *to render impassable, to render passage unreasonably*

inconvenient, or hazardous. Under the plain and ordinary language of subsection 1312(5), a single person standing or lying in the middle of a public street can be guilty of violating the statute without participating with two or more people in a riot.

¶5 The Legislature had ample opportunity to require proof of a contemporaneous act of riot in its new subsection to section 1312. If the Legislature intended to require proof that those obstructing traffic were also guilty of a riot, it easily could have done so with the notation: “every person, [*while in the commission of such riot,*] who shall unlawfully obstruct....,” etc. Subsections 1 through 4 each reference riot and have a subject of “*such person,*” thus connecting the penalty to the crime of riot defined in section 1311. 21 O.S.2021, § 1312(1-4) (emphasis added). Even the dangling conclusory clause of section 1312 provides “[i]n all other cases *such person* is punishable as for a misdemeanor.” 21 O.S.2021, § 1312 (emphasis added). The absence of any element of riot and the statute’s broad application to *every* person distinguishes the misdemeanor in subsection 5 from all other offenses mentioned in section 1312. Aside from its curious placement, the comprehensive language in

subsection 1312(5) bears no relation to riot. I therefore respectfully dissent from the Court's answer to the first certified question.