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OPPS
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**JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JORDAN POLOVINA,

Defendant.

CASE NO: 25-CR-054145
DEPT NO: 03

**STATE’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS FOR
SELECTIVE PROSECUTION**

DATE OF HEARING: January 26, 2026
TIME OF HEARING: 09:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through W. JAKE MERBACK, Chief Deputy District Attorney, and files this State’s Opposition to Defendant’s Motion to Dismiss for Selective Prosecution.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 PROCEDURAL HISTORY

3 On June 26, 2025, Jordan Polovina, (hereinafter “Defendant”), was charged, by way of
4 Criminal Complaint, with one count Stop, Stand or Cause Others to Stop Within Pedestrian
5 Bridge (Misdemeanor - CCC 16.13.030 - NOC 66203).

6 On July 21, 2025, Defendant was arraigned in Justice Court, where he rejected the
7 State’s offer. A bench trial was set for November 17, 2025 however, Defendant filed a Motion
8 to Continue, which was granted at a hearing on September 22, 2025.

9 On November 10, 2025, Defendant filed the instant Motion to Dismiss for Selective
10 Prosecution. The State’s Response now follows.

11 STATEMENT OF FACTS

12 On May 22, 2025, Officers Bettencourt and Nye with the Las Vegas Metropolitan
13 Police Department (“LVMPD”) were operating as a marked bicycle patrol unit. Declaration
14 of Arrest Report (“DOAR”) from 05/22/2025 at 1. As the two officers were patrolling the
15 Resort Corridor on Las Vegas Blvd, they observed Defendant playing an instrument with a
16 speaker. Id. Defendant was against the north wall, in the middle of the pedestrian bridge
17 located at the intersection of Las Vegas Blvd and Park Avenue. Id. The pedestrian bridge had
18 signs posted regarding the pedestrian flow zone. Id. Officers Bettencourt and Nye proceeded
19 to conduct a person stop on Defendant. Id.

20 Officers Bettencourt and Nye identified themselves as police and notified Defendant
21 that he was being stopped for loitering in the pedestrian flow zone. Id.

22 ARGUMENT

23 **I. DEFENDANT’S FIRST AMENDMENT’S CLAIM FAILS BECAUSE HE WAS**
24 **NOT CHARGED FOR HIS EXPRESSIVE CONDUCT**

25 **To maintain the safe and continuous movement of pedestrian traffic, it**
26 **is unlawful for any person to (1) stop or stand within any pedestrian flow**
27 **zone, or (2) engage in any activity while within a pedestrian flow zone with**
28 **the intent of causing another person who is within a pedestrian flow zone to**
stop or stand. A person is not in violation of this section if they stop or stand

1 while waiting for access to an elevator or escalator for purposes of entering
2 or exiting a pedestrian flow zone.

3 Clark County Code 16.13.030 (emphasis added).

4 In United States v. O'Brien, the United States Supreme Court held that a law is content
5 neutral if it does not target expression based on its message, and the government can justify
6 its regulation without reference to the content of the expressive activity. United States v.
7 O'Brien, 391 U.S. 367, 369, 88 S. Ct. 1673, 1675 (1968). CCC 16.13.030 does not reference
8 content or expressive activity, instead, it prohibits the following behavior: (1) stop or stand
9 within any pedestrian flow zone, or (2) engage in any activity while within a pedestrian flow
10 zone with the intent of causing another person who is within a pedestrian flow zone to stop or
11 stand. The ordinance aims to maintain the safe and continuous movement of pedestrian
12 traffic. Under O'Brien, CCC 16.13.030 fits squarely into being a content neutral ordinance.
13 O'Brien, 391 U.S. at 369.

14 Defendant disingenuously claims that he was unlawfully cited on the pedestrian bridge
15 for exercising his First Amendment right to freedom of expression while playing his cello.
16 Motion to Dismiss at 5. This claim ignores both the scope of the ordinance and constitutional
17 law. CCC 16.13.030 is clear about its objective: to maintain the safe and continuous movement
18 of pedestrian traffic. Despite Defendant's assertions, the ordinance does not restrict any
19 musical content or artistic expressions. The ordinance applies to anyone on the pedestrian
20 bridge who through their conduct, blocks or impedes pedestrian flow, with the exception of
21 waiting to access an elevator or for purposes of entering or exiting a pedestrian flow zone. The
22 ordinance however, is not enforced by officers against individuals stopping to take photos on
23 the bridge because it is not directly related to what is causing the disorder on the pedestrian
24 bridge. *See* Disposition of LVMPD from 09/23/2025 at 39.

25
26 **Q.** Okay. So is it LVMPD's understanding that taking a picture
27 would be exempted from 16.13.030?

28 **A.** Yes.

1 Q. All right. What is the basis to believe that taking a picture,
2 stopping – let me rephrase that. What is the basis to believe that
3 stopping to take a picture is allowed under Clark County
4 Ordinance 16.13.030?

5 A. Our, Metro’s interpretation of the law is, my interpretation as
6 well, is that this is for flow, the flow of pedestrian traffic.
7 Somebody stopping to take a photograph is not directly related to
8 what was causing the disorder issues on the bridges. So the intent
9 of the law was to reduce the disorder. If someone is stopping to
10 take a photograph and promote that type of – to promote that type
11 of behavior is not harmful to us in any way.

12 Disposition of LVMPD from 09/23/2025 at 39.

13 Q. Does LVMPD direct its officers to only enforce against people
14 who have stopped in a manner that would impede the flow of
15 traffic or lead to people congregating on the pedestrian bridges?

16 A. Yes.

17 Q. How has that direction been communicated to your officers?

18 A. Through this Administrative Notice, through the two videos
19 that were a part of the training associated with this ordinance.

20 Disposition of LVMPD from 09/23/2025 at 47.

21 As can be seen from the above disposition of undersheriff Andy Walsh, CCC 16.13.030
22 is enforced against conduct that impedes the flow of pedestrian traffic on the bridge, not
23 against expressive activity.

24 Under long held constitutional law, a defendant who is seeking to prove a First
25 Amendment selective enforcement claim must show (1) discriminatory effect, and (2)
26 discriminatory purpose. Wayte v. United States, 470 U.S. 598, 600, 105 S. Ct. 1524, 1527
(1985). Here, Defendant is unable to satisfy either prong of the Wayte test.

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1 First, Defendant is unable to establish discriminatory effect. For a defendant to meet
2 discriminatory effect under the first prong, they must show that others who were similarly
3 situated in the same conduct were not cited. Wayte, 470 U.S. at 604-05.

4 Here, the pedestrians on the bridge were taking photographs, a behavior that is not
5 enforced under the ordinance. See Disposition of LVMPD from 09/23/2025 at 39-40, 47.
6 Defendant on the other hand, was stopped because he was in the middle of bridge playing his
7 cello, conduct that is enforced under the statute due to stopping the flow of pedestrian traffic.
8 Defendant and the other pedestrians were not engaged in the same behavior because he was
9 playing his instrument, while the other pedestrians were taking photos. Therefore, Defendant's
10 claim under the first prong fails.

11 Second, Defendant has not established the second prong of the test; discriminatory
12 purpose. Under Wayte, discriminatory purpose requires that Defendant was charged under the
13 ordinance due to his expressive activity, not merely showing he was engaged in the conduct
14 at the time he was charged. Wayte, 470 U.S. at 600.

15 Here, Defendant fails to show that the officers cited him due to a disagreement with his
16 artistic expression or trying to suppress it. In fact, the officers specifically stated that he was
17 being stopped for loitering in the pedestrian flow zone. DOAR at 1. Defendant does not offer
18 an ounce of evidence that the officers were targeting him due to his expressive conduct or
19 disagreed with his musical expression. The fact that Defendant was engaged in playing his
20 cello while violating a content neutral ordinance does not modify the neutral enforcement of
21 the ordinance into an unconstitutional targeting.

22 As such, Defendant's First Amendment claim fails because he is unable to satisfy either
23 prong of the Wayte analysis.

24
25 **II. DEFENDANT CANNOT SATISFY HIS SELECTIVE PROSECUTION CLAIM**
26 **UNDER WAYTE AND ARMSTRONG**

27 [T]he presumption of regularity supports their prosecutorial decisions
28 and, in the absence of clear evidence to the contrary, courts presume that
they have properly discharged their official duties.

1 United States v. Armstrong, 517 U.S. 456, 458, 116 S. Ct. 1480, 1483 (1996).

2 Selective prosecution claims are evaluated under the same analysis provided in Wayte.
3 Under the Wayte analysis, a Defendant who is seeking a selective prosecution claim has the
4 burden of proving discriminatory effect and discriminatory purpose. Wayte, 470 U.S. at 600.
5 In Armstrong, the United States Supreme Court upheld the Wayte analysis and outlined the
6 clear evidence burden that a Defendant must reach in proving a selective prosecution
7 claim. Armstrong, 517 U.S. at 465.

8 Under Armstrong, a Defendant seeking a selective prosecution claim must show
9 discriminatory effect and discriminatory purpose and must do so through clear evidence of
10 both prongs. Armstrong, 517 U.S. at 458. Nevada courts have also consistently upheld the
11 strict selective prosecution analysis under Wayte and Armstrong. See Salaiscooper v. Eighth
12 Judicial Dist. Court, 117 Nev. 892, 34 P.3d 509 (2001).

13 Despite Defendant's assertions, he has failed to show that similarly situated individuals
14 were treated differently or that his charge is due to an unconstitutional motive. To show
15 discriminatory effect, Defendant must show that others similarly situated, and were known to
16 law enforcement were not prosecuted. Armstrong, 517 U.S. at 458. This would have required
17 that another individual or individuals on the bridge to be playing an instrument and to be seen
18 by law enforcement but not cited under the ordinance. This was not the case here. The other
19 individuals on the pedestrian bridge were taking photographs, not playing an instrument. Here,
20 Defendant points to individuals on the pedestrian bridge who were taking photographs.
21 However, as noted above, taking photographs on the bridge is not conduct enforced by the
22 ordinance because it does not obstruct pedestrian flow. On the other hand, Defendant was
23 positioned in the middle of the pedestrian bridge playing his instrument in a way that did
24 impede pedestrian travel. This conduct is what the ordinance specifically regulates. Because
25 Defendant identifies pedestrians who were not playing instruments, were not engaged in
26 regulated conduct, or engaged in conduct that is enforced under the ordinance, his claim fails
27 under both Wayte and Armstrong.

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1 Next, Defendant has also failed to prove that he was charged due to a discriminatory
2 purpose, which he claims was due to his freedom of musical expression. The officers merely
3 being aware that Defendant was playing his cello is not enough, the decision to charge
4 Defendant must have been made in an attempt to suppress his musical expression, which was
5 not the case. Additionally, Defendant offers no such evidence that this is why he was charged.
6 In fact, the record completely discredits Defendant's arguments. Officers cited Defendant
7 because he was playing his cello on the pedestrian bridge, in the middle of the bridge, which
8 interfered with pedestrian movement. This is exactly the conduct CCC 16.13.030 regulates.

9 Furthermore, Defendant's arguments regarding officer training further weakens his
10 argument. In LVMPD's disposition of undersheriff Walsh, he specifically states that officers
11 are trained to enforce the ordinance against people who have stopped in a manner that would
12 impede the flow of traffic or lead to the congregation on the pedestrian bridge. See Disposition
13 of LVMPD from 09/23/2025 at 47. This shows that officers are trained to enforce conduct, not
14 expressive activity resulting in obstruction on the pedestrian bridge. Because Defendant has
15 failed to provide any evidence, let alone "clear evidence", as required by Armstrong that the
16 enforcement decision by officers was due to a decision to suppress Defendant's musical
17 expression, the second prong of the Wayte test has not been met. Therefore, Defendant has
18 failed to meet discriminatory effect and discriminatory purpose under Wayte.

19 As such, Defendant cannot meet the selective prosecution evidentiary burden required
20 by Armstrong. Therefore, dismissal of the charge is unjustified and the State respectfully
21 requests that the Defendant's motion be denied.

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1 **CONCLUSION**

2 Accordingly, the State respectfully requests that this Court deny Defendant’s Motion
3 to Dismiss for Selective Prosecution.

4 DATED this 10th day of December, 2025.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY: /s/ W. Jake Merback
10 W. JAKE MERBACK
11 Chief Deputy District Attorney
12 Nevada Bar #9126

13 **CERTIFICATE OF ELECTRONIC FILING**

14 I hereby certify that service of State's Opposition to Defendant’s Motion to Dismiss,
15 was made this 10th day of December, 2025, by Electronic Filing to:

16 JACOB T. S. VALENTINE, ESQ.
17 jvalentine@aclunv.org

18
19 BY: /s/ J. Weiner-Gentry
20 Secretary for the District Attorney’s Office
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