**Case No. 15-2154**
IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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| Quentin Scott, | ) |
| | ) |
| Plaintiff - Appellant, | ) |
| | ) |
| v. | ) |
| | ) |
| City of Albuquerque, et al., | ) |
| | ) |
| Defendants - Appellees. | ) |

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On Appeal from the United States District Court
For the District of New Mexico
Honorable Scott W. Skavdahl, presiding

**No. 1:14-CV-0665-SWS-WPL**

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# APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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Respectfully Submitted,

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**ORAL ARGUMENT REQUESTED**

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## ARGUMENT

Scott's supplemental brief addressed the Court's question of whether the A.M. panel opinion impacted Scott's appeal. Scott's answer is that the A.M. opinion held that the Silva Court's interpretation of the operative language in a predecessor statute gave no guidance to a reasonable police officer in how to read the statute he used to justify the arrest of F.M. A.M. v. Holmes, No. 14-2066, 2016 WL 3999756, at *16 (10th Cir. July 25, 2016); State v. Silva, 525 P.2d 903, 904 (N.M. Ct. App. 1974). However, the majority opinion does not dictate the result of Scott's appeal because a reasonable reading of the language of the statute would not criminalize Scott's behavior and the use of the statute to arrest Scott approaches egregiousness on the qualified immunity scale, dispensing with the need for clear precedent on the meaning of the operative language that the Silva Court reviewed. [1]

[1] The City complains that Scott cites only learned treatises published after 2009 for the proposition that Hensley should have known Scott's arrest was egregious. However, articles related to the school-to prison pipeline predate Hensley's arrest of Scott. Augustina Reyes, The Criminalization of Student Discipline Programs and Adolescent Behavior, 21 St. John's J. Legal Comment 73 (2006); Avarita Hanson, Have Zero Tolerance School Discipline Policies Turned Into a Nightmare? The American Dream's Promise of Equal Educational Opportunity Grounded in Brown v. Board of Education, 9 U.C. Davis J. Juv. L. & Pol'y 289 (2005); Texas Appleseed, Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance, available at https://www.texasappleseed.org/sites/default/files/01-STPPReport2007.pdf; Ellen Tuzzolo, Rebuilding Inequity: The Re-emergence of the School-to-Prison Pipeline

The City contends that the "common meanings" of the words contained in Section 30-20-13(D) "prohibit any act that diminishes or prevents a process or activity from continuing, prevents the normal continuance of the functions of a school or causes a disturbance or problem in the mission, process and procedures or functions of a school." See Appellee's Supplemental Brief, pg. 7. In particular, the City argues that because Scott was with the custodians, he diminished or prevented the activities of Ms. Griego, Ms. Wiggins and Officer Hensley, prevented the normal continuance of the school function and caused a disturbance in the functioning of the school. Id. at 8. The City's contention that Scott's presence with the custodians caused a criminal disturbance in the function and mission of the school finds no support factually and would render the statute unconstitutional. The City is interpreting the relevant statute in piecemeal by applying dictionary meanings to each single word, rather than reading the operative language of the collection of words in their plain English meaning.

Through the lens of A.M., with common sense principles of statutory construction so as to not render the statute vague or overbroad, the statute does not criminalize a boy not being in class. An officer is obviously expected to know the meaning of the words of a statute he enforces. An officer's reliance on a state

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in New Orleans, High School J., Dec. 2006-Jan. 2007; Bob Herbert, School to Prison Pipeline, N.Y. Times, June 9, 2007.

statute must be reasonable. A.M. v. Holmes, No. 14-2066, 2016 WL 3999756, at *12. "Relevant factors in determining whether reliance on a statute rendered an official's conduct objectively reasonable include: (1) the degree of specificity with which the statute authorized the conduct; (2) whether the official in fact complied with the statute; (3) whether the statute has fallen into desuetude; and (4) whether the official could have reasonably concluded the statute was constitutional." Roska ex rel. Roska v. Sneddon, 437 F.3d 964, 971 (10th Cir. 2006), see also Keylon v. City of Albuquerque, 535 F.3d 1210, 1220 n.4 (10th Cir. 2008)

Since courts interpret a criminal statute in a manner that avoids constitutional concerns, police officers should logically refrain from reading a statute in a manner that renders the statute plainly vague or overbroad. Crandon v. United States, 494 U.S. 152, 160 (1990) (Criminal statutes must give "fair warning" of the prohibited conduct and courts will not interpret criminal statutes "broader than that clearly warranted by the text."); Green v. Bock Laundry Mach. Co., 490 U.S. 504, 527 (1989) (Courts will not interpret statutes to provide "an absurd, and perhaps unconstitutional, result.")

The Supreme Court has often invoked "the canon of constitutional avoidance in statutory interpretation" through use of the rule of lenity. Clark v. Martinez, 543 U.S. 371, 380–81 (2005). Courts seek to avoid interpreting statutes in a manner that would raise constitutional doubts about the statute. Id. Ambiguous

criminal statutes must always "be interpreted in favor of the defendants subjected to them." United States v. Santos, 553 U.S. 507, 514 (2008) ("fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain").

The A.M. panel looked at words of the statute in isolation. The City, in turn, refers to "any" as "one or some indiscriminately *of whatever kind*." (Page 5). However, in searching for meaning in the words "any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions" of a school, the Court should be mindful that '[w]ords, like syllables, acquire meaning not in isolation but within their context." KMart Corp. v. Cartier, Inc., 486 U.S. 281, 319 (1988) (Scalia, J.). Statutes are not "a collection of isolated phrases." Abuelhawa v. United States, 556 U.S. 816, 819–20 (2009). Also, the meaning of a statute should be read to be "in accord with context and ordinary usage," and "most compatible with the surrounding body of law into which the provision must be integrated—a compatibility which, by a benign fiction, we assume Congress always has in mind." Green v. Bock Laundry Mach. Co., 490 U.S. at 528 (1989) (Scalia, J.).

Even the meaning of "any" cannot be derived strictly from a dictionary definition:

> The question before us is whether the statutory reference "convicted in any court" includes a conviction entered in a foreign court. The word "any" considered alone cannot answer this question. In ordinary life, a speaker who says, "I'll see any film," may or may not mean to include films shown in another city.

Small v. United States, 544 U.S. 385, 388, 125 S. Ct. 1752, 1754–55, 161 L. Ed. 2d 651 (2005) See also, Nixon v. Missouri Mun. League, 541 U.S. 125, 126, 124 S. Ct. 1555, 1557, 158 L. Ed. 2d 291 (2004) ("'any'" can and does mean different things depending upon the setting.")

State v. Silva, supra, in fact, remains useful in how it interpreted the meaning of the predecessor statute to preserve the statute's language from a vagueness challenge. In Silva, the court applied United States Supreme Court precedent to assure that the statute would not forbid or require the doing of an act in terms "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application …." 86 N.M. 543, 546, 525 P.2d 903, 906 (1974); quoting, Connally v. General Const. Co., 269 U.S. 385 (1926). The Silva court relied on Grayned v. City of Rockfort, 408 U.S. 104 (1972), where the Court upheld a statute written specifically for the school context since the prohibited and disruptive activities could be easily measured by the impact on the normal activities of the school. Silva, 525 P.2d at 906; citing Grayned. The Silva court noted that though a term within a statute may be ambiguous when isolated, if it is read together with the other terms in the statute, the meaning is clear and the court is able to adequately determine the parameters of the statute. Id. at 907. Here, as in

Silva, the terms "obstruct, impair and disrupt" negate any arguments of vagueness and overbreadth by requiring that a prohibited disruption contain certain characteristics and interfere with the school's mission, processes, procedures and functions. See Id.

As Silva and Supreme Court precedent on statutory construction hold, the Willful Interference with the Educational Process Statute must be read as a whole to give full effect to its intended purpose and must be read in a manner that gives criminal defendants fair warning of the behavior prohibited. In this case, the statute's meaning and limitations are so clear when read as a whole that it was patently unreasonable for Officer Hensley to interpret the statute and act in the way which he did. Though the A.M. panel held that the officer could not be held liable because he could not have known that F.M.'s conduct fell outside the scope of the statute, a reasonable police officer should recognize that the wording of the statute lends itself to an identifiable set of circumstances, which do not apply by any argument to a boy not being in class. To not read this limitation will cause school arrest to exist in a realm of unfettered discretion.

With consideration of the A.M. opinion and in the context of the facts surrounding the arrest of Quentin Scott, this Court should examine NMSA 1978, 30-3-30(D) in a manner to insure that the words "disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions" of a school are not

applied too broadly and are given meaning pursuant to the collection of the words and not just to any particular word. After all, Officer Hensley was bound to apply the words in a manner that would comport with the "fair warning" expectation of our constitution. Again, The City has no evidence that Ms. Wiggins left any teaching or that Ms. Griego was involved in a task other than dealing with students' problems. See Appx. at 97, Defendants' asserted undisputed facts 13-15 (Hensley alleges that he sought out Ms. Wiggins and provides no evidence that he interrupted a class.) Thus, no reasonable police officer could believe that Quentin Scott had disrupted or disturbed any class.

## CONCLUSION

The language of the Willful Interference with the Educational Process Statute gave Officer Hensley fair notice that Quentin Scott's behavior could not be arguably disruptive of the school process. Also, the arrest of a middle school student for an allegation that he was not in class is a sufficiently egregious arrest that did not require judicial precedent interpreting the operative words of the statute. For these reasons and the reasons Scott has stated previously, Scott requests that the Court reverse the judgment of the District Court and remand this action for trial.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

As required by Fed. R. App. P. 32(a)(7)(c), I certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) insofar as this brief is proportionally spaced using Microsoft Word 2013 in 14 point Times New Roman.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonably inquiry.

Respectfully,

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## CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that a copy of the foregoing **APPELLANT'S SUPPLEMENTAL REPLY BRIEF**, as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with ESET Endpoint Security™ version 5.0.2228.1, with the most recent update occurring on September 5, 2016; and, according to the program, is free of viruses. 10th Cir. R. 25.3. In addition, I certify all required privacy redactions have been made.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPELLANT'S SUPPLEMENTAL REPLY BRIEF** was furnished through (ECF) electronic service to the following on this 6th day of September, 2016:

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