

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MARSH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48680

FILED

MAR 07 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of assault with the use of a deadly weapon and intimidating a public officer. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge. The district court sentenced appellant William Marsh, Jr., to serve a prison term of 12 to 48 months for the assault count and a concurrent term of 12 to 36 months for the intimidating a public officer count.

Marsh first contends that NRS 200.471(1)(a), which defines assault as "intentionally placing another person in reasonable apprehension of immediate bodily harm," is unconstitutionally vague. Specifically, Marsh contends that the average person would not know what conduct was prohibited.

Statutes enjoy a presumption of validity, and the burden is on the party attacking them to show their unconstitutionality.¹ A statute is unconstitutionally vague if it fails to give persons of ordinary intelligence fair notice of what conduct is prohibited and fails to provide law enforcement officials with adequate guidelines to prevent discriminatory

¹Sheriff v. Vlasak, 111 Nev. 59, 61-62, 888 P.2d 441, 443 (1995).

enforcement.² Marsh fails to show that the statutory language did not provide him with fair notice that his conduct in brandishing a gun at his girlfriend was criminal. Thus, we disagree with Marsh's contention that NRS 200.471(1)(a) is unconstitutionally vague.

Next, Marsh contends that the district court erred in allowing the State to amend the information while jurors were deliberating to reflect the type of gun used in the commission of the crime. Particularly, Marsh contends that the information specified that he brandished a .357 caliber weapon, but he had testified that he used a .22 caliber weapon. Marsh contends that he would have been acquitted if the district court had not allowed the information to be amended because the jury submitted a question to the court during deliberations regarding the identification of the handgun.

Contrary to Marsh's contention, in this case, the district court did not allow the State to amend the information. Following a discussion regarding amendment of the information, the district court merely sent a note to the jurors instructing them that the elements that the State had to prove were included in the jury instructions. Accordingly, Marsh's claim is belied by the record.

Marsh next contends that the district court erred in refusing to dismiss the information based on a claim that the information did not provide adequate notice of the offense of intimidating a public officer. Specifically, Marsh contends the information inappropriately used the statutory language "intent to induce him, contrary to his duty to do, make, omit or delay any act, decision or determination."³ Marsh argues that the

²Id. at 61, 888 P.2d at 442-43.

³NRS 199.300(1).

State never articulated the specific duty of the police officer that Marsh had interfered with.

Pursuant to NRS 173.075(1), "the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." Here, the information contained a concise and definite written statement of the essential facts providing Marsh notice that he was charged with pointing a weapon at a police officer in order to interfere with the officer's duty to investigate an alleged crime. Thus, we conclude that the district court did not err in failing to dismiss the information for failure to provide adequate notice.

Marsh next contends that the district court erred in denying his motion to dismiss based on a claim of witness intimidation. Specifically, the victim testified that just prior to trial, the Department of Child and Family Services (DCFS) threatened to place her child in foster care if she did not vacate Marsh's residence. Marsh contends that the threat by DCFS influenced the victim to embellish her testimony.

We conclude that the district court did not err by denying Marsh's motion to dismiss.⁴ The district court found that the victim's testimony did not vary from her preliminary hearing testimony and did not constitute embellishment. Further, information regarding the DCFS's action was provided to the jury, enabling it to consider this information while weighing the victim's credibility.⁵ Accordingly, the district court did

⁴See Rippo v. State, 113 Nev. 1239, 1251, 946 P.2d 1017, 1025 (1997) ("[w]itness intimidation by a prosecutor can warrant a new trial if it results in a denial of the defendant's right to a fair trial").

⁵See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

not err in denying Marsh's motion to dismiss based on witness intimidation.

Marsh further contends that the district court erred in denying his motion to suppress because the warrantless entry into his home by police officers violated the Fourth Amendment. Specifically, Marsh contends that the district court erred in finding that the search of Marsh's home was permissible based on exigent circumstances, and the seizure of the gun evidence was proper under the plain view doctrine.

Even assuming that the district court erred in denying the motion to suppress the gun evidence, we conclude the error was harmless beyond a reasonable doubt.⁶ We note that there was sufficient independent evidence supporting Marsh's convictions for assault for brandishing a weapon at and threatening the victim, and for intimidation of an officer for brandishing a weapon at the police officer. In particular, we note that the victim and her daughter both testified that Marsh brandished a gun and threatened the victim. The arresting officer testified that Marsh brandished a gun while standing in the window looking out at the officer. Marsh also testified at trial and admitted that he brandished a weapon while standing at the window. Therefore, we conclude that any failure to suppress the gun evidence did not affect the reliability of the jury verdict and did not result in prejudice to Marsh.

Finally, Marsh contends that the district court improperly instructed the jurors that officers were on the property legally.


⁶Alward v. State, 112 Nev. 141, 152-53, 912 P.2d 243, 251 (1996) ("[w]here error of constitutional proportions has been committed, a conviction of guilty may be allowed to stand if the error is determined to be harmless beyond a reasonable doubt"), overruled in part on other grounds by Rosky v. State, 121 Nev. 184, 111 P.3d 690 (2005).

Specifically, the district court instructed the jury that "as a matter of law, under the circumstances of this case, the officers were legally present and legally remained at the scene." Marsh maintains that the question of whether the officers were legally present on his property was a factual question for the jury.

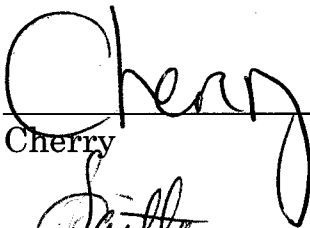
Initially, although Marsh objected below, we note that Marsh has not provided this court with any case law or relevant authority in support of his contention. This court has repeatedly stated that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."⁷ Accordingly, we decline to consider Marsh's claim.

Having considered Marsh's contentions and concluded they lack merit, we


ORDER the judgment of conviction AFFIRMED.


_____ J.

Maupin


_____ J.

Cherry


_____ J.

Saitta

⁷Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

cc: Hon. Steve L. Dobrescu, District Judge
G. C. Backus
Attorney General Catherine Cortez Masto/Carson City
White Pine County District Attorney
White Pine County Clerk