

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE ALAN BRANTLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52352

**FILED**

APR 07 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appellant Maurice Alan Brantley appeals from a judgment of conviction, pursuant to a jury verdict, of invasion of the home. Eighth Judicial District Court, Clark County; David Wall, Judge.

Sufficiency of the evidence

Brantley contends that insufficient evidence supports his conviction because “this was not an open and shut case,” the victim was not a credible witness, and testimonial and physical evidence supported Brantley’s theory of defense. This contention lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979).

At trial, the State adduced evidence that prior to the date of the offense, the victim kicked Brantley out of her home, changed the locks, and filled out two applications for temporary protective orders, for the purpose of keeping Brantley away from her residence, that listed Brantley’s address as separate from her own. Although Brantley’s mail continued to arrive at the victim’s residence, the victim instructed her

children that Brantley was not allowed in the residence, and the victim's male companion did not see any items in the residence indicating that another man lived there. On the date of the offense, Brantley's car was registered to another address. Brantley did not have a working key to the residence and broke a window to gain entry. Based on this evidence, a rational juror could reasonably infer that Brantley forcibly entered an inhabited dwelling without the permission of the resident or lawful occupant. See NRS 205.067(1), (5) (defining home invasion). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal, where, as here, substantial evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

#### Constitutionality of NRS 205.067

Brantley contends that the home invasion statute, NRS 205.067, is void and unconstitutionally vague and overbroad because it contains no intent element and does not require that the home belong to another. We review the constitutionality of a statute de novo. Nelson v. State, 123 Nev. 534, 540, 170 P.3d 517, 522 (2007). Statutes are presumed to be valid and the challenger bears the burden of demonstrating their unconstitutionality. Id.

Brantley's overbreadth challenge fails because NRS 205.067 does not infringe upon constitutionally protected conduct. See Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 494-95 (1982) (an enactment which does not reach "a substantial amount of constitutionally protected conduct" is not subject to a facial overbreadth challenge); Silvar v. Dist. Ct., 122 Nev. 289, 297-98, 129 P.3d 682, 687-88 (2006). Further, Brantley has failed to demonstrate that the statute is unconstitutionally

vague because the conduct proscribed by NRS 205.067 is clearly defined, persons of ordinary intelligence have fair notice of what conduct is forbidden, and the statute does not encourage discriminatory and arbitrary enforcement. See Nelson, 123 Nev. at 540-41, 170 P.3d at 522. Therefore, we conclude that these contentions are without merit.

Motion for new counsel

Brantley contends that the district court erred by failing to hold an evidentiary hearing regarding his proper person motion for new counsel. This court reviews the district court's denial of a motion to substitute counsel for an abuse of discretion. Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). In reviewing the denial of a motion to substitute counsel, we consider "(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion." Id.

Brantley timely filed a proper person motion to dismiss his counsel and appoint alternate counsel more than three months before trial was scheduled to begin, see id. at 969-70, 102 P.3d at 577, in which he alleged, among other things, that his counsel failed to communicate with him, return his phone calls, or investigate his case, and indicated that he lacked faith and trust in his counsel. Although the district court held a hearing on the motion, during which Brantley complained several times that he had not communicated with his attorney, the district court made no inquiry into the nature of Brantley's complaints other than to ask his counsel if she had anything to add, which she did not. See id., at 971, 102 P.3d at 576 ("[T]he adequacy of the district court's inquiry [is] a crucial component and one we will not overlook on appeal."); Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001) ("Where a motion for new counsel is made considerably in advance of trial, the court may not summarily deny

the motion but must adequately inquire into the defendant's grounds for it."). Under these circumstances, we conclude that the district court abused its discretion by denying the motion to substitute counsel and Brantley is entitled to a new trial.<sup>1</sup> See Young, 120 Nev. at 969, 102 P.3d at 576 (the erroneous denial of a motion to substitute counsel violates a defendant's right to counsel). Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. David Wall, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>Because we grant Brantley a new trial we need not address his remaining claims.