

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD RAYMOND TORREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53328

**FILED**

MAR 11 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of aggravated stalking. Third Judicial District Court, Lyon County; David A. Huff, Judge.

Appellant Richard Raymond Torrez argues that the aggravated stalking statute—NRS 200.575—is unconstitutionally vague and overbroad in that it does not define the type of acts that would cause a person to feel “terrorized, frightened, intimidated or harassed,” what conduct constitutes “acts” in a “course of conduct,” what constitutes a “series of acts,” and what constitutes a “continuity of purpose.” We review the constitutionality of a statute de novo, with the party challenging the statute bearing the burden of making a clear showing that the statute is unconstitutional. Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). Torrez has not met his burden and made a clear showing that the statute is unconstitutionally vague or overbroad.

Vagueness

Torrez relies on State v. Bryan, 910 P.2d 212 (Kan. 1996), to argue that the terms “terrorized, frightened, intimidated or harassed” are unconstitutionally vague. But unlike the stalking statute invalidated in

Bryan, these terms in the Nevada statute are defined by an objective standard in that the conduct must be such as “would cause a reasonable person to feel terrorized, frightened, intimidated or harassed,” NRS 200.575(1). Cf. State v. Rucker, 987 P.2d 1080, 1092 (Kan. 1999) (observing that amendments to statute after Bryan to incorporate an objective standard appeared to resolve the vagueness problems identified in Bryan). Torrez similarly cites no relevant authority for his vagueness challenges to the various components of the “course of conduct” definition set forth in NRS 200.575(6)(a). Torrez thus has not met his burden of demonstrating that Nevada’s aggravated stalking statute, which requires a course of conduct defined by an objective and subjective standard,<sup>1</sup> a threat,<sup>2</sup> and specific intent,<sup>3</sup> is unconstitutionally vague. Cf. Bouters v.

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<sup>1</sup>The offender must, “without lawful authority, willfully or maliciously” engage in “a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person” “that would cause a reasonable person to feel terrorized, frightened, intimidated or harassed, and that actually caused the victim to feel terrorized, frightened, intimidated or harassed.” NRS 200.575(1), (6)(a).

<sup>2</sup>This court has observed that “[t]he legislative history showing the evolution of Nevada’s anti-stalking statute indicates that NRS 200.575 was patterned on other jurisdictions’ statutes that require ‘a credible threat’ in conjunction with misdemeanor stalking to constitute the felony of aggravated stalking.” Rossana v. State, 113 Nev. 375, 382 n.4, 934 P.2d 1045, 1049 n.4 (1997).

<sup>3</sup>The offender must “threaten[ ] the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm.” NRS 200.575(2) (emphasis added).

State, 659 So. 2d 235, 238 (Fla. 1995); State v. Saunders, 695 A.2d 722, 728-29 (N.J. Super. Ct. App. Div. 1997).

Overbreadth

Torrez also offers no authority to support the suggestion that the statute is overbroad, and we note that the statute specifically excludes conduct that is protected by the First Amendment, NRS 200.575(6)(e), and includes a specific intent element, NRS 200.575(2). See Silvar, 122 Nev. at 297-300, 129 P.3d at 687-89 (explaining that overbreadth doctrine invalidates laws that infringe on First Amendment rights and concluding that prostitution loitering ordinance was unconstitutionally overbroad because it chilled constitutionally protected conduct and lacked specific intent element).

Having considered Torrez's arguments and concluded that he has not met his burden of demonstrating that the aggravated stalking statute is unconstitutionally vague or overbroad, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. David A. Huff, District Judge  
Law Office of Kenneth V. Ward/Fernley  
Lyon County District Attorney  
Attorney General/Carson City  
Lyon County Clerk