IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY WAYNE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36200

FILED

OCT 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of discharging a firearm into a vehicle, and one count of discharging a firearm where a person might be endangered. The district court ordered appellant to pay a $750.00 fine for discharging a firearm into a vehicle and sentenced him to 1 year in jail for discharging a firearm where a person might be endangered. The district court suspended the jail sentence and placed appellant on probation for a term not to exceed 3 years.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on the charge of discharging a firearm where a person might be endangered. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

In particular, we note that appellant was intoxicated and angry when he fired a gun into an unoccupied pickup truck that was parked outside a residence. At the time appellant fired the gun, there was a person standing nearby.

The jury could reasonably infer from the evidence presented that appellant discharged a firearm in a place where a person might be endangered. 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. See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

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Appellant also contends that NRS 202.290[1] is unconstitutionally vague. Statutes enjoy a presumption of validity, and the burden is on the party attacking them to show that they are unconstitutional. Sheriff v. Vlasak, 111 Nev. 59, 61-62, 888 P.2d 441, 443 (1995). A law is unconstitutionally vague in violation of due process if it fails to provide persons of ordinary intelligence with fair notice of what conduct is prohibited and fails to provide law enforcement officials with adequate guidelines to prevent discriminatory enforcement. Id. at 61, 888 P.2d at 443. "[S]tatutes challenged for vagueness are evaluated on an as-applied basis where, as here, first amendment interests are not implicated." Lyons v. State, 105 Nev. 317, 320, 775 P.2d 219, 221 (1989) (citing Maynard v. Cartwright, 486 U.S. 356, 361 (1988)). Therefore, appellant has the burden to prove that NRS 202.290 did not provide him with adequate notice that his conduct was proscribed by law.

We conclude that NRS 202.290 provides adequate notice that discharging a firearm near a residence with at least one person standing nearby is prohibited, and therefore, the statute is not unconstitutionally vague.

Having considered appellant's contentions and concluded that they are without merit, the judgment of conviction is affirmed.

It is so ORDERED.[2]

Shearing, J.

Agosti, J.

Leavitt, J.

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[1]NRS 202.290(2) provides, in part: "a person who willfully . . . [d]ischarges any firearm . . . in a public place or in any place where any person might be endangered thereby, although an injury does not result, is guilty of a gross misdemeanor."

[2]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Dan L. Papez, District Judge
Attorney General
Eureka County District Attorney
Law Offices of Gary D. Fairman
Eureka County Clerk