IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN CHANSE RIDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84483-COA

FILED

OCT 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin Chanse Rider appeals from a judgment of conviction, entered pursuant to a jury verdict, of two counts of felony intimidating a public officer and two counts of gross misdemeanor intimidating a public officer. Fifth Judicial District Court, Esmeralda County; Kimberly A. Wanker, Judge.

First, Rider argues that the statute prohibiting the intimidation of a public officer is unconstitutionally vague because it does not sufficiently define "threat," "intimidation," or "immediately." A statute is presumed to be constitutional, and the party challenging its constitutionality "has the burden of making a clear showing of invalidity." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (internal quotations marks omitted). A statute is void for vagueness "(1) if it fails to provide a person of ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Id.* at 481-82, 245 P.3d at 553 (internal quotation marks omitted). NRS 199.300(1) provides, in relevant part:

> "[a] person shall not, directly or indirectly, address any threat or intimidation to a public officer [or] public employee . . . with the intent to induce such

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> a person contrary to his or her duty to do, make, omit or delay any act, decision or determination, if the threat or intimidation communicates the intent, either immediately or in the future: (a) To cause bodily injury to any person; (b) To cause physical damage to the property of any person other than the person addressing the threat or intimidation; (c) To subject any person other than the person addressing the threat or intimidation to physical confinement or restraint; or (d) To do any other act which is not otherwise authorized by law and is intended to harm substantially any person other than the person addressing the threat or intimidation with respect to the person's health, safety, business, financial condition or personal relationships.

NRS 199.300(1) describes what actions constitute threats or intimidation, while NRS 199.300(2) specifically exempts other actions. Rider does not demonstrate that the terms "threat," "intimidate," and "immediately" as utilized in NRS 199.300(1) fail to provide a person of ordinary intelligence fair notice of what is prohibited. Rider also does not demonstrate that those terms are so standardless that the statute authorizes or encourages seriously discriminatory enforcement. Accordingly, Rider fails to make a clear showing that NRS 199.300 is unconstitutionally vague. Therefore, Rider is not entitled to relief based on this claim.

Second, Rider argues that NRS 199.300 is unconstitutionally overbroad because it may implicate constitutionally protected speech. "[T]he overbreadth doctrine provides that a law is void on its face if it sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of protective First Amendment rights, such as the right to free expression or association." *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 297, 129 P.3d 682, 687-88 (2006) (internal quotation

marks omitted). However, "a statute should not be void unless it is substantially overbroad in relation to the statute's plainly legitimate sweep." *Id.* at 298, 129 P.3d at 688 (quotation marks omitted).

The First Amendment "permits a State to ban a true threat." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (internal quotation marks omitted). "True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* (internal quotation marks omitted); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992) (stating "threats of violence are outside the First Amendment"). In addition, "the First Amendment does not protect fighting words, or words that by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Scott v. First Judicial Dist. Court*, 131 Nev. 1015, 1019, 363 P.3d 1159, 1162 (2015) (internal quotation marks omitted).

NRS 199.300(1) prohibits threats of violence or harm made against certain individuals and other persons or entities closely associated with those individuals. The type of threats prohibited by NRS 199.300(1) constitute threats to commit violence and/or constitute fighting words and are therefore not protected by the First Amendment. Accordingly, Rider fails to demonstrate that NRS 199.300 is unconstitutionally overbroad. Therefore, Rider is not entitled to relief based on this claim.

Third, Rider argues that there was insufficient evidence produced at trial to support the jury's finding of guilt. Rider contends the State failed to prove that he had the ability to immediately or in the future carry out his threats because he was in a jail cell when the threats were

uttered.[1] Our review of the record on appeal reveals sufficient evidence 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); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The evidence and testimony revealed the following. Rider was housed in the county jail. During one incident, Rider was in a common area and asked for a jail employee to change the channel on a television. She responded that she was not permitted to do so. As a result, Rider became upset and kicked the toilet. The jail employee and other employees directed Rider to lock up in his cell, but he refused to comply with their orders. Rider eventually returned to his cell and threatened to throw urine or feces on the jail employees. A jail employee testified that Rider's threat to throw urine or feces on them could have been carried out immediately. Rider also stated that he would harm the employees after his release from the jail. For this incident, Rider was charged with one offense for each of the three employees present, and the jury convicted him of two counts of felony intimidating a public officer and one count of gross misdemeanor intimidating a public officer.

In a second incident, a jail employee served Rider breakfast. Rider became upset because he believed he should have been served different food due to a medical issue. Because the jail employee did not provide Rider with different food, Rider threatened to harm the employee after his release from the jail. Rider was charged with one offense stemming

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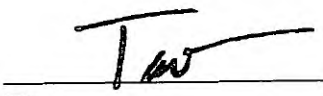
[1]Where the defendant used "physical force or immediate threat of physical force in the course of" committing the crime, it is a felony. NRS 199.300(3)(a). But when "no physical force or immediate threat of physical force is used," it is a gross misdemeanor. NRS 199.300(3)(b).

from this incident, and the jury convicted him of gross misdemeanor intimidating a public officer.

Given the evidence and testimony concerning both incidents, the jury could reasonably find Rider committed two counts of felony intimidating a public officer and two counts of gross misdemeanor intimidating a public officer. *See* NRS 199.300(1), (3). While Rider contends he could not have carried out his threats, 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, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

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cc: Hon. Kimberly A. Wanker, District Judge
Jason Earnest Law, LLC
Attorney General/Carson City
Esmeralda County District Attorney
Esmeralda County Clerk