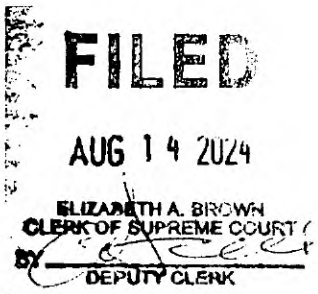
IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW TIMOTHY CARTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85520



ORDER OF AFFIRMANCE

This is an appeal from an order of conviction, pursuant to a jury verdict, for three counts of aggravated stalking and one count of harassment. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

A jury found Matthew Carter guilty of three counts of aggravated stalking and one count of harassment after Carter made a series of statements on X, then known as Twitter ("tweets"), directed at several Nevada legislators. The statements involved predictions of death and an outright threat to murder two legislators in front of their children.

On appeal, Carter first argues that his speech was protected by the First Amendment and therefore he cannot be held criminally liable for it. He contends that under *Counterman v. Colorado*, 600 U.S. 66 (2023), the court should read NRS 200.575 to require a reckless mens rea as to the subjective understanding of the speaker regarding whether the victims would perceive the charged speech as threatening. He further argues that his speech was not a true threat. Neither argument prevails. NRS

200.575(3), the aggravated-stalking statute under which Carter was convicted, requires that a defendant have the intent to place the victim in fear of death or substantial bodily harm, and the jury instructions here required a showing of specific intent. His convictions therefore comport with *Counterman*. *See Counterman*, 600 U.S. at 73, 79 (explaining that the speaker must have a reckless mens rea). Next, Carter tweeted explicit death threats at two legislators, saying "[P]repare your family I will murder you in front of your children." He also tweeted thinly veiled death threats to legislators on other occasions, such as "Enjoy your final days!" and "Prepare your loved ones! You will not be alive by November the decision has been made. Sorry u gotta go!" These and other tweets as viewed in context constituted true threats. *Virgina v. Black*, 538 U.S. 343, 358-59 (2003) (explaining that true threats are not protected by the first amendment); *Watts v. United States*, 394 U.S. 705, 707-08 (1969) (considering the context of speech to evaluate whether it constituted a true threat).

Carter also argues that the evidence is insufficient to support an aggravated stalking conviction under NRS 200.575(3). Because NRS 200.575(4) deals with stalking via the Internet and NRS 200.575(3) does not, Carter contends that he could only be convicted under NRS 200.575(4). But here, whether the evidence would alternatively support a conviction under NRS 200.575(4) is immaterial, because the State chose to pursue—and obtained—three aggravated stalking convictions against Carter under NRS 200.575(3). Nothing in NRS 200.575, Nevada law, or the canons of statutory construction supports the contention that because a defendant

uses the internet to commit the crime of stalking, that defendant cannot be charged under a subsection other than NRS 200.575(4).

Nor was the evidence insufficient to support the aggravated-stalking convictions under NRS 200.575(3). A defendant who, in the absence of legal authority, "willfully or maliciously engages in a course of conduct directed towards a victim that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety . . . and that actually causes the victim to feel" any of those emotions commits the misdemeanor crime of stalking. NRS 200.575(1). Aggravated stalking occurs when the defendant commits the crime of stalking and "threatens the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm" and is a category B felony. NRS 200.575(3). Sufficient evidence will support the verdict if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mason v. State*, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

The State introduced evidence of multiple threatening tweets directed at the victims, including the tweet set out above that Carter directed at two legislators, telling them that he would murder them in front of their children, and other thinly veiled threats, including one directed at a third legislator. The victims testified the tweets made them feel scared and caused them to change their routines, inform legislative police, and reach out to colleagues. A rational juror could conclude that the tweets would have caused a reasonable person to feel harassed or fearful for his or

her immediate safety. Thus, sufficient evidence supported a finding of stalking. As to aggravated stalking, a rational juror could have inferred from the circumstances that Carter intended to cause the victims to be placed in reasonable fear of death or substantial bodily harm. *See* NRS 193.200 ("Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused."). Sufficient evidence supported the three aggravated-stalking convictions.

Finally, we consider whether the district court erred by failing to give a limiting instruction before admitting other-bad-acts evidence. Carter did not object below on this ground or request an instruction, but we agree the district court erred, as the district court is required to give a limiting instruction regardless of whether the parties request one. *Tavares v. State*, 117 Nev. 725, 731-32, 30 P.3d 1128, 1132 (2001). This failure, however, does not warrant reversal here. Some of the other tweets admitted in that exhibit were relevant to the hate-crime charge, and Carter does not show on appeal that the evidence had a substantial and injurious effect on the verdict. *See id.* (stating that a district court's failure to give a limiting instruction for the use of other-bad-acts evidence is reviewed for nonconstitutional harmless error). The tweets underlying the charges were so inflammatory that the additional tweets, even though inflammatory, would have had little impact on the outcome. Indeed, the jury's decision indicates those additional tweets did not impact the verdict, as the jury acquitted Carter of the hate-crime enhancement to which those tweets were relevant. We therefore conclude that the district court's failure to give a limiting instruction was harmless.

We have carefully considered Carter's other arguments and conclude that they are without merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Egan K. Walker, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Attorney General/Ely
Washoe District Court Clerk