IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT JASON RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88035-COA

ORDER OF AFFIRMANCE

Robert Jason Ramirez appeals from a judgment of conviction, entered pursuant to a jury verdict, of making a threat or conveying false information concerning an act of terrorism, weapons of mass destruction, lethal agents or toxins. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Ramirez first argues that NRS 202.448 is unconstitutionally overbroad and vague. Ramirez did not object to NRS 202.448's constitutionality below, and he does not argue plain error on appeal. *See Truesdell v. State*, 129 Nev. 194, 201-02, 304 P.3d 396, 401 (2013) (outlining appellant's claim regarding the constitutionality of a statute and "review[ing] for plain or constitutional error because [appellant] failed to object below"). Specifically, he does not argue that any alleged errors are clear under current law from a casual inspection of the record, nor does he argue that those errors affected his substantial rights. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). We thus conclude he has forfeited these claims, and we decline to review them on appeal. *See Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015) (stating "all unpreserved errors are to be reviewed for plain error without regard as

to whether they are of constitutional dimension"); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error); *State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev., Adv. Op. 90, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts "follow the principle of party presentation" and thus "rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)); *Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

Ramirez also argues the district court erred by denying his motion to set aside the jury verdict based on insufficient evidence. Where there is insufficient evidence to support a conviction, the trial judge may set aside a jury verdict and enter a judgment of acquittal. NRS 175.381(2). The evidence to support a conviction is insufficient if "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." *Evans v. State*, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996). When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Ramirez first argues that insufficient evidence supports his conviction because his statements did not involve acts of terrorism or the presence of weapons of mass destruction. The State introduced evidence at trial that Ramirez became agitated at a hospital when he was told he could

not visit a patient. A hospital employee testified that Ramirez pulled out a cell phone, asked if he should "go protocol" or "weaponize because they're weaponized," and stated that "he was going to make a call and have a bunch of Marines swarm the ER." The employee further testified that Ramirez said, "you don't know what I have in my bag." The employee said that "a lot of [Ramirez's] statements were accompanied by a gesture pointing to his [backpack]."

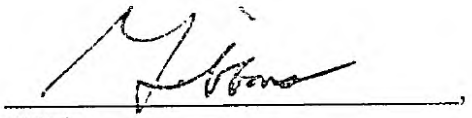
One of the security officers testified that Ramirez put his cell phone to his ear and repeatedly stated "do you want me to weaponize?" She explained that officers pulled their tasers after Ramirez "basically was telling us that he was gonna kill us all." She further explained that she assumed Ramirez had a weapon or a bomb in the backpack he kept trying to reach for "because he stated there was a weapon." A second security officer testified that he did not know what was in Ramirez's backpack but assumed it was a sharp weapon or a gun "based on his statement of weaponizing." He explained that once Ramirez went outside the hospital, he dropped his backpack to the ground and started going through it in a "military-like" manner. Because Ramirez had stated he was going to "weaponize," the officer thought Ramirez was reaching for a weapon and took cover.

Based on this evidence, any rational juror could have found beyond a reasonable doubt that Ramirez knowingly made a threat or conveyed false information about an act of terrorism or a weapon of mass destruction. *See* NRS 202.448(1) (stating the elements of making a threat or conveying false information concerning an act of terrorism or a weapon of mass destruction); NRS 202.4415(1)(a) (defining an act of terrorism as "any act that involves the use or attempted use of . . . coercion or violence

which is intended to . . . [c]ause great bodily harm or death to the general population").

Ramirez also argues there was insufficient evidence that his statements constituted a "true threat" such that they were not protected by the First Amendment. Ramirez did not raise this First Amendment argument in his motion to set aside the verdict and the related pleadings below, and he does not argue plain error on appeal. Specifically, he does not argue that the alleged error is clear under current law from a casual inspection of the record, nor does he argue that the error affected his substantial rights. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48. We thus conclude he has forfeited this claim, and we decline to review it on appeal. *See Martinorellan*, 131 Nev. at 48, 343 P.3d at 593; *Miller*, 121 Nev. at 99, 110 P.3d at 58; *Doane*, 138 Nev., Adv. Op. 90, 521 P.3d at 1221; *Senjab*, 137 Nev. at 633-34, 497 P.3d at 619. Therefore, we conclude the district court did not err in denying Ramirez's motion to set aside the jury verdict, and we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk