IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOWARD A/K/A ROBERT HOWARD FERGUSON, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38589

FILED

JAN 09 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery constituting domestic violence, first offense. The district court sentenced appellant Robert Howard to time served.

Howard contends that NRS 33.018, which defines acts constituting domestic violence, is void for vagueness. Specifically, Howard argues that NRS 33.018 is vague because its legislative history indicates that women, children, and romantic relationships were the focus of the legislation and that the language "related by marriage" is ambiguous because "in-laws are not technically related by marriage." Howard further argues that "[p]rosecuting in-laws unfairly discriminates between those who choose to legalize their relationship and those who do not or cannot, such as siblings and parents of homosexual couples." We conclude that NRS 33.018 is not void for vagueness.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."[1] "Statutes are presumed to be valid, and the burden is on the challenger to make a clear showing of their unconstitutionality."[2] Furthermore, "statutes challenged for vagueness are evaluated on an as-applied basis where, as here, first

[1]Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).

[2]Childs v. State, 107 Nev. 584, 587, 816 P.2d 1079, 1081 (1991).

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amendment interests are not implicated."[3] Additionally, "persons are deemed to have been given fair notice of a criminal offense if the statutorily proscribed conduct has been described with sufficient clarity to be understood by individuals of ordinary intelligence."[4]

Howard pleaded guilty to battery constituting domestic violence for beating his brother-in-law, who was also his roommate, in the face and head with a rifle after a verbal confrontation over a set of keys. Nevada's domestic violence statute applied to Howard on two different bases: (1) because the battery was committed against a person related by marriage; and (2) because the battery was committed upon someone with whom Howard actually resided.

NRS 33.018(1) provides that:

> Domestic violence occurs when a person commits one of [several listed enumerated] acts against or upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child.[5]

We conclude that NRS 33.018(1) provides a clear, detailed description of the relationships qualifying as a domestic relationship. In light of the fact that the statute broadly defines domestic relationships, we reject Howard's argument that the domestic violence statute was only intended to apply to certain relationships involving women, children, and persons who are dating. Further, we conclude that NRS 33.018 is not unconstitutionally vague because a person of ordinary intelligence would perceive: (1) that the phrase "related by marriage" includes that person's in-laws; and (2) that the phrase "a person with whom he is or was actually residing" includes that person's roommate. Accordingly, Howard has failed to overcome the presumption that NRS 33.180 is constitutional.

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[3]Lyons v. State, 105 Nev. 317, 320, 775 P.2d 219, 221 (1989); see also Maynard v. Cartwright, 486 U.S. 356, 361 (1988).

[4]Lyons, 105 Nev. at 320, 775 P.2d at 221; see also United States v. Harris, 347 U.S. 612, 617 (1954); Smith v. State, 112 Nev. 1269, 1276, 927 P.2d 14, 18 (1996).

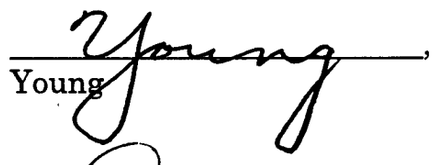
[5]Emphasis added.

Howard also contends that NRS 33.180 violates his right to equal protection because those prosecuted for battery resulting in domestic violence are subjected to harsher punishments than those merely prosecuted with battery, despite the fact that both offenses involve the same conduct. We disagree.

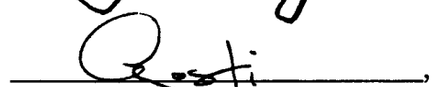
Assuming the two statutes prescribe different penalties for the same conduct, this court has explained that a defendant will "only be able to demonstrate that a violation of his equal protection rights has occurred when he can show that he was singled out for prosecution on the more serious offense for a reason which is offensive to the Constitution" such as race or religion.[6] Because Howard has made no such claim in the present case, he has failed to demonstrate that his equal protection rights were violated by the existence of the statutory scheme at issue.

Having considered Howard's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Young



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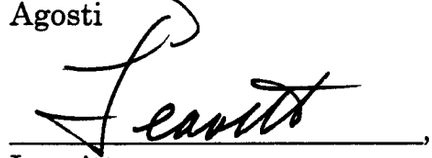

_____, J.
Leavitt

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

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[6]Sheriff v. Killman, 100 Nev. 619, 621, 691 P.2d 434, 436 (1984) (citing United States v. Batchelder, 442 U.S. 114 (1979)).