No. _____

In The
Supreme Court of the United States

CASEY BRANDON SIBLEY,

Petitioner,

V.

STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari
to the Arizona Court of Appeals

APPENDIX

DENNIS I. WILENCHIK
Counsel of Record
JOHN D. WILENCHIK
DAVID A. TIMCHAK
WILENCHIK & BARTNESS, P.C.
2810 N. Third St.
Phoenix, AZ 85004
(602) 606-2810
diw@wb-law.com
davidt@wb-law.com
admin@wb-law.com
Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,
v.
CASEY BRANDON SIBLEY, *Appellant*.

No. 1 CA-CR 17-0768
FILED 5-31-2018

Appeal from the Superior Court in Maricopa County
No. LC2017-000225-001
The Honorable Patricia A. Starr, Judge

AFFIRMED

COUNSEL

Scottsdale City Prosecutor's Office, Scottsdale
By Seth Peterson
Counsel for Appellee

Wilenchik & Bartness, P.C., Phoenix
By Dennis I. Wilenchik, David Timchak (argued)
Counsel for Appellant

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge David D. Weinzweig joined.

McMURDIE, Judge:

¶1 Casey Brandon Sibley appeals his conviction and imposition of probation for threatening or intimidating. He challenges the facial constitutionality of the statute that defines the offense.[1] For the following reasons, we affirm.

FACTS[2] AND PROCEDURAL BACKGROUND

¶2 When the concierge at Sibley's condominium complex informed Sibley he needed to move his vehicle because it was illegally parked, Sibley became upset and "[en]raged." Sibley repeatedly stated he was "gonna shoot those bitches in the HOA" if his car was towed. Believing Sibley's statement to be a threat, the concierge informed security of the statements. When two women who worked in the HOA office learned of the threat, they became concerned, scared, stressed, distraught, and felt threatened.[3] The victims hired undercover police officers and extra security guards for protection.

---

[1] Sibley also argues insufficient evidence supports his conviction. As Sibley correctly recognizes, this court lacks jurisdiction to address that contention because Sibley's case commenced in municipal court. Ariz. Rev. Stat. § 22-375; *State v. Yabe*, 114 Ariz. 89, 90 (App. 1977). We decline Sibley's invitation to treat his request for relief on this basis as a petition for special action.

[2] We view the facts in the light most favorable to upholding the verdict and resolve all reasonable inferences against Sibley. *State v. Harm*, 236 Ariz. 402, 404, ¶ 2, n.2 (App. 2015) (citing *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

[3] Sibley had previously been very loud and "verbally aggressive" to at least one of the women who worked in the HOA office.

¶3 The City of Scottsdale subsequently charged Sibley with one count each of threatening or intimidating and disorderly conduct, both class 1 misdemeanors. The municipal court found Sibley guilty of threatening or intimidating, and not guilty of disorderly conduct. The court suspended sentence and placed Sibley on 11 months of unsupervised probation. Sibley appealed to superior court, which affirmed. Sibley timely appealed to this court, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") §§ 12-120.21(A)(1), 13-4031, -4033(A)(1), and 22-375.

DISCUSSION

¶4 As relevant here, "[a] person commits threatening or intimidating if the person threatens or intimidates by word or conduct . . . [t]o cause physical injury to another person[.]" A.R.S. § 13-1202(A)(1).

¶5 Sibley challenges the facial validity of § 13-1202(A)(1). He first argues the statute violates the First Amendment because it does not require proof of "wrongful intent." He also contends § 13-1202(A)(1) is unconstitutionally overbroad and vague. We review *de novo* whether a statute is constitutional. *State v. Russo*, 219 Ariz. 223, 225, ¶ 4 (App. 2008). The party challenging a statute's constitutionality bears the burden of establishing its invalidity and must overcome a "strong presumption" that the statute is constitutional. *State v. Kaiser*, 204 Ariz. 514, 517, ¶ 8 (App. 2003).

A. Section 13-1202(A)(1) Does Not Punish Speech Protected by the First Amendment.

¶6 In 2001, this court construed § 13-1202(A)(1) as punishing a "true threat," which we defined as "a threat if, under the circumstances, a reasonable person would foresee that [a defendant's] words would be taken as a serious expression of an intent to inflict bodily harm, and [the] statements were not the result of mistake, duress, or coercion." *In re Kyle M.*, 200 Ariz. 447, 451–52, ¶¶ 22–23 (App. 2001). In concluding the legislature intended "true threats" to constitute threatening or intimidating under § 13-1202(A)(1), we noted the legislature in 1994 deleted from § 13-1202(A) the phrase "with the intent to terrify[,]" and did not replace that phrase with "any words describing a culpable mental state." *Id.* at 450, ¶ 13. Accordingly, we rejected the notion that § 13-1202(A)(1) "necessarily includes the culpable mental state of 'wrongful intent[]' . . . [because] . . . we cannot reinsert into [§] 13-1202(A)(1) under the guise of judicial construction words of limitation that the legislature has expressly deleted." *Id.* at ¶ 14. Instead, we explained "a culpable mental state is necessarily involved in the commission of the offense," and that our adopted definition of "true threat" "sufficiently narrows the words or conduct prohibited without infringing upon the privileges of free speech guaranteed by our state and federal constitutions." *Id.* at 450, 451, ¶¶ 15, 22.

¶7 In a subsequent case, we noted that the *Kyle M.* court's "[g]rafting the 'true threat' requirement into [§ 13-1202(A)(1)] . . . resolved constitutional concerns based on the first amendment right to free speech."

In re Ryan A., 202 Ariz. 19, 22, ¶ 8 (App. 2002); *see United States v. Alvarez*, 567 U.S. 709, 717 (2012) ("true threat[]" is a category of expression permissibly subject to a content-based restriction on speech); *Virginia v. Black*, 538 U.S. 343, 359 (2003) (citing the Court's prior cases that recognize "the First Amendment also permits a State to ban a 'true threat'"). Thereafter, the Arizona Supreme Court also noted that the definition of "true threat" adopted in *Kyle M.* "avoid[ed] constitutional conflict[.]" *Citizen Pub'g Co. v. Miller*, 210 Ariz. 513, 520, ¶ 29 (2005).[4]

---

[4] Sibley argues the *Miller* court implicitly recognized that *Black* requires proof of wrongful intent for speech to be unprotected as a "true threat." *Miller* did not do so; instead, *Miller* expressly noted that the United States Supreme Court in *Black* held:

> [C]ross burnings committed with an intent to intimidate could be constitutionally prohibited, [and] the Court explained the true threat doctrine as follows:
> "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. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur.

Miller, 210 Ariz. at 520, ¶ 28 (alteration in original). In making this argument, Sibley contends the Arizona Supreme Court's recognition in *Miller* that *Kyle M.* adopted a test "substantially similar" to the *Black* Court's "true threat" test indicates the two tests are not identical. *See id.* at ¶ 29. We are not persuaded, however, that the obvious conclusion flowing from this observation is that proof of a defendant's wrongful subjective intent is necessary for a "true threat" to be unprotected by the First Amendment.

¶8 Nonetheless, Sibley relies on the United States Supreme Court's plurality conclusion in *Black* to argue that a "true threat" punishable under the First Amendment must be made with "wrongful intent." In *Black*, the Court considered a First Amendment challenge to a Virginia statute that criminalized cross burnings committed with the intent to intimidate. *Black*, 538 U.S. at 347. A majority of the Court held that "[i]nstead of prohibiting all intimidating messages," Virginia may ban such a "particularly virulent form of intimidation." *Id.* at 363. The Court also addressed the statute's provision, as interpreted through the trial court's jury instruction, that specified cross burning was *prima facie* evidence of intimidation. *Id.* at 363–64. A plurality of the Court found that provision facially unconstitutional, reasoning that cross burning was "constitutionally proscribable intimidation. But that same act may mean only that the person is engaged in core political speech." *Id.* at 364–65. The Court defined "[i]ntimidation in the constitutionally proscribable sense of the word" as "a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.* at 360.

¶9 *Black* did not hold the First Amendment forbids punishment of a threat made without proof of "wrongful intent." As Justice Thomas recently noted, at issue in *Black* was a statute that expressly required an intent to intimidate; thus, the Court "had no occasion to decide whether such an element was necessary in threat provisions silent on the matter." *Elonis v. United States*, 135 S. Ct. 2001,

2027 (2015) (Thomas, J., dissenting). Further, although in *Cassel*—a case Sibley leans upon heavily—the Ninth Circuit Court of Appeals relied on the *Black* plurality's definition of "intimidation," *see supra* ¶ 8, in broadly concluding, "[t]he clear import of this definition is that only *intentional* threats are criminally punishable consistently with the First Amendment[,]" other federal courts have concluded an objective standard like the one we adopted in *Kyle M.* and applied in *Ryan A.* is appropriate. *United States v. Cassel*, 408 F.3d 622, 631 (9th Cir. 2005); *see Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1075 (9th Cir. 2002) ("It is not necessary that the defendant intend to, or be able to carry out his threat; the only intent requirement for a true threat is that the defendant intentionally or knowingly communicate the threat."), *as amended* (July 10, 2002); *United States v. D'Amario*, 461 F. Supp. 2d 298, 302 (D.N.J. 2006) ("The Third Circuit does not share the Ninth Circuit's apparent inability to determine what comprises a 'true threat.'"); Casey Brown, *A True Threat to First Amendment Rights: United States v. Turner and the True Threats Doctrine*, 18 Tex. Wesleyan L. Rev. 281, 295–96 (2011) (noting "[t]he Cassel court's interpretation of Black has been severely criticized by other circuits" and discussing cases). We agree with those courts' description of *Cassel* as an outlier opinion regarding this issue, and therefore, we do not follow it.[5]

---

[5] While we consider the opinions of the lower federal courts regarding the interpretation of the Constitution, such authority is not controlling on Arizona courts. *State v. Montano*, 206 Ariz. 296, 297, ¶ 1, n.1 (2003) ("We are not bound by the Ninth

¶10 Based on our holding in *Kyle M.* that § 13-1202(A)(1) prohibits threats that a reasonable person would foresee would cause fear—a holding that this court and the Arizona Supreme Court subsequently referred to approvingly—we decline to conclude that a successful prosecution under the statute must prove the defendant intended to cause fear. Because the First Amendment's guarantee of free speech does not protect "true threats," § 13-1202(A)(1) is not facially unconstitutional on First Amendment grounds. *See State v. Meeds*, 1 CA-CR 16-0281, 2018 WL 2054176, at *6, ¶ 28 (Ariz. App. May 3, 2018) (citing *Kyle M.* for the proposition that the conduct of threatening or intimidating prohibited in § 13-1202(A)(1) is not protected by the First Amendment).

B. Section 13-1202(A)(1) Is Not Unconstitutionally Overbroad or Vague.

¶11 Similarly, Sibley argues § 13-1202(A)(1) is unconstitutionally overbroad and vague because the legislature removed any requirement of "wrongful intent" from the statute.[6] Sibley also emphasizes the

---

Circuit's interpretation of what the Constitution requires."); *State v. Chavez*, 243 Ariz. 313, 315, ¶ 4, n.2 (App. 2017).

[6] Sibley arguably lacks standing to raise his vagueness challenge. His repeatedly stating that he was "gonna shoot those bitches in the HOA" while "enraged" clearly fell within the legitimate goal of § 13-1202(A)(1) to protect individuals from fear of violence. *See Black*, 538 U.S. at 360 ("[A] prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur.") (quotations omitted); *Parker v.*

reasonable person standard enunciated in *Kyle M.* and complains that "a conviction . . . rises or falls on the judge's or jury's determination of a reasonable person." According to Sibley, the statute is therefore vague because "it imposes criminal liability based on the finder of fact[']s determination, months or years later, that a speaker has misjudged a juror's or judge's determination of the allusive 'reasonable person.'"

¶12 "An overbroad statute is one designed to burden or punish activities which are not constitutionally protected, but . . . includes within its scope activities which are protected by the First Amendment." *State v. Jones*, 177 Ariz. 94, 99 (App. 1993) (citation omitted). "A statute is unconstitutionally vague if it fails to provide 'person[s] of ordinary intelligence a reasonable opportunity to know what is prohibited' and fails to contain explicit standards of application to prevent arbitrary and discriminatory enforcement." *State v. Poshka*, 210 Ariz. 218, 220, ¶ 5 (App. 2005) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). A statute need not be drafted with absolute precision to satisfy due process. *State v. Lefevre*, 193 Ariz. 385, 390, ¶ 18 (App. 1998).

¶13 We reject Sibley's challenge to § 13-1202(A)(1) on overbreadth and vagueness grounds. First, we have expressly decided that the absence of the speaker's subjective wrongful intent as a necessary element in § 13-1202(A)(1) does not render the

---

Levy, 417 U.S. 733, 756 (1974) ("One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.").

statute violative of the First Amendment, an argument Sibley reiterates. *See supra* ¶ 10. And Sibley's implied assertion that "a threat if, under the circumstances, a reasonable person would foresee that [a defendant's] words would be taken as a serious expression of an intent to inflict bodily harm, and [the] statements were not the result of mistake, duress, or coercion[,]" *In re Kyle M.*, 200 Ariz. at 452, ¶ 23, equates to an unpopular "minority view point" strains credibility.

¶14 Second, Sibley's complaint about a fact finder's "post hoc" determination of reasonableness has no merit as a basis for finding § 13-1202(A)(1) is infirm on vagueness grounds. *See United States v. Ragen*, 314 U.S. 513, 523 (1942) ("The mere fact that a penal statute is so framed as to require a jury upon occasion to determine a question of reasonableness is not sufficient to make it too vague to afford a practical guide to permissible conduct."). "Such after the fact determinations of reasonableness by a jury are commonplace. Indeed, as this court has observed, 'ex post facto assessments of the reasonableness of conduct and state of mind are ubiquitous and probably indispensable in the law.'" *Lefevre*, 193 Ariz. at 391, ¶ 22 (quoting *State v. Buhman,* 181 Ariz. 52, 54 (App. 1994)).

¶15 For these reasons, Sibley fails to establish § 13-1202(A)(1) is unconstitutionally overbroad or vague.

CONCLUSION

¶16 Sibley's conviction and probation are affirmed. The stay of Sibley's sentence previously entered by the court is lifted.

AMY M. WOOD
Clerk of the Court
FILED: AA

SUPREME COURT
STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231
TELEPHONE: (602) 452-3396

October 30, 2018

RE: STATE OF ARIZONA v CASEY BRANDON SIBLEY

Arizona Supreme Court No. CR-18-0319-PR
Court of Appeals, Division One No. 1 CA-CR 17-0768
Maricopa County Superior Court No. LC2017-000225-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 30, 2018, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Janet Johnson, Clerk

TO:
Joseph T Maziarz
Seth Peterson
Dennis I Wilenchik
David Timchak
Amy M Wood

Michael K. Jeanes,
Clerk of Court
*** Filed ***
10/27/2017 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000225-001 DT 10/24/2017

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA
v.
CASEY BRANDON SIBLEY (001)

SETH W PETERSON
DENNIS I WILENCHIK

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

Lower Court Case No. CR2016011948.

Appellant Casey Sibley appeals his conviction and sentence for one count of threatening or intimidating, a class 1 misdemeanor. For the reasons that follow, this Court affirms the conviction and sentence.

I. FACTS AND PROCEDURAL BACKGROUND

The State charged Sibley by complaint with one count of disorderly conduct and one count of threatening or intimidating, both class 1 misdemeanors. The trial court denied Sibley's motion to dismiss the charges on constitutional grounds. (Minute Entry, August 31, 2016.)

The trial court held a bench trial. At trial, LW testified that she worked in the concierge's office at Optima Camelview. (Reporter's Transcript of Proceedings, December 5, 2016 ("RT 12/5/16") at 15.) On June 1, 2016, she learned that Sibley's vehicle was illegally parked, and sent him a text to tell him that security needed him to move his vehicle. (RT 12/5/16 at 17-18.) After receiving no response, LW sent another text to Sibley, because she didn't want his car to be towed. (*Id.* at 18.) Sibley then called LW. (*Id.*)

Sibley came into the office, sat down and talked to LW "about some personal things," and when she told him that the security guard needed him to move his car, "he got really upset." (*Id.* at 19.) "[H]e just got really aggressively upset and, you know, said some words, that he said that he was gonna shoot those bitches in the HOA, . . ." (*Id.*) "[H]e said it a few times." (*Id.*) According to LW, "he wasn't his normal self that day at all." (*Id.* at 20.) Sibley wasn't yelling, but "said it sitting down face-to-face with me. And then he stood up and said it as he was walking out the door, as well." (*Id.*) LW recalled Sibley making the statement that he would "kill those bitches" three times. (*Id.*)

LW wasn't scared, but "was scared for him – for him more than people. I don't think he would harm

anybody, but I don't think he was thinking properly, also." (*Id.* at 21.) When asked if she thought it was a credible threat, LW said "it's a toss-up. But I would say in that particular moment, yes, because it – it was just something that he would never – I would never hear that from him, so it was just out of character for him, and I was kind of concerned for him, obviously." (*Id.*)

LW later clarified that Sibley said he would shoot the "bitches" in the HOA if they towed his car. (*Id.* at 28.) LW told security about Sibley's statement because she believed it was a threat. (*Id.* at 39.)

JL manages the concierge office. (*Id.* at 41.) According to JL, Sibley seemed "a bit annoyed about a situation that was going on with the HOA and him . . ." (*Id.* at 43.) She overheard him "make a threat about shooting, or going to shoot the ladies in the management office." (*Id.* at 43.) She couldn't recall if he was serious, but she was "taken back a bit that he would say something like that . . ." (*Id.* at 44.) JL's boyfriend, JT, joked with Sibley that if he was going to shoot someone, he should shoot him: "they were laughing about it . . ." (*Id.* at 47.) JT, the HOA landscaper at Optima Camelview, and Sibley's friend, heard the statement, which he did not take seriously. (*Id.* at 90-91.) He did not believe that JL or LW took it seriously either. (*Id.* at 92.)

JL did not believe Sibley's comment was serious. (*Id.* at 49.) According to JL, LW "felt bad that she had even said anything, because she didn't think it was that serious." (*Id.* at 50.)

TW is the community manager at Optima Camelview; she runs the HOA. (*Id.* at 53.) When she first found out about Sibley's statements, she "was very concerned" and "scared." (*Id.* at 55.) After

watching video of the incident, TW was "[v]ery concerned, stressed, scared, you know, worried for my staff." (*Id.* at 57.)

OP worked in the HOA office as the assistant community manager. (*Id.* at 70; 72.) She had concerns about Sibley based on prior incidents when he was "verbally aggressive" or passionate about an issue. (*Id.* at 71-72.) When OP heard about Sibley's comments on June 1st, she "felt threatened." (*Id.* at 73.) After viewing the video, OP was "astonished," and "definitely scared," to the point that she took extra security measures. (*Id.* at 74.) She was "distraught" and couldn't sleep. (*Id.* at 74.)

Scottsdale Police Officer Ethan Clark responded to Optima Camelview on June 1st. (*Id.* at 81-82.) Sibley denied making any threats, but later told Officer Clark that "he's very passionate, and sometimes he speaks without thinking." (*Id.* at 82.) He also told Officer Clark that "he may have made the threat, but he did not remember it." (*Id.* at 82-83.) Officer Clark thought TW and OP were "both extremely – I think they were extremely scared at the situation when it was going on." (*Id.* at 85.)

After a bench trial, the trial court found Sibley not guilty of disorderly conduct, because "the State failed to prove that the defendant's comments or behavior in the presence of Ms. W., Ms. L., or Mr. T., seriously disturbed those individuals. However, the court finds that a reasonable person would find the comments to be a serious expression of an intention to inflict bodily harm. . . . The court is firmly convinced that this was a *true threat*." (Minute Entry, December 9, 2016) (emphasis in original.)

The trial court sentenced Sibley to unsupervised probation for 11 months, and a $150 fine plus

surcharge. Sibley filed a timely appeal. This Court has jurisdiction pursuant to ARIZ. CONST. Art. 6, § 16, and A.R.S. §§ 12–124(A) and 22-371(A).

II. ISSUES

On appeal, Sibley argues that the statute he was convicted of violating, A.R.S. § 13-1201(A)(1), is unconstitutional on its face because it fails to require proof of wrongful intent, as required by the 1st and 14th Amendments to the United States Constitution.

Alternatively, he argues that the statute is unconstitutional as applied to him, because no one with whom he communicated viewed his communications as a "serious expression."

Sibley also argues that his conviction is unsupported by the evidence.

III. STANDARD OF REVIEW

An appellate court reviews a sufficiency of the evidence claim for an abuse of discretion. *State v. Gunches*, 225 Ariz. 22, 25, ¶ 14 (2010). In doing so, the appellate court reviews the record to decide whether substantial evidence supports the verdict, viewing the facts in the light most favorable to sustaining the verdict. *Id.* Substantial evidence is defined as proof that a reasonable person could accept as both adequate and sufficient to support a conclusion that the defendant is guilty beyond a reasonable doubt. *Id.*

An appellate court generally applies a de novo standard of review to a constitutional challenge, and starts with the presumption that the challenged statute is constitutional. *State v. Monfeli*, 235 Ariz.

186, 187, ¶ 5 (App. 2014). Judicial restraint requires a court to "avoid constitutional questions unless "absolutely necessary" to decide the case." *Planned Parenthood Arizona, Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 270, ¶ 15 (App. 2011) (citation omitted).

IV. LEGAL ANALYSIS

a. Sufficient evidence supports the trial court's finding that Sibley uttered a "true threat."

Sibley argues that the State did not prove that his actions constituted a "true threat," because none of the people who heard his statements personally felt threatened. But LW specifically testified that she felt threatened, causing her to alert security to Sibley's statements.

In any event, a "true threat" does not require that the person hearing the statement in fact be afraid or feel threatened. *In re Ryan A.*, 202 Ariz. 19, 22, ¶ 9 (App. 2002). Thus, Sibley's reliance on the argument that the people who heard his statements did not take them seriously is misplaced.

The evidence supports the trial court's conclusion that the State met its burden of proving that Sibley's statements constituted a "true threat." Thus, the trial court did not abuse its discretion when it found Sibley guilty of threatening or intimidating.

b. Is A.R.S. § 13-1202(A)(1) unconstitutional because it does not require proof of the speaker's subjective intent?

Sibley argues that the threatening statute is unconstitutional, both on its face and as applied to him, because it does not require proof of wrongful intent on the part of the speaker.

This argument was rejected by the Court of Appeals in *In re Kyle M.*, 200 Ariz. 447 (App. 2001). The Court held that "A.R.S. section 13–1202(A)(1) does not require the State to prove a defendant or juvenile acted with 'wrongful intent,' although the State must demonstrate that the perpetrator communicated a 'true threat.'" *Id.* at 448, ¶ 2.

> The test for a true threat is an objective one: in order for the government to establish a "true threat" it must demonstrate that the defendant made a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or to take the life of [a person].

Id. at 451, ¶ 21 (quoting *United States v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir. 1990)). A person need not act with "wrongful intent" in order to violate the statute. *Id.* at 450, ¶ 15.

The requirement that a statement constitute a "true threat" narrows the prohibition on speech enough to avoid First Amendment concerns. As the Court noted in *Kyle M.*, the interpretation of that statute to require a showing of a "true threat" acts to "sufficiently narrow[ ] the words or conduct prohibited without infringing upon the privileges of

free speech guaranteed by our state and federal constitutions." *Id.* at 451, ¶ 22.

None of the cases cited by Sibley require a different conclusion.

A State may ban "true threats." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (citing *Watts v. United States*, 394 U.S. 705, 708 (1969)). That is so because "[t]he protections afforded by the First Amendment, . . . are not absolute" and "the government may regulate certain categories of expression consistent with the Constitution." *Id.* at 358. And although the Virginia statute at issue in *Black* required subjective intent on the part of the wrongdoer, nothing in that decision imposed a subjective intent requirement for a state statute to pass constitutional muster.

While some courts have found that *Virginia v. Black* created a subjective intent standard, our Supreme Court has not. Instead, the Arizona Supreme Court has found that the test in Arizona for determining a true threat under the First Amendment (as elucidated by *In Re Kyle M.*) is "substantially similar" to that set forth in *Virginia v. Black*. *Citizen Publ'g Co. v. Miller*, 210 Ariz. 513, 520, ¶ 29 (2005).

Sibley's reliance on *Elonis v. United States* is also misplaced. In that case, the United States Supreme Court engaged in the interpretation of a federal statute, and specifically found it "not necessary to consider any First Amendment issues" in rendering its decision. *Elonis v. United States*, 135 S. Ct. 2001, 2012 (2015).

For all those reasons, Sibley's argument that his conviction violated the United States Constitution is unavailing.

V. CONCLUSION

Therefore,

IT IS ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Patricia A. Starr
THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

SCOTTSDALE CITY COURT
3700 N 75th Street
Scottsdale, AZ 85251
(480) 312-2442

Case # M-0751-CR-2016011948
Complaint # 01976102

STATE OF ARIZONA
VS.
SIBLEY, CASEY BRANDON
7137 E. RANCHO VISTA #4005
SCOTTSDALE, AZ 85251

MINUTE ENTRY

PURSUANT TO: Defendant's motion to Dismiss.

IT IS ORDERED: Defendant's motion to dismiss on constitutional grounds is denied. Court affirms Trial Readiness Conference for 9/30/16 at 2:00pm in Courtroom 1.

8/31/2016, /s/ Honorable Statia D. Hendrix

SCOTTSDALE CITY COURT
3700 N 75th Street
Scottsdale, AZ 85251
(480) 312-2442

Case # M-0751-CR-2016011948
Complaint # 01976102

STATE OF ARIZONA
VS.
SIBLEY, CASEY BRANDON
7137 E. RANCHO VISTA #4005
SCOTTSDALE, AZ 85251

MINUTE ENTRY

PURSUANT TO: Defendant's Motion to Vacate Judgment received on 1/4/17.

IT IS ORDERED: Motion is denied.

1/11/2017, /s/ Honorable Statia D. Hendrix

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ariz. Rev. Stat. § 13-1202 (A)(1)

A. A person commits threatening or intimidating if the person threatens or intimidates by word or conduct:

1. To cause physical injury to another person or serious damage to the property of another; or. . . .

SCOTTSDALE CITY COURT
3700 N 75th Street
Scottsdale, AZ 85251
(480) 312-2442

Case # M-0751-CR-2016011948
Complaint # 01976102

STATE OF ARIZONA
VS.
SIBLEY, CASEY BRANDON
7137 E. RANCHO VISTA #4005
SCOTTSDALE, AZ 85251

After review of the testimony and case law, the court finds that the State has failed to prove the defendant's comments or behavior in the presence of Ms. Ward, Ms. Law, or Mr. Tonn, seriously disturbed those individuals. However, the court finds that a reasonable person would find the comments to be a serious expression of an intention to inflict bodily harm. The court also finds that no evidence was presented that the defendant's threat to shoot two women in the head was a result of mistake, duress, or coercion. The court is firmly convinced that this was a true threat. As such, the court finds the Defendant guilty on count one and not guilty on count two. The matter is ordered set to Sentencing Hearing.

12/9/2016, /s/ Honorable Statia D. Hendrix