



IN THE
Court of Appeals of Indiana

Craig R. Hendry,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



September 15, 2026

Court of Appeals Case No.
26A-CR-33

Appeal from the Greene Superior Court
The Honorable Dena A. Martin, Judge

Trial Court Cause No.
28D01-2403-CM-100

Opinion by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

[1] Craig Hendry told the Linton City Council that when Linton police officers served a warrant on him at his home, the officers “kicked in” his front door, broke into his home, “kidnapped” him, and placed him in a “concrete cage” for 45 days against his will. State’s Ex. 2, 0:25-4:30. Based on these comments, the State charged Hendry with Class B misdemeanor false informing under Indiana Code § 35-44.1-2-3 (False Informing Statute). Hendry, who represented himself throughout the trial proceedings, moved to dismiss the charge on grounds that the False Informing Statute, as applied to him, was unconstitutional under both the federal and state constitutions. The trial court denied the motion, and the case proceeded to a jury trial. The jury found Hendry guilty after deliberating only briefly.

[2] Now represented by counsel, Hendry appeals, claiming his comments were constitutionally protected speech and that the False Informing Statute is unconstitutional, both on its face and as applied to him. But Hendry presents arguments on appeal that he did not raise in the trial court. We conclude he waived part of his appellate claims and that his remaining arguments do not establish that the trial court erroneously denied his motion to dismiss. We therefore affirm.¹

¹ The American Civil Liberties Union of Indiana has submitted a brief as amicus curiae in favor of Hendry. We thank the organization for its submission.

Facts

A. Hendry's Arrest on July 26, 2022

- [3] Shortly after 10:00 p.m. on July 26, 2022, Linton Police Officers Cayden Walker and Janzen Franklin, along with Greene County Sheriff's Deputy Michael Stanley, went to Hendry's mobile home in Linton to execute an arrest warrant issued out of Vigo County. Officer Walker knocked on the front door, but no one answered. This was the officers' first visit to the residence that day, and the exterior of the front door was, at that time, undamaged. The officers believed Hendry was home. They saw lights and heard a television and a male voice within the home. In addition, Hendry's vehicle was parked nearby.
- [4] The officers remained on the scene continuously for about an hour while they waited for issuance of a warrant to enter the residence. During that time, the officers did not observe anyone enter or leave Hendry's home. Once the warrant was secured, the officers again approached the front door, knocked, and warned Hendry that they would kick in the door if he did not answer. Hendry opened the door and was arrested pursuant to the warrant without incident. The officers noted cats inside the residence and closed and latched the door as they left. Hendry told the officers he had heard them knocking earlier in the evening.
- [5] After confirming no unattended children were present in Hendry's home, Officer Franklin drove Hendry to a Vigo County officer, who then took custody of him and transported him to the Vigo County Jail. In total, Hendry was in the

custody of the original arresting officers for less than an hour. Hendry then was jailed in Vigo County for the next 1½ months.

B. Chief Clark’s Investigation in November 2023

- [6] In November 2023—approximately 16 months after the arrest—Hendry called Linton Police Department Chief Paul Clark. Hendry complained to Chief Clark that Linton officers had “kicked the door in” during the July 2022 arrest and damaged it. Tr. Vol. II, pp. 130-31. Hendry sought repair or replacement of the door. Chief Clark, who had no independent knowledge of the incident, investigated the complaint by reviewing the arresting officers’ body camera footage. Based on that review, Chief Clark concluded that Hendry’s door had not been kicked in or otherwise damaged during the arrest.

C. The City Council Meeting on March 11, 2024

- [7] On March 11, 2024—four months after the call to Chief Clark and 20 months after Hendry’s arrest—Hendry spoke at a Linton City Council meeting during the public-comment session. The City Council funds the Linton Police Department.
- [8] During Hendry’s approximately 4½-minute address to the Council, he stated that Linton police officers, whom he described as “armed thugs,” had come to his home while he was not there, “kicked in” his door, and searched the residence looking for him. State’s Ex. 2, 0:25-0:40. Hendry further stated that, when he returned home around midnight, the “aggressors” returned,

“kidnapped” him, and “hailed [him] to a concrete cage where they kept [him] against [his] will for a period of 45 days.” *Id.* at 1:00-1:31.

[9] Hendry also accused Linton police of “terrorizing” people in the community that “seem to be undesirable to them.” *Id.* at 2:30-2:40. He requested the Council abolish the Linton Police Department, which he described as a “terrorist organization” and “poison.” *Id.* at 3:00-3:10, 4:30-4:40. Hendry also stated, “Of course, we know the Linton City Council won’t abolish these useless and dangerous tax leeches because [it] also seem[s] to fall into this same category.” *Id.* at 2:40-2:50. After quoting Thomas Jefferson, Hendry ended his presentation by noting that “in past days, the penalties for taking a man’s liberty have risen to the level of death, and I think that shouldn’t be forgotten.” *Id.* at 3:15-4:30.

[10] A member of the Council stated that it had “no intention of abolishing the Linton Police Department.” *Id.* at 4:45-4:50. When the Council member asked Chief Clark to respond, the Chief stated that the “public records” of Hendry’s case “speak for themselves.” *Id.* at 5:00-5:10. Appearing agitated, Hendry noted that the body camera footage of his arrest had not been released and accused the officers of breaking into his home. The Council soon adjourned the meeting. Hendry later posted on his YouTube channel a video of his comments and the Council’s reaction to them.

D. The Charge, Motion to Dismiss, and Trial

[11] On March 18, 2024, the State charged Hendry with one count of Class B misdemeanor false informing based on his statements to the Council that Linton officers kicked in his door without legal justification and later kidnapped him. On October 11, 2025, Hendry moved to dismiss the charge, arguing that his prosecution violated both the First Amendment and the Indiana Constitution and that the False Informing Statute is unconstitutionally vague as applied to him. During the hearing on the motion to dismiss, Hendry argued that his statements were constitutionally protected opinions. He never asserted either in his motion to dismiss or at the hearing that his statements constituted rhetorical hyperbole. The trial court took the motion to dismiss under advisement at the end of the hearing and denied it without a stated rationale the following day.

[12] At Hendry’s ensuing jury trial, the State presented evidence that Hendry’s door had not been kicked in or damaged by police and that Hendry had been lawfully arrested pursuant to a valid warrant. This evidence included the testimony of the officers involved in the arrest, along with body camera footage, evidence of the arrest warrant and the warrant to enter the residence, and Chief Clark’s testimony regarding his review of the body camera footage. As part of the State’s case-in-chief, the Linton Mayor testified that he was “shocked” by Hendry’s allegations and understood them as claims of misconduct. Tr. Vol. II, p. 188.

[13] Hendry maintained that, at the time of his comments to the Council, he believed his statements to the Council were true and “absolutely genuine.” *Id.* at 127-29, 217. He also alleged that his statements were “hyperbole” that could not form the basis of a criminal conviction. *Id.* at 127-28. During Hendry’s defense, his neighbor testified that he had seen police arrive at Hendry’s home earlier in the day of Hendry’s arrest, heard a “loud bang,” and watched two officers enter the home while Hendry was away. *Id.* at 193-94. The neighbor conceded on cross-examination that he did not reveal his observations for about a year after the incident.

[14] At the close of evidence, Hendry moved for a directed verdict, which the trial court summarily denied. Minutes after the jury began deliberating, it returned a guilty verdict on the charge of Class B misdemeanor false informing. Two weeks later, the trial court sentenced Hendry to 160 days in the Greene County Jail, with 17 days credit for time served. It also imposed a \$100 fine.

Discussion and Decision

[15] Hendry appeals, challenging only the trial court’s denial of his pretrial motion to dismiss. Because he raises issues on appeal that he never presented to the trial court, we find those issues waived. As to his remaining claims, we conclude that the False Informing Statute, as applied to him, is not unconstitutional under the First Amendment to the United States Constitution or Art. 1, § 9 of the Indiana Constitution and is not unconstitutionally vague.

I. Waived Appellate Claims

[16] In his motion to dismiss and related arguments, Hendry alleged the False Informing Statute is unconstitutional under the First Amendment and Art. 1, § 9 of the Indiana Constitution because the Statute, as applied, penalizes him for his protected speech. He also alleged that the Statute is unconstitutionally vague as applied. On appeal, Hendry claims for the first time that the Statute is also unconstitutional on its face because it allegedly is a content-based, viewpoint-discriminatory restriction that fails strict scrutiny for under-inclusiveness. Issues not presented to the trial court—even those with constitutional dimensions—are waived and therefore may not be raised on appeal. *Safeco Ins. Co. of Ind. v. Blue Sky Innovation Grp.*, 230 N.E.3d 898, 907 (Ind. 2024); *Holtswarth v. Oliver*, 279 N.E.3d 360, 367 (Ind. Ct. App. 2026). We therefore address only Hendry’s challenges to the Statute “as applied.”

II. Standard of Review as to Remaining Claims

[17] “‘We review a trial court’s ruling on a motion to dismiss a charging information for an abuse of discretion,’” which occurs when the court misinterprets the law. *State v. S.T.*, 82 N.E.3d 257, 259 (Ind. 2017) (quoting *A.-H.Y. v. State*, 975 N.E.2d 1273, 1276 (Ind. 2013)). “A challenge to the constitutionality of a statute is a ‘pure question of law,’ which we review de novo.” *Id.* (quoting *State v. Doe*, 987 N.E.2d 1066, 1070 (Ind. 2013)). All statutes are presumptively constitutional, and we resolve all reasonable doubts concerning a statute in favor of constitutionality. *Id.* “That being said, unlike the higher burden faced by those making a facial constitutional challenge, those challenging the statute

as applied ‘need only show the statute is unconstitutional on the facts of the particular case.’” *Id.* (quoting *State v. Zerbe*, 50 N.E.3d 368, 369 (Ind. 2016)).

[18] The False Informing Statute specifies in relevant part:

A person who . . . makes a complaint against a law enforcement officer to the state or municipality . . . that employs the officer:

(A) alleging the officer engaged in misconduct while performing the officer’s duties; and

(B) knowing the complaint to be false . . .

commits false informing, a Class B misdemeanor.

Ind. Code § 35-44.1-2-3(d)(5) (2023).

III. The False Informing Statute Is Not Unconstitutional as Applied to Hendry’s Speech

[19] In support of his claim that the False Informing Statute is unconstitutional as applied under both the First Amendment and Art. 1, § 9, Hendry’s central argument is that his statements to the City Council were rhetorical hyperbole: that is, “imaginative expression” that no reasonable listener would take as an assertion of fact. Appellant’s Br., p. 8. Hendry argues that the First Amendment and Art. 1, § 9 therefore barred his prosecution, regardless of the Statute’s general validity.

[20] The State responds that Hendry waived this issue by failing to present the hyperbole theory to the trial court. Without framing his statements as rhetorical hyperbole, Hendry claimed in the trial court that he believed the statements

were literally true at the time he made them and that the statements were his opinions and political speech that were constitutionally protected. We need not resolve the waiver question because Hendry’s claim fails on the merits under both the First Amendment and Art. 1, § 9.

A. First Amendment

[21] The First Amendment protects “imaginative expression” and “rhetorical hyperbole” from being treated as actionable false statements of fact. *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 20 (1990); U.S. Const. amend. I; *see also Brewington v. State*, 7 N.E.3d 946, 960-61 (Ind. 2014). This protection does not turn on whether the speaker labels the statement an “opinion.” *Milkovich*, 497 U.S. at 21; *see also Brewington*, 7 N.E.3d at 961. Instead, the dispositive question is whether a reasonable listener, in context, would understand the statement as conveying an assertion of fact that is susceptible of being proved true or false. *Milkovich*, 497 U.S. at 21; *Brewington*, 7 N.E.3d at 961. Loose, figurative language—calling a legal but distasteful negotiating tactic “blackmail” or a political adversary a “traitor” or “scab”—receives full protection precisely because no reasonable audience would understand it as a literal factual charge. *Greenbelt Coop. Publ’g Ass’n v. Bresler*, 398 U.S. 6, 14 (1970); *Old Dominion Branch No. 496, Nat’l Ass’n of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974).

[22] This First Amendment protection is not unlimited, however. A statement that asserts, or reasonably implies, a specific and verifiable fact about a public official’s conduct—an accusation of perjury or a particularized charge of official

misconduct—is not converted into protected hyperbole merely because it is dramatic, colorful, or embedded in a broader rant. *Milkovich*, 497 U.S. at 21-22 (allegation implying perjury not hyperbole); *Davidson v. Perron*, 716 N.E.2d 29, 33-34 (Ind. Ct. App. 1999) (statement that a named officer had “abused” his authority was an implied assertion of verifiable fact, not opinion, because it “amounted to a charge of official misconduct”). Context cuts both ways: the same speech may contain protected epithets alongside unprotected factual assertions. A court must examine each challenged statement rather than treat the entire speech as an undifferentiated unit. *See Milkovich*, 497 U.S. at 21 (loose or figurative language “negate[s] the impression” that a speaker is “seriously maintaining” a factual assertion—an inquiry that depends on the particular words used, not merely their surroundings).

- [23] The false informing charge here did not rest on Hendry’s characterization of the Linton Police Department as a “terrorist organization” of “tax leeches” or on his description of the officers as “armed thugs.” App. Vol. II, p. 16. Those characterizations—like “blackmail” in *Bresler* or “traitor” in *Austin*—are the kind of loaded, undefined epithets that no reasonable listener would take as literal, verifiable accusations. *See Bresler*, 398 U.S. at 14; *Austin*, 418 U.S. at 284-86. Nor did the State attempt to prosecute Hendry’s reference to “terrorist organization,” “tax leeches,” or “armed thugs” as such. The charge instead rested on two discrete factual claims: that Linton officers “kicked in” Hendry’s door without legal justification and that they “kidnapped” him. App. Vol. II, p. 16.

[24] Unlike “blackmail” or “traitor,” these were not free-floating epithets. The statements for which Hendry was charged were particularized descriptions of a specific encounter. The statements incorporated a specific timeframe, a specific location, and a specific sequence of events, offered as an example in support of Hendry’s request that the council abolish the department. State’s Ex. 2. The more specific and verifiable a claim, the less plausible it is that a reasonable listener would wave it off as mere exaggeration. *See Milkovich*, 497 U.S. at 21-22; *Davidson*, 716 N.E.2d at 33-34. A reasonable jury could find that the level of particularity of Hendry’s statements signaled a factual assertion rather than hyperbole.

[25] False statements of verifiable fact about an officer’s conduct are precisely what the Statute is designed to address. *See* Ind. Code § 35-44.1-2-3(b), (d)(5) (2023). Hendry’s false statements about kicking in the door and kidnapping were the sort of claims capable of being tested and disproved, which is the hallmark of a factual assertion rather than rhetorical hyperbole. *See Milkovich*, 497 U.S. at 21; *Brewington*, 7 N.E.3d at 961.

[26] The record reinforces that conclusion in three respects. First, Hendry made functionally the same claim about his door to Chief Clark by telephone months before he voiced these statements at the Council meeting. He did so not as a rhetorical flourish before a legislative body but as a private complaint and request for payment that prompted an actual investigation. Chief Clark reviewed body camera footage specifically to determine whether the door had been kicked in. Hendry offers no basis for finding that a claim serious enough to

trigger a factual investigation when made privately transforms into mere hyperbole when repeated publicly in a different forum.

- [27] Second, although the reaction of Hendry’s audience, while relevant, is not the touchstone of the inquiry, this evidence does not clearly favor Hendry. The Linton Mayor testified that he was “shocked” by Hendry’s allegations and understood them as claims of misconduct. Tr. Vol. II, p. 188. The Council member asked Chief Clark to respond to Hendry’s statements. This is hardly the reaction to obvious rhetorical excess that one would expect.
- [28] Third, and most tellingly, Hendry himself never characterized these statements as hyperbole in his motion to dismiss or accompanying brief or during the subsequent hearing. Although he did briefly refer to his comments as hyperbole at trial, Hendry consistently maintained that, at the time he made the statements for which he was later charged, he believed his statements were true and “absolutely genuine.” Tr. Vol. II, pp. 216-17. This stance is difficult to reconcile with his later assertion that the same statements were understood by everyone—including the speaker—as nothing more than “imaginative expression.”
- [29] On this record, a reasonable factfinder could conclude that Hendry’s statements that officers “kicked in” his door and “kidnapped” him implied assertions of fact that were “sufficiently factual to be susceptible of being proved true or false” and, therefore, not hyperbole. *Milkovich*, 497 U.S. at 21. Indeed, the evidence at trial—including officer testimony, body camera footage, and the

arrest and entry warrants—proved those assertions false. The First Amendment’s protection for rhetorical hyperbole accordingly does not shield Hendry’s conviction. The False Informing Statute was not unconstitutionally applied to his speech.

B. Art. 1, § 9

[30] Art. 1, § 9 of the Indiana Constitution provides: “No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.” As with the First Amendment, the protections afforded by Art. 1, § 9 are not absolute. *Hendry v. State*, 272 N.E.3d 239, 254 (Ind. Ct. App. 2025).

[31] But in construing this clause, our Supreme Court has “resist[ed] the siren song of First Amendment jurisprudence” because Art. 1, § 9 “articulates a liberty interest, not an equality interest.” *Whittington v. State*, 669 N.E.2d 1363, 1368 (Ind. 1996). Unlike the First Amendment, Art. 1, § 9 protects against restriction of expressive activity, not discrimination on the basis of content or viewpoint. *Id.* Claims under Art. 1, § 9 are therefore analyzed under a framework built from its own text and drafting history, not imported from federal doctrine. *See id.* at 1367-68.

1. Standard for Analyzing Art. 1, § 9 Claims

[32] Courts analyzing Art. 1, § 9 claims employ a two-step analysis. *Hendry v. State*, 272 N.E.3d 239, 254 (Ind. Ct. App. 2025). “First, a reviewing court must

determine whether state action has restricted a claimant's expressive activity." *Whittington*, 669 N.E.2d at 1367. "Second, if it has, the court must decide whether the restricted activity constituted an 'abuse' of the right to speak." *Id.* "One way a claimant can try to meet this burden is to show that his or her expressive activity was political." *Id.* at 1369.

[33] "Expressive activity is political, for the purposes of the responsibility clause, if its point is to comment on government action, whether applauding an old policy or proposing a new one, or opposing a candidate for office or criticizing the conduct of an official acting under color of law." *Id.* at 1370. Once the claimant proves the expressive activity is "political," the burden shifts to the State to demonstrate that its restriction did not "materially burden" the claimant's political expression. *Id.*

[34] The State may satisfy this burden by showing that the unpunished expression would inflict "'particularized' harm analogous to tortious injury on readily identifiable private interests." *Id.* (citing *Price v. State*, 622 N.E.2d 954, 964 (Ind. 1993)). This elevated protection for political speech is a "core value" of our state Bill of Rights. *Price*, 622 N.E.2d at 963.

2. Application of the Two-Step Inquiry Shows Hendry's Prosecution Did Not Violate Art. 1, § 9

[35] The first step of this inquiry is easily satisfied. The False Informing Statute restricted Hendry's expressive activity in the most direct way possible by making his statements to the Council a crime. *See Whittington*, 669 N.E.2d at

1368 (state action restricts expressive activity when it imposes “a direct and significant burden on a person’s opportunity to speak his or her mind, in whatever manner the speaker deems most appropriate”).

[36] We proceed to the second step and consider whether that restriction was an “abuse” of the right to speak. Hendry’s remarks to the Council were political in the fullest sense *Whittington* contemplates: Hendry was criticizing “the conduct of . . . official[s] acting under color of law”—that is, law enforcement officers armed with a warrant—and asking the entity which paid the officers’ salaries—the Council—to abolish the police department in response. *Id.* at 1370.

[37] Because his speech was political, the burden shifted to the State to show that prosecuting Hendry for two of his statements did not materially burden that political expression. *Id.* The State accomplished this by showing that, left unpunished, those statements would have inflicted “particularized harm analogous to tortious injury on readily identifiable private interests.” *Id.*

[38] Hendry’s statements that Linton officers “kicked in” his door without legal justification and later returned to “kidnap[]” him were directed at identifiable individuals—the specific officers who executed Hendry’s July 2022 arrest. State’s Ex. 2, 0:25-0:40, 1:00-1:31. Through those statements, Hendry knowingly and falsely accused the officers of discrete, unlawful conduct in the performance of their duties. *See* Ind. Code § 35-43-2-1.5 (“A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Level 6 felony”); Ind. Code § 35-42-3-2(a) (“A

person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another commits kidnapping,” a Level 6 felony absent special circumstances).

[39] Falsely alleging criminal activity by a person is harm “analogous to tortious injury” and in this instance could qualify as defamation if Hendry acted with malice. *See Whittington*, 669 N.E.2d at 1370; *Price*, 622 N.E.2d at 964; *Henrichs v. Pivarnik*, 588 N.E.2d 537, 542 (Ind. Ct. App. 1992) (ruling that a statement is defamatory per se when it imputes criminal conduct and that such a statement may be actionable when directed to a public official if the statements were made with knowledge that the defamatory statements were false or with reckless disregard as to whether they were false).

[40] The State chose to prosecute Hendry only for his statements that fell into this category of “abuse” under Art. 1, § 9. The prosecution did not reach further. Subsection (d)(5) of the False Informing Statute requires a knowing falsehood alleging a violation of a specific departmental rule or procedure. Ind. Code § 35-44.1-2-3(d)(5) (2023). This subsection accordingly could not have been, and was not, used to punish Hendry’s more generalized political rhetoric—his description of the department as “poison” and a “terrorist organization” composed of “tax leeches” who terrorize people who are undesirable to the officers. State’s Ex. 2, 1:00-1:31, 2:30-2:40, 3:00-3:10, 4:30-4:40. That particular rhetoric named no specific officer and alleged no discrete, verifiable act of misconduct; therefore, it seemingly could not inflict the type of “particularized

harm analogous to tortious injury on readily identifiable private interests.” *See Whittington*, 669 N.E.2d at 1370.

- [41] Because the State showed that Hendry’s prosecution did not materially burden his political expression, the False Informing Statute was not unconstitutionally applied to him under Art. 1, § 9.

IV. The False Informing Statute Is Not Unconstitutionally Vague as Applied to Hendry

- [42] “Due process principles advise that a penal statute is void for vagueness if it does not clearly define its prohibitions.” *Brown v. State*, 868 N.E.2d 464, 467 (Ind. 2007). “To that end, there are two independent causes to invalidate a statute on vagueness grounds: (1) the statute does not provide notice enabling ordinary people to understand the conduct that it prohibits; and (2) the statute potentially authorizes or encourages arbitrary or discriminatory enforcement.” *Tiplick v. State*, 43 N.E.3d 1259, 1262 (Ind. 2015). Hendry claims that the False Informing Statute is unconstitutionally vague for both reasons.
- [43] Because the False Informing Statute touches expression, this standard is applied with particular care, mindful of the chilling effect vague penal statutes can have on speech. *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997); *Helton v. State*, 624 N.E.2d 499, 506 (Ind. 1993) (“Statutes which threaten to inhibit the exercise of constitutional rights or which impose criminal penalties are subjected to greater scrutiny and less vagueness is tolerated in them than in other types of laws”). Even so, Hendry bears a heavy burden because he must overcome the

presumption of constitutionality that envelops the Statute. *See Gates v. State*, 192 N.E.3d 222, 225 (Ind. Ct. App. 2022).

A. The False Informing Statute Provided Adequate Notice to Hendry of the Conduct It Prohibits

[44] “A statute is not void for vagueness ‘if individuals of ordinary intelligence would comprehend it adequately to inform them of the proscribed conduct.’” *Id.* (citing *State v. Lombardo*, 738 N.E.2d 653, 656 (Ind. 2000)). Because a vagueness challenge requires focus on the precise circumstances of the case giving rise to the challenge, “the defendant does not meet his burden of showing unconstitutional vagueness by devising hypothetical situations which might demonstrate vagueness.” *Id.*

[45] Subsection (d)(5) of the False Informing Statute sets out discrete, ascertainable elements: a person (1) makes a complaint against a law enforcement officer (2) to the state or municipality that employs the officer, (3) alleging that the officer engaged in misconduct while performing the officer’s duties, (4) knowing the complaint to be false. Ind. Code § 35-44.1-2-3(d)(5) (2023). The Statute defines “misconduct” as “a violation of a departmental rule or procedure of a law enforcement agency.” Ind. Code § 35-44.1-2-3(b) (2023).

[46] This is not the kind of open-ended standard that leaves citizens guessing at the line between permitted and prohibited conduct. An ordinary person can understand that falsely and knowingly telling a city council that the city’s officers broke down a citizen’s door without cause and forcibly seized and

confined the citizen without justification for over a month is a “complaint” alleging “misconduct” within the plain meaning of those terms. *See Brown*, 868 N.E.2d at 467 (statutory language must “convey sufficiently definite warning as to the proscribed conduct when measured by common understanding”).

[47] The False Informing Statute’s failure to separately enumerate every degree of falsity or every register of political rhetoric that might approach its boundary does not render it vague, contrary to Hendry’s claim. A statute “need only inform the individual of the generally proscribed conduct” and need not catalog every permutation of prohibited speech. *State v. Lombardo*, 738 N.E.2d 653, 656 (Ind. 2000) (quoting *State v. Downey*, 476 N.E.2d 121, 122 (Ind. 1985)).

[48] Hendry’s argument that the statute failed to warn him where “trivial” hyperbole ends and prosecutable falsity begins proves less than he suggests. The line that he suggests is lacking is supplied by the False Informing Statute’s own terms. Statements that do not purport to describe a violation of a specific departmental rule or procedure—his “terrorist organization” and “tax leeches” rhetoric, for instance—fall outside the statute’s definition of misconduct altogether and were never charged here. *See Downey*, 476 N.E.2d at 123 (statute must draw a line “between trivial and substantial things”).

[49] The State’s decision not to charge every intemperate remark in Hendry’s speech is not evidence that the statute lacks a discernible boundary. To the contrary, it is evidence that the boundary the statute draws—between generalized criticism

or opinion and specific, knowingly false factual accusations of rule violations—was correctly applied.

B. The False Informing Statute Does Not Invite Arbitrary or Discriminatory Enforcement

[50] Hendry also argues that the False Informing Statute’s rare use, and his own prosecution, show that the Statute hands officials a prohibited “standardless sweep” to pursue disfavored speakers. *See Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (quoting *Smith v. Goguen*, 415 U.S. 566, 575 (1974)). We disagree. The statute confines enforcement discretion through its elements. Liability attaches only when a complaint: (1) is made to the officer’s public employer; (2) alleges a violation of a specific departmental rule or procedure; and (3) is knowingly false. Ind. Code § 35-44.1-2-3(d)(5) (2023).

[51] These requirements narrow the universe of prosecutable speech considerably and leave little room for an officer or prosecutor to arrest or prosecute a defendant’s generalized criticism, opinion, or hyperbole based on personal animus toward the defendant. That the statute has rarely, if ever, been the basis for a published appellate decision is at least as consistent with prosecutorial restraint in situations requiring careful, case-specific constitutional analysis as it is with arbitrary or selective enforcement.

[52] This result is not changed by Chief Clark’s probable cause affidavit noting that law enforcement officers were especially attentive to Hendry because of his history of confrontations as a “[F]irst [A]mendment auditor.” App. Vol. II, p.

18. Such evidence does not establish that the statute itself is the vehicle for viewpoint-based harassment. The vagueness inquiry considers whether the statute supplies “minimal guidelines to govern law enforcement,” *Kolender*, 461 U.S. at 358, not on whether officers were subjectively more attuned to a particular defendant’s public conduct.

[53] For these reasons, the False Informing Statute’s elements meaningfully constrain the discretion of those who enforce it. Hendry’s own prosecution followed directly from conduct falling squarely within the statutory elements of false informing: two specific, knowingly false accusations that the officers who arrested him violated departmental rules. Accordingly, the Statute is not void for vagueness as applied to him.

Conclusion

[54] Hendry’s statements that Linton police officers “kicked in” his door and “kidnapped” him were not rhetorical hyperbole beyond the reach of the False Informing Statute. The record supports a reasonable factfinder’s conclusion that these were specific, verifiable factual assertions that Hendry knowingly asserted as true and that the State proved false. The False Informing Statute is also not unconstitutionally vague as applied to Hendry: its elements gave him fair notice that knowingly false, specific accusations of rule violations made to the agency that paid the officers’ salaries were prohibited. In addition, those same elements sufficiently constrain enforcement discretion to guard against arbitrary or discriminatory application of the Statute. The trial court did not abuse its

discretion in denying Hendry's motion to dismiss. As Hendry raises no other issues on appeal that were not waived, we affirm the trial court's judgment.

Bailey, J., and Brown, J., concur.

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