IN THE SUPREME COURT OF THE STATE OF NEVADA

STACY R. STINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58984

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of intimidating a witness. Fifth Judicial District Court, Nye County; Jack B. Ames, Sr. Judge.

First, appellant Stacy R. Stinson contends that insufficient evidence was adduced to establish that the charged offense occurred in Pahrump Township, Nye County, Nevada, as alleged in the amended information, and therefore, "the State lacked jurisdiction to prosecute." We disagree. The victim testified that Stinson, her ex-husband residing in Idaho, sent her text messages threatening, among other things, to deny her visitation rights with their children when he returned to Nye County if she refused to sign and "file a not prosecute on his pending case." The victim testified that she was living in Pahrump at the time she received the threatening text messages. The victim received the text messages on, at least, April 8th and April 13th, 2010, and reported them to the Nye County Sheriff's Office on April 14th. Deputy James Erickson testified that the victim showed him the text messages and provided him with a written statement detailing the threats.

"It is well settled that the allegation of venue in a criminal case is a material allegation and must be proved." People v. Gleason, 1 Nev. 173, 178 (1865). Venue may be established by circumstantial evidence. See Dixon v. State, 83 Nev. 120, 122, 424 P.2d 100, 101 (1967). Moreover, venue need not be shown beyond a reasonable doubt. See James v. State, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989). Here, the evidence as a whole was sufficient to conclude that the charged offense of intimidating a witness occurred in Pahrump Township, Nye County, as alleged in the amended information, see Dixon, 83 Nev. at 121-22, 424 P.2d at 100-01, and therefore, Stinson's contention is without merit.

Second, Stinson contends that the district court erred by admitting photographs of the text messages over his objection that they were not properly authenticated and lacked foundation. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Here, the district court abused its discretion because the photographs were not properly authenticated prior to their admission. See NRS 52.015(1); see also Commonwealth v. Koch, 39 A.3d 996, 1005 (Pa. Super. Ct. 2011) ("[C]ellular telephones are not always exclusively used by the person to whom the phone number is assigned."). Nevertheless, the district court's error was harmless and the text messages were admissible because they "contained factual information or references unique to the parties involved," Koch, 39 A.3d at 1004; see also Rodriguez v. State, 128 Nev. ___, ___, 273 P.3d 845, 849 (2012) (citing approvingly to Koch), thus

providing sufficient evidence to establish the identity of the author and support their authenticity, see State v. Thompson, 777 N.W.2d 617, 625-26 (N.D. 2010). See, e.g., Zana v. State, 125 Nev. 541, 545 n.3, 216 P.3d 244, 247 n.3 (2009) (reviewing the erroneous admission of evidence for harmless error). Therefore, we conclude that Stinson is not entitled to relief on this ground.

Third, Stinson contends that the district court erred by allowing the State to amend the criminal information after the defense rested. We disagree. The district court found that the amended information conformed to the evidence presented at trial. Additionally, the amended information did not charge Stinson with an additional or different offense and he fails to demonstrate that his substantial rights were prejudiced. See NRS 173.095(1); Viray v. State, 121 Nev. 159, 162-63, 111 P.3d 1079, 1082 (2005) (prejudice depends on whether "the defendant had notice of the State's theory of prosecution"). Therefore, we conclude that the district court did not abuse its discretion by granting the State's motion for leave to amend the information.

Fourth, Stinson contends that the district court erred by precluding any mention of the fact that he was acquitted in the prior criminal case. The district court made the following ruling prior to the start of trial: "What I'm going to order is that you can refer to a prior case entitled State versus Stinson, which is Case No. 6315. . . . And I think that all we need to know is that there was a prior case and it was 6315 and that these allegations arose from alleged threats—as a witness in that

case." We conclude that whether Stinson was convicted or acquitted in the underlying case was not relevant to the charge of intimidating a witness and that the district court did not abuse its discretion. See NRS 48.015 (evidence is relevant when it has a "tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence"); see also Mclellan, 124 Nev. at 267, 182 P.3d at 109. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Saitta

_____, J.
Pickering

_____, J.
Hardesty

cc: Chief Judge, The Fifth Judicial District Court
Hon. Jack B. Ames, Senior Judge
Christopher R. Arabia
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk