IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN BRADLEY EISENMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86439-COA

ORDER OF AFFIRMANCE

Shawn Bradley Eisenman appeals from a judgment of conviction, entered pursuant to a jury verdict, of extortion. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

First, Eisenman argues that the State presented insufficient evidence to demonstrate he committed extortion.[1] 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). Circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 807 (2016).

At trial, the State presented evidence that someone threw a rock at the window of the home of the victim, LaDonna. Attached to the rock was a note accusing her of stealing a trailer from "Jadestone" on April

[1]Eisenman does not argue that the State presented insufficient evidence that an extortion occurred, only that he did not commit the crime.

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22, 2016. The note demanded payment of $7000 for "my jailtime and loss of my trailer," and it threatened that she would be shot if she did not leave the money in a trash can on the curb by 2:00 a.m.

The State also presented evidence that it was Eisenman who committed the extortion. J. Reeves testified that several weeks before the note was thrown, LaDonna and her partner, Jack, were at a property on Jadestone Ave. when Reeves offered to sell Jack some trailers that were on the property. Reeves testified that he was not sure when Jack removed the trailers but they were gone shortly after he made the deal. The State presented evidence that on April 22, 2016, after the trailers had been removed, and after Eisenman was released from jail on unrelated issues, Eisenman went to the Jadestone property. P. O'Dell testified that she and LaDonna were cleaning out a different trailer when Eisenman spoke with LaDonna and asked her about the other trailers that had been on the property. O'Dell testified LaDonna informed him that Reeves had sold the trailers to her and Jack.

Reeves testified that Eisenman then confronted him about the trailers, and in the course of several conversations over the next few weeks, Eisenman asked Reeves where LaDonna lived, and Reeves showed him. Reeves also testified that Eisenman admitted to him that he threw a rock at LaDonna's home. B. Wiggens testified that he was at LaDonna's home on May 25, 2016, when he heard a thud and went outside to see a man yelling at LaDonna's home. Wiggins testified that the man told Wiggins that he had thrown a rock at the window and left a note. Wiggens testified the man then got into the passenger side of a dark colored car and drove off. A police detective testified that Eisenman's girlfriend drove a black Nissan Altima. And O'Dell testified she saw Eisenman driving a black Nissan

when he spoke to LaDonna at the trailer on the Jadestone property. Reeves also testified that Eisenman drove him to a pawn shop in a newer, black, four-door car. The State presented the content of a text message that was sent to Reeves from Eisenman's girlfriend's phone that referenced $7000 and expecting to find it in a trash can, as well as Reeves' response that there was no money found in the trash can. Reeves testified Eisenman told him on May 25 or 26, 2016, to look for the money under a trash can.

Given this evidence, we conclude that the State presented sufficient circumstantial evidence such that *any* rational trier of fact could have found that Eisenman committed the extortion. Eisenman argues that the jury found Reeves was not credible because it found Eisenman not guilty of extorting Reeves. However, it was the jury's province to pass upon the credibility of Reeves' testimony at trial. *See Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975) ("[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness."). Further, the jury was instructed it could "disregard the entire testimony of [the] witness [it did not believe] or any portion of his testimony which is not pro[ved] by other evidence." And jurors are presumed to follow the jury instructions given. *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 776, 783 (2006). Thus, the jury could have found Reeves incredible regarding the extortion against him but found him credible regarding the extortion of LaDonna. Accordingly, we conclude that Eisenman was not entitled to relief on this claim.

Second, Eisenman argues the district court abused its discretion at sentencing by imposing a sentence of 10 years to life pursuant to the large habitual criminal statute and ordering the sentence to be served consecutively to his sentence in a different case. Eisenman claims the

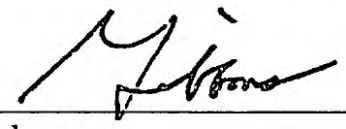
district court sentenced him more harshly because he had been found not guilty of other charges at trial. Further, Eisenman argues that his sentence does not serve the purposes of the habitual criminal statute or the interests of justice because the sentence was set to be served consecutively to a sentence of life without the possibility of parole and because it was excessive.

The district court has wide discretion in its sentencing decision. It is within the district court's discretion to impose consecutive sentences. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015); *see also Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . ."). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

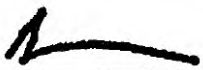
The sentence imposed in this case is within the parameters provided by the relevant statute. *See* 2009 Nev. Stat., ch. 156, § 1, at 567. And Eisenman does not demonstrate that the district court relied on impalpable or highly suspect evidence. Further, the district court did not use the fact that Eisenman had been acquitted of other criminal charges to increase his sentence; rather, the district court considered the acquittal as mitigating evidence. Finally, considering Eisenman's criminal history and the facts of this case, we cannot conclude that the district court abused its discretion in imposing the sentence to run consecutively to the sentence in

his other case. Therefore, we conclude Eisenman is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk