IN THE SUPREME COURT OF THE STATE OF NEVADA

LEMEL HANKSTON A/K/A LEMEL DETANNER HANKSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52524

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Sufficiency of the evidence

Appellant Lemel Hankston contends that insufficient evidence supports his conviction because the State failed to prove that he intended to kill the victim. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979).

At trial the State adduced evidence that Hankston had a brief confrontation with Kevin W., who was associated with a rival gang. Hankston followed Kevin and his friend to a local store. After separately returning from the store, Hankston and Kevin again exchanged words. Kevin left the area, but returned shortly thereafter with a group of friends

and relatives. Hankston approached Kevin's group, once more exchanged words with Kevin, then said, "I'm going to solve this," reached into his pants, pulled out a gun, and fired four shots in rapid succession at Kevin's group. One of the bullets hit Kevin's friend Andre in the abdomen, piercing his liver and lung. Andre was hospitalized for fifteen days, and required two surgeries to repair his injuries.

Based on this evidence, a rational juror could reasonably infer that Hankston possessed the deliberate intention to unlawfully kill Kevin, and committed an act that tended but failed to do so. See NRS 193.200 (intent "is manifested by the circumstances connected with the perpetration of the offense"); NRS 193.330(1) (defining attempt); NRS 200.010(1) (defining murder); NRS 200.020 (defining express malice); Sharma v. State, 118 Nev. 648, 656, 56 P.3d 868, 872-73 (2002). Further, the doctrine of transferred intent allows a conviction for attempted murder "where an unintended victim is harmed as a result of the specific intent to harm an intended victim." Ochoa v. State, 115 Nev. 194, 200, 981 P.2d 1201, 1205 (1999). It is for the jury to determine the weight and credibility to give to conflicting testimony, and the jury's verdict will not be disturbed on appeal, where, as here, substantial evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Relying on Graves v. State, 84 Nev. 262, 266, 439 P.2d 476, 478 (1968), Hankston also contends that insufficient evidence supports his conviction because no evidence was adduced establishing that the injuries inflicted were life threatening. This contention lacks merit because since Graves this court has rejected the notion that there are degrees of attempted murder, and concluded that the only element the State must prove is a specific intent to kill. Keys v. State, 104 Nev. 736, 740-41, 766

P.2d 270, 273 (1988); see, e.g., Ewell v. State, 105 Nev. 897, 785 P.2d 1028 (1989) (affirming a conviction for attempted murder where the victims were not physically injured).

Prosecutorial misconduct

Hankston next contends that the State engaged in prosecutorial misconduct by encouraging Andre to give perjured testimony. We disagree. First, the record does not support the assertion that Andre committed perjury. Although he originally told police he didn't know who shot him, Andre testified consistently at the grand jury proceedings and at trial that Hankston was the person who shot him. See NRS 199.145 (defining perjury). Second, the fact that Andre received compensation from Victims of Crime does not suggest that the prosecution compensated him for his testimony. Third, the record does not indicate that the assistance received was contingent upon Andre testifying that Hankston was the person who shot him. Finally, the fact that Andre received compensation from Victims of Crime was made known to the jury, and Hankston was allowed the opportunity to, and did, cross-examine Andre about the matter. Cf. Sheriff v. Acuna, 107 Nev. 664, 669, 819 P.2d 197, 200 (1991) (the terms of a bargain between the State and a witness in exchange for testimony must be disclosed to the jury and the defendant must be allowed to cross-examine the witness concerning those terms). Thus, we conclude that this contention is without merit.

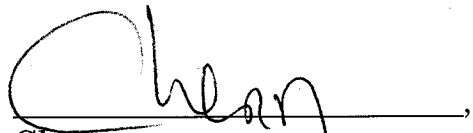
Charges brought

To the extent Hankston contends that he was inappropriately charged in district court rather than juvenile court, we disagree. It was within the prosecution's discretion to charge Hankston with attempted murder, see Stromberg v. Dist. Ct., 125 Nev. ___, ___, 200 P.3d 509, 512

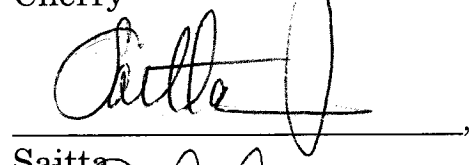
(2009) (so long as probable cause is established, the decision of whether to prosecute an offender, and for what crimes, rests in the discretion of the prosecutor) (citing Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978)), and the juvenile court does not have jurisdiction over a juvenile charged with attempted murder, NRS 62B.330(3)(a).

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry



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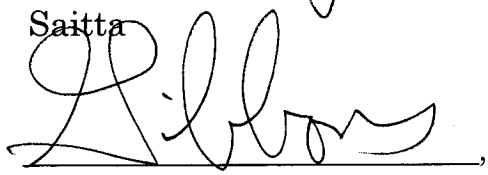

_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 15, District Judge
Kristina M. Wildeveld
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk