IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN SCOTT CLAUSEN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 72411

FILED

MAY 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Scott Clausen appeals from a judgment of conviction entered pursuant to a jury verdict of robbery with the use of a deadly weapon, attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and felon in possession of a firearm. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

First, Clausen argues there was insufficient evidence to support the jury's finding of guilt for attempted murder. Clausen asserts the evidence did not establish he acted with express malice. Our review of the record on appeal, however, reveals sufficient evidence 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); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The victim in this matter testified she walked toward her vehicle while carrying bank bags containing a large amount of money. As she proceeded to her vehicle, she noticed a man sitting near the parking area. When she approached her vehicle, she turned and discovered the man was close behind her. The man raised the firearm toward her and

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demanded she give him the money. The next thing she remembered was awaking on the ground with a gunshot wound to her head. She proceeded to go inside of a store and ask someone to call 911 because she had been shot. The victim testified at trial that Clausen was the man who shot her.

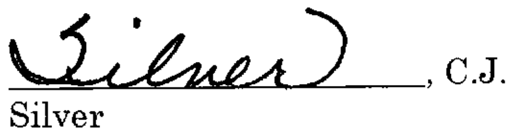
Based on this testimony, the jury would reasonably find Clausen committed attempted murder. *See* NRS 193.330(1); NRS 200.010; NRS 200.020(2). Because "[i]ntent need not be proven by direct evidence," it was reasonable for the jury to infer from Clausen's conduct and the circumstantial evidence regarding the victim's gunshot wound that Clausen acted with a deliberate intent to kill the victim. *Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001), *abrogated on other grounds by State v. Eighth Judicial Dist. Court*, 134 Nev. ___, ___, 412 P.3d 18, 22 (2018); *see also Keys v. State*, 104 Nev. 736, 740, 766 P.2d 270, 272 (1988) ("Proving express malice means proving a deliberate intention to kill."). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Therefore, we conclude Clausen's argument lacks merit.

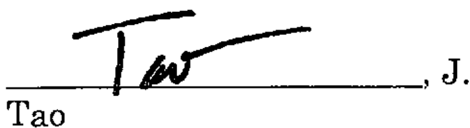
Second, Clausen argues the district court abused its discretion by sentencing him under the habitual criminal enhancement. Clausen asserts his prior convictions were for non-violent offenses and many of his convictions were remote. We review a district court's sentencing decision for an abuse of discretion, *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009), and the district court has broad discretion concerning adjudication of a defendant as a habitual criminal, *see* NRS 207.010(2); *O'Neill v. State*, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). We will not interfere

with the sentence imposed by the district court "[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).

The record reveals the district court understood its sentencing authority and properly exercised its discretion to adjudicate Clausen a habitual criminal, concluding Clausen was "the epitome of the defendant that warrants habitual criminal adjudication." *See Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000); *see also Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions."). Moreover, Clausen's sentence of life without the possibility of parole falls within the parameters of the relevant statute, *see* NRS 207.010(1)(b)(1), and Clausen makes no argument his sentence was based upon impalpable and highly suspect evidence. We conclude the district court did not abuse its discretion and Clausen's argument lacks merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_______________, C.J.
Silver


_______________, J.
Tao

_______________, J.
Gibbons

cc: Hon. Lynne K. Simons, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk