

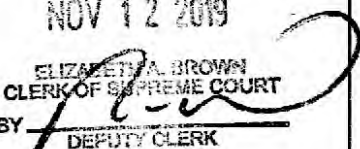
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY ANGEL RIVERA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76731-COA

**FILED**

NOV 12 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Anthony Angel Rivera appeals from a judgment of conviction entered pursuant to a jury verdict of assault with a deadly weapon and battery by strangulation. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

*Sufficiency of the evidence*

Rivera claims insufficient evidence supports his convictions because the State failed to prove that his battery of victim Martin Avalos-Pineda resulted in substantial bodily harm and he placed victim Paola Itzel-Valdez in apprehension of immediate bodily harm while holding a pneumatic rifle. 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).

The jury heard testimony that Rivera went to Avalos-Pineda’s automobile shop and became angry when he learned his limousine had not been repaired. He went into Avalos-Pineda’s office, struck Avalos-Pineda in the head, and put his arm around Avalos-Pineda’s neck. Avalos-Pineda

could not breathe, he had trouble seeing, and he passed out. Rivera took the pneumatic rifle Avalos-Pineda kept in his office.

Itzel-Valdez saw Rivera go into Avalos-Pineda's automobile shop and went into the shop shortly afterwards. She saw Rivera striking Avalos-Pineda with one hand and holding his neck with the other hand. She believed Avalos-Pineda was injured because he was bleeding from his eyes. And she asked what was going on. Rivera stopped hitting Avalos-Pineda, grabbed the pneumatic rifle, and exited Avalos-Pineda's office. He held the rifle with the muzzle pointed toward the ceiling and told Itzel-Valdez that "Nothing happened here. You didn't see anything." Itzel-Valdez felt she had been threatened.

We conclude a rational juror could reasonably conclude from this evidence that Rivera impeded Avalos-Pineda's breathing in a manner that created a *risk* of death or substantial bodily harm by choking him until he passed out, *see* NRS 200.481(1)(i), and Rivera intentionally placed Itzel-Valdez in apprehension of immediate bodily harm by telling her she did not see anything while holding a deadly weapon, *see* NRS 200.471(1)(a)(2). 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, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

#### *Motion for mistrial*

Rivera claims the district court abused its discretion by denying his motion for a mistrial because the State committed misconduct by disparaging the defense during its rebuttal. "Denial of a motion for mistrial is within the district court's sound discretion, and [the reviewing] court will

not overturn a denial absent a clear showing of abuse.” *Randolph v. State*, 1717 Nev. 970, 981, 36 P.3d 424, 431 (2001).

Rivera moved for a mistrial after the State’s rebuttal. He argued the State had committed misconduct by suggesting his cross-examination of Itzel-Valdez was either racist or sexist. The district court found the issue of Itzel-Valdez’ ability to comprehend English was crucial to her credibility, a significant part of Rivera’s cross-examination focused on this issue, and the State’s rebuttal also responded to this issue. The district court further found the State’s rebuttal did not, in any way, assert that Rivera either attacked or discriminated against Itzel-Valdez based on her ethnicity.

We conclude the record supports the district court’s findings, the record does not demonstrate the State’s conduct was improper, *see Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (applying a two-step analysis to claims of misconduct), and the district court did not abuse its discretion by denying Rivera’s motion for a mistrial.

### *Sentencing*

Rivera claims the district court abused its discretion at sentencing by misapprehending the facts of the case; failing to consider that he was a hardworking businessman whose many employees relied upon him for employment; failing to consider the support he had from his family, friends, and members of the community; and relying upon his criminal history in making its sentencing decision. He also appears to argue that he should have received probation.

We review a district court’s sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). 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 district court's decision to grant probation is discretionary. NRS 176A.100(1)(c).

The record demonstrates the district court's sentencing decision was not based upon impalpable or highly suspect evidence. The district court declined to follow the State's and the Division of Parole and Probation's habitual criminal adjudication and sentencing recommendations. And the district court sentenced Rivera to prison terms of 24 to 60 months for the assault-with-a-deadly weapon count and 24 to 60 months for the battery-by-strangulation count. Rivera's sentences fall within the parameters of the relevant statutes, *see* NRS 193.130(2)(c); NRS 200.471(2)(b); NRS 200.481(2)(b), and we conclude the district court did not abuse its discretion at sentencing.

*Cumulative error*

Rivera claims cumulative error deprived him of a fair trial. However, we conclude Rivera failed to demonstrate any error, so there is nothing to cumulate.

Having concluded Rivera is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Ronald J. Israel, District Judge  
Law Office of Benjamin Nadig, Chtd.  
The Law Office of Kristina Wildeveld & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk