

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WALTER VAN JORDAN, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80490-COA

FILED

JUL 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Walter Van Jordan, II, appeals from a judgment of conviction, pursuant to a jury verdict, of discharging a firearm from or within a structure or vehicle within a prohibited area and resisting a public officer with use of a firearm. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Jordan lived with Christina Dixon in her trailer.¹ One afternoon, Dixon returned home and Jordan allegedly pointed one of their two guns at her and began threatening her. As soon as Jordan turned his head, Dixon grabbed the gun Jordan was holding and ran across the street to her neighbor's house, where her neighbor contacted the police. Dixon said she heard three shots fired from her home and the neighbor heard five.

After the neighbor called the police, the police arrived and surrounded the trailer. The police proceeded as if this were a barricade situation because Jordan refused to leave the trailer, had a firearm that he pointed at the front door of the trailer, and there were reports of shots fired from inside the trailer. Following barricade procedures, the police instructed Jordan to exit the trailer using a loud speaker. Jordan did not exit the trailer and yelled that he was going to shoot the police in the head. He also told the police that the door was jammed. After approximately five hours of this

¹We do not recount the facts except as necessary for our disposition.

standoff, police officers pried the front door open and found Jordan holding an axe. Jordan complied with police officers' commands to drop the axe, but they had to forcefully remove him from the home.

Following his arrest, Jordan admitted that he fired at least one shot and that the shot went through the front door's lock. He also conceded that more than one round was fired, but he did not admit that he fired the rounds. A detective with the Elko Police Department confirmed a bullet had gone through the door's lock, making the door inoperable. The detective also located three other bullets that went through the front door and struck Dixon's car.

The State charged Jordan with two counts of assault with a deadly weapon, one count of discharging a firearm from a structure or vehicle in a prohibited area, and one count of resisting a public officer with use of a firearm. The jury found Jordan not guilty of the assault charges but guilty of discharging a firearm in a prohibited area and resisting a public officer with use of a firearm.

At the sentencing hearing, the district court reviewed a victim-impact statement written by Dixon. Jordan objected, arguing that Dixon was not a victim because the jury acquitted him of the two assault counts. The district court acknowledged Jordan's objection but determined that the statement did not carry a lot of weight because Dixon already testified to all the information contained within the statement. Without mentioning Dixon or her statement, the district court sentenced Jordan concurrently to 28 to 72 months in prison for discharging a firearm in a prohibited area and 12 to 36 months for resisting a public officer with use of a firearm.

Sufficient evidence supports the judgment of conviction

On appeal, Jordan argues that there is insufficient evidence to support the jury's verdict for discharging a firearm in a prohibited area and

resisting a public officer with a firearm. Specifically, Jordan asserts that there is insufficient evidence to support the jury's conclusion that he acted with malice or wanton conduct when he discharged his firearm in a prohibited area and that he used a firearm to resist the police. For the reasons stated below, we disagree with Jordan and affirm the judgment of conviction.

When reviewing the sufficiency of the evidence supporting a criminal conviction, we consider "whether, after viewing the evidence in the light most favorable to the prosecution, 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); see also *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). 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 the verdict. *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Discharging a firearm

The crime of discharging a firearm within or from a structure or vehicle requires a person from or in a structure or a vehicle to "maliciously or wantonly discharge[] or maliciously or wantonly cause[] to be discharged a firearm within or from the structure or vehicle." NRS 202.287. Malice can be inferred from "an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty." NRS 193.0175. "Wanton" is defined as "[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences." *Wanton, Black's Law Dictionary* (10th ed. 2014).

The jury had sufficient evidence to determine that Jordan acted with malice or wanton conduct when he discharged his firearm. Dixon

testified that Jordan threatened her with the firearm and Jordan admitted to having a firearm when Dixon was in the trailer and discharging it. While he admitted to firing one shot accidentally, he conceded, and the evidence shows, that more than one shot was fired from his firearm. Therefore, it was reasonable for the jury to conclude under NRS 202.287 and NRS 193.0175 that he wrongfully discharged his firearm without excuse or cause.

Resisting arrest

The crime of resisting a public officer with use of a firearm involves using a firearm to “willfully resist[], delay[] or obstruct[] a public officer in discharging or attempting to discharge any legal duty of his or her office.” NRS 199.280(1).

The jury had sufficient evidence to determine that Jordan used a gun to resist arrest, as the gun’s presence—combined with his threats to shoot the police officers—delayed the police from executing their duties. Further, Jordan had a gun inside the home that he was holding when officers directed him to exit the home, threatened to shoot officers in the head, and pointed his gun at the front door. Despite Jordan not pointing or firing the gun at any police officers, the police did not enter the trailer because of reports of gunfire and because they saw him with a firearm. Therefore, pursuant to NRS 199.280(1), it is reasonable that the jury concluded Jordan used a gun to delay or obstruct the police officers’ ability to discharge their duty to arrest him.

The district court did not abuse its discretion by considering Dixon’s victim-impact statement

Jordan also argues that the district court erred when it reviewed Dixon’s victim-impact statement because the jury acquitted him of the assault charges against her.

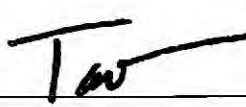
We review a district court’s sentencing decisions for an abuse of discretion. *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We


will not interfere with a sentence 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).


Here, we conclude that the district court did not abuse its discretion by reviewing Dixon’s victim-impact letter, which was attached to the presentence investigation report by the Division of Parole and Probation, because she was the victim of Jordan unlawfully discharging the firearm in her home and damaging her property. *See* NRS 176.015(3) and (4)(a). Furthermore, even if she was not a victim, the district court stated at sentencing that the letter did not provide new information that it had not heard from Dixon at trial, and that her letter did not carry much weight. Indeed, the district court did not mention the letter when it announced Jordan’s sentence nor when it detailed its reasons for the sentence. Therefore, Jordan has not demonstrated that the alleged error affected his substantial rights. *See* NRS 178.598.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Fourth Judicial District Court Department 1
Manuele Law LLC
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk