IN THE SUPREME COURT OF THE STATE OF NEVADA

MORRIS WADE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39429

FILED

NOV 25 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of coercion with the use of a deadly weapon (count I) and solicitation to commit murder (count II). The district court sentenced appellant Morris Wade to serve two consecutive prison terms of 24 to 72 months for count I and a consecutive prison term of 72 to 180 months for count II.

Wade first contends that his conviction for coercion with the use of a deadly weapon should be reversed because "the jury found the specific act necessary for the use of a deadly weapon enhancement did not happen." In particular, Wade notes that the jury acquitted him of aiming a firearm at a human being and assault with a deadly weapon: two offenses involving the firearm that was the basis for the deadly weapon enhancement.

To the extent that Wade argues that the evidence presented at trial was insufficient to support the jury's finding that Wade committed

the crime of coercion with a deadly weapon, we reject that contention.[1] Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[2]

In particular, we note that Wade's ex-wife, Janice Wade, testified at trial that, on January 4, 1996, Wade pointed a shotgun at her and angrily told her that if she did not go the bank and bring him $5,000.00 he was going to "put that gun up my ass and see how far my brains would spatter all over my white walls, and then he would go into the kitchen and eat a spaghetti dinner, [and] it wouldn't bother him at all."[3] The shotgun Wade allegedly used and audiotapes of Wade threatening Janice, which were recorded on January 5, 1996, were also admitted at trial. Although Wade testified that he did not coerce Janice,

---

[1]We note that there was also sufficient evidence presented in support of the solicitation to commit murder charge. The evidence presented included testimony from a jailhouse informant and an undercover police detective that, while in prison on the coercion charge, Wade offered money to have his ex-wife Janice Wade killed. Additionally, Wade's handwritten notes providing information about Janice were admitted into evidence, as well as records showing the accumulation of money in Wade's prison bank account to pay for the murder.

[2]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

[3]At the time that Wade made the threat, he was on house arrest and could not go beyond 100 feet of his residence. Janice testified that Wade told her he was going to use the $5,000.00 to hire a motorcycle gang to kill his neighbors "and their baby and whoever else happened to be in the house" so that they couldn't testify against him in a pending criminal matter.

the jury could reasonably infer from the evidence presented that Wade was guilty of the crime of coercion with a deadly weapon.[4] 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.[5]

To the extent that Wade argues that the jury verdicts are inconsistent, we also reject that contention. Assuming that the jury verdicts are inconsistent with respect to the use of the firearm, this court has held that inconsistent verdicts are permitted in Nevada.[6] This court's view is consistent with federal law.[7] Accordingly, we conclude that reversal of Wade's conviction is not warranted based on an alleged inconsistency in the jury's verdict.

Wade next contends that the indictment was insufficient to put Wade on notice that he could be found guilty of the crime of coercion

---

[4]See NRS 207.190(1)(c) ("It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to . . . [a]ttempt to intimidate the person by threats or force."); NRS 193.165(1).

[5]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

[6]See, e.g., Greene v. State, 113 Nev. 157, 931 P.2d 54 (1997); Bollinger v. State, 111 Nev. 1110, 901 P.2d 671 (1995); Brinkman v. State, 95 Nev. 220, 592 P.2d 163 (1979).

[7]See United States v. Powell, 469 U.S. 57, 69 (1984) (holding that inconsistent verdicts may be the result of mistake, compromise, or lenity and that reversal is not required simply because the verdicts are inconsistent).

with the use of a deadly weapon for merely showing the victim a concealed shotgun. Wade contends that he was prejudiced by the insufficient indictment because if he had been given notice that the State was pursuing a theory that he merely showed Janice the shotgun, rather than pointed it at her, he would have put on a defense consistent with Moore v. State.[8] We conclude the Wade's contention lacks merit.

This court has recognized that where an allegation that a charging document is insufficient is raised after the verdict, the verdict cures any technical defects unless the defendant has been prejudiced by the defective charging document.[9] Here, Wade has failed to show that he was prejudiced by the alleged insufficiency in the indictment. Wade's challenge to the deadly weapon enhancement based on Moore would have been unsuccessful because that case in inapposite. In Moore, this court held that the deadly weapon enhancement could not apply to a conspiracy conviction because the crime of conspiracy requires merely an agreement, not an overt act.[10] Here, unlike the crime of conspiracy, the crime of coercion requires an overt act. Also, we disagree with Wade that the indictment was insufficient. With regard to the coercion count, the amended indictment provided that Wade:

---

[8] 117 Nev. 659, 27 P.3d 447 (2001).

[9] Laney v. State, 86 Nev. 173, 178, 466 P.2d 666, 669-70 (1970).

[10] 117 Nev. 659, 27 P.3d 447.

> [D]id, on or about January 4, 1996, then and there willfully, unlawfully, and feloniously use physical force, or the immediate threat of such force, against JANICE WADE, with intent to compel her to do, or abstain from doing, an act which she had a right to do, or abstain from doing, by defendant intimidating or attempting to intimidate JANICE WADE by threats or force, to-wit: by defendant pointing a shotgun at the said JANICE WADE and threatening to shoot JANICE WADE unless she withdrew money and gave said money to defendant.

The indictment was sufficient to put Wade on notice of the essential facts constituting the offense and to allow him to prepare a defense.[11] Accordingly, Wade's challenge to the sufficiency of the indictment lacks merit.

Wade next contends that his conviction should be reversed because Janice testified to inadmissible hearsay and improper prior bad act evidence that was highly prejudicial. In particular, when asked about a telephone call Wade made to her office, Janice testified that her co-worker who took the call said: "there's a man on the phone who say he's your husband and he said that if he doesn't talk to you, he's going to come down here with a gun and blow everybody in the office away." While

---

[11]See NRS 173.075(1) ("the indictment . . . must be a plain, concise and definite written statement of the essential facts constituting the offense charged"); Sheriff v. Spagnola, 101 Nev. 508, 515, 706 P.2d 840, 844 (1985) (recognizing that the purpose of NRS 173.075 is to put the defendant on notice of the charges he is facing and to allow him to prepare a defense).

acknowledging that the district court sustained defense counsel's objection and admonished the jury to disregard the testimony, Wade contends that reversal of his conviction is warranted because the statement was intentionally elicited by the prosecutor and was so prejudicial that the jury could not disregard it. We disagree.

Preliminarily, we note that the statement was not hearsay because it was not offered to prove the truth of the matter asserted.[12] Nonetheless, assuming the statement was hearsay or improper character evidence, the district court took appropriate curative measures immediately after the statement was made, admonishing the jury to disregard the testimony. We presume that the jury followed the district court's instructions.[13] Moreover, in light of the overwhelming evidence presented of Wade's guilt, we conclude that the testimony was not so prejudicial that it could not have been neutralized by an admonition to the jury.[14] Accordingly, reversal of Wade's conviction is not warranted on this basis.

---

[12]See NRS 51.035.

[13]See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) ("There is a presumption that jurors follow jury instructions."), clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998); see also Owens v. State, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980) (holding that any indication of defendant's previous criminal activity based on witness's testimony was cured by trial court's immediate admonition to jury).

[14]See generally Allen v. State, 99 Nev. 485, 490-91, 665 P.2d 238, 241-42 (1983) (discussing whether witness's testimony about inadmissible prior bad act warranted reversal of the conviction).

Finally, Wade contends that his conviction should be reversed because, on cross-examination by defense counsel, Janice testified to inadmissible prior bad act testimony. In particular, when asked if Wade divorced her, Janice responded affirmatively, describing how after she was served with divorce papers: "Wade was in a car in the parking lot . . . and almost ran over the process server, then he was remanded back into custody and it never went to trial." While acknowledging that defense counsel failed to object to the prior bad act testimony, Wade argues that the admission of the testimony resulted in plain error because it affected Wade's substantial rights. We disagree.

First, we emphasize that the testimony was elicited by defense counsel, not by the State.[15] Second, although Wade points out that Janice's answer to defense counsel's question was non-responsive and amounted to inadmissible prior bad act evidence, defense counsel failed to object, request that the testimony be stricken from the record, or seek an admonition that the testimony be disregarded.[16] Finally, we disagree that the testimony affected Wade's substantial rights; the testimony did not

---

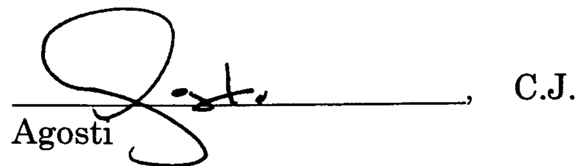
[15]See Homick v. State, 108 Nev. 127, 139, 825 P.2d 600, 608 (1992) (refusing to consider whether the admission of prior bad act evidence was prejudicial error where the evidence was elicited by defense counsel).

[16]See Richmond v. State, 118 Nev. ___, ___, 59 P.3d 1249, 1253-54 (2002) (holding that an appellant must object or file a motion in limine in the district court in order to preserve the issue involving prior bad act evidence for appellate review); see also Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001).

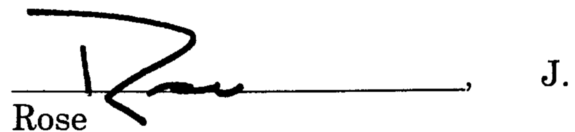
concern the charged offenses and, in light of the overwhelming evidence of Wade's guilt, we conclude the prior bad act testimony was not so prejudicial that it would have affected the jury's verdict.[17] We therefore conclude that reversal of Wade's conviction is not warranted.

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

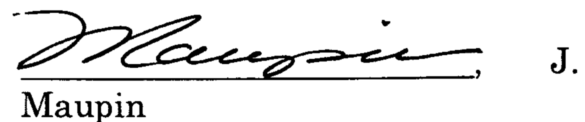
ORDER the judgment of conviction AFFIRMED.



Agosti, C.J.



Rose, J.



Maupin, J.

cc: Hon. Michael L. Douglas, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

[17]See Tavares, 117 Nev. at 732, 30 P.3d at 1132-33.