IN THE SUPREME COURT OF THE STATE OF NEVADA

LESTER GAMBLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45520

FILED

MAR 13 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of count I, voluntary manslaughter with the use of a deadly weapon, and pursuant to a guilty plea, counts II and III, being an ex-felon in possession of a firearm. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. Appellant Lester Gamble was sentenced to a prison term of 48-120 months on count I, voluntary manslaughter, plus an equal and consecutive term for the use of a deadly weapon. As to each count II and III, Gamble was sentenced to a prison term of 48-72 months. Count II was to be served concurrent with count I, count III was to be served concurrent with count II.

Gamble first contends that the jury instructions regarding malice and malice aforethought are constitutionally defective. However, as Gamble concedes, this court has explicitly upheld these instructions; we decline to revisit the issue here.[1]

Next, Gamble asserts that the jury was improperly instructed regarding self-defense. Gamble failed to object to the instruction

[1]See Cordova v. State, 116 Nev. 664, 666-67, 6 P.3d 481, 482-83 (2000); Leonard v. State, 114 Nev. 1196, 1208, 969 P.2d 288, 296 (1998).

regarding self-defense. "The failure to object or to request special instruction to the jury precludes appellate consideration."[2] Moreover, we note that the instruction given was approved by this court in Runion v. State, and Gamble's claim therefore lacks merit.[3]

Lastly, Gamble contends the State failed to prove, beyond a reasonable doubt, that Gamble did not act in self-defense when he shot and killed the victim. If, at trial for murder, there is evidence of self-defense, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense.[4]

The record indicates that the State presented sufficient evidence to negate self-defense.[5] Multiple witnesses testified that Gamble and the victim had a brief conversation that did not appear to be argumentative or emotionally charged. No witnesses at the scene testified to seeing the victim with a gun, as Gamble claimed, and police and a crime scene analyst testified that no gun was found at the crime scene or on the victim. Viewing this evidence in the light most favorable to the

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[2]McCall v. State, 91 Nev. 556, 557, 540 P.2d 95, 95 (1975).

[3]116 Nev. 1041, 1051-52, 13 P.3d 52, 59 (2000).

[4]Mullaney v. Wilbur, 421 U.S. 684 (1975); Runion v. State, 116 Nev. 1041, 1052, 13 P.3d 52, 59 (2000).

[5]See Washington v. State, 112 Nev. 1067, 1073, 922 P.2d 547, 551 (1996) (stating that this court will not disturb a jury verdict on appeal if it was supported by sufficient evidence).

prosecution, we conclude that a rational trier of fact could have found that Gamble was not acting in self-defense.[6] Therefore, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Special Public Defender David M. Schieck
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[6]See Domingues v. State, 112 Nev. 683, 693, 917 P.2d 1364, 1371 (1996) (explaining that in a criminal case, sufficiency of the evidence requires this court to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, after viewing the evidence in the light most favorable to the prosecution").