

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD R. GORDON A/K/A TODD  
RANDALL GORDON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47391

**FILED**

**NOV 15 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Todd R. Gordon to a prison term of 30 to 90 months, but suspended execution of the sentence and placed Gordon on probation for an indeterminate period not to exceed 3 years.

Gordon contends that there is insufficient evidence in support of his conviction because the State failed to prove that Gordon did not act in self-defense. 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.<sup>1</sup>

In particular, we note that the victim, a landscape maintenance foreman, testified that he and Gordon got into a "wrestling match" after he asked Gordon to leave the jobsite where they were

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<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

working. After the brief scuffle ended, the victim called his boss, Scott Horton, and again asked Gordon to leave the jobsite. While the victim was on the phone with Horton, Gordon repeatedly struck him with a four-foot carpenter's level. The victim fell to the ground, and Gordon hit him again on the back of the head, lacerating the membrane between the skull and scalp.

The victim's testimony was corroborated by Horton. Horton testified that Gordon telephoned him and sounded angry, explaining that he was mad at the victim and "was going to kick his ass." About one hour later, Horton received a telephone call from the victim. The victim was out of breath, explaining that Gordon had sucker-punched him and then they had fought. In the middle of the conversation, the phone disconnected. Approximately two minutes later, the victim called back. The victim told Horton that Gordon had hit him with a level. Horton described the victim as distraught and frantic.

Gordon testified at trial that his coworker threatened to kill him and attacked him first, with a cellular telephone and a rock. However, the jury could reasonably infer from the evidence presented that Gordon was not acting in self-defense and committed the charged offense of battery with a deadly weapon.<sup>2</sup> 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.<sup>3</sup>

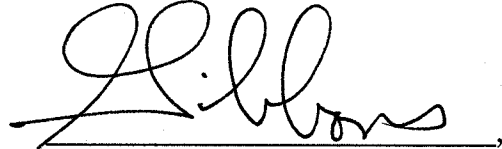
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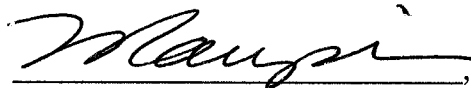
<sup>2</sup>NRS 200.481(1)(a); NRS 193.165(5).

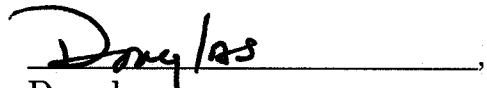
<sup>3</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Having considered Gordon's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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