


IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMEL J. GIBBS A/K/A JAMEL GIBBS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56842

**FILED**

NOV 15 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of attempted murder with the use of a deadly weapon and with the intent to promote, further, or assist a criminal gang. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Jamel J. Gibbs' convictions arise from an incident in which he fired shots at four individuals he believed were members of a rival gang. We consider two allegations of trial error and an insufficiency-of-the-evidence claim on appeal.<sup>1</sup>

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<sup>1</sup>Gibbs also claims that the district court erred by (1) denying his motion in limine to preclude the State from introducing 9-1-1 audiotapes, (2) admitting a police radio ticket based upon the 9-1-1 call made by one of the victims, (3) denying his motion for mistrial, and (4) not dismissing as lesser-included offenses the four counts of assault with the use of a deadly weapon with the intent to promote, further, or assist criminal gang. Because Gibbs failed to support his contentions with any argument or legal support, we will not consider them. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

First, Gibbs argues that the district court erred by denying his motion to suppress physical evidence and his confession because police officers executed an unlawful warrantless search at the residence where Gibbs was found after the shooting. However, as the district court correctly concluded, Gibbs lacked standing to challenge the validity of the search of the residence or the car parked in the garage, where he deposited his brown hooded sweatshirt and handgun. A person must have a subjective and objective expectation of privacy in the place searched or the items seized to assert a Fourth Amendment violation. State v. Taylor, 114 Nev. 1071, 1077, 968 P.2d 315, 320 (1998). A person's mere presence in the residence searched does not confer standing to challenge the lawfulness of the search because that person has no legitimate expectation of privacy in the residence. Hicks v. State, 96 Nev. 82, 83, 605 P.2d 219, 220 (1980); see Rakas v. Illinois, 439 U.S. 128, 148 (1978); Scott v. State, 110 Nev. 622, 628, 877 P.2d 503, 508 (1994) (concluding that the relevant inquiry in determining standing to contest validity of vehicle search is whether there is possessory or ownership interest in vehicle). Here, the residence was leased by a woman who did not know Gibbs or permit him to live there and the car was registered to someone other than Gibbs. Because Gibbs failed to show that he had a reasonable expectation of privacy in the residence or the car, the district court did not err by denying his motion to suppress physical evidence and his confession. Lamb v. State, 127 Nev. \_\_\_, \_\_\_, 251 P.3d 700, 703 (2011) (observing that in reviewing district court's ruling on motion to suppress, this court reviews district court's factual findings for clear error and its legal conclusions de novo).

Second, Gibbs argues that the district court abused its discretion by denying his motion to strike the State's notice of gang expert on the ground that the expert was not qualified and his testimony was cumulative, inflammatory, had little probative value, and was unhelpful to the jury. Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (concluding that we review the district court's admission of evidence for abuse of discretion). After a hearing, the district court concluded that the gang expert was qualified and that the probative value of the evidence outweighed any unfair prejudice in light of the gang enhancement alleged by the State. We note that the transcript of the gang expert's testimony is absent from Gibbs' appendix.<sup>2</sup> Nevertheless, even assuming any error in the admission of the gang expert's testimony, we conclude that the error was harmless. See NRS 178.598; Kotteakos v. United States, 328 U.S. 750, 776 (1946); Mclellan v. State, 124 Nev. 263, 269-70, 182 P.3d 106, 111 (2008). Gibbs admitted his gang affiliation to several police officers during previous encounters with him, and, after the shooting, Gibbs admitted to a police officer that he shot at the victims, whom he believed were rival gang members, because of "disrespect issues" between his gang and a rival gang. Because Gibbs' gang affiliation was well-established at trial, additional evidence on that matter did not unfairly prejudice him.

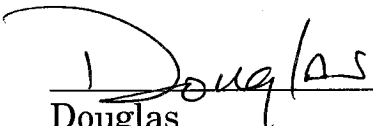
Third, Gibbs contends that insufficient evidence supports his convictions for attempted murder because the State failed to prove that he specifically intended to kill the victims. Viewing the evidence in the light

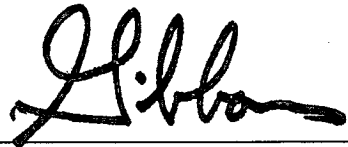
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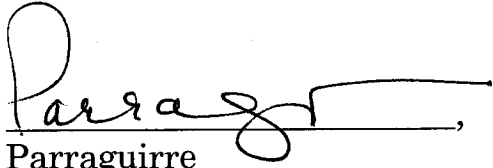
<sup>2</sup>We note that the absence of the transcript of the expert's trial testimony from appellant's appendix is due to difficulties with the court reporter.

most favorable to prosecution, we conclude that any rational juror could have found Gibbs guilty of attempted murder beyond a reasonable doubt, see Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), considering evidence indicating that he fired shots at the victims, including his admissions to police officers that he fired shots at the victims until his gun magazine was empty. NRS 193.330; NRS 200.030; Valdez v. State, 124 Nev. 1172, 1196, 196 P.3d 465, 481 (2008) (observing that “the jury may infer intent to kill from the manner of the defendant's use of a deadly weapon”). Having considered Gibbs’ arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge  
Law Office of Jeannie N. Hua, Inc.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk