

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS CARROLL GAULE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36082

**FILED**

OCT 12 2000

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 24 to 60 months in prison, suspended the sentence and placed appellant on probation for an indeterminate period not to exceed 3 years.

Appellant's sole contention is that the State adduced insufficient evidence to support the jury's verdict. In particular, appellant claims that the State failed to prove beyond a reasonable doubt that he did not act in self-defense when he shot and killed Ricky Tripp. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "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." *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting *Jackson v.*

Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted). Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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. Ricky Tripp and another individual were burglarizing appellant's home when appellant returned and was attacked by Tripp and his companion, who were armed with stun guns. After a struggle, appellant retrieved his shotgun. There was a struggle for the shotgun inside the house. After appellant retained control of the shotgun, Tripp and his companion ran out of the house. Appellant shot Tripp's companion, who fell to the ground and died on appellant's property. Appellant then pursued Tripp down Lakehurst Road while firing the shotgun at Tripp, who was running away from appellant's home.<sup>1</sup> Tripp suffered several injuries. The cause of his death, however, was a gunshot wound to the back. The medical examiner testified that a shotgun slug entered the right middle of Tripp's back and exited from the right side of his chest, severing several major blood vessels. The medical examiner further testified

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<sup>1</sup>There was testimony that in a statement following the incident, appellant indicated that he went inside to call 9-1-1 after shooting Tripp's companion and that upon getting a busy signal he then pursued Tripp.

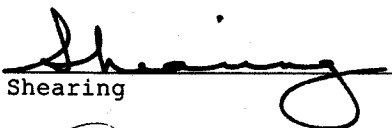
that it might have been possible for Tripp to function after suffering this injury and that if Tripp were running when he was hit, he could continue to run, but that 100 feet would be "pushing it" and that 50 feet would be a more comfortable estimate.

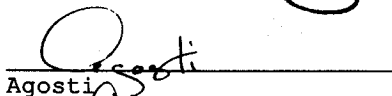
Tripp's body was found over 500 feet from appellant's home. Crime scene investigators found a trail of blood and several shotgun cartridge casings and projectiles along the path from appellant's home to Tripp's body. An impact site for a shotgun slug was found on a cement wall and there was blood and tissue spatter on the wall and a nearby signpost. The impact site on the wall was approximately 505 feet from appellant's home. Although crime scene investigators and the medical examiner could not rule out the possibility that the shotgun slug that entered and exited the body of Tripp's companion also caused the fatal injury to Tripp, their testimony indicates that such a scenario was unlikely given the loss of velocity caused by a slug traveling through the first subject and the distance that Tripp would had to have covered after suffering the fatal injury. Additionally, the blood and tissue spatter on the wall approximately 505 feet from appellant's home further supports the inference that the fatal injury was not inflicted on appellant's property. Finally, one of appellant's neighbors testified that after his home was burglarized several weeks before the shooting, appellant indicated that he would kill

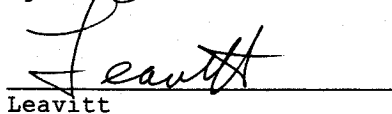
anyone who tried to break into his house again. Based on this evidence the jury could reasonably find that appellant was not acting in self-defense when he shot Tripp and that he was guilty of voluntary manslaughter with the use of a deadly weapon. See NRS 200.120; NRS 200.200; NRS 200.050; NRS 193.165.

Having considered appellant's contention and concluded that it lacks merit, we affirm the judgment of conviction.

It is so ORDERED.<sup>2</sup>

  
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Shearing J.

  
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Agosti J.

  
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Leavitt J.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General  
Clark County District Attorney  
Peter R. LaPorta  
Clark County Clerk

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<sup>2</sup>We note that the fast track statement filed by counsel for appellant is devoid of any citations to the transcripts in support of factual assertions contained in the statement. See NRAP 3C(e)(2); NRAP 28(e). We caution counsel for appellant that failure to comply with the Nevada Rules of Appellate Procedure in the future may result in the imposition of monetary sanctions. See NRAP 3C(n).