

IN THE SUPREME COURT OF THE STATE OF NEVADA

LULA PEARL LEVINGSTON,

No. 36227

Appellant,

**FILED**

vs.

FEB 21 2001

THE STATE OF NEVADA,

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

Respondent.

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of child neglect causing death. The district court sentenced appellant to serve 24 to 90 months in the Nevada State Prison.

Appellant first contends that the State adduced insufficient evidence to support the jury's finding of guilt. In particular, appellant argues that the State failed to prove, beyond a reasonable doubt, that she was criminally responsible for the victim's death because the State did not prove that she placed the heating pad in the victim's crib. We conclude that appellant's contention lacks merit.

When reviewing a challenge to the sufficiency of the evidence to support a criminal conviction, 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."<sup>1</sup> Furthermore, "it is the jury's function,

<sup>1</sup>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).

01-02226

not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."<sup>2</sup>

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. The State adduced evidence that the victim, two-month-old Maleeka Carthen, died from severe dehydration due to prolonged exposure to a heating pad located in her crib. The State also adduced evidence that Maleeka was in appellant's custody and care during the relevant time period. Although appellant testified that she did not put the heating pad in the crib and had no knowledge that the heating pad was in the crib until she found Maleeka dead, one of her statements to the police indicates that she was aware that the heating pad was in the crib and placed Maleeka on the heating pad even though the child appeared to be in some distress.

The jury could reasonably infer from the evidence presented that appellant was responsible for Maleeka's safety and permitted Maleeka to suffer unjustifiable physical pain or mental suffering as a result of neglect culminating in death.<sup>3</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>4</sup>

Appellant also argues that the district court erred in admitting photographs of the victim and the crime scene. Appellant asserts that the photographs were unnecessary,

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<sup>2</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

<sup>3</sup>See NRS 200.508.

<sup>4</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

prejudicial, gruesome and served only to inflame the jury. We disagree.

The district court has great discretion in deciding whether to admit photographs and we will not disturb the district court's decision absent an abuse of that discretion.<sup>5</sup>

"Despite gruesomeness, photographic evidence has been held admissible when it accurately shows the scene of the crime or when utilized to show the cause of death and when it reflects the severity of wounds and the manner of their infliction."<sup>6</sup> Further, "'[c]olor photographs of a victim used by a doctor to explain the cause of death to a jury are properly admissible because they aid in the ascertainment of truth.'"<sup>7</sup>

In this case, the photographs in question consisted of three autopsy photos of the infant, two photos of the infant taken at the crime scene, and one photo of the infant's crib and surrounding area. The photos of the infant merely depict the external injuries to the child and were used by the pathologist at trial to describe the injuries and cause of death. The photo of the infant's crib area depicts nothing more than a child's crib and the surrounding furniture. While the photographs are disturbing in that they depict a lifeless child, we conclude that they accurately portray the scene of the crime and were used to show the cause of death, the severity of the wounds, and the manner of their infliction.<sup>8</sup> Therefore, we conclude appellant's argument is without merit.

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<sup>5</sup>See Domingues v. State, 112 Nev. 683, 695, 917 P.2d 1364, 1373 (1996).

<sup>6</sup>Therault v. State, 92 Nev. 185, 193, 547 P.2d 668, 674 (1976) (citations omitted), overruled on other grounds by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995).

<sup>7</sup>Domingues, 112 Nev. at 695, 917 P.2d at 1373 (quoting Allen v. State, 91 Nev. 78, 82, 530 P.2d 1195, 1197 (1975)).

<sup>8</sup>See id.

Having considered appellant's contentions and concluded that they are without merit, we affirm the judgment of conviction.

It is so ORDERED.

Young J.  
Young

Rose J.  
Rose

Becker J.  
Becker

cc: Hon. Jerome M. Polaha, District Judge  
Attorney General  
Washoe County District Attorney  
Calvert & Wilson  
Washoe County Clerk