

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY SHEPARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38308

FILED

SEP 10 2002

ORDER OF AFFIRMANCE

JANET P. W. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

Gary Shepard appeals from a judgment of conviction entered after a jury found him guilty of first-degree murder with the use of a deadly weapon. Shepard challenges his conviction on various grounds. We conclude that all of his arguments lack merit, and we affirm his conviction.

Shepard alleges various instances of error regarding the jury instructions given at his trial: improperly instructing the jury that the manner and use of a deadly weapon can imply intent; confusing the jury with ambiguous voluntary manslaughter instructions; and failing to instruct the jury that Shepard did not have the burden of proving the elements of voluntary manslaughter. We conclude that the district court did not abuse its discretion in instructing the jury as it did.<sup>1</sup> The instruction on ascertaining intent and premeditation from use of a deadly weapon and the instructions on voluntary manslaughter were quoted exactly from this court's case law.<sup>2</sup> Because the district court correctly

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<sup>1</sup>See Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (reviewing the district court's decision regarding jury instructions under an abuse-of-discretion standard).

<sup>2</sup>See Givens v. State, 98 Nev. 573, 577, 655 P.2d 533, 535 (1982); Dearman v. State, 93 Nev. 364, 367, 566 P.2d 407, 409 (1977). See also *continued on next page . . .*

instructed the jury that the State had the burden of proving every element of each crime beyond a reasonable doubt, the court was not required to instruct the jury that Shepard did not have the burden to prove provocation beyond a reasonable doubt.

Shepard next contends that the prosecutor engaged in several instances of misconduct throughout the trial. At trial, Shepard objected to many of these instances, and the objections were sustained and the jury admonished. Notwithstanding, Shepard argues that the various instances cumulatively justify a new trial. We disagree. After a thorough review of the record on appeal, we conclude that the cumulative effect of the prosecutorial misconduct did not violate Shepard's right to a fair trial.<sup>3</sup>

Having considered Shepard's arguments and concluding that they lack merit, we

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*... continued*

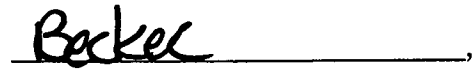
Byford v. State, 116 Nev. 215, 263 n.4, 994 P.2d 700, 714 n.4 (2000); Schoels v. State, 114 Nev. 981, 986, 966 P.2d 735, 738 (1998), modified on other grounds on reh'g, 115 Nev. 33, 975 P.2d 1275 (1999).

<sup>3</sup>See Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985) (stating that if the cumulative effect of errors committed at trial denies appellant his right to a fair trial, this court will reverse the conviction).

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. James W. Hardesty, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk