

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEON K. MCCOY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43145

FILED

NOV 04 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a deadly weapon and attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stephen L. Huffaker, Judge. The district court sentenced appellant Leon K. McCoy to serve a prison term of 48 to 120 months for the burglary count and a consecutive prison term of 96 to 240 months for the attempted murder count, with an equal and consecutive prison term for the use of a deadly weapon.

Relying on Heglemeier v. State,<sup>1</sup> McCoy contends that reversal of his conviction is warranted because the testimony presented at trial that he had possession of a gun was conflicting, unreliable, and uncorroborated. 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>2</sup>

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<sup>1</sup>111 Nev. 1244, 903 P.2d 799 (1995) (holding that the State failed to present sufficient reliable evidence corroborating the accomplice's testimony to sustain the conviction as a matter of law).

<sup>2</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).

In particular, we note that the victim testified that he was asleep in bed at his girlfriend's house when she woke him up and informed him that someone had kicked down the door. The victim, dressed only in his undergarments and unarmed, went down the hallway to see what had happened. He observed McCoy in the doorway with a gun in his hand and proceeded towards him, stating: "Hey, what's going on? Don't do that." McCoy responded angrily shouting, "What's up, cuz?" and fired the gun, hitting the victim in the chest. The victim then grabbed McCoy and struggled for the gun but another shot was fired, hitting the victim in the abdomen. Ultimately, the victim took the gun away from McCoy and chased him out the door without firing any shots. The victim then went back into the bedroom, dropped the gun, and told his girlfriend to call 9-1-1. As a result of the gunshot wounds, the victim was in a coma for two months, suffering severe internal injuries.

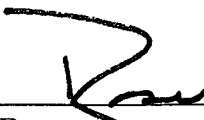
In addition to the victim's testimony, his girlfriend testified that she heard someone break down the front door. Although she did not observe the altercation between McCoy and the victim because she was hiding, she did observe the victim go down the hallway, dressed only in his underwear and t-shirt, and was certain that, at that time, the victim did not have a gun. She then heard McCoy's voice, a struggle, and two gunshots. The victim's girlfriend explained that she had broken up with McCoy approximately a week before the shooting and he was unhappy about that. Moreover, several eyewitnesses testified at trial identifying either McCoy or his vehicle fleeing the scene. Finally, a North Las Vegas police officer described how McCoy fled from him as he attempted an arrest; eventually, McCoy was cornered in an alley and arrested.


Although McCoy argues that the victim was the initial aggressor and the individual in possession of the gun, both the victim and his girlfriend testified that the victim did not have a gun at the time he


went down the hallway to see who had broken down the door. Although McCoy notes that the victim's girlfriend also testified that she later observed the victim drop the gun<sup>3</sup> and that the victim had possessed guns before, the jury could reasonably infer from the evidence presented that the victim was unarmed at the time he was shot and McCoy was the initial aggressor. 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>

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

ORDER the judgment of conviction AFFIRMED.

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

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

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

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<sup>3</sup>The victim's girlfriend observed him drop the gun only after he was shot and had chased McCoy out of the apartment. According to the victim, the gun was McCoy's, but he had managed to wrestle it away from him during the struggle.

<sup>4</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).

cc: Hon. Stephen L. Huffaker, Senior Judge  
Gregory L. Denué  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk