IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Raul Roberto Carrillo, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060766-CA F I L E D (December 13, 2007) 2007 UT App 391

Third District, Salt Lake Department, 041906193
The Honorable Deno Himonas

Attorneys: Debra M. Nelson and Marie E. Maxwell, Salt Lake City, for Appellant
Mark L. Shurtleff and Christine F. Soltis, Salt Lake City, for Appellee

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Before Judges Bench, Billings, and Orme.

BENCH, Presiding Judge:

Defendant Raul Roberto Carrillo appeals from his conviction for manslaughter. See Utah Code Ann. § 76-5-205(1)(a) (2003). Specifically, Defendant challenges the sufficiency of the evidence regarding whether he "recklessly," as defined by the Utah Code, caused the death of the victim. Utah Code Ann. § 76-2-103(3) (2003 & Supp. 2007).

The State claims that Defendant may not properly argue against the sufficiency of the evidence on appeal because the claim was not preserved at trial. "As a general rule, to ensure that the trial court addresses the sufficiency of the evidence, a defendant must request that the court do so," State v. Holgate, 2000 UT 74, ¶ 14, 10 P.3d 346, and "claims not raised before the trial court may not be raised on appeal," id. ¶ 11. Prior to the ruling in Holgate, this court had created an exception to the preservation rule where, in the context of a criminal bench trial, we applied rule 52(b) of the Utah Rules of Civil Procedure. See State v. Larsen, 2000 UT App 106, ¶ 9 n.4, 999 P.2d 1252 ("'When findings of fact are made in actions tried by

the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made . . . an objection to such findings . . . .'" (quoting Utah R. Civ. P. 52(b))). In Holgate, the supreme court declined to comment on our use of rule 52(b) in the criminal context because Holgate was not an appeal from a bench trial and the issue was not properly before the supreme court. See Holgate, 2000 UT 74, ¶ 14 n.4.

Here, the record shows that Defendant's only challenge to the sufficiency of the evidence during the bench trial came after the State rested. That objection did not specifically challenge the evidence as it related to the crime of manslaughter. When the trial court pronounced Defendant's guilt for manslaughter, a lesser included offense that Defendant had requested the trial court consider, Defendant made no pertinent objection. We assume, without deciding, that the Larsen exception to the preservation rule remains valid. Defendant's sufficiency of the evidence claim nevertheless fails on the merits.

A bench verdict "'shall not be set aside unless clearly erroneous,'" State v. Walker, 743 P.2d 191, 192 (Utah 1987) (quoting Utah R. Civ. P. 52(a)), such that even if "there is evidence to support [the verdict], the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed," In re Z.D., 2006 UT 54, ¶ 38, 147 P.3d 401 (internal quotation marks omitted). Under the Utah Code, a defendant's conduct is reckless when he "consciously disregards a substantial and unjustifiable risk" of death and his disregard of that risk "constitutes a gross deviation from the standard of care that an ordinary person would exercise." Utah Code Ann. § 76-2-103(3); see also State v. Standiford, 769 P.2d 254, 263 (Utah 1988).

Defendant was convicted of manslaughter after he intentionally stabbed the victim in the thigh, slicing the femoral artery and causing the victim to bleed to death. The trial court found that Defendant's stabbing of the victim with sufficient force to drive the knife three and a half inches into the victim's inner thigh constituted reckless conduct as defined by the Utah Code. The evidence and the inferences drawn from the depth and placement of the wound, as well as from the nature of the attack, are sufficient to support the trial court's

determination that Defendant recklessly caused the death of the victim.

We therefore affirm.

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Russell W. Bench,
Presiding Judge

WE CONCUR:

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Judith M. Billings, Judge

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Gregory K. Orme, Judge