

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY ORTWIEN SCHILLING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53870

FILED

FEB 03 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

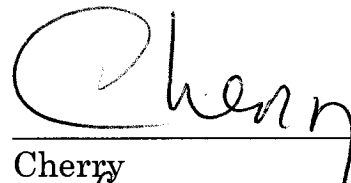
Appellant argues that the district court abused its discretion by admitting gruesome photographs of the victim's body, which depicted extreme trauma to her face, and a bath tub drain, which contained several of the victim's teeth. "[G]ruesome photographs are admissible if they aid in ascertaining the truth, such as when used to show the cause of death, the severity of wounds and the manner of injury." Doyle v. State, 116 Nev. 148, 160, 995 P.2d 465, 473 (2000). Although the photographs are disturbing, we conclude that they were relevant to show the cause of death, severity of the victim's wounds, and the manner of injury. Accordingly, the district court did not abuse its discretion in this regard. Byford v. State, 116 Nev. 215, 231, 994 P.2d 700, 711 (2000).

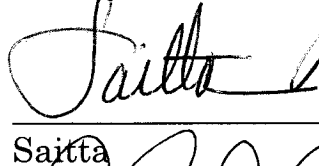
Next, relying primarily on Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005), appellant contends that the district court erred by not instructing the jury that the State must prove beyond a reasonable doubt that he did not act in the "heat of passion." Unlike Crawford,

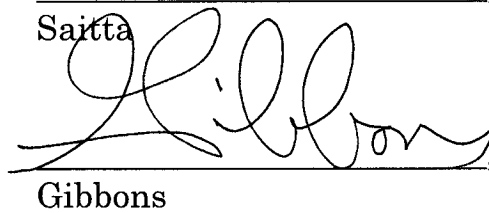
however, appellant did not request such an instruction. Therefore, we review for plain error. Tavares v. State, 117 Nev. 725, 729, 30 P.3d 1128, 1130-31 (2001), holding modified on other grounds by McClellan v. State, 124 Nev. ___, 182 P.3d 106 (2008). Considering the evidence, the instructions on manslaughter, and the State's burden of proof, coupled with our holding in Crawford that obligates a district court to provide the instruction appellant now proposes only upon request, we conclude that appellant failed to demonstrate plain error affecting his substantial rights.

Having considered appellant's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. John P. Davis, District Judge
Gibson & Kuehn
Attorney General/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk