IN THE SUPREME COURT OF THE STATE OF NEVADA

RAFAEL CASTILLO-SANCHEZ, AKA RAFAEL CASTILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57273

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon and assault with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Rafael Castillo-Sanchez raises five issues on appeal.

First, Castillo-Sanchez claims that insufficient evidence supports his conviction for first-degree murder. Castillo-Sanchez attacked his wife with a knife and she sustained 93 wounds in the mortal attack, 26 of which were defensive in nature. His two sons testified that they found Castillo-Sanchez standing in the family's apartment, covered in blood and holding a blade, and found their mother dying in the bedroom. Castillo-Sanchez later told a security guard, "I killed my wife." Given these facts, we conclude that a rational juror could have reasonably found the essential elements of first-degree murder with the use of a deadly weapon beyond a reasonable doubt. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Despite this, Castillo-Sanchez contends that he may only be convicted of second-degree murder because the nature and extent of the

victim's injuries, standing alone, are insufficient as a matter of law to prove that he committed premeditated, deliberate, and willful murder and that the district court erred by rejecting a jury instruction that stood for this proposition. It is Castillo-Sanchez who errs. See DePasquale v. State, 106 Nev. 843, 848, 803 P.2d 218, 221 (1990) ("Premeditation and deliberation can be inferred from the nature and extent of the injuries, coupled with repeated blows."); see also Thomas v. State, 114 Nev. 1127, 1145-46, 967 P.2d 1111, 1123 (1998) (rejecting appellant's contention that a "previous plan" is required to sustain first-degree murder conviction); Jones v. State, 113 Nev. 454, 468 n.3, 937 P.2d 55, 64 n.3 (1997) (concluding that evidence of 36 stab wounds was, in itself, "overwhelming evidence upon which the jury could have found . . . first-degree murder").

Second, Castillo-Sanchez argues that the district court erred in giving a jury instruction on the presumption of innocence that referred to "material" elements of the offense but did not define which elements were material. This contention has been repeatedly rejected, see Nunnery v. State, 127 Nev. ___, ___, 263 P.3d 235, 259-60 (2011) (listing cases), and we likewise reject it here.

Third, Castillo-Sanchez claims that the district court erred in denying his motions for a mistrial. Castillo-Sanchez first moved for a mistrial when a witness testified that before the victim's murder, she was scared for her life. The district court sustained Castillo-Sanchez's objection to this statement and struck it, later concluding that this was sufficient to cure any error when it denied Castillo-Sanchez's mistrial motion. Castillo-Sanchez next moved for a mistrial after a witness responded to a defense question by stating that Castillo-Sanchez began acting oddly "after the drug bust." Castillo-Sanchez argued that this

information was a prior bad act in that it allowed the jury to infer that he was selling drugs and therefore a mistrial was required. The district court struck the testimony but denied the motion, noting that the testimony was elicited in the course of the defense's own questioning about Castillo-Sanchez's drug use. The jury was instructed to disregard any statements stricken from the record and we presume that the jury followed these instructions. Richardson v. Marsh, 481 U.S. 200, 211 (1987); Flores v. State, 114 Nev. 910, 914, 965 P.2d 901, 903 (1998). Therefore, we conclude that the district court did not abuse its discretion in denying these mistrial motions. See Rudin v. State, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004).

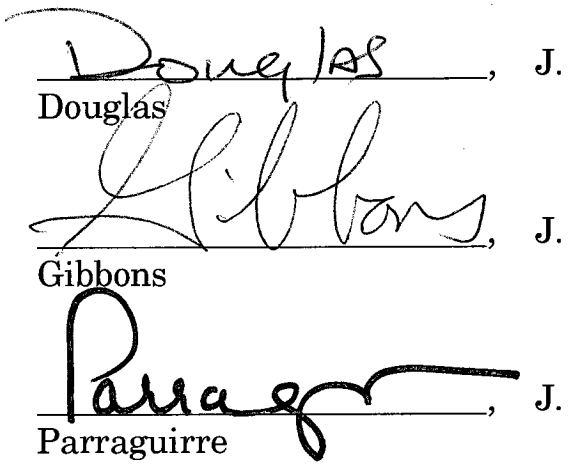
Fourth, Castillo-Sanchez contends that the district court erred when it precluded him from confronting an expert witness with a prior inconsistent statement. There was, however, no inconsistency. Castillo-Sanchez repeatedly asked the medical examiner if the victim's wounds were consistent with torture. The witness was reluctant to offer an opinion on that issue but finally relented, stating that, "I could possibly consider this a possible torture case, but I do not." Castillo-Sanchez later attempted to impeach the witness by calling a defense investigator who would testify that the witness had previously said the wounds were not consistent with torture. Noting that the witness had testified to exactly that, the district court denied the request to call the investigator. We discern no abuse of discretion. See Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009).

Fifth, Castillo-Sanchez contends that cumulative error denied him a fair trial. Because we have rejected Castillo-Sanchez's assignments of error, we conclude that his allegation of cumulative error also lacks

merit. See U.S. v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.").

Having considered Castillo-Sanchez's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk