

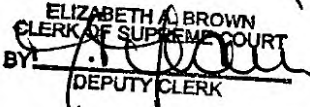
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS MANUEL VALENZUELA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85791-COA

**FILED**

OCT 19 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jesus Manuel Valenzuela appeals from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Lynne K. Simons, Chief Judge.

A few months prior to the murder, Valenzuela began dating Adria Ely.<sup>1</sup> Ely had previously dated the victim, Donald Perry. According to Ely, she would still spend time with Perry throughout her and Valenzuela's relationship. Valenzuela was "very upset" and "hurt" that she was still willing to see Perry, and at one point Valenzuela told Ely that she had to choose between "him or me." Valenzuela and Perry had also "exchanged words" where Valenzuela told Perry to stay away from Ely.

In April 2019, Valenzuela and Ely were walking to the Wells underpass bridge when Perry "popped up out of nowhere" and joined them, surprising Valenzuela. When Perry approached, he greeted Ely with a hug

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<sup>1</sup>We recount the facts only as necessary for our disposition.

and “possibly” a kiss. At trial, Ely described the situation as uncomfortable and tense. Once the three of them reached the underpass bridge, Ely began to walk away with Perry. This caused Valenzuela to get upset, saying, “[g]o ahead, stay with that guy then” before leaving and walking the other direction. Ely testified that she perceived Valenzuela’s departure as a breakup.

Valenzuela left Ely and Perry for between five and ten minutes and walked up and down the street. Valenzuela told detectives that during this time, he had thought that it was weird that Perry was there, that Perry kept seeing Ely and that she was happy to see him, and he wondered what they were doing. Valenzuela, who carried a folding pocketknife with him daily, then returned to Ely and Perry with the knife unfolded and concealed in his shirt sleeve. Upon Valenzuela’s return, Ely tried to diffuse the situation by reintroducing the two men. Then, without any provocation or words exchanged between them, Valenzuela took the knife from his sleeve and stabbed Perry in the chest by “socking” him with the fist that held the exposed blade.

Valenzuela and Ely fled the scene together and walked to a local auto shop. Valenzuela told a shop employee, whom he knew, that he had stabbed somebody. The employee allowed Valenzuela to use the shop office to make a phone call, and while in the office, Valenzuela gave Ely his shirt and the knife and directed her to dispose of them. Ely hid both items in a trash can behind the shop. After they left the auto shop, Valenzuela and Ely ran into Ely’s father down the street. Ely introduced Valenzuela to her father, and Valenzuela told him he stabbed Perry for “messing with” Ely.

In the meantime, police had responded to the Wells underpass bridge, where Perry was pronounced deceased at the scene. Through eyewitness accounts and surveillance video of nearby businesses, Valenzuela was identified as a person of interest. Both Ely and Valenzuela were detained and taken separately to the Reno Police Department for recorded interviews with Detective Allison Jenkins. During her interview, Ely described the events leading up to the stabbing and mentioned that Valenzuela was worried about losing her to Perry. Ely also told Detective Jenkins where she had hidden the knife.<sup>2</sup>

During his recorded interview, Valenzuela admitted to stabbing Perry, but offered several different reasons for doing so over the course of the interview. Initially, Valenzuela told Detective Jenkins that he stabbed Perry because he believed Perry was a child molester. Later, Valenzuela stated that the stabbing was an accident because he had only taken the knife out to scare Perry, and Perry “move[d] forward and actually impale[d] himself on the exposed blade of the knife.” Valenzuela also told Detective Jenkins that he stabbed Perry in self-defense after Perry had “attempted to stab him” first with a butter knife. Valenzuela then said that he stabbed Perry because he was angry and that he had already told Perry to stay away from Ely. Lastly, Valenzuela tried to blame Ely for stabbing Perry.

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<sup>2</sup>As a result of Ely’s disclosure during the interview, Sergeant Ernie Kazmar with the Reno Police Department responded to Nevada Auto Body and recovered the knife in the trash can. Valenzuela’s shirt was never found.

Detective Jenkins later testified that when she told Valenzuela about Perry's death, Valenzuela expressed shock. However, she stated that as the interview progressed, she "no longer believed that those were genuine responses." Perry's death was ruled a homicide caused by a single stab wound that penetrated his heart.

The State charged Valenzuela with one count of first-degree murder with the use of a deadly weapon. Following a five-day jury trial, the jury returned a guilty verdict. Valenzuela was sentenced to serve a prison term of life with the possibility of parole after 20 years for the murder plus a consecutive sentence of 6 to 20 years for the use of a deadly weapon.

On appeal, Valenzuela raises a single argument: his conviction must be reversed because there was insufficient evidence to find premeditation and deliberation. We disagree, and therefore affirm.

When determining whether a verdict was based on sufficient evidence, this court will inquire "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This court "will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). To sustain a jury verdict of first-degree murder with

the use of a deadly weapon, the murder must be perpetrated by “willful, deliberate and premeditated killing.”<sup>3</sup> NRS 200.030(1)(a).

“Premeditation and deliberation are questions of fact for the jury. They may be ascertained or deduced from the facts and circumstances of the killing; direct evidence is not required.” *Curtis v. State*, 93 Nev. 504, 507, 568 P.2d 583, 585 (1977) (internal citations omitted). “Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.” *Byford v. State*, 116 Nev. 215, 236, 994 P.2d 700, 714 (2000). Deliberation “may be arrived at in a short period of time,” but may not be “formed in passion” or a “mere unconsidered and rash impulse.” *Id.* Premeditation, on the other hand, is “a design, a determination to kill, distinctly formed in the mind by the time of the killing.” *Id.* at 237, 994 P.2d at 714. Premeditation “may be as instantaneous as successive thoughts of the mind.” *Id.* at 233, 994 P.2d at 712. “The time will vary with different individuals and under varying circumstances. The true test is not the duration of time, but rather the extent of the reflection.” *Id.* at 237, 994 P.2d at 717.

“Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.” NRS 193.200; *see also Valdez v. State*, 124 Nev. 1172, 1197, 196 P.3d 465, 481 (2008) (“[I]ntent can rarely be proven by direct evidence of a defendant’s state of mind, but instead is inferred by the jury

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<sup>3</sup>Valenzuela concedes on appeal that the State presented sufficient evidence of implied malice. NRS 200.010(1).



from the individualized, external circumstances of the crime.” (quoting *Sharma v. State*, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002))). “[T]he intention to kill may be ascertained or deduced from the facts or circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of the use, and the attendant circumstances characterizing the act.” *Moser v. State*, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975). “Evidence of premeditation and deliberation is seldom direct.” *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 808 (2016) (quoting *Briano v. State*, 94 Nev. 422, 425, 581 P.2d 5, 7 (1978)).

In this case, there was sufficient evidence for the jury to find that Valenzuela stabbed Perry with premeditation and deliberation. Ely testified that throughout her dating relationship with Valenzuela, Valenzuela was “upset” and “hurt” that she still spent time with Perry, and Valenzuela and Perry had “exchanged words” where Valenzuela told Perry to stay away from her. Less than an hour before the murder, when Perry joined Ely and Valenzuela, Valenzuela again voiced his frustration that Ely was spending time with Perry before Valenzuela walked away in what Ely perceived as a breakup. Valenzuela returned less than ten minutes later, and Valenzuela told Detective Jenkins that during that time he was concerned that Ely and Perry were spending so much time together and wondered what they were doing together. He then returned with his knife concealed and unfolded and stabbed Perry in the chest without any words or provocation. After leaving the scene, Valenzuela told the auto shop employee that he’d stabbed somebody and disposed of the knife. Valenzuela then told Ely’s father that he stabbed Perry because Perry was “messing with” Ely. Under these facts, the jury could reasonably infer that

Valenzuela premeditated and deliberated during the five to ten minutes that he was gone. *See Washington*, 132 Nev. at 663, 376 P.3d at 808 (“Intent to kill can be inferred from the circumstances surrounding the killing.”).<sup>4</sup>

Valenzuela contends that his conviction must be reversed because the jury did not receive *direct* evidence that he acted with premeditation and deliberation, and because he told Detective Jenkins that he “just meant to scare” Perry but did not intend to kill him. However, circumstantial evidence of premeditation and deliberation can support a conviction, *Curtis*, 93 Nev. at 507, 568 P.2d at 585, and circumstantial evidence may include “the sequence of events which leads to the death of the victim, including the probable manner in which injuries were inflicted[,] and the conduct of the defendant after the incident,” *Briano*, 94 Nev. at 425, 581 P.2d at 7-8 (internal citations omitted). In this case, Valenzuela’s conduct on the day of the murder leading up to the stabbing, including his frustration when Perry appeared, his anger when walking away from Perry and Ely, and his return less than ten minutes later with the knife already unfolded, enabling him to stab Perry, is sufficient circumstantial evidence that Valenzuela acted with the intent to kill. In addition, Valenzuela’s

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<sup>4</sup>We also note that Ely testified that she broke up with Perry because she believed that Perry had molested her daughter. When Ely disclosed her suspicion about Perry to Valenzuela, she was about to leave their motel room to stab Perry, but Valenzuela stopped her and “said he would do it himself,” though nothing happened immediately thereafter. It is unknown when this exchange occurred in relation to the murder. Nevertheless, the jury could have reasonably inferred from Ely’s testimony that Valenzuela premeditated and deliberated the attack at an earlier point in time and simply took the opportunity that presented itself on the day of the murder.

conduct after the incident, including his statement to the auto shop employee that he stabbed someone and his comment to Ely's father that he stabbed Perry for "messing with" Ely, provides further circumstantial evidence for the jury to find that Valenzuela intended to do more than "scare" Perry.

The jury also watched Valenzuela's recorded interview, during which Valenzuela discussed his thoughts and intent, and heard Detective Jenkins' corresponding testimony. It was within the jury's purview to assess the credibility of Valenzuela's statements as to what he believed and intended, and this court will not reweigh evidence or credibility determinations on appeal. *See generally Mitchell*, 124 Nev. at 816, 192 P.3d at 727 ("This court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact.").

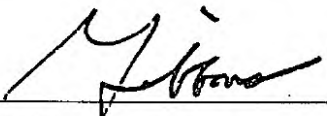
Lastly, Valenzuela contends that the evidence showed his conduct was instantaneous and impulsive, rather than deliberate or premeditated. As noted above, premeditation and deliberation can be determined by "the use of a weapon calculated to produce death, the manner of use, and the attendant circumstances characterizing the act." *Moser*, 91 Nev. at 812, 544 P.2d at 426. In this case, Valenzuela used a knife to stab Perry in the chest after he left for between five and ten minutes and then returned with the knife already unfolded. The jury could have rationally found that Valenzuela's conduct was deliberate and premeditated. *See, e.g., Commonwealth v. Williams*, 854 A.2d 440, 445 (Pa. 2004) ("[B]ecause Appellant stabbed Frances in her chest and through her heart, the jury could properly infer that Appellant had the specific intent necessary to be convicted of first-degree murder."); *McEwen v. State*, 695 N.E.2d 79, 90 (Ind.



1998) (“[A] stabbing near the heart allows an inference of knowing or intentional killing.”).

Therefore, because there was sufficient evidence to support Valenzuela’s conviction, we

ORDER the judgment of conviction AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>5</sup>Valenzuela also argues on appeal that there was insufficient evidence because Perry was killed with a single blow, as opposed to multiple blows, and because there was no evidence that Valenzuela knew where Perry’s heart was or possessed the requisite skill to strike at Perry’s heart. However, we find Valenzuela’s arguments unpersuasive, as he does not cogently argue why he could not be convicted absent this evidence. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority). In any event, it is a matter of common knowledge that the heart, lungs and vital arteries are located in the chest, such that a single stab wound to that part of the body could be fatal. *See, e.g., Jester v. State*, 296 S.E.2d 555, 556 (Ga. 1982) (“[T]hat a stab wound penetrating entirely through the heart causes death, is not a matter in the common experience of the human race which should even require expert testimony.”).

cc: Hon. Lynne K. Simons, Chief Judge  
Washoe County Alternate Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk