

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK JOHN INTERLICCHIA JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86702

FILED

JUN 13 2024

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of home invasion and two counts of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Frank Interlicchia raises four issues, none of which warrant relief.

First, Interlicchia argues that there was insufficient evidence to support the first-degree murder convictions. Interlicchia contends that because he was high on heroin and had been hit on the head with a pipe before the killings, the jury could not have found premeditation and deliberation. We disagree. When reviewing the sufficiency of the evidence supporting a criminal conviction, we consider “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.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

The State presented evidence that Interlicchia did not use heroin that day until after the victims were killed, that the pipe was actually an aluminum vacuum attachment, and that Interlicchia was not fazed by the hit. In fact, Interlicchia was examined by medical personnel at the scene, who determined he did not need any medical treatment. Further,

the State introduced evidence that Interlicchia was the initial aggressor, destroyed a phone when someone tried to call 9-1-1 during the incident, and locked the apartment door before killing the victims. The State also introduced evidence that Interlicchia repeatedly bludgeoned the victims to death in an intentional and precise way, damaging only their faces. Finally, Interlicchia himself testified at trial that he killed the victims in self-defense and that he felt what he did was “absolutely necessary.” Thus, a rational juror could have found deliberation and premeditation beyond a reasonable doubt. See NRS 200.010 (defining murder); NRS 200.030(1)(a) (identifying a “willful, deliberate, and premeditated killing” as first-degree murder); *Byford v. State*, 116 Nev. 215, 237, 994 P.2d 700, 714 (2000) (stating that premeditation can be as “instantaneous as successive thoughts of the mind”); *Wilkins v. State*, 96 Nev. 367, 374-75, 609 P.2d 309, 313-14 (1980) (explaining that jurors can rely solely on circumstantial evidence to find the elements of a crime satisfied and are allowed to draw reasonable inferences from the evidence presented). Accordingly, we conclude sufficient evidence supported Interlicchia’s convictions for first-degree murder.

Second, Interlicchia argues that the district court erred by admitting gruesome crime scene and autopsy photographs. We disagree. Gruesome 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). The autopsy pictures Interlicchia challenges helped the medical examiner testify about the victims’ cause of death, the amount of force used, and the resulting loss of integrity to the face. The crime scene pictures demonstrated the severity of the victims’ injuries and depicted physical

evidence, e.g., the murder weapons and Interlicchia's shoe. Further, although the photographs were graphic, the district court meaningfully weighed the potential for unfair prejudice against their probative value. See *Harris v. State*, 134 Nev. 877, 880, 432 P.3d 207, 210-11 (2018) (providing that such photographs "are subject to the balancing test set out in NRS 48.035(1), which precludes the admission of evidence when its probative value is substantially outweighed by the danger of unfair prejudice"). The district court considered all the objections to the autopsy and crime scene photographs, rejecting several and ordering others to be cropped to remove unnecessarily gruesome elements. Therefore, we conclude that the district court did not abuse its discretion in admitting the photographs. See *Turpen v. State*, 94 Nev. 576, 577, 583 P.2d 1083, 1084 (1978) ("Admissibility of such photographs lies within the sound discretion of the district court and, absent an abuse of that discretion, the decision will not be overturned.").

Third, Interlicchia argues that the prosecutor committed misconduct by commenting on Interlicchia's right to remain silent. Because Interlicchia did not object at trial, we review for plain error, see *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (explaining that a defendant who fails to object to prosecutorial misconduct must demonstrate plain error affecting the defendant's substantial rights), and find none. Interlicchia argues that the prosecutor commented on Interlicchia's right to remain silent when the prosecutor asked the lead detective whether any evidence at the scene indicated that the victims were attacking Interlicchia. The prosecutor asked those questions in response to Interlicchia asking the detective if knowing that one of the victims was under the influence and attacked Interlicchia would have impacted the investigation. The record reflects that the prosecutor was clarifying that there was no evidence at the

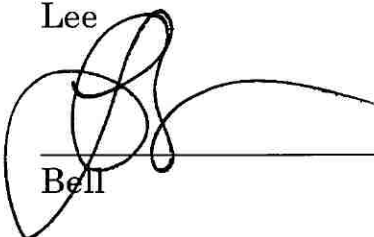
scene that the victims had attacked Interlicchia, not directly or indirectly commenting on Interlicchia's right to remain silent. Thus, we conclude that Interlicchia fails to demonstrate plain error.

Finally, Interlicchia challenges the instructions informing the jury about malice aforethought and implied malice. Interlicchia concedes that this court has previously rejected similar challenges to those instructions. *See, e.g., Guy v. State*, 108 Nev. 770, 776-77 & n.2, 839 P.2d 578, 582-83 & n.2 (1992) (approving the use of "heart fatally bent on mischief" to define malice aforethought and "abandoned and malignant heart" to define implied malice); *Leonard v. State*, 117 Nev. 53, 79, 17 P.3d 397, 413 (2001) (holding that the implied malice and malice aforethought instructions were sufficient). Interlicchia fails to demonstrate why this court should reconsider those rulings. Thus, Interlicchia has not demonstrated that the district court abused its discretion in settling jury instructions. *See Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (reviewing the district court's settling of jury instructions for an abuse of discretion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Michelle Leavitt, District Judge
David Schieck Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk