IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BECERRIL, A/K/A RUDY BECERRILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86336

FILED
JAN 23 2025
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 assault with use of a deadly weapon and second-degree murder with use of a deadly weapon and, pursuant to a guilty plea, of possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant David Becerril's conviction arises from a shooting outside of a 7-Eleven convenience store. After exchanging words, Becerril and victim Devin Anderson each fired one shot at the other. While Anderson missed, Becerril shot Anderson in the head, killing him. Becerril pleaded guilty to possession of a firearm by a prohibited person but maintained at trial that he was not guilty of the remaining charges. A jury convicted Becerril of second-degree murder and assault, both with use of a deadly weapon.

Sufficient evidence supports Becerril's second-degree murder conviction

Becerril argues that the State presented insufficient evidence of second-degree murder because it did not prove beyond a reasonable doubt

that Becerril did not kill Anderson in self-defense.[1] Becerril suggests that self-defense was established by evidence that Anderson placed his hand near a gun in his waistband and fired before Becerril, causing Becerril to fear he would be shot if he did not shoot Anderson.

When reviewing a challenge to the sufficiency of evidence, we view the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). Second-degree murder requires a finding that the defendant killed another with implied malice but without premeditation and deliberation. *Desai v. State*, 133 Nev. 339, 347, 398 P.3d 889, 895 (2017); *see also* NRS 200.010(1) (defining murder); NRS 200.030(2) (defining second-degree murder). "Malice shall be implied . . . when all the circumstances of the killing show an abandoned and malignant heart." NRS 200.020(2); *see also McCurdy v. State*, 107 Nev. 275, 278, 809 P.2d 1265, 1266 (1991) (stating that "[i]mplied malice 'signifies general malignant recklessness of others' lives and safety or disregard of social duty'" (quoting *Thedford v. Sheriff*, 86 Nev. 741, 744, 476 P.2d 25, 27 (1970))). A person who kills in self-defense is justified if (1) the person was "confronted by the appearance of imminent danger," which caused "an honest belief and fear" of death or great bodily injury; (2) the person acted solely on such

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[1]Becerril asserts, with limited explanation, that considerable provocation also negated an essential element of second-degree murder. To the extent this contention is distinct from Becerril's self-defense argument, we need not consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (holding that this court need not address issues unsupported by "relevant authority and cogent argument").

appearance, belief, and fear; and (3) a reasonable person in a comparable situation would have believed they were in similar danger. *Runion v. State,* 116 Nev. 1041, 1051-52, 13 P.3d 52, 59 (2000); *see also* NRS 200.120-.200 (defining justifiable homicide and self-defense).

While Anderson's instantaneous death might support the claim that he was the first to shoot, the evidence presented at trial indicated that Anderson and Becerril fired their guns within less than a second of each other and that Anderson initially tried to retreat from growing tensions with Becerril. Anderson's girlfriend, Victoria Villalobos, testified that when she exited the 7-Eleven, Anderson appeared scared and implored Villalobos to open the passenger door of the car so they could leave. Furthermore, there was no evidence that Anderson removed the gun from his waistband until immediately before he ducked behind the car and fired. The State presented evidence that, in contrast, Becerril announced he was going to get a gun while making shooting motions with his hands. After retrieving the gun, Becerril walked to the back of Villalobos' car and pointed it at her, saying he was going to kill her. Becerril then shot Anderson and continued to use his jammed gun to "pistol-whip" Anderson, then-deceased, in the face. We conclude that a rational juror could reasonably infer from this evidence that Becerril did not act in self-defense when he shot Anderson because Becerril was not motivated solely by a subjective fear for his life. Additionally, the jury could have reasonably found that Becerril was not entitled to claim self-defense because he was the original aggressor. *See Runion,* 116 Nev. at 1051, 13 P.3d at 59. Accordingly, we conclude that sufficient evidence supported Becerril's conviction for second-degree murder.

The district court did not err in admitting evidence that Becerril pistol-whipped the victim

Becerril next argues that the district court erred in admitting evidence that Becerril pistol-whipped Anderson after the shooting. Becerril contends that because Anderson died immediately, the pistol-whipping was irrelevant to cause of death and was substantially more prejudicial than probative. Because Becerril did not object to this evidence at trial, we review for plain error. *See Franks v. State*, 135 Nev. 1, 3, 432 P.3d 752, 754-55 (2019).

Actions that follow immediately after a killing or are a continuation of the same transaction are admissible to show the existence of implied malice at the time the killing occurred. *See State v. Hall*, 54 Nev. 213, 233-36, 13 P.2d 624, 630-31 (1932) (concluding that evidence that the defendant beat the deceased victim's wife with a gun after shooting the victim was admissible to prove malice). The State presented evidence that, within twenty seconds of the shooting, Becerril leaned over Anderson's body and hit Anderson in the face with a gun, causing lacerations to the forehead and nose. As discussed above, evidence that Becerril battered Anderson, who was on the ground and not moving, after any threat had clearly dissipated, was probative of whether Becerril killed Anderson while experiencing an "honest belief and fear" of immediate danger required to show self-defense. *See Runion*, 116 Nev. at 1051, 13 P.3d at 59 (2000). Any danger of unfair prejudice was outweighed by the probative value as to Becerril's state of mind. *See* NRS 48.035(2). Additionally, Becerril's violence in the immediate aftermath of the shooting was admissible as res gestae and was relevant to whether malice could be implied under the circumstances. *See* NRS 48.035(3); *Allan v. State*, 92 Nev. 318, 320, 549 P.2d 1402, 1403 (1976) (holding that evidence of other criminal acts was

admissible as res gestae of the charged crime to "complete the story. . . by proving the immediate context of happenings near in time and place"). We therefore conclude that the district court did not commit plain error in admitting evidence of the pistol-whipping.

The district court did not err in allowing testimony referencing "mug shots"

Becerril next argues that the district court committed plain error by permitting testimony that detectives created a lineup used to identify Becerril from photographs stored in the police department's "mug shot system," implying that Becerril had a prior criminal history. Becerril did not object to this testimony at trial. The detective should not have referenced "mug shots." *See Manning v. Warden*, 99 Nev. 82, 86, 659 P.2d 847, 849-50 (1983) (concluding that jurors could have inferred defendant's prior criminal activity from testimony about obtaining defendant's mug shot). But the comment was brief and non-specific as it was focused on how police generally select photographs that resemble a suspect for inclusion in a lineup. Furthermore, on cross-examination, Becerril clarified that the photographic lineup was created three months after Becerril was arrested for shooting Anderson. *See Browning v. State*, 120 Nev. 347, 358, 91 P.3d 39, 47 (2004) (concluding that a defendant's mugshot "had no appreciable prejudicial effect since jurors had no reason to assume that it had been taken in any other case but the one for which [the defendant] was being tried"). The passing mention of mug shots in these circumstances thus gave the jury no reason to infer that Becerril had been arrested previously and therefore did not undermine the presumption of innocence. Because Becerril has not shown prejudice arising from the detective's testimony, we conclude that this argument is without merit.

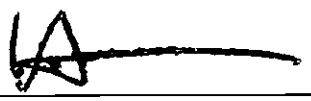
Any gaps in the trial record do not warrant reversal

Finally, Becerril argues that the district court impeded meaningful appellate review by failing to make a complete record of untranscribed portions of trial, including settling of jury instructions, any canvass of a juror who purportedly said hello to Anderson's father, and a response to a jury note requesting help playing a video exhibit. Due process requires the district court to record all sidebar proceedings in a criminal trial either as the matter is resolved or by allowing the attorneys to make a record at a later hearing. *Preciado v. State*, 130 Nev. 40, 43, 318 P.3d 176, 178 (2014). Reversal is warranted, however, only if the missing portions of the record "are so significant that their absence precludes . . . a meaningful review of the alleged errors that the appellant identified and the prejudicial effect of any error." *Id.* (citing *Daniel v. State*, 119 Nev. 498, 508, 78 P.3d 890, 897 (2003)).

Here, the district court settled jury instructions during an unrecorded conference in chambers but permitted counsel to place all objections and arguments on the record at a subsequent hearing. Becerril contends that the district court provided insufficient explanations for its rulings when making the subsequent record, preventing Becerril from identifying any potential abuses of discretion. As this court has observed, "the final settling of jury instructions . . . in all criminal and civil jury trials must be done on the record." *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 322, 212 P.3d 318, 332 (2009). But Becerril has not alleged any error in the instructions given or rejected. *Cf. Archanian v. State*, 122 Nev. 1019, 1033, 145 P.3d 1008, 1019 (2006) (finding no showing of prejudice resulting from an unrecorded conference addressing admissibility of evidence where appellant did not raise a claim on appeal relating to the evidence). Nor has

Becerril shown that the district court in fact canvassed the juror who allegedly interacted with Anderson's father. Finally, Becerril acknowledges that no prejudice resulted from the unrecorded assistance to the jury relating to the video exhibit. Therefore, we discern no reversible error with respect to the record. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



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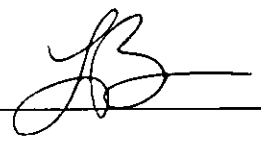

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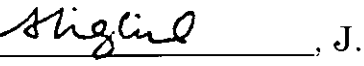

_____, J.
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cc: Hon. Michelle Leavitt, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk