

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISREAL HECHAVARRIA-CORREA,  
A/K/A ISREAL  
HECHAVARRIACORREA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71594

**FILED**

DEC 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Isreal Hechavarria-Correa appeals from a judgment of conviction entered pursuant to a jury verdict of attempted murder with the use of a deadly weapon and battery with the use of a deadly weapon constituting domestic violence. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

First, Hechavarria-Correa claims the State failed to present sufficient evidence to convict him of either charge because he did not have the required intent to commit the crimes. Specifically, Hechavarria-Correa claimed he was drunk, he was swaying with the knife in his hand, and he accidentally cut the victim. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998)

The evidence presented at trial showed Hechavarria-Correa was drinking on the day of the incident. He stayed at home drinking and fixing the washing machine while his girlfriend, the victim, went to a family

member's house. When she returned, she and Hechavarria-Correa made dinner and both continued to drink. They began to argue and Hechavarria-Correa told the victim she was his, and that if she was not going to be with him, he was going to kill her. The victim went upstairs to go to bed. Shortly after she went upstairs, Hechavarria-Correa retrieved a 23-inch knife from the garage and went upstairs after the victim. He began to argue with the victim. The victim asked him what he was going to do with the knife. He told her he was going to kill her and then struck her in the head with the knife. She began to bleed from the head. Hechavarria-Correa gave her a towel and she went downstairs and called 911. While talking with the dispatcher, Hechavarria-Correa took the phone from her and hung it up. The police did not arrive for over an hour. They searched the home with the victim's permission and found the knife in a laundry basket and found Hechavarria-Correa asleep upstairs in the bedroom.

The jury could reasonably infer from the evidence presented that Hechavarria-Correa had the requisite intent to commit attempted murder and battery given Hechavarria-Correa's statements he was going to kill the victim and his decision to go to the garage to retrieve the knife prior to going upstairs. *See* NRS 193.330(1); NRS 200.030(1); NRS 200.481(1)(a); NRS 200.485. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56; 825 P.2d 571, 573 (1992). Further, the jury was instructed on voluntary intoxication and rejected Hechavarria-Correa's assertion he was too drunk to form the requisite intent. Therefore,

Hechavarria-Correa failed to demonstrate the State failed to present sufficient evidence at trial.

Second, Hechavarria-Correa claims the district court abused its discretion by failing to give a “use” instruction in regard to the deadly weapon. Specifically, Hechavarria-Correa claims the district court should have instructed the jury he had to “use” the deadly weapon in conscious furtherance of the crime. The district court rejected this argument because the case Hechavarria-Correa relied on dealt with crimes where a deadly weapon was used in an unintentional manner. *See Buschauer v. State*, 106 Nev. 890, 895-96, 804 P.2d 1046, 1049-50 (1990). In *Buschauer*, the defendant was convicted of involuntary manslaughter with the use of a deadly weapon. *Id.* The Nevada Supreme Court determined that was not proper because involuntary manslaughter is an unintentional crime and his crime by definition did not involve use of the weapon in conscious furtherance of a crime. *Id.* at 896, 804 P.2d at 1050.

When declining to give a “use” instruction, the district court found, in order to be convicted of attempted murder with the use of a deadly weapon and battery with the use of a deadly weapon, the jury would have to find Hechavarria-Correa used the weapon in conscious furtherance of the crime because the crimes required intent. Further, the district court found the jury was going to be instructed adequately on intent and the elements of the offenses. Substantial evidence supports the decision of the district court, *see id.* at 895-96, 804 P.2d at 1049-50; *Rose v. State*, 123 Nev. 194, 205, 163 P.3d 408, 415-16 (2007) (the district court does not err by refusing to give an instruction that is adequately covered by another instruction), and we conclude the district court did not abuse its discretion by denying to give this instruction.

Third, Hechavarria-Correa claims the district court abused its discretion by failing to give an inverse flight instruction. Hechavarria-Correa fails to support his proposed inverse flight instruction with any legal authority, and we observe remaining at the scene of the crime is not exculpatory simply because fleeing from the scene may have been inculpatory. Therefore, the district court did not abuse its discretion by denying to give this jury instruction.

Finally, Hechavarria-Correa claimed the State committed prosecutorial misconduct during closing argument by shifting the burden of proof and by indirectly commenting on his right to silence. Specifically, Hechavarria-Correa claims the State shifted the burden and commented on his right to silence by stating “there is no evidence whatsoever this was an accident” during closing and “there is no evidence whatsoever before you ladies and gentlemen, that this was an accidental act” during rebuttal argument.

Hechavarria-Correa failed to object to these instances, and therefore his claim is subject to plain error analysis. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). In conducting plain error analysis we must determine whether there was error and whether the error was plain from the record. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). “[A]n error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice.” *Valdez*, 124 Nev. at 1190, 196 P.3d at 477.


We conclude Hechavarria-Correa failed to demonstrate plain error affecting his substantial rights in regard to the State’s argument during closing. The State was properly responding to Hechavarria-Correa’s

claim this was an accident and made a reasonable inference from the evidence presented at trial. *See Klein v. State*, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989). Further, to the extent the State's comments may have implied Hechavarria-Correa did not testify nor present witnesses on his behalf, this error was harmless and did not affect his substantial rights given the weight of the evidence.

Having concluded Hechavarria-Correa is not entitled to relief,  
we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Carolyn Ellsworth, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk