

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISAAC MENDES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85445-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Isaac Mendes appeals from a judgment of conviction, pursuant to a jury verdict, of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Isaac Mendes resides in a house in the same neighborhood as Casey Reynolds and Kyle Reynolds in North Las Vegas.¹ One house separates Mendes's residence from Casey and Kyle's house, in what appears to be a typical suburban neighborhood layout. In October 2020, Casey and Kyle were changing the oil in one of their vehicles in their driveway. Mendes began shouting at them and yelled that they "were unable to defend" and care for themselves. During this time, Mendes was looking at and pointing at Casey and Kyle. While yelling at Casey and Kyle, Mendes shouted that he had a Glock and lifted his shirt up to reveal that he had a handgun on his person. Casey and Kyle retreated into their garage and called 9-1-1.

While Casey and Kyle were speaking with a 9-1-1 operator, Mendes entered his residence and emerged with an AR-15 semi-automatic rifle. Mendes began waving the rifle around while still shouting at and looking at Kyle. At one point, he pointed the barrel of the AR-15 at Kyle,

¹Apparently, Mendes was temporarily residing with his parents. Casey is Kyle's father, but the record does not reveal Kyle's age.

who stepped outside the garage at the request of the 9-1-1 operator to see if Mendes had returned outside. Casey remained inside the garage. Mendes eventually shouted either “I can pop you from here” or “I can drop you from here,” while he was pointing the barrel of the AR-15 at Kyle.

When the police arrived, they observed that Mendes was still outside his residence with the AR-15. Mendes was confrontational and aggressive when the police arrived and ignored the commands of the officers. Mendes eventually retreated inside of his residence with the AR-15. The police obtained a search warrant and took Mendes into custody.² While searching Mendes’s residence, the police found a loaded AR-15, additional magazines for the AR-15, a loaded Glock handgun, and an unloaded Glock handgun.

In November 2020, Mendes was charged with (1) assault with a deadly weapon (Casey), (2) assault with a deadly weapon (Kyle), and (3) carrying a concealed firearm or other deadly weapon. Count 3 was dropped before the matter proceeded to trial, apparently because Mendes had a concealed weapon permit. A four-day jury trial was conducted in 2022.

During jury selection, one of the prospective jurors informed the district court that he watches Court TV and often finds himself forming an opinion before the trial ends. The court stated that it understood people develop opinions during a trial, but the important thing is that jurors listen to all of the testimony and keep an open mind. The prospective juror affirmed that he would be able to listen to all the testimony and keep an open mind. Neither the State nor Mendes asked the prospective juror any

²It appears that a SWAT team entered Mendes’s residence in order to arrest him.

follow-up questions to this remark and the prospective juror became a member of the jury without any challenge.

At trial, Kyle, Casey, and three police officers that responded to the scene testified. The State sought to admit multiple photographs of the firearms and ammunition found in Mendes's residence. Mendes objected, arguing that the photographs were not relevant and more prejudicial than probative. After discussion between the district court and the parties, only photographs of the AR-15, the magazines for the AR-15, the Glocks, and the ammunition found inside one of the Glocks were admitted.

During the settling of jury instructions, Mendes requested an instruction on NRS 202.320 (describing the misdemeanor offense of drawing a deadly weapon in a threatening manner), which was given as Instruction 13. Neither the jury instructions nor the verdict form gave the jury the option to find Mendes guilty of a lesser included offense. The record suggests that Mendes did not propose any other jury instructions or otherwise object to the instructions given, or the manner in which they were given.

During deliberations, the jury had several questions for the district court; two are relevant to the issues before this court. First, the jury asked the court for the legal definition of "brandish." The word "brandish" is contained within the seconded amended information. The court, following input from the parties, informed the jury that "Nevada law does not define brandishing." Second, the jury asked the court if it could review the entirety of Kyle's testimony. After consulting with the parties, the district court instructed the jury to return the following morning and provided the jury with a CD/DVD of Kyle's testimony and a clean computer for the jury to view the testimony on. Mendes did not object to either of the jury's questions or the court's responses. The record does not reveal if the

jury actually rewatched Kyle's testimony, in whole or in part, or how many times it may have watched it. However, it is clear that, if the jury rewatched Kyle's testimony, it was not in open court.

Eventually, the jury returned a not guilty verdict as to count I and a guilty verdict as to count II. Mendes was sentenced to a suspended sentence of 28-72 months in the Nevada Department of Corrections with 676 days credit for time served. Mendes was placed on probation for an indeterminate period not to exceed 48 months.

Mendes now appeals and argues that (1) the district court erred by advising a prospective member of the jury that he could form an opinion at any time during trial³; (2) the jury instructions lacked the proper specific intent instruction, failed to include proper definitions, failed to instruct on "reasonable apprehension," and were legally incorrect; (3) the court erred when it answered the jury's question about the definition of "brandish"; (4) the court erred when it allowed the jury to review Kyle's testimony in the jury room; (5) the court abused its discretion when it admitted pictures of the firearms and ammunition recovered; (6) there was not sufficient evidence to support the verdict; and (7) there were cumulative errors requiring a new trial. We disagree.

The district court did not plainly err when it instructed the jury

³Mendes failed to object below, and he does not argue plain error on appeal. Therefore, he has forfeited this claim, and we need not consider it. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Additionally, when a party fails to challenge the seating of a juror despite knowing facts that could have prompted a challenge, the issue is waived on appeal. *Sayedzada v. State*, 134 Nev. 283, 288, 419 P.3d 184, 190 (2018). Further, we note that the district court instructed the jury to "listen to the evidence and keep an open mind."

Mendes failed to object to the jury instructions below. Therefore, this court reviews for plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show that there was an error; the error was plain, meaning that it is an error that is clear under current law from a causal inspection of the record; and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a 'grossly unfair' outcome)." *Id.* at 51, 412 P.3d at 49. The appellant holds the burden of showing that his substantial rights were affected and that he was actually prejudiced. *Phenix v. State*, 114 Nev. 116, 119, 954 P.2d 739, 740 (1998); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error).

Mendes argues that assault with a deadly weapon is a specific intent crime and the district court's failure to instruct the jury on specific intent prejudiced him. The State responds that Mendes failed to object below, Instruction 9 is a correct statement of law, and Mendes failed to support his claim with proper legal authority and cogent argument. Although the instruction given did not include the word "specific," the court did instruct the jury on specific intent by instructing that, in order to be guilty, Mendes had to *intentionally* place "another person in reasonable apprehension of immediate bodily harm."

We agree that assault is a specific intent crime. *Powell v. State*, 113 Nev. 258, 263, 934 P.2d 224, 227 (1997). But Nevada law does not require that the word "specific" be used when instructing on specific intent. *See Wilkerson v. State*, 87 Nev. 123, 126-27, 482 P.2d 314, 316 (1971) (concluding that an instruction "sufficiently direct[ed] the jury to consider specific intent" even though the instruction did not include the word

“specific”). Additionally, jury instructions can be taken as a whole to consider whether they provided sufficient direction to the jury. *See Powell*, 113 Nev. at 263, 934 P.2d at 227. The jury was instructed on intent, the State’s burden of proof, and the elements of the crime. While the exact same instructions found to be appropriate in *Powell* were not given in this matter, we cannot conclude that there is clear error based on the instruction given under current law from a causal inspection of the record.⁴

Mendes argues that Instruction 3 was deficient because it did not define the standard terms “willful,” “unlawful,” and “feloniously.” The State disagrees and argues that these words are used in their ordinary sense, so they did not require definitions. “Trial courts have broad discretion in deciding whether terms within an instruction should be further defined.” *Dawes v. State*, 110 Nev. 1141, 1145, 881 P.2d 670, 673 (1994). Additionally, “[w]ords used in an instruction in their ordinary sense and which are commonly understood require no further defining.” *Id.* at 1146, 881 P.2d at 673. The words identified by Mendes are common and need no further definition. Additionally, the definitions that Mendes now provides in his brief only expand upon their common usage and do not

⁴Even if the district court had erred, we conclude that Mendes has not demonstrated that his substantial rights were affected in that the alleged error caused actual prejudice or a miscarriage of justice. The jury was instructed that it needed to find that Mendes *intended* to place Casey and Kyle in “reasonable apprehension of immediate bodily harm.” While not using the word “specific,” this language adequately instructed the jury that the State had to prove Mendes had the specific intent to accomplish an assault with a deadly weapon. *See Intent, Black’s Law Dictionary* (11th ed. 2019) (defining “specific intent” as “[t]he intent to accomplish the precise criminal act that one is later charged with”).

provide any legal or uncommon usages of the words. Accordingly, we conclude that the district court did not plainly err.⁵

Mendes next argues that the district court erred by not explaining the test for determining “reasonable apprehension” to the jury, even though he did not request such an instruction at trial. The State responds that Mendes offered no such language below and did not cite any authority to support his position on appeal.

The district court did not plainly err. Under the reasonable person test, the jury evaluates the facts from the perspective of a reasonable person. *Santana v. State*, 122 Nev. 1458, 1463, 148 P.3d 741, 745 (2006). Here, the jury was instructed to determine if the victims were placed in “reasonable apprehension of immediate bodily harm.” This instruction encompasses the objective reasonable person test since it conveys the objective analysis required. Because the jury instruction encompassed the appropriate test, we conclude that Mendes has not shown clear error under current law from a causal inspection of the record.⁶

⁵Even if the district court erred, Mendes has not demonstrated that his substantial rights were affected. Mendes argues the omission of the definitions prejudiced him because one police officer testified that it was not against the law for Mendes to shout or to have a firearm. Mendes fails to explain how this testimony relates to the definitions Mendes now claims should have been included in the jury instructions. Further, the testimony may actually have aided Mendes because the officer explained that portions of Mendes’s actions were not against the law.

⁶Even if the district court did err, Mendes has not shown that his substantial rights were affected. Mendes speculates that he was prejudiced because the jury could have convicted him based on Kyle’s testimony that he was scared. However, the jury was instructed to determine if Kyle’s fear was reasonable as it was told to decide if the victims experienced “reasonable apprehension of immediate bodily harm.” The record reveals that the jury was presented with evidence of guilt beyond the subjective fear

On appeal, Mendes argues that Instruction 10 “is legally incorrect and confusing because it conflates alternate and conflicting theories on the definition of a deadly weapon.” Mendes goes on to explain that the jury was instructed on both the functional and the inherently dangerous test instead of just being instructed on the functional test.⁷ The State responds that the jury was properly instructed because the language in the instruction came directly from NRS 193.165(6) (defining “deadly weapon”) and NRS 202.253(3) (defining “firearm”).

Here, the district court did not plainly err by instructing the jury on both the functional and inherently dangerous definitions of “deadly weapon.” Both definitions are used in Nevada and it is within the court’s discretion to determine which definition to give to the jury. *Rodriguez v. State*, 133 Nev. 905, 909, 407 P.3d 771, 774 (2017). Therefore, Mendes has not shown the district court clearly erred under current law from a causal inspection of the record.⁸

of the victims. Further, the jury does not appear to have relied solely on the victims’ subjective feelings, because—even though Casey testified that he felt threatened by Mendes—the jury nevertheless acquitted Mendes of assaulting Casey with a deadly weapon.

⁷Mendes also argues that Instruction 10 improperly instructed the jury that a firearm is a deadly weapon and contains an incorrect definition of “firearm.” However, Mendes failed to object below, propose his own jury instructions on the issue, or provide cogent argument on appeal. Accordingly, we need not consider these arguments. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48; *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

⁸Even if the district court erred, Mendes has failed to show that his substantial rights were affected. First, the second amended information encompassed both definitions. Second, even if the jury was only instructed that a deadly weapon is “[a]ny weapon, device, instrument, material or

Mendes argues that Instruction 11 includes an improper definition of the word “use.”⁹ More specifically, Mendes argues that the definition of “use” found in Instruction 11 comes from Nevada caselaw explaining the deadly weapon enhancement in NRS 193.165 which Mendes was not charged with violating. The State replies that Mendes failed to object or request a different instruction below and that Instruction 11 is a correct statement of law.

Here, Mendes has not shown that using the same definition of “use” from NRS 193.165 in defining the offense charged in NRS 200.471 is clear error under current law from a causal inspection of the record. Further, Mendes has not demonstrated that his substantial rights were affected. Mendes argues that he was prejudiced because the jury “may” have equated “use” with possession.” Mendes provides no support for this argument and sufficient evidence supports that Mendes “used” the AR-15 instead of merely possessing the firearm. Accordingly, we conclude that Mendes’s argument is unpersuasive under plain error review.¹⁰

substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death,” the jury could have still found that a person, who, like Mendes, was standing outside with an AR-15 rifle and threatening to shoot his neighbor, had used a deadly weapon.

⁹Mendes also states Instruction 9 incorrectly defined “use,” but he fails to support this argument, instead focusing his argument and analysis on Instruction 11. Accordingly, we need not consider his argument. See *Maresca*, 103 Nev. at 673, 748 P.2d at 6.

¹⁰Mendes also argues that Instruction 11 references a second theory that was not pleaded, because the instruction did not explain what the State needed to prove he did when “using” the firearm. Mendes fails to explain his argument considering the firearm was pointed at the victim, provide any legal support for his argument, or explain how his substantial rights were

The district court did not err when it answered the jury's request for a definition of "brandish"

Mendes argues that the district court erred when it told the jury that Nevada law does not define "brandishing" during deliberations. Mendes further argues that this violated his substantial rights because the jury did not understand the charges and that this alleged error could have made the difference between the jury finding Mendes guilty of a felony or a misdemeanor. The State replies that Mendes has failed to provide any law showing that the district court was incorrect and, even if the court did err, it was harmless because substantial evidence supports the verdict.

Mendes did not object below, nor did Mendes offer any definition of "brandish" when the jury requested a legal definition. Therefore, we may review for plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. Mendes does not argue that the district court was incorrect and tacitly acknowledges that there is no legal definition of "brandish" in Nevada. Instead, Mendes argues that the district court erred by not providing a common dictionary definition for "brandish."

The district court is required to inform the jury on any point of law that arises in the case after they have retired to deliberate. NRS 175.451. However, the court is not required to define words that are used "in their ordinary sense and which are commonly understood." *Dawes*, 110 Nev. at 1146, 881 P.2d at 673. This is in contrast with the requirement that the district court define phrases and words that have technical legal meanings. *Id.* Accordingly, we conclude that Mendes has not shown clear error under current law from a causal inspection of the record. Further

affected. Accordingly, we do not discern plain error and need not further consider his argument. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6.

Mendes's substantial rights could not have been affected as argued because he did not request an instruction or verdict form on lesser included offenses. Accordingly, we conclude that Mendes has failed to demonstrate plain error. *Mendes's substantial rights were not affected when the district court allowed the jury to view playback of Kyle's testimony*

Mendes argues that the district court erred when it allowed the jury to listen/view Kyle's testimony while it deliberated outside of the court's presence and by not admonishing the jury to weigh all evidence and not focus on a specific portion of the trial after it reviewed the playback of Kyle's testimony. The State responds that the district court did not err; that even if the district court did err, appellate review is unavailable because Mendes participated in the error; and that Mendes only provides persuasive authority to support his argument that the jury should have been admonished.

Here, Mendes agreed to give the jury the opportunity to review Kyle's recorded testimony during its deliberations. Therefore, any error was invited, and thus we need not consider it on appeal. *See Belcher v. State*, 136 Nev. 261, 275, 464 P.3d 1013, 1028 (2020) (concluding that a party cannot challenge on appeal errors which that same party invited, induced, or provoked). However, even considering the error, Mendes did not object below. Therefore, we may only review for plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. Reviewing for plain error, we cannot discern clear error under current law from a causal inspection of the record. And even if the district court clearly erred, then Mendes has failed to show that his substantial rights were affected. What actually happened in the jury room is unknown; the jury may have reviewed the witness's recorded testimony in the jury room. But the jury would have heard the testimony read or played back in open court if not in the jury room. Thus, the jury

would have heard the testimony again, and there is no contention that the jury heard inadmissible evidence. Accordingly, we conclude that Mendes has not demonstrated that the alleged error caused actual prejudice or a miscarriage of justice.¹¹

The district court did not abuse its discretion when it admitted photographs of the weapons and ammunition at issue into evidence

Mendes argues that the district court abused its discretion when it allowed the State to admit photographs of the AR-15 rifle and the Glock recovered from Mendes's residence after the incident because they were not relevant and were more prejudicial than probative. The State responds that the exhibits were both relevant and were not unfairly prejudicial.

We "will not disturb a district court's decision to admit photographic evidence unless the district court abused its discretion." *West v. State*, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003) (footnote omitted). An abuse of discretion occurs if the district court's decision is arbitrary or capricious. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. Relevant evidence "is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice." NRS 48.035(1).

The disputed photographs show firearms that Mendes was accused of having on his person and brandishing at the victim. The disputed photographs also show ammunition for the firearms at issue,

¹¹We note that Mendes has not cited Nevada law that requires that the jury be admonished after the playback of testimony.

which was found in Mendes's house. We note that one of the Glocks was loaded when recovered by the police. The district court could reasonably find that the photographs were relevant because they made it more probable that Mendes actually had firearms, or deadly weapons, on his person when he was shouting at the victims, since the photographs showed firearms found shortly after the incident in Mendes's residence that matched the firearms Kyle testified he saw. Additionally, the photographs of the ammunition were relevant because the attempted use of a deadly weapon was part of the offenses as charged in the alternative and the recovered evidence made it more likely that Mendes willfully and unlawfully attempted to use physical force.¹² This shows relevance since two of the firearms were discovered to be loaded and it could be inferred that they were loaded before Mendes retreated inside his residence and the police obtained a search warrant to search the residence. Accordingly, we conclude that the district court acted within its discretion when it found that the photographs depicting the facts that were described by various witnesses were relevant and corroborative.

Unfair prejudice "is an appeal to 'the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence.'" *State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 933, 267 P.3d 777, 781 (2011) (quoting *Krause Inc. v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001)). Mendes argues that he was prejudiced because Kyle never identified the photographs of the firearms as the firearms that he observed in Mendes's possession. This argument makes no reference to the

¹²Mendes was charged with "willfully, unlawfully, and intentionally plac[ing] another person in reasonable apprehension of immediate bodily harm" or "willfully and unlawfully attempt[ing] to use physical force against another person."

standard used to determine if evidence is unfairly prejudicial and seems to refer to relevance. Additionally, the photographs do not appeal to the “emotional and sympathetic tendencies of a jury.” Instead, they objectively show the firearms and ammunition found in Mendes’s residence immediately after the incident and they were, at a minimum, similar to what Kyle described and the jury heard from the police officers. Accordingly, we conclude that the district court did not abuse its discretion.¹³

Sufficient evidence supports the verdict

Mendes argues that sufficient evidence does not support the verdict. The State responds that overwhelming evidence supports the verdict.

In reviewing a challenge to the sufficiency of evidence supporting a criminal conviction, this court considers “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) (emphasis omitted)). “The established rule is that it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.” *Id.* (citing *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975)). This court will not disturb a verdict supported by substantial evidence. *Id.*

¹³We also note that the district court carefully considered each picture that was presented by the State and objected to by Mendes. The record reveals that the court did not admit several of these pictures because they showed firearms that were not at issue in the case.

Here, the State needed to prove beyond a reasonable doubt that Mendes, as it charged him in the second amended information, did “willfully, unlawfully, feloniously and intentionally” placed Kyle “in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against” Kyle by brandishing a firearm “while making verbal threats” to Kyle. When viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the State has proved beyond a reasonable doubt that Mendes committed all the elements of the crime. *See McNair*, 108 Nev. at 56, 825 P.2d at 573.

Kyle testified that he and his father were outside working on their car when Mendes began yelling at them. According to Kyle, Mendes yelled that Kyle and his family were unable to defend and care for themselves. Kyle also testified that Mendes pointed at Kyle and his father and eventually pulled up his shirt to reveal that he had a handgun on his person. Kyle and his father retreated into their garage and called 9-1-1. Eventually, Mendes entered his house then exited with what Kyle described as a long rifle, later identified as an AR-15. The 9-1-1 operator asked Kyle to see if Mendes had stepped outside again, so Kyle left the garage and witnessed Mendes waving the rifle around and at one point Mendes pointed the barrel of the rifle at Kyle.

Kyle also testified that while Mendes was pointing the rifle at Kyle, Mendes said that he could shoot Kyle—either saying “I can pop you from here” or “I can drop you from here.” The first officer that responded to the scene testified that when he arrived Mendes was seated in front of his house with a rifle. The officer also testified, without objection, that Mendes was confrontational and threatened to shoot the responding police officers. Mendes retreated inside his house and the police obtained a search warrant.

Once the police obtained the search warrant, they entered the residence, arrested Mendes, and retrieved a loaded AR-15, additional magazines for the AR-15, a loaded Glock, and an unloaded Glock. We conclude that this evidence is sufficient to support the verdict against Mendes.¹⁴

Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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

¹⁴Mendes also argues that cumulative errors require reversal. As there are no errors to cumulate, Mendes's cumulative error claim fails. See *Lipsitz v. State*, 135 Nev. 131, 140 n.2, 442 P.3d 138, 145 n.2 (2019) (concluding that there were no errors to cumulate when the court found only a single error).

¹⁵Insofar as Mendes has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.