

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIAN ALEXANDER LUPERCIO-
TREJO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87449

FILED

APR 16 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 attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, discharge of a firearm at or into an occupied vehicle, burglary of a motor vehicle with the use of a deadly weapon, and mayhem. Second Judicial District Court, Washoe County; Tammy Riggs, Judge.

Julian Lupercio-Trejo shot Sahid Saavedra-Izquierdo multiple times at point blank range. The shooting occurred after more than a year of Lupercio-Trejo threatening Saavedra-Izquierdo due to Lupercio-Trejo's jealousy about his ex-girlfriend, Alexandra Romo. At the time of the shooting, Saavedra-Izquierdo was seated inside a vehicle at a red light. Romo and Saavedra-Izquierdo's cousin Alejandra Mora were also inside the vehicle at the time of the shooting. Neither woman was injured. Saavedra-Izquierdo sustained serious injuries from the shooting, including a broken nose, facial paralysis, hearing loss, and blindness in one eye. Saavedra-Izquierdo's injuries required numerous surgeries, including the installation of plates in his leg, and a nerve transplant for his arm.

At trial, the jury found Lupercio-Trejo guilty on all charges. The district court sentenced Lupercio-Trejo to serve an aggregate prison

term of 20 to 50 years, with the attempted murder and discharging a firearm counts to run consecutively and all remaining counts to run concurrently.

On appeal, Lupercio-Trejo argues that insufficient evidence supports the conviction for discharging a firearm at or into an occupied vehicle because the State failed to prove malice separate from the specific intent to kill (i.e., the mens rea for the attempted murder). Lupercio-Trejo concedes that in some cases a prosecution for both offenses is permissible but argues that in this case because he only aimed and shot at Saavedra-Izquierdo, the conviction for discharging a firearm should be vacated. We disagree and affirm the judgment of conviction.

“When reviewing a criminal conviction for sufficiency of the evidence, this court determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution.” *Brass v. State*, 128 Nev. 748, 754, 291 P.3d 145, 149-50 (2012). “[I]t is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.” *Nolan v. State*, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006) (internal quotations omitted). When substantial evidence supports a verdict, we will not disturb that verdict on appeal. *Henry v. State*, 83 Nev. 194, 196, 426 P.2d 791, 791 (1967).

NRS 202.285(1)(b) states that “[a] person who willfully and maliciously discharges a firearm at or into any . . . vehicle, . . . [i]f it is occupied, is guilty of a category B felony.” The jury was instructed accordingly. The jury was also instructed on the definition of “maliciously” within the context of the charged offense. Specifically, the jury was instructed:

As it relates to Counts [sic] III, to act “maliciously” is to act with an evil intent, wish or design to vex, annoy or injure another person. The condition of mind described by “maliciously” may also be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

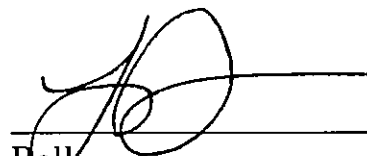
This instruction is nearly identical to the definition adopted by the Legislature and by this court in the model jury instructions. *See* NRS 193.0175; Nevada Pattern Jury Instructions: Criminal § 22.03 (State Bar of Nevada 2023).


The sole issue before us is whether the State proved malice to sustain a conviction under NRS 202.285(1)(b) separate from an intent to kill Saavedra-Izquierdo. We are unpersuaded by Lupercio-Trejo’s contention that he did not act maliciously because he only aimed at and shot his intended victim. The crux of Lupercio-Trejo’s argument focuses on the “willful disregard of the rights of another” malice inference. Our review of the record reveals that Lupercio-Trejo “pistol-whipped” Saavedra-Izquierdo in the face with a loaded firearm, had a scuffle with Romo as she attempted to confiscate the loaded firearm that was pointed inside the vehicle, and fired multiple bullets into a vehicle full of occupants on a public roadway. Any rational trier of fact could have found, beyond a reasonable doubt, that each of the actions exhibited a willful disregard of the rights of the vehicle occupants. Lupercio-Trejo’s contention that his good aim should absolve him of culpability is misplaced. Such an argument fails to consider the very real possibilities of the other vehicle occupants being hit by bullets that misfired, ricocheted, dislodged, or missed. Because substantial evidence supports the jury’s finding of malice within the charged offense, we will not

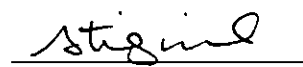
disturb that finding, and we conclude that Lupercio-Trejo's argument is without merit.

Additionally, Lupercio-Trejo fails to cogently argue and present relevant authority in support of his argument that the legislature did not intend to punish the same conduct for both attempted murder and discharging a firearm at or into an occupied vehicle such that his punishment is excessive. Thus, we decline to address this issue. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (holding that it is appellant's responsibility to provide relevant authority and cogent argument). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Bell


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Tammy Riggs, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk