IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY LEMAY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54965

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, burglary while in possession of a firearm, and attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge. Appellant Larry Lemay, Jr., raises two contentions on appeal.

First, Lemay argues that insufficient evidence supports his conviction for attempted murder with the use of a deadly weapon because the State failed to prove that he had the specific intent to kill the victim. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The evidence showed that Lemay entered the victim's home with a pistol, and, when cornered by the victim, Lemay pointed the weapon at him and pulled the trigger. The weapon did not discharge because no round was chambered. Lemay tried to chamber a round but the victim grabbed the weapon and struggled with Lemay until the police arrived. Based on this evidence, we conclude that a rational

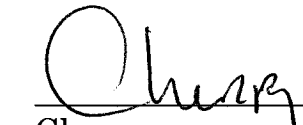
juror could reasonably find that Lemay deliberately intended to take the victim's life with his actions but failed to accomplish that end. See NRS 193.200; NRS 193.330(1); NRS 200.020(1); NRS 200.030. While Lemay's trial testimony shows that he denied attempting to shoot the victim, it is for the jury 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); Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

Second, Lemay argues that the State committed prosecutorial misconduct. He contends that the prosecutor's comment, "[w]e're not here to be reasonable," impermissibly instructed the jury to disregard the burden of proof. Because Lemay did not object to the statement at the time it was made, his claim is reviewed for plain error. See Higgs v. State, 126 Nev. ___, ___, 222 P.3d 648, 662 (2010); see also McKague v. State, 101 Nev. 327, 330, 705 P.2d 127, 129 (1985) (providing that claims of error "need not be considered" where defendant fails to make a contemporaneous objection). We conclude that, when considered in context, the statement did not impermissibly attempt to quantify reasonable doubt, see McCullough v. State, 99 Nev. 72, 75, 657 P.2d 1157, 1158-59 (1983), or direct the jury to disregard the reasonable doubt instruction, and thus did not amount to an error "so unmistakable that it is apparent from a casual inspection of the record," Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), and by Nika v. State, 124 Nev. 1272, 1287, 198 P.3d 839, 849-50 (2008), cert. denied 558 U.S. ___, 130 S. Ct. 414 (2009). Even assuming the remarks were improper,

Lemay has failed to show that he was prejudiced or that his substantial rights were affected considering the substantial evidence of his guilt.

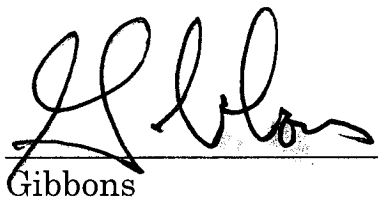
Having considered Lemay's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry

_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. David B. Barker, District Judge
The Eighth District Court Clerk
Attorney General/Carson City
Christiansen Law Offices
Clark County District Attorney