

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIANO TEJEDA-ZUNIGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72761

FILED

JUL 17 2018

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

ORDER OF AFFIRMANCE

Mariano Tejada-Zuniga appeals under NRAP 4(c) from a judgment of conviction entered pursuant to a jury verdict of battery with the use of a deadly weapon resulting in substantial bodily harm and possession of stolen property. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, Tejada-Zuniga argues the district court erred by admitting a witness' testimony regarding firearms because it amounted to improper lay opinion testimony. Tejada-Zuniga did not object to this testimony and, thus, is not entitled to relief absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). "In conducting plain error review, we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

Here, the witness was the owner of the firearm that Tejada-Zuniga used in the commission of the crime. During his direct testimony, he discussed his experience using the firearm and the safety features of the firearm. On cross-examination, Tejada-Zuniga questioned the witness

regarding the trigger pull of the firearm at issue in this matter compared to the trigger pull of other firearms. On redirect, the State questioned the witness regarding his overall experience with firearms and the witness responded that he was familiar with firearms, but clarified that he was not an expert. The witness then stated that he believed the trigger pull of the firearm used in this matter fell somewhere in-between lighter and heavier pull firearms.

Based upon our review of the record, we conclude the challenged testimony was rationally based upon the perception of the witness and was helpful to understand his testimony and determine a fact in issue. See NRS 50.265. Moreover, the witness' testimony concerning firearm trigger pull was initiated on cross-examination and, therefore, any error regarding its admission was invited by Tejeda-Zuniga. See *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." (quoting 5 Am.Jur2d *Appeal and Error* § 713 (1962), p. 159-60)). Therefore, we conclude Tejeda-Zuniga fails to demonstrate plain error in this regard.

Second, Tejeda-Zuniga argues the State committed prosecutorial misconduct during its closing argument by misstating the law regarding general intent. Tejeda-Zuniga asserts that the State improperly stated that the jury only had to find he intended to pull the trigger of the firearm to find the necessary general intent to support a crime of battery. Tejeda-Zuniga did not object to this argument and, thus, is not entitled to relief absent a demonstration of plain error. See *Valdez*, 124 Nev. at 1190, 196 P.3d at 477.


“General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated.” *Bolden v. State*, 121 Nev. 908, 923, 124 P.3d 191, 201 (2005) (internal quotation marks omitted), *receded from on other grounds by Cortinas v. State*, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008). Tejada-Zuniga’s trial defense was that he did not commit battery because the firearm accidentally discharged and he did not mean to shoot the victim. Given Tejada-Zuniga’s defense and our review of the record, we conclude the State appropriately acknowledged it had to prove Tejada-Zuniga willfully and unlawfully shot the victim and the shooting was not the result of an accidental discharge. See NRS 200.481(1)(a). The State also appropriately argued that it did not have to prove Tejada-Zuniga intended to cause the harm the victim suffered as a result of the shooting. Based on the record before this court, we conclude Tejada-Zuniga fails to demonstrate plain error. Accordingly, we conclude Tejada-Zuniga fails to demonstrate he is entitled to relief.

Third, Tejada-Zuniga argues he is entitled to relief due to cumulative error. However, because Tejada-Zuniga fails to demonstrate any error, we conclude he is not entitled to relief due to cumulative error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Coyer Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk