

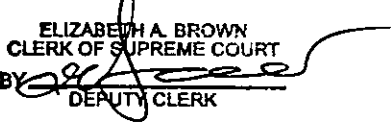
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN MANUEL LOPEZ-LEYVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88610-COA

FILED

MAY 22 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Juan Manuel Lopez-Leyva appeals from a judgment of conviction, entered pursuant to a jury verdict, of attempted murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, assault with use of a deadly weapon, burglary while in possession of a firearm, mayhem with use of a deadly weapon, and being a felon in possession of a firearm. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

On January 1, 2024, Lopez-Leyva and his co-defendant, Juan Manuel Sanchez-Ramirez, entered Daise Juarez's home in search of a discarded wallet and phone that were purportedly left behind by two of Sanchez-Ramirez's friends. Juarez denied having these items, but the men—both of whom were carrying firearms—stayed at her apartment and indicated that they would not leave without the items. Throughout the hours that followed, Juarez observed Sanchez-Ramirez threatening Lopez-Leyva. Eventually, Lopez-Leyva shot Juarez in her leg before following her to her kitchen and shooting her again in her shoulder and neck.

After Lopez-Leyva and Sanchez-Ramirez left, Juarez's roommate found her on the kitchen floor and called the police. Juarez survived the shooting; however, she was left completely paralyzed from the neck down due to a penetrating injury to the C6 vertebrae in her neck.

Lopez-Leyva and Sanchez-Ramirez were arrested and charged with (1) attempted murder with the use of a deadly weapon, (2) battery with use of a deadly weapon resulting in substantial bodily harm, (3) assault with use of a deadly weapon, (4) burglary while in possession of a firearm, (5) mayhem with the use of a deadly weapon, and (6) being a felon in possession of a firearm. This matter proceeded to a six-day joint jury trial for both co-defendants.¹ Lopez-Leyva gave a brief opening statement wherein he asked the jury to consider why he was present at Juarez's apartment on the day of the crimes.

Juarez testified and gave the only eyewitness account of the crimes. She described how she was upstairs in her apartment when Sanchez-Ramirez demanded that she "[o]pen the door or I'm going to shoot the door down." She then observed Lopez-Leyva bring a gun to Sanchez-Ramirez. Sanchez-Ramirez then advised that he and Lopez-Leyva would not leave until they retrieved the wallet and phone.

The men had a conversation with Juarez just inside her front door. Juarez testified, "[Sanchez-Ramirez] was telling [Lopez-Leyva] that Reno belongs to him, that he needs to bow down to him. And - - and [Lopez-Leyva] looked like he was afraid of [Sanchez-Ramirez]." Juarez observed that both men had guns. At one point in the conversation, Sanchez-Ramirez told Lopez-Leyva, "You have 24 hours, motherfucker, to get me that wallet

¹Prior to trial, the district court bifurcated the charges of felon in possession of a firearm from the remaining charges.

and the phone." Juarez testified that Sanchez-Ramirez continued to threaten Lopez-Leyva.

Juarez then left the apartment in Sanchez-Ramirez's vehicle to go buy him cigarettes. She testified that she knew they would search her place when she left, and she was hoping that they would discover that she did not have the wallet or phone. On cross-examination, she conceded that Lopez-Leyva originally volunteered to go and get Sanchez-Ramirez cigarettes, but that Sanchez-Ramirez would not let him leave.

When Juarez re-entered her home, Lopez-Leyva and Sanchez-Ramirez were still inside. Juarez said that she wanted them to leave, and Sanchez-Ramirez grabbed a gun and shot several times into the ground outside while proclaiming, "[t]he cops are not going to come . . . nobody is going to come." Juarez again requested that they leave, and Lopez-Leyva said to Sanchez-Ramirez, "Come on. Let's go. Let's just go." Sanchez-Ramirez indicated that Lopez-Leyva was not going anywhere.

Inside, Sanchez-Ramirez started whispering to Lopez-Leyva. According to Juarez, it appeared as though Sanchez-Ramirez was "pumping up" Lopez-Leyva. Lopez-Leyva responded to Sanchez-Ramirez's whispers with "[y]eah, [y]ou're right. You're right."

Sometime thereafter, Lopez-Leyva held a gun to Juarez's head. Lopez-Leyva and Sanchez-Ramirez were again whispering amongst themselves before Lopez-Leyva yelled, "[y]ou're lying to me, bitch." Lopez-Leyva then shot Juarez in the leg with a gray handgun that had previously been held by Sanchez-Ramirez. Juarez ran to the kitchen and Lopez-Leyva followed her and shot her again in her shoulder and her neck.

On cross-examination by Lopez-Leyva, Juarez admitted to telling the police that she believed Sanchez-Ramirez was threatening

Lopez-Leyva. Juarez testified that at one point after she told Sanchez-Ramirez that she did not have the phone or wallet, Lopez-Leyva said to him, "Yeah, fool. Just let her go, fool," and that it was clear to her that Lopez-Leyva wanted to leave. Juarez further testified that, at one point, Sanchez-Ramirez started to yell at Lopez-Leyva, alleging that the latter knew where the phone and wallet were located. Specifically, Sanchez-Ramirez yelled at Lopez-Leyva, "Don't fucking lie to me, fool. You know where the fuck it's at. Go get it fool." She also testified that she told the police that throughout the ordeal, it was clear to her that Sanchez-Ramirez was threatening Lopez-Leyva. She further testified that she believed Sanchez-Ramirez to be dangerous. On cross-examination by Sanchez-Ramirez, Juarez explained, "I believe that [Sanchez-Ramirez] told [Lopez-Leyva] to shoot me."

In addition to Juarez, the State elicited testimony from various law enforcement officers, a few of Juarez's neighbors, the neurosurgeon who treated Juarez, a criminalist, a firearms expert, Juarez's roommate, the father of Juarez's children, and Juarez's friend. Following these testimonies, the State rested. Neither Lopez-Leyva nor Sanchez-Ramirez testified, and both defendants also rested.

Lopez-Leyva proffered the following jury instruction, alleging that Juarez's testimony met the minimal burden to support his duress theory of defense:

The Defendant Mr. Juan Manuel Lopez-Leyva has raised the affirmative defense of duress.

This means that Mr. Juan Manuel Lopez-Leyva is not guilty of a crime if he falls into the following class of persons who are not liable to punishment:

1. He committed the act or made the omission charged;
2. under threats or menaces sufficient to show;

3. that he had reasonable cause to believe, and did believe;

4. that if he refused, his life would be endangered or he would suffer great bodily harm.²

The district court declined to give the instruction.

After closing arguments, the jury found Lopez-Levy guilty of the first five counts. Lopez-Levy was then tried on the sixth bifurcated charge of being a felon in possession of a firearm and was convicted of that as well.³ The district court sentenced Lopez-Levy to an aggregate term of incarceration of 17 to 46 years. This appeal followed.

Lopez-Levy argues on appeal that the district court erred by refusing to instruct the jury on his affirmative defense of duress. He argues that the district court's refusal to provide this instruction deprived him of his ability to argue his theory of the case to the jury. The State, in response, argues that Lopez-Levy did not elicit testimony that would entitle him to that instruction, particularly with respect to his actual belief of danger to himself. The State does not argue that the failure to instruct on duress was harmless beyond a reasonable doubt. Upon review, we agree with Lopez-Levy.

"The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Generally, "the defense has the right to have the

²We note that this proposed instruction was tailored from the Nevada pattern jury instruction on duress. See Nevada Pattern Jury Instructions: Criminal § 5.04 (State Bar of Nevada 2023).

³Sanchez-Ramirez was similarly convicted of all charges against him, and has separately appealed his judgment of conviction.

jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be.” *Id.* at 751, 121 P.3d at 586 (quoting *Vallery v. State*, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002)). However, a defendant is not entitled to a theory-of-the-case instruction that is “misleading, inaccurate, or duplicitous.” *Id.* at 754, 121 P.3d at 589.

“The duress defense is an ancient common law affirmative defense which provides the defendant a legal excuse for the commission of the criminal act.” *Cabrera v. State*, 135 Nev. 492, 494, 454 P.3d 722, 724 (2019) (internal quotation marks omitted). The Nevada Legislature codified the duress defense at NRS 194.010(8). *Id.* at 495, 454 P.3d at 724. That statute excludes from criminal liability—unless the crime is punishable by death—anyone “who committed the act . . . charged under threats or menaces sufficient to show that they had reasonable cause to believe, and did believe, their lives would be endangered if they refused, or that they would suffer great bodily harm.” NRS 194.010(8).

Here, Lopez-Leyva proposed an accurate jury instruction on the affirmative defense of duress. In addition, the above-referenced testimony by Juarez satisfied *Crawford*’s requirement that there be some evidence, “no matter how weak or incredible that evidence may be,” to support the defense. 121 Nev. at 751, 121 P.3d at 586. Specifically, Juarez’s testimony established that Lopez-Leyva was threatened by Sanchez-Ramirez, that Lopez-Leyva appeared scared, and that it appeared Sanchez-Ramirez directed Lopez-Leyva to shoot Juarez.

To the extent that the State suggests that Lopez-Leyva was not entitled to a duress instruction because he did not testify that he actually believed he was in danger, we disagree. A defendant need not testify in order to receive an instruction on their theory of the case so long as there is

some evidence to support the theory. *McCraney v. State*, 110 Nev. 250, 255, 871 P.2d 922, 925 (1994) (“To require a defendant to introduce evidence in order to be entitled to a specific jury instruction on a defense theory would violate the defendant’s constitutional right to remain silent by requiring that he forfeit that right in order to obtain instructions.”); *see also Brooks v. State*, 124 Nev. 203, 211, 180 P.3d 657, 662 (2008) (“A defendant has the right to have the jury instructed on a theory of the case as disclosed by the evidence . . . *regardless of who introduces the evidence* and what other defense theories may be advanced.” (emphasis added)). Accordingly, the district court erred by declining to give Lopez-Leyva’s theory-of-the-case instruction.

“This court evaluates appellate claims concerning jury instructions using a harmless error standard of review.” *Mathews v. State*, 134 Nev. 512, 517, 424 P.3d 634, 639 (2018) (quoting *Barnier v. State*, 119 Nev. 129, 132, 67 P.3d 320, 322 (2003)). A district court’s failure to give a jury instruction is harmless if the jury’s verdict was not attributable to that error beyond a reasonable doubt. *Crawford*, 121 Nev. at 756, 121 P.3d at 590.

As previously discussed, Juarez testified about Sanchez-Ramirez’s violence, Lopez-Leyva’s repeated requests to leave, and the specific threats Juarez observed Sanchez-Ramirez make to Lopez-Leyva. She also testified that she believed Sanchez-Ramirez *told* Lopez-Leyva to shoot her. Moreover, Lopez-Leyva’s proposed instruction on duress was not covered by the other instructions provided to the jury. *Cf. Crawford*, 121 Nev. at 756, 121 P.3d at 590 (holding a district court’s failure to give a defendant’s proposed “heat of passion” instruction was harmless in part because the instructions that were actually provided to the jury generally


covered the concept); *see also Earl v. State*, 111 Nev. 1304, 1308, 904 P.2d 1029, 1031 (1995) ("Where the district court refuses a jury instruction on defendant's theory of the case that is substantially covered by other instructions, it does not commit reversible error."). In light of the foregoing, we cannot conclude that the district court's failure to provide the proposed duress instruction was harmless beyond a reasonable doubt.⁴ *See, e.g., Cabrera*, 135 Nev. at 497, 454 P.3d at 726 (concluding that the failure to instruct on duress was not harmless beyond a reasonable doubt where the defendant "presented ample evidence" to support the defense, including her testimony that "[s]he was scared" and "felt like she had no choice," and where the State highlighted the absence of a duress defense in closing (internal quotation marks omitted)).

Thus, we reverse Lopez-Leyva's convictions for attempted murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, assault with use of a deadly weapon, burglary while in possession of a firearm, and mayhem with use of a deadly weapon and remand this matter for a new trial as to those charges. As Lopez-Leyva does not challenge his conviction for being a felon in possession of a firearm on appeal, we affirm his judgment of conviction as to that charge only.⁵

⁴Again, we note that the State did not argue that if the failure to give the instruction was error, it was harmless error.

⁵Insofar as Lopez-Leyva has raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief or need not be reached given the disposition of this appeal.

Accordingly, we ORDER the judgment of conviction
AFFIRMED IN PART AND REVERSED IN PART AND REMAND this
matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Ristenpart Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk