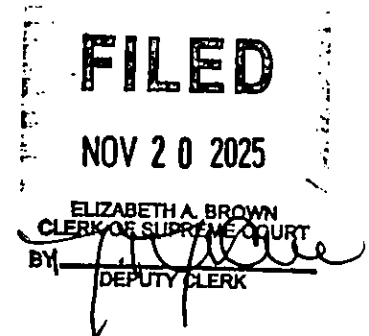


IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS JAVIER TARELO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89432



*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of assault with a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, discharging a firearm from within a structure or vehicle, two counts of attempted murder with use of a deadly weapon, and five counts of discharging a firearm at or into an occupied structure or vehicle. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

Appellant Jesus Javier Tarelo argues that the reasonable doubt instruction given to the jury violated Tarelo's due process and equal protection rights as guaranteed by the Nevada and United States Constitutions, warranting reversal. *See* U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8(2); Nev. Const. art. 4, § 21. Tarelo did not object to the reasonable doubt instruction or offer an alternative. Generally, the "[f]ailure to object to or request a jury instruction precludes appellate review, unless the error is patently prejudicial and requires the court to act sua sponte to protect the defendant's right to a fair trial." *McKenna v. State*, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998). Unpreserved constitutional

claims are reviewed for plain error. *Martimorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015); *see also Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (“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.”).

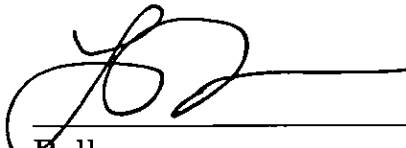
Tarelo argues that the reasonable doubt instruction given at trial, which used the definition mandated in NRS 175.211, provided Tarelo fewer due process protections than would have been afforded by the instruction used in federal courts. Specifically, Tarelo contends that the federal model instruction is less confusing than the Nevada version and can be modified at a defendant’s request. The United States Constitution does not require a reasonable doubt instruction to contain any particular wording, so long as it accurately “instructs the jury on the necessity that the defendant’s guilt be proved beyond a reasonable doubt.” *Victor v. Nebraska*, 511 U.S. 1, 5 (1994). Both this court and the United States Court of Appeals for the Ninth Circuit have repeatedly affirmed the constitutionality of Nevada’s standard reasonable doubt instruction. *See, e.g., Garcia v. State*, 121 Nev. 327, 340 & n.26, 113 P.3d 836, 844 & n.26 (2005) (collecting cases); *Ramirez v. Hatcher*, 136 F.3d 1209, 1211-14 (9th Cir. 1998). Tarelo has not provided compelling authority to conclude that the reasonable doubt instruction here violated due process, regardless of whether a different instruction is used in federal courts.

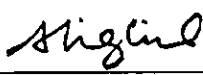
Additionally, Tarelo contends, for the same reasons described above, that the reasonable doubt instruction given at trial violated principles of equal protection. The initial question in an equal protection analysis is whether the challenged law treats “similarly situated persons” differently. *Rico v. Rodriguez*, 121 Nev. 695, 703, 120 P.3d 812, 817 (2005).

State court defendants are not similarly situated to federal court defendants and variation between the instructions given in two different jurisdictions does not raise equal protection concerns. *See United States v. Quintero*, 995 F.3d 1044, 1058 (9th Cir. 2021) (“[T]here is no equal protection violation where the federal government treats defendants charged with federal crimes differently than a state treats defendants charged with state crimes.”); *United States v. Venable*, 666 F.3d 893, 901 (4th Cir. 2012) (holding that criminal defendants can only be similarly situated “if they were prosecuted by the same sovereign”). Because the instruction given in the instant case provided the same definition mandated for all defendants in Nevada courts, *see* NRS 175.211(2), we discern no equal protection violation. Tarelo has therefore failed to demonstrate the reasonable doubt jury instruction given at trial amounted to plain error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Bitá Yeager, District Judge  
Lowe Law LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk