



IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN MATHEW ARMSTRONG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88533

Appeal from a judgment of conviction, pursuant to a jury verdict, of carrying a concealed firearm or other deadly weapon, possession of a machine gun, and violating regulations regarding modified semiautomatic firearms and parts for firearms, and pursuant to a guilty plea, of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Affirmed in part, reversed in part, and remanded.

Nancy M. Lemcke, Public Defender, and Katherine Currie-Diamond, Chief Deputy Public Defender, Clark County,
for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District Attorney, and Ann Dunn, Chief Deputy District Attorney, Clark County,
for Respondent.

Christopher M. Peterson and Jacob Valentine, North Las Vegas,
for Amicus Curiae American Civil Liberties Union of Nevada.

Randolph M. Fiedler, Las Vegas,
for Amicus Curiae Nevada Attorneys for Criminal Justice.

BEFORE THE SUPREME COURT, PICKERING, PARRAGUIRRE, and BELL, JJ.

OPINION

By the Court, BELL, J.:

Appellant Steven Armstrong entered a Las Vegas gun shop attempting to sell a Glock 30 handgun. The Glock was fitted with an auto-sear, a device that converts a semiautomatic pistol into a fully automatic machine gun. Auto-sears are prohibited by Nevada law. After a store employee noticed the auto-sear, the store owner contacted law enforcement. The State charged Armstrong with multiple offenses related to the attempted sale. A jury convicted Armstrong of offenses including possession of a modified semiautomatic firearm and possession of a machine gun. Armstrong then pleaded guilty to ownership or possession of a firearm by a prohibited person. We reverse Armstrong's conviction for possession of a modified semiautomatic firearm because Nevada's statutory definition of a machine gun necessarily encompasses a semiautomatic firearm modified to fire automatically, such that the count is included within the possession-of-a-machine-gun conviction. We affirm Armstrong's remaining convictions.

FACTS AND PROCEDURAL HISTORY

Steven Armstrong entered Accuracy Gun Shop in Las Vegas to sell two firearms. One of those firearms was a Glock 30 handgun. Armstrong handed the Glock to a sales associate, who observed the firearm had been modified with an auto-sear device, commonly referred to as a switch. Nevada law prohibits both possession of a firearm that has been converted into a machine gun with an auto-sear and possession of a machine gun. NRS 202.350(1)(b); NRS 202.274(1)(c). Armstrong asked whether he could remove

the auto-sear device and still sell the firearm. The store clerk declined, returned the firearm to Armstrong, and instructed Armstrong not to return to the store.

The owner of the gun shop contacted law enforcement to report that a customer brought an illegal firearm component into the store. The owner later provided video surveillance footage to an officer. The video footage depicted Armstrong attempting to sell the firearms and showed the Glock with the auto-sear attached. As a result of the attempted sale, the State charged Armstrong with carrying a concealed firearm, possession of a machine gun, and violating regulations regarding modified semiautomatic firearms and parts for firearms, specifically alleging that Armstrong possessed a Glock 30 equipped with an auto-sear.

At trial, the jury returned guilty verdicts on the counts of carrying a concealed firearm, possessing a machine gun, and violating regulations regarding modified semiautomatic firearms. Armstrong later pleaded guilty to ownership or possession of a firearm by a prohibited person. The district court sentenced Armstrong to a prison term of twenty to fifty months on the possession-of-a-machine-gun charge and to lesser concurrent terms on the other offenses. Armstrong now appeals.

DISCUSSION

Armstrong raises several constitutional and procedural challenges on appeal. Armstrong argues that Nevada's bans on machine guns and modified semiautomatic firearms violate both the United States and Nevada Constitutions. Armstrong contends his convictions for both possession of a machine gun and violating regulations regarding modified semiautomatic firearms conflict with the Double Jeopardy Clauses of the United States and Nevada Constitutions. Armstrong also challenges the sufficiency of the

evidence, the admission of specific witness testimony, the admission of other act evidence, and certain jury instructions. Lastly, Armstrong claims that the cumulative effect of the alleged errors warrant reversal. We disagree that the Nevada laws violate either constitution but agree that the convictions for both possession of a machine gun and violating regulations regarding semiautomatic firearms modified with an auto-sear run afoul of double jeopardy. We find the remainder of Armstrong’s claims lack merit.

Nevada’s laws prohibiting possession of machine guns and semiautomatic firearms modified with an auto-sear do not violate the U.S. Constitution

Nevada law prohibits machine guns and restricts firearm modifications that make firing fully automatic. NRS 202.350(1)(b) provides that “a person within this State shall not . . . keep, offer or expose for sale, or give, lend, possess or use a machine gun.” NRS 202.274(1)(c) precludes a person from possessing a semiautomatic firearm that has been modified, or a part or combination of parts that are designed, to “eliminate[] the need for the operator of the semiautomatic firearm to make a separate movement for each individual function of the trigger and: (1) [m]aterially increases the rate of fire of the semiautomatic firearm; or (2) [a]pproximates the action or rate of fire of a machine gun.” Armstrong argues for the first time on appeal that Nevada’s bans on machine guns and modified semiautomatic firearms violate the U.S. Constitution’s Second Amendment, as applied to him, because the statutes criminalize the keeping or bearing of arms, including machine guns. Armstrong alleges an auto-sear device attached to a Glock 30 is not an unusual weapon and its prohibition is unconstitutional under *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022).

When a criminal defendant raises a constitutional issue for the first time on appeal, the governing standard is plain error review, applied

uniformly to all unpreserved errors regardless of their constitutional dimension. *Martinoirellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015) (holding that “all unpreserved errors are to be reviewed for plain error without regard as to whether they are of constitutional dimension”). To obtain relief under plain error review, “the error must be so unmistakable that it is apparent from a casual inspection of the record.” *Vega v. State*, 126 Nev. 332, 338, 236 P.3d 632, 637 (2010) (internal quotation marks omitted). Additionally, the appellant must show the error affected the appellant’s substantial rights by causing “actual prejudice or a miscarriage of justice (defined as a ‘grossly unfair’ outcome).” *Jeremias v. State*, 134 Nev. 46, 51, 412 P.3d 43, 49 (2018). Even structural constitutional error does not automatically satisfy the substantial rights prong; the appellant must still point to specific prejudice arising from the record presented. *Id.* at 50-51, 412 P.3d at 49.

The facial Second Amendment challenge here involves a pure question of law (constitutionality of a statute) ultimately subject to de novo review, but the unpreserved posture means the court must first conclude the constitutional infirmity is plain under current law. Plain error review governs whether the court will exercise its discretion to address the constitutional question at all—meaning the appellant must first clear the plain error threshold before the court applies de novo review to the underlying constitutional merits.

Turning to whether Armstrong has demonstrated that the statute is plainly unconstitutional under current law, we note that a Glock 30 and an auto-sear, individually and together, are arms under the Second Amendment. *See* 96 A.L.R. Fed. 3d Art. 1 § 28 (2024) (describing federal authority that holds that a part designed to convert a weapon into an automatic firearm in and of itself constitutes a machine gun). A Glock 30 becomes a machine gun when an

auto-sear is attached to it because the device allows the firearm to fire multiple rounds with a single pull of the trigger. *See* NRS 202.253(6) (a “[m]achine gun” is “any weapon which shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single function of the trigger”). Similarly, federal circuit courts have recognized that a semiautomatic firearm equipped with an auto-sear constitutes a machine gun under the federal statutory definition. *See* 26 U.S.C. § 5845(b); *United States v. Bridges*, 150 F.4th 517, 529-30 (6th Cir. 2025) (Nalbandian, Circuit Judge, concurring in part and concurring in the judgment); *United States v. Maluoth*, 121 F.4th 1158, 1162 (8th Cir. 2024).

In our analysis, it is important to distinguish between an auto-sear and a bump stock. In some ways similar to an auto-sear, a bump stock is an accessory that allows a shooter to achieve a higher rate of fire. A bump stock allows the shooter’s finger to remain flexed on the trigger, while pushing the firearm forward—or “bumping”—to produce additional shots. The important difference here is that a bump stock “cannot fire more than one shot ‘by a single function of the trigger.’ And, even if it could, it would not do so ‘automatically.’” *Garland v. Cargill*, 602 U.S. 406, 415 (2024) (quoting 26 U.S.C. § 5845(b)). In *Garland*, analyzing the current federal prohibition on machine guns, the United States Supreme Court distinguished between the bump stock mechanism, which requires some manipulation to cause a firearm to fire, and machine guns, which fire rounds “by a single function of the trigger”—the language in the federal statute. *Id.* The Court expressly declined to address the issue of mechanical bump stocks, but specifically distinguished auto-sears because an auto-sear “permits a shooter to fire multiple shots while engaging the trigger only once.” *Id.* at 420 n.4. A majority of the Court found restrictions on bump stocks fell outside the current federal law banning machine guns and

devices like auto-sears that turn firearms into machine guns; however, *Garland* did not address the constitutionality of bump stocks, and we do not address the issue here. Auto-sears allow for automatic firing of a firearm with one pull of the trigger, which is a violation of both state and federal law.

When examining the constitutionality of a firearm restriction, we must begin with Nevada’s long tradition of respecting the right to keep and bear arms, a right protected by both the Second Amendment to the U.S. Constitution and the Nevada Constitution. Nev. Const. art. 1, § 11(1). States may not “burden a law-abiding citizen’s right to armed self-defense” in public. *Bruen*, 597 U.S. at 29.

At the same time, our nation has a “historical tradition of prohibiting the carrying of dangerous and unusual weapons.” *Id.* at 21 (citation modified). As a result, this court, “when faced with a constitutional challenge to a statute regulating firearms, . . . must determine (1) whether the regulated conduct is covered under the plain text of the Second Amendment’s protections, and if so, (2) whether the regulation is consistent with America’s historical tradition of gun regulation.” *Cocking v. State*, 141 Nev., Adv. Op. 21, 567 P.3d 348, 351 (2025).

Once converted through the addition of an auto-sear, a Glock 30 no longer resembles the class of arms traditionally possessed by law-abiding citizens for self-defense. Instead, the modified firearm falls within the category of weapons that are highly dangerous and unusual and, therefore, are unprotected by the scope of the Second Amendment. The United States Court of Appeals for the Ninth Circuit has held that “machine guns are highly dangerous and unusual weapons that are not typically possessed by law-abiding citizens for lawful purposes” and, consequently, are not protected by the Second Amendment. *United States v. Henry*, 688 F.3d 637, 640 (9th Cir.

2012) (citation modified). The U.S. Supreme Court has similarly observed it would be “startling” for the Second Amendment to protect machine guns. *District of Columbia v. Heller*, 554 U.S. 570, 624 (2008). Because the Nevada laws in question here regulate weapons considered dangerous, unusual, and not typically possessed for lawful self-defense, we conclude the statutes are consistent with this nation’s historical tradition of firearm regulation and do not violate the United States Constitution.

Nevada’s laws prohibiting possession of machine guns and semiautomatic firearms modified with an auto-sear do not violate the Nevada Constitution

Armstrong also challenges for the first time on appeal the constitutionality of Nevada’s laws prohibiting possession of machine guns and modified semiautomatic firearms under the Nevada Constitution. Armstrong argues Nevada’s 1982 constitutional amendment guaranteeing a right to keep and bear arms provides more expansive protection for citizens than the U.S. Constitution because it permits gun possession for “recreational use” and “other lawful purposes.” Nev. Const. art. 1, § 11(1). We conclude the statutes are consistent with this state’s historical tradition of firearm regulation and do not clearly violate the Nevada Constitution, so Armstrong has failed to establish plain error.

In 1982, the Nevada Constitution was amended to add Article 1, Section 11(1), which provides “[e]very citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes.” When interpreting a constitutional provision, this court is “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *Pohlabel v. State*, 128 Nev. 1, 9, 268 P.3d 1264, 1269 (2012) (citation modified). This analysis requires us

“to determine the public understanding of a legal text leading up to and in the period after its enactment or ratification.” *Strickland v. Waymire*, 126 Nev. 230, 234, 235 P.3d 605, 608 (2010) (citation modified). “[W]hen a constitutional provision’s language is clear on its face, we will not go beyond that language in determining the voters’ intent.” *Miller v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1120 (2008). But when a constitutional provision’s meaning is susceptible to two or more reasonable interpretations, then the provision is ambiguous and we will “look to the provision’s history, public policy, and reason to determine what the voters intended.” *Id.*

Historical context surrounding the 1982 amendment confirms that the amendment intended to protect common lawful uses of arms. At the time, federal law already prohibited civilian possession of machine guns under the National Firearms Act of 1934, with Congress explicitly noting that such weapons were appropriate only for law enforcement. *See* Pub. L. No. 73-474, 48 Stat. 1236 (1934) (currently codified at 26 U.S.C. §§ 5801-5872). The Firearm Owners’ Protection Act of 1986 further restricted manufacture and possession at the federal level, reinforcing that civilian machine gun ownership has never been considered a core component of the right to keep and bear arms. *See* Pub. L. No. 99-308, 100 Stat. 449 (1986) (codified at 18 U.S.C. §§ 921-934).

Following the 1982 amendment of the Nevada Constitution, the Nevada Legislature prohibited the possession and use of machine guns. 1989 Nev. Stat., ch. 309, § 1, at 653-54. “These post-1985 criminal prohibitions demonstrate that Congress and the Nevada Legislature recognized the grave danger that machineguns pose in civilian hands.” *Parsons v. Colts Mfg. Co.*, 137 Nev. 698, 707, 499 P.3d 602, 609 (2021). The Nevada Legislature’s prohibition on machine gun possession, enacted seven years after the voters adopted Article 1, Section 11(1), operates not by removing a constitutional

purpose (security, defense, hunting, or recreation) from the enumerated list, but rather by placing machine guns entirely outside the category of firearms whose possession constitutes a “lawful purpose” in Nevada at all. Machine gun possession by private civilians is not a purpose that Nevada’s voters in 1982 would reasonably have understood as protected, and no historical evidence supports a right to possess fully automatic weapons under Article 1, Section 11(1).

Nevada’s legislative history also confirms that Article 1, Section 11(1) of our constitution was intended to preserve lawful firearm possession while still allowing reasonable regulation. When Article 1, Section 11(1) was considered by the legislature, the primary sponsor and a senator agreed that future legislators would be able to pass legislation regarding the lawful use of firearms. Hearing on A.J.R. 6 Before the Sen. Judiciary Comm., 61st Leg. (Nev., Feb. 25, 1981) (statements of Senator William Raggio and Assemblyperson Robert E. Robinson, as summarized in minutes). The 1982 amendment was not intended to preclude reasonable statutory regulation of particularly dangerous or unusual weapons, including machine guns. In a different context, this court has interpreted the right to bear arms provision in the Nevada Constitution consistently with the amendment’s overall purpose: to entrench core firearm rights against easy legislative modification while still allowing targeted, reasonable regulation. *Pohl*, 128 Nev. at 10, 268 P.3d at 1270. Given the legislative history, we conclude Nevada’s ban on machine guns and modified semiautomatic firearms is wholly consistent with Article 1, Section 11(1) and does not violate the Nevada Constitution.

Armstrong's convictions for both possession of a machine gun and violating regulations regarding modified semiautomatic firearms conflict with the Double Jeopardy Clauses of the United States and Nevada Constitutions

Armstrong contends the elements contained in NRS 202.350(1)(b) (possession of a machine gun) are completely subsumed in NRS 202.274(1)(c)(2) (regulations pertaining to modified semiautomatic firearms). As a result, conviction for both offenses violates the Double Jeopardy Clause of the U.S. and Nevada Constitutions. U.S. Const. amend. V; Nev. Const. art. 1, § 8. The State counters Armstrong forfeited this issue by failing to preserve it below and, in any event, each statute contains an element the other does not.

As a threshold matter, Armstrong's failure to present this issue below is not dispositive. This court has the authority to address constitutional questions raised on appeal for the first time. *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983). The governing standard is plain error review. *Martinoirellan*, 131 Nev. at 48, 343 P.3d at 593. The error must be plain from the record and must also affect the appellant's substantial rights by causing actual prejudice or a miscarriage of justice. *Jeremias*, 134 Nev. at 51, 412 P.3d at 49. Here, Armstrong has demonstrated both plain error and prejudice.

The Double Jeopardy Clause contained in both the U.S. and Nevada Constitutions forbids multiple punishments for the same offense unless the legislature has made unmistakably clear that such punishment is allowed. *Kelley v. State*, 132 Nev. 348, 350, 371 P.3d 1052, 1053 (2016). "In determining whether multiple convictions violate the Double Jeopardy Clause, this court applies the test in *Blockburger v. United States*, 284 U.S. 299 (1932)." *Id.* (citation modified). "The *Blockburger* test 'inquires whether each offense contains an element not contained in the other; if not, they are the "same offence" and double jeopardy bars additional punishment and successive prosecution.'" *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012)

(quoting *United States v. Dixon*, 509 U.S. 688, 696 (1993)). In *Jackson*, we held, unless there is express legislative direction regarding cumulative punishment, the *Blockburger* “same elements” test is utilized to determine whether multiple convictions and punishments violate the Double Jeopardy Clause. *Id.* at 611, 291 P.3d at 1282.

The central question in Armstrong’s double jeopardy claim is whether a modified semiautomatic firearm qualifies as a machine gun as defined by the legislature. Nevada law defines a “[m]achine gun” as “any weapon which shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single function of the trigger.” NRS 202.253(6). When a semiautomatic firearm has been modified to fire multiple shots with a single function of the trigger, as described by NRS 202.274(1)(c)(1)-(2), the weapon necessarily falls within the statutory definition of a machine gun under NRS 202.253(6). Possession of this kind of firearm necessarily constitutes a violation of NRS 202.350(1)(b).

The statutes are not identical. NRS 202.274(1)(c) requires proof that the firearm has been modified, which is an element not expressly required by NRS 202.350(1)(b). *LaChance v. State*, 130 Nev. 263, 274, 321 P.3d 919, 927 (2014) (concluding it is irrelevant for purposes of the double-jeopardy analysis that one conviction has an additional element not found in the other). Even so, when the prosecution proves that a semiautomatic firearm has been altered to allow automatic fire, it has necessarily proven that the weapon meets the legislature’s definition of a machine gun. NRS 202.274(1)(c); 202.350(1)(b). In this way, the offense of altering a semiautomatic firearm is fully subsumed within the offense of possession of a machine gun and is a lesser-included offense. See NRS 202.274(2) (stating possession of a modified semiautomatic firearm is a category D felony); NRS 193.130(2)(d) (imposing a sentence of one

to four years for a violation of a category D felony); NRS 202.350(2)(b) (stating possession of a machine gun is a category C felony); NRS 193.130(2)(c) (imposing a sentence of one to five years for a violation of a category C felony).

Because NRS 202.274(1)(c) is a lesser-included offense and its elements are entirely contained within the language of NRS 202.350(1)(b), we hold both convictions cannot simultaneously survive scrutiny under the Double Jeopardy Clauses of the United States and Nevada Constitutions. Thus, we reverse Armstrong's conviction for violating regulations regarding modified semiautomatic firearms.

The State provided sufficient evidence to convict Armstrong

Armstrong asserts the State presented insufficient evidence to prove beyond a reasonable doubt that the Glock 30 was, in fact, a semiautomatic firearm modified to operate as an automatic weapon and improperly relied on a lay witness's belief as to its functionality. When determining a challenge to the sufficiency of the evidence, this court considers "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Here, video surveillance, eyewitness testimony from two gun store employees, and Armstrong's own incriminating statements provided sufficient evidence that Armstrong carried a concealed weapon, and the Glock 30 was modified with an auto-sear, meeting the legislature's definition of a machine gun. We conclude the evidence presented was sufficient to support Armstrong's convictions.

The district court did not abuse its discretion in allowing for the admission of witness testimony about the Glock 30 and the purpose of the auto-sear

Armstrong avers the district court abused its discretion by overruling his objection and permitting the gun store clerk to testify that the Glock 30 was genuine and the attached auto-sear converted the Glock 30 into a machine gun. Similarly, Armstrong states the court abused its discretion when it allowed a police officer to testify that an auto-sear enables a semiautomatic firearm to discharge multiple rounds with a single trigger pull. Armstrong claims that the two witnesses were not qualified to testify as experts and, regardless, the State failed to provide him with the proper notice.

This court reviews the district court's admission of evidence for abuse of discretion. *Carroll v. State*, 132 Nev. 269, 279, 371 P.3d 1023, 1030 (2016). The key distinction between lay and expert testimony "lies with a careful consideration of the substance of the testimony." *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d 627, 636 (2015). Courts must evaluate whether "the testimony concern[s] information within the common knowledge of or capable of perception by the average layperson or does it require some specialized knowledge or skill beyond the realm of everyday experience." *Id.* at 382-83, 352 P.3d at 636. "Lay testimony must be confined to personal observations that any layperson would be capable of making." *State v. Tierney*, 839 A.2d 38, 46 (N.H. 2003). Nevada law permits lay witnesses to offer opinions based on personal observation and experience without qualifying as experts. Under NRS 50.265, a lay witness may provide opinions or inferences if they are rationally based on the witness's perception and helpful to a clear understanding of the testimony or the determination of a fact in issue.

The store clerk did not testify as an expert, and his testimony was properly admitted as lay witness testimony because it was limited to visual

identification and physical observation of the Glock 30. Identifying a commercially manufactured firearm and recognizing an attached device does not require scientific testing, specialized methodology, or technical analysis beyond ordinary perception. Because the testimony was rationally based on personal perception and helpful to understanding the evidence, it did not require expert qualification and was properly admitted under NRS 50.265.

The police officer also did not testify as an expert. Even though the district court recognized the officer had five and a half years' experience on the firearms task force, the officer's testimony explained in general terms how an auto-sear causes a semiautomatic firearm to fire multiple rounds with a single trigger pull. This explanation did not involve measurements or scientific testing but instead described a basic cause-and-effect relationship understandable to a layperson. Therefore, we conclude the district court properly allowed for the admission of both witnesses' lay testimony.

The district court did violate Armstrong's due process right to a fair trial by allowing for the admission of other act evidence

Armstrong asserts the district court abused its discretion when it overruled his objection and allowed for the admission of evidence that the Glock 30 held radically invasive projectile (RIP) ammunition. At trial, Armstrong objected to the introduction of the RIP ammunition on relevance grounds and on the basis that the gun store clerk was not an ammunition design expert. On appeal, Armstrong maintains the evidence was irrelevant and argues for the first time that the RIP ammunition constituted other act evidence. Armstrong also argues the prosecution improperly emphasized the gun store clerk's testimony regarding the ammunition, and the court failed to offer a limiting instruction, which resulted in the admission of highly prejudicial evidence that violated Armstrong's right to a fair trial.

This court reviews the district court's admission of evidence, including other act evidence, for abuse of discretion. *Chaparro v. State*, 137 Nev. 665, 669, 497 P.3d 1187, 1192 (2021). Armstrong preserved his relevance objection but failed to object to the introduction of the RIP ammunition as other act evidence. That failure renders his argument against other act evidence waived, unless we find plain error. *Merica v. State*, 87 Nev. 457, 462, 488 P.2d 1161, 1163-64 (1971) ("This objection not having been specified in the lower court, we will not consider it on appeal."). In the context of failure to conduct a *Petrocelli* hearing, plain error requires a showing that the trial result would have been different had the trial court excluded the evidence. *Diomampo v. State*, 124 Nev. 414, 430, 185 P.3d 1031, 1041 (2008); *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

With regard to the relevance challenge, the State asserts it inquired about the ammunition in the firearm to prove the Glock 30 was genuine and loaded, making the evidence relevant. Because the State presented a relevant reason for admission of the evidence that the firearm was loaded with ammunition, we conclude that Armstrong's relevance challenge fails.

As for Armstrong's challenge that testimony about the specific and potentially inflammatory nature of the type of ammunitions constituted impermissible other act evidence, Armstrong must demonstrate plain error. While the fact that the firearm was loaded with live ammunition may bear some relevance to whether the Glock was a firearm, the nature of the specific sort of ammunition does not tend to prove or disprove any element of the offense charge. Here, the district court failed to conduct a *Petrocelli* hearing to determine whether the specific type of ammunition could have properly been admitted as other act evidence. This was error. The absence of a *Petrocelli*

hearing leaves this court without “a meaningful opportunity to review the district court’s exercise of discretion.” *Armstrong v. State*, 110 Nev. 1322, 1324, 885 P.2d 600, 601 (1994).

Even so, because Armstrong failed to object at trial, Armstrong must establish plain error. In the face of overwhelming evidence of Armstrong’s guilt, admission of the type of ammunition in the firearm does not rise to the level of plain error because the result would have been the same even if the evidence had been excluded. Consequently, we conclude that Armstrong’s claim fails.

The jury instructions properly stated the law

Armstrong further contends the district court erred when it instructed the jury that the Glock 30 did not need to be operable, provided the definition of a deadly weapon, added surplus language while omitting relevant definitions, and failed to present an advisory instruction on acquittal. Whether a jury instruction is an accurate statement of the law is reviewed de novo. *Moore v. State*, 136 Nev. 620, 622, 475 P.3d 33, 35 (2020). Otherwise, this court reviews a lower court’s decision to give instructions for abuse of discretion or judicial error. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

The “carrying a concealed weapon” instruction did not misstate the law regarding operability of the firearm

Armstrong claims the district court misstated the law when it instructed the jury that the Glock 30 did not need to be operable, and the State should have been required to prove operability under NRS 202.350 and NRS 202.253.

Jury Instruction 4 reads in pertinent part:

“Firearm” means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

NRS 202.253(3) provides as follows:

“Firearm” means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

The first part of the district court’s instruction tracked the statutory definition of “firearm.”

The instruction’s statement that “[t]here is no requirement that the firearm be loaded or operable” finds direct textual support in NRS 202.360(4)(b), which provides that for purposes of Nevada’s prohibited person-in-possession statute, “[f]irearm” includes any firearm that is loaded or unloaded and operable or inoperable.” This provision expressly extends the definition to cover all firearms regardless of whether they are functional or loaded. This court has consistently found in the absence of a statutory requirement of operability that the State is not required to prove that the firearm was loaded or operable. *See Pohl*, 128 Nev. at 6, 268 P.3d at 1267 (stating that NRS 202.360(1)(a) prohibits a felon from possessing “any firearm,” “loaded or unloaded and operable or inoperable,” citing both NRS 202.360(3)(b) (now NRS 202.360(4)(b)) and the NRS 202.253 definition); *McIntyre v. State*, 104 Nev. 622, 623, 764 P.2d 482, 483 (1988) (recognizing that, under NRS 193.165—the sentence enhancement statute for use of a firearm in a crime—the legislature attributed to firearms a per se deadly status, and “proof of a firearm’s deadly capabilities is not required”); *State v.*

Eighth Jud. Dist. Ct. (Bankhead), 141 Nev., Adv. Op. 39, 573 P.3d 1254, 1257 (2025) (invalidating, in an assault with a deadly weapon case, a jury instruction that required proof of loaded-and-operable status because the instruction imposed a burden on the State that the law does not require).

Because the instruction was a correct statement of the law, we conclude that the district court properly instructed the jury the Glock 30 did not need to be operable in order to convict Armstrong of carrying a concealed weapon.

The district court properly instructed the jury on the definition of a deadly weapon

Armstrong also alleges the district court erred when it unnecessarily provided the definition of a deadly weapon as an instrument capable of causing substantial bodily harm or death. Armstrong contends the instruction lowered the State's burden of proof and inflamed the jury. Armstrong waived this claim by failing to raise it below and invited any error by proposing the very language he now challenges. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (holding a defendant "will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit" (internal quotation marks omitted)). Because Armstrong proposed instructing the jury on the definition of a deadly weapon, we conclude that he invited the alleged error and cannot now challenge it on appeal.

The instruction regarding surplus subsections and omitted statutory definition was not misleading

Armstrong proposes the district court improperly instructed the jury on uncharged subsections of Nevada's ban on modified semiautomatic firearms and omitted the statutory definition of "[s]emiautomatic firearm" from NRS 202.253(8). Armstrong states these errors prevented the jury from

hearing all elements of the offense and improperly directed the jury to consider theories not supported by the evidence.

Armstrong has waived this contention by failing to object below. We review this claim, too, for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2018). The district court's instruction was not misleading or incomplete because the State consistently argued Armstrong possessed a modified semiautomatic firearm that met the legislature's definition of a machine gun. Although the court's instruction included statutory language beyond the charged subsection, the jury was never instructed to convict Armstrong based on any uncharged theory and nothing in the record suggests the jury convicted on any alternative subsection.

Similarly, Armstrong's reliance on the omission of the statutory definition of a semiautomatic firearm is unavailing. Simply asserting the district court's omission of a statutory definition does not automatically constitute plain error. Armstrong points to no evidence of prejudice. We conclude Armstrong fails to meet his burden of demonstrating plain error.

An advisory verdict of acquittal was not warranted

Armstrong also argues that the district court abused its discretion by denying his request for an advisory verdict of acquittal under NRS 175.381(2), which permits the court to advise the jury to acquit if the evidence is insufficient. This claim is meritless. Like many instructions, an advisory verdict of acquittal is discretionary and should only be given if a court concludes the evidence is insufficient to sustain a conviction. *Middleton v. State*, 114 Nev. 1089, 1105, 968 P.2d 296, 307 (1998) ("The granting of an advisory instruction to acquit rests within the sound discretion of the district court."). On appeal, Armstrong fails to identify any evidence that was improperly admitted or missing that would render the evidence insufficient.

Because the State presented more than sufficient evidence to establish Armstrong's guilt, we conclude the district court acted well within its discretion in denying the request for an advisory instruction.

There are no errors to cumulate

Lastly, Armstrong submits that cumulative error warrants reversal. Because the only error arises from the double jeopardy violation, we conclude there are no other errors to cumulate, and Armstrong is not entitled to relief based on this claim. *See Barlow v. State*, 138 Nev. 207, 221, 507 P.3d 1185, 1199 (2022) ("Because we discern only one error, there is nothing to cumulate.").

CONCLUSION

The Second Amendment right to keep and bear arms protects ownership of firearms traditionally possessed by law-abiding citizens for lawful purposes. The Nevada Constitution does not expand that protection to encompass machine guns or firearms modified to function as fully automatic weapons. Nevada's prohibitions on machine guns do not violate either the United States Constitution or the Nevada Constitution.

At the same time, the Double Jeopardy Clauses of the United States and Nevada Constitutions safeguard against duplicative punishment for the same offense. When the Nevada Legislature has defined one crime in terms that include all of the elements of another, double jeopardy generally precludes convictions for both offenses. Armstrong was charged with possessing one firearm—both as a machine gun and as a modified semiautomatic weapon—in violation of double jeopardy. As a result, the conviction for violating regulations regarding modified semiautomatic firearms under NRS 202.274(1)(c) is reversed, and the case is remanded for the entry of

an amended judgment of conviction. The judgment of conviction is otherwise affirmed.

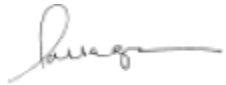
A handwritten signature in cursive script, appearing to be 'J. Bell'.

Bell, J.

We concur:

A handwritten signature in cursive script, appearing to be 'J. Pickering'.

Pickering, J.

A handwritten signature in cursive script, appearing to be 'J. Parraguirre'.

Parraguirre, J.