NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	1 CA-CR 08-0689
	DEPARTMENT E
v.	**MEMORANDUM DECISION**
ALONSO PEREZ-PEREZ, Appellant.	(Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-107758-001 SE

The Honorable Teresa A. Sanders, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Robert A. Walsh, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Eleanor Terpstra, Deputy Public Defender
Attorneys for Appellant

D O W N I E, Judge

¶1 Alonso Perez-Perez ("Defendant") appeals his convictions and sentences. For the following reasons, we affirm.

BACKGROUND[1]

¶2 On February 2, 2007, Mesa police attempted to initiate a traffic stop of an improperly registered vehicle. Defendant, the driver of the vehicle, failed to stop. Instead, he led officers on a high-speed chase for seven minutes. The pursuit ended when Defendant ran a red light and "t-boned" a car driven by L.L. L.L. died from injuries sustained in the collision.

¶3 As officers approached the accident scene, they saw Defendant exit the driver's side of his vehicle. Officers quickly apprehended him.[2] L.G., Defendant's passenger, sustained minor injuries from the collision.

¶4 The State charged Defendant with first degree murder (felony murder), or alternatively, second degree murder (count 1), endangerment (count 2), unlawful flight from a law enforcement vehicle (count 3), and leaving the scene of a fatal

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[1] We view the facts in the light most favorable to sustaining the verdicts and resolve all inferences against Defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

[2] In addition to making other incriminating statements, Defendant stated, "It was all his idea . . . to take off," and he admitted driving "out of control" during the chase. At trial, Defendant admitted making these statements.

injury accident (count 4). Counts 1 and 2 were alleged as dangerous offenses.

¶5 A jury trial was held. Defendant testified that L.G. had forced him at gunpoint to flee the police. At the close of evidence, the court instructed the jury regarding first degree felony murder and second degree murder. It also gave instructions on manslaughter and negligent homicide.

¶6 The jury found Defendant not guilty of first degree murder, but guilty of second degree murder, endangerment, unlawful flight from a law enforcement vehicle, and leaving the scene of a fatal injury accident. Defendant was sentenced to presumptive terms of imprisonment, with counts 1 through 3 to be served concurrent with each other and consecutive to count 4.

¶7 Defendant appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), and -4033(A)(1) (Supp. 2008).

DISCUSSION

¶8 Over Defendant's objection, the trial court gave the following jury instruction: "Evidence that the defendant may have been compelled to flee from police due to threats made by another does not justify the reckless killing of an innocent person." Defendant argues this instruction improperly prevented the jury from considering evidence that L.G. threatened his life

in deciding whether Defendant was guilty of manslaughter instead of second degree murder.

¶9 As charged in this case, a person commits second degree murder when, "[u]nder circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person." A.R.S. § 13-1104(A)(3) (Supp. 2007). A person commits manslaughter by "[c]ommitting second degree murder as defined in section 13-1104, subsection A, paragraph 3, while being coerced to do so by the use or threatened immediate use of unlawful deadly physical force upon such person." A.R.S. § 13-1103(A)(4) (Supp. 2007). Defendant contends the challenged instruction "compels the jury to disregard the evidence of unlawful deadly force, thus, effectively negating [A.R.S. § 13-1103(A)(4)]." We disagree.

¶10 We review *de novo* whether jury instructions properly state the law. *State v. Johnson,* 212 Ariz. 425, 431, ¶ 15, 133 P.3d 735, 741 (2006). "The purpose of jury instructions is to inform the jury of the applicable law in understandable terms. A set of instructions need not be faultless; however, they must not mislead the jury in any way and must give the jury an understanding of the issues." *State v. Noriega,* 187 Ariz. 282, 284, 928 P.2d 706, 708 (App. 1996) (internal citation omitted). Only when the instructions, taken as a whole, could reasonably

mislead a jury will a case be reversed for error in the instructions. *State v. Schrock,* 149 Ariz. 433, 440, 719 P.2d 1049, 1056 (1986) (citation omitted).

¶11 The challenged instruction did not bar the jury from considering evidence of alleged duress in deciding whether Defendant was guilty of manslaughter under § 13-1103(A)(4). The instruction properly informed the jury of the law--namely, that a coerced defendant is not absolved of criminal liability in committing homicide. *See* A.R.S. § 13-412(C) (2001) (duress is not a defense for offenses involving homicide). Moreover, the court properly instructed that manslaughter is proven if the jury found Defendant committed second degree murder while being coerced. *See* A.R.S. § 13-1103(A)(4).

¶12 During closing arguments, defense counsel told the jury, "You may also conclude that [Defendant] was guilty of manslaughter by a different way. If you decide he committed second degree murder, but that he was coerced or made to do so by the threatened immediate used [sic] of unlawful deadly physical force." This argument, along with the jury instructions, properly advised the jury how to consider and apply defense evidence-–if it chose to believe Defendant-–that

L.G. forced him at gunpoint to flee police.[3] *State v. Johnson,* 205 Ariz. 413, 417, ¶ 11, 72 P.3d 343, 347 (App. 2003) ("[I]n evaluating the jury instructions, we consider the instructions in context and in conjunction with the closing arguments of counsel.").

¶13 The record does not support Defendant's contention that the prosecutor told the jury it could not consider duress in connection with manslaughter. The prosecutor correctly argued that duress would not justify the reckless killing of an innocent person and that duress could not be considered as to the first degree murder charge. Defendant did not object to the State's closing argument. Viewing the instructions as a whole, together with closing arguments, we cannot conclude the jury was misled regarding Defendant's claim of duress.

¶14 Defendant also argues the trial court fundamentally erred in failing to instruct the jury on duress in connection with count 2. However, when the parties discussed final jury instructions, defense counsel expressly informed the court twice that he was not seeking a duress instruction. Thus, any error was invited by Defendant, and we do not review for fundamental error. *See State v. Logan*, 200 Ariz. 564, 565-66, ¶ 9, 30 P.3d 631, 632-33 (2001) ("If an error is invited, we do not consider

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[3] The jury is the sole determiner of a witness's credibility. *State v. Rivera*, 210 Ariz. 188, 192, ¶ 20, 109 P.3d 83, 87 (2005) (citation omitted).

whether the alleged error is fundamental, for doing so would run counter to the purposes of the invited error doctrine. Instead, as we repeatedly have held, we will not find reversible error when the party complaining of it invited the error."); *State v. Fish,* 222 Ariz. 109, 132, ¶ 79, 213 P.3d 258, 281 (App. 2009) (invited error doctrine precludes fundamental error review when trial court follows a party's express wishes regarding jury instructions).[4]

CONCLUSION

¶15 Defendant's convictions and sentences are affirmed.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PHILIP HALL, Presiding Judge

/s/
DONN KESSLER, Judge

[4] To the extent Defendant challenges the verdict form regarding second degree murder, the record reflects that defense counsel and the prosecutor jointly drafted the verdict form, and any alleged error therein would also be invited.