IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71203

FILED

JUN 29 2017

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

ORDER OF AFFIRMANCE

Jesus Gonzalez appeals from a judgment of conviction. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

A jury found Gonzalez guilty of "mistreatment or interference with the duties of a police animal" for striking a police dog that chased and bit him during a foot pursuit. On appeal, he argues that the trial evidence was insufficient and that he is entitled to a new trial or mistrial.[1]

Gonzalez contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports it. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Our review of the record reveals substantial evidence to establish guilt beyond a reasonable doubt as determined by a rational trier

[1]We do not recount the facts except as necessary to our disposition.

of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *Jackson*, 443 U.S. at 318-19. Gonzalez fled from a Las Vegas Metropolitan Police Department SWAT team attempting to execute a search warrant and hid in a shed in the backyard of a nearby house. In response, out of a concern for officer safety,[2] the officers deployed a police dog named Archie trained to search for suspects and bite and hold them until ordered to release. Archie found Gonzalez, entered the shed, and a fight ensued. Although no one except Gonzalez saw the start of the fight, within seconds, two officers arrived at the shed. They saw Archie biting Gonzalez and Gonzalez repeatedly punching Archie in the face and attempt to choke the dog with a bag. The officers told Gonzalez to stop fighting the dog and that if he did, the dog would let go of his bite. The record, viewed in the light most favorable to the prosecution, shows that the officers then removed Archie from his bite-hold on Gonzalez, ending any further threat to Gonzalez from the dog, and thereafter, Gonzalez kicked Archie once and attempted to kick him again. On this record, a rational jury could have concluded that Gonzalez willfully and maliciously taunted, tormented, teased, beat, or struck a police animal or interfered with a police animal in the performance of its duties. *See* NRS 574.105(1).[3]

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[2]This concern was reasonable under the circumstances. Based on prior intelligence and Gonzalez's behavior at the time, law enforcement reasonably feared that Gonzalez might be armed, and at the moment they approached the shed, they were reasonably concerned about the danger of a personal confrontation with Gonzalez. Deploying the police dog was the less dangerous option.

[3]This order takes no position on whether an attempted kick of a police animal would be enough, without more, for a conviction under NRS 574.105(1) because Gonzales abandoned this argument on appeal.

Gonzalez also contends that he was entitled to a new trial or to a mistrial because the district court erroneously allowed the State to amend the charging document after trial had already begun. The original criminal information alleged that Gonzalez committed the offense by punching and/or choking Archie, but did not mention a kick or attempted kick. During the State's opening statement at trial, the prosecutor told the jury that Gonzalez kicked Archie in addition to punching him. Gonzalez objected and asked for a mistrial. According to Gonzalez, the State ambushed him because it never mentioned anyone witnessing a kick or attempted kick until trial began, but Gonzalez does not argue on appeal that the State violated any discovery statutes, or that he attempted to contact all of the eyewitnesses himself before trial to find out what they saw or what their testimony would be.[4] In response to Gonzalez's objection, the district court ordered that the State could not mention that Archie was kicked unless it amended the charge, which the State did. After trial, Gonzalez renewed his motion for a mistrial and moved for a new trial under NRS 176.515(4), which the district court denied.

We review denials of motions for a mistrials and new trials for an abuse of discretion. *State v. Purcell*, 110 Nev. 1389, 1393, 887 P.2d 276, 278 (1994) ("[T]he district court *may* grant a motion for a new trial . . . ." (emphasis added)); *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006) ("The decision to deny a motion for a mistrial rests within the district court's discretion and will not be reversed on appeal absent a clear showing of abuse.'" (quoting *Randolph v. State*, 117 Nev. 970, 981, 36

[4]The State notified Gonzalez of the names of both of the officers who testified at trial about a kick or attempted kick over a month before trial in a supplemental notice of witnesses.

P.3d 424, 431 (2001))). When we review for abuse of discretion, we can reverse only for clear legal error or for a decision that no reasonable judge could have made. *See Leavitt v. Siems*, 130 Nev. ___, ___, 330 P.3d 1, 5 (2014) (stating an abuse of discretion occurs only "when no reasonable judge could reach a similar conclusion under the same circumstances").

The district court did not abuse its discretion in allowing the State to amend the information and by denying a new trial or mistrial. Under Nevada law, a "criminal defendant has a substantial and fundamental right to be informed of the charges against him so that he can prepare an adequate defense," but even "an inaccurate information does not prejudice a defendant's substantial rights if the defendant had notice of the State's theory of prosecution." *Viray v. State*, 121 Nev. 159, 162-63, 111 P.3d 1079, 1081-82 (2005).

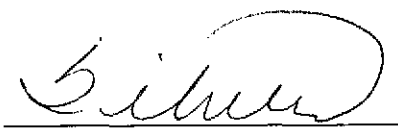
Thus, a criminal information need not itemize every incriminating punch, scratch, thrown-elbow, or kick that took place during an extended fight that could form the basis of a single pleaded charge. Rather, the State need only describe the "essential facts" of the charge sufficient to put the defendant on notice of the State's theory of prosecution so the defense can prepare an adequate defense. *See, e.g.*, *Shannon v. State*, 105 Nev. 782, 785 & n.2, 783 P.2d 942 944 & n.2 (1989).

Here, the State did not delete any charges, change the charged crime, or add any new charges, and it did not change its theory of prosecution. Instead, in order to conform to the evidence, the State merely added additional facts to the description of the existing charge that were similar to those originally described in the information and arose from the same confused fight that was the subject of the existing charge. The district court did not abuse its discretion by allowing such an amendment.

Finally, Gonzalez argues that a new trial is necessary due to conflicting testimony, but the Nevada Supreme Court has placed that determination in the hands of the district court. *See State v. Purcell*, 110 Nev. 1389, 1393, 887 P.2d 276, 278 (1994) ("[T]he district court may grant a motion for a new trial based on an independent evaluation of the evidence . . . ."). We conclude that the district court did not abuse its discretion in denying this relief.

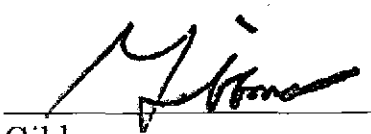
Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Silver

_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Richard Scotti, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk