IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, vs. JAVIER SALGADO, Respondent.	No. 75287-COA
THE STATE OF NEVADA, Appellant, vs. SYLVESTER SALGADO, A/K/A SILVESTER SALGADO GAYTON, Respondent.	No. 75288-COA

ORDER OF REVERSAL AND REMAND

The State of Nevada appeals from a district court order granting a motion to dismiss an indictment. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

The State indicted Javier and Sylvester Salgado (the Respondents) on 20 counts of unlawful acts related to animal fighting under NRS 574.070(2).[1] Each count in the indictment recites identical language stating that the Respondents, on or about August 3, 2016, in Clark County,

> did then and there willfully, unlawfully and feloniously own, possess, keep, train, promote, or purchase an animal, to wit: a chicken and/or rooster, with the intent to use it to fight another animal, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the

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

> crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

The Respondents filed a motion to dismiss the indictment for failure to provide constitutionally adequate notice of the charges. The district court concluded that the indictment was not sufficiently pleaded and accordingly granted the Respondents' motion to dismiss. Specifically, the district court concluded that the indictment set forth multiple different crimes within single counts and contained insufficient factual allegations.

On appeal, the State argues that the indictment provided adequate notice of the charges against the Respondents.[2] We agree.

We review a district court's order granting a motion to dismiss an indictment for an abuse of discretion. *State v. Plunkett*, 134 Nev. ___, ___, 429 P.3d 936, 937 (2018). "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). But to the extent that the district court's order in this case rested on its interpretation of NRS 574.070(2) as creating six separate crimes, this is a question of statutory construction that we review de novo. *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012). Also, "we review de novo whether the

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[2]The State did not identify the district court's denial of its motion to amend the indictment in its notice of appeal, and therefore, we decline to review that ruling. *See* NRAP 3(c)(1)(B); *Abdullah v. State*, 129 Nev. 86, 90, 294 P.3d 419, 421 (2013). We also note that the State has not presented relevant authority or cogently argued why this court should reverse the district court's denial of its motion to amend. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

charging document complied with constitutional requirements." *West v. State*, 119 Nev. 410, 419, 75 P.3d 808, 814 (2003).

The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. As articulated by the Nevada Supreme Court, criminal defendants have "a substantial and fundamental right to be informed of the charges against [them] so that [they] can prepare an adequate defense." *Viray v. State*, 121 Nev. 159, 162, 111 P.3d 1079, 1081 (2005). Accordingly, an indictment "must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1). "[The] indictment, standing alone, must contain: (1) each and every element of the crime charged and (2) the facts showing how the defendant allegedly committed each element of the crime charged." *State v. Hancock*, 114 Nev. 161, 164, 955 P.2d 183, 185 (1998) (citing *United States v. Hooker*, 841 F.2d 1225, 1230 (4th Cir. 1988)).

We first consider whether the district court erred when it concluded that the indictment "sets forth six potentially different crimes." "It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means." NRS 173.075(2). Importantly, while multiple means may be pleaded in a single count, multiple offenses may not. *See Gordon v. Eighth Judicial Dist. Court*, 112 Nev. 216, 227-29, 913 P.3d 240, 247-48 (1996) (describing counts pleading multiple offenses as "duplicitous"). In *Gordon*, the supreme court held that NRS 207.400(1) "sets out various means of committing the offense of racketeering," rather than separate offenses, even though the statute lists numerous acts in separate subsections. *Id.* at 227-28, 913 P.3d at 248. Likewise, NRS 574.070(2)(a)

states that "[a] person shall not . . . [o]wn, possess, keep, train, promote or purchase an animal with the intent to use it to fight another animal." These separate acts are not even placed in different subsections like those in NRS 207.400(1). Consequently, as NRS 207.400(1) simply outlines various means by which a defendant could commit a single offense, so too does NRS 574.070(2). Thus, the district court erred as a matter of law when it concluded that NRS 574.070(2) creates six different potential crimes and that the indictment was therefore duplicitous as written.[3]

We next consider whether the district court erred when it concluded that the indictment contained insufficient factual allegations. An indictment must provide the defendant with adequate notice of the State's theories of prosecution by stating the essential facts that constitute the offense in ordinary and concise language. *See Viray*, 121 Nev. at 162, 111 P.3d 1081-82. It "must include a characterization of the crime and such description of the particular act alleged to have been committed by the accused as will enable him properly to defend against the accusation." *Simpson v. Eighth Judicial Dist. Court*, 88 Nev. 654, 660, 503 P.2d 1225, 1229-30 (1972) (quoting 4 R. Anderson, Wharton's Criminal Law and Procedure, § 1760, at 553 (1957)).

An indictment can meet the constitutional notice requirements under the Sixth Amendment when it tracks the language of the statute. *See*

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[3]Moreover, the State may plead alternative theories of criminal liability in a single count. *See Williams v. State*, 118 Nev. 536, 549, 50 P.3d 1116, 1125 (2002). And the supreme court has described principal, aiding and abetting, and conspiracy as alterative theories. *See Washington v. State*, 132 Nev. 655, 665, 376 P.3d 802, 810 (2016); *Walker v. State*, 116 Nev. 670, 673-74, 6 P.3d 477, 479 (2000). Accordingly, the district court erred to the extent that it took issue with the State pleading three theories of liability in each count.

Russell v. United States, 369 U.S. 749, 765 (1962). However, the Nevada Supreme Court has stated that when the indictment is phrased in statutory terms and the statutory language is conclusory, "allegations phrased solely in such language are insufficient." *Sheriff v. Standal*, 95 Nev. 914, 916-17, 604 P.2d 111, 112 (1979) (citing *Sheriff v. Levinson*, 95 Nev. 436, 596 P.2d 232 (1979)). But the supreme court has also made clear that courts "are not concerned with whether the information could have been more artfully drafted, but only whether as a practical matter, the information provides adequate notice to the accused." *West*, 119 Nev. at 420, 75 P.3d at 814 (quoting *Levinson*, 95 Nev. at 437, 596 P.2d at 234); *see also Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 669 (1970) (stating that "[t]he sufficiency of an indictment or information is to be determined by practical rather than technical considerations").

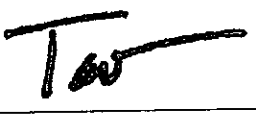
Here, the indictment tracked the statutory language and was not conclusory. Each count in the indictment contains language identical to NRS 574.070(2), and the indictment cites to that statute. Moreover, the statutory language used in each count is not conclusory, but rather simply states various means of committing the crime and comprises the limited universe of conduct that is criminalized under NRS 574.070(2). Further, the indictment provides the names of both Respondents and the date on which law enforcement uncovered the alleged unlawful conduct. It also identifies the particular instrumentalities with which the Respondents are alleged to have committed the crimes (chickens/roosters). It may be impracticable to require the State to allege with particularity which single chicken/rooster is the instrument for a particular count in a case like this one, where more than 500 chickens were discovered. Rather, in this kind of case, the State need only allege facts sufficient to put a defendant on notice that he or she is charged with committing specific unlawful acts regarding cockfighting in

violation of NRS 574.070(2), which is what the State did here. Accordingly, the district court erred when it concluded that the indictment failed to give the Respondents constitutionally adequate notice of the charges against them.

Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, A.C.J.
Douglas



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
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Eighth District Court Clerk