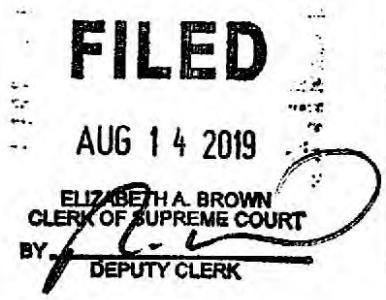
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO A. SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77283-COA



ORDER OF AFFIRMANCE

Mario A. Sanchez appeals from a judgment of conviction, entered pursuant to a jury verdict, of open or gross lewdness. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, Sanchez claims the district court erred by allowing improper narrative testimony regarding the video surveillance tape. Sanchez did not object based on improper narrative testimony; therefore, no relief is warranted absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018), *cert. denied*, 139 S. Ct. 415 (Oct. 29, 2018) ("Before [the appellate courts] will correct a forfeited error, an appellant must demonstrate that: (1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights.").

We conclude Sanchez failed to demonstrate any error, plain or otherwise. Narration is appropriate if it assists the jury in making sense of the video. *Burnside v. State*, 131 Nev. 371, 388-89, 352 P.3d 627, 639-40 (2015). Here, the witness provided very little narration and the narration that was provided was limited to assisting the jury in making sense of the video and to explain why the video zoomed in. Therefore, we conclude the

district court did not err by allowing the witness to narrate portions of the surveillance video at trial.

Second, Sanchez claims the district court erred by allowing the security guard to testify about a legal conclusion. Specifically, Sanchez claims the security guard's testimony that Sanchez was "masturbating" was an opinion on the ultimate issue of guilt. Sanchez did not object based on improper opinion on the ultimate issue of guilt; therefore, no relief is warranted absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 49. We conclude Sanchez failed to demonstrate plain error because the security guard's testimony was rationally based on his perception and was helpful to the determination of a fact in issue. *See* NRS 50.265.

Third, Sanchez claims there was insufficient evidence presented to convict him of open or gross lewdness. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Here, the State presented evidence that Sanchez pulled his penis out of his pants and began rubbing it for a total of 13 seconds. He did this on Las Vegas Boulevard with people passing by. A security guard for the Bellagio witnessed the act in real time through the security cameras and a videotape of the incident was played for the jury.

The jury could have reasonably inferred from the evidence presented that Sanchez was guilty of a second offense of open or gross

lewdness.[1] *See* NRS 201.210(1)(b). It is for the jury to determine the weight and credibility to give witness testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[2] *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); *see also Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Finally, Sanchez argues the district court abused its discretion by declining to give four of Sanchez' proposed jury instructions. Specifically, he claimed the district court erred by declining to give his proposed instructions regarding: (1) the definitions of open or gross lewdness and the intent necessary to commit open or gross lewdness; (2); the "two reasonable interpretations" instruction; (3) an inverse instruction regarding the presumption of innocence and reasonable doubt; and (4) the lesser-included offense of vagrancy.

Sanchez failed to demonstrate the district court abused its discretion by declining to give his proposed instruction regarding the definitions of open or gross lewdness or the intent to commit open or gross lewdness. Sanchez' proposed instruction would have misinformed jurors regarding the intent requirement of "open;" therefore, the district court was not required to give it. *See Sanchez-Dominguez*, 130 Nev. 85, 89-90, 318 P.3d 1068, 1072 (2014); *see also Crawford v. State*, 121 Nev. 744, 754, 121 P.3d 582, 589 (2005) (a defendant is not entitled to misleading, inaccurate,

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[1]Sanchez stipulated he had previously been convicted of open or gross lewdness.

[2]We note Sanchez failed to provide this court with a copy of the surveillance video. The burden is on Sanchez to provide this court with pertinent portions of the record. *See* NRAP 30(b)(3); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

or duplicative jury instructions). Further, the instruction given by the district court completely and accurately defined open or gross lewdness. *See* NRS 201.210; *see also Berry v. State*, 125 Nev. 265, 283, 212 P.3d 1085, 1097-98 (2009), *abrogated on other grounds by State v. Castaneda*, 126 Nev. 478, 483, 245 P.3d 550, 554 (2010). Therefore, we conclude the district court did not abuse its discretion by failing to give Sanchez' proposed instruction.

Further, a court's rejection of a "two reasonable interpretations" jury instruction is not an error so long as the jury is adequately instructed on the standard of reasonable doubt. *See Mason v. State*, 118 Nev. 554, 590, 51 P.3d 521, 524 (2002). Here, the jury was properly instructed on the standard of reasonable doubt. Therefore, we conclude the district court did not abuse its discretion by rejecting Sanchez' proposed "two reasonable interpretations" jury instruction.

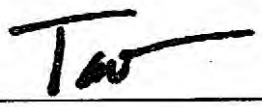
On the other hand, inverse jury instructions should normally be given when requested. *See Crawford v. State*, 121 Nev. 744, 753, 121 P.3d 582, 588 (2005). Therefore, we conclude the district court erred by refusing to give Sanchez' proposed inverse instruction. However, a district court's refusal to instruct the jury on a defendant's proposed inverse jury instruction will not warrant reversal where the reviewing court is "convinced beyond a reasonable doubt that the jury's verdict was not attributable to the error and that the error was harmless under the facts and circumstances of [the] case." *Id.* at 756, 121 P.3d at 590. Here, Sanchez' inverse jury instructions addressed the State's burden to prove each charge beyond a reasonable doubt, and the record demonstrates the jury was properly instructed on the same. There was overwhelming evidence of Sanchez' guilt, and we are convinced that the district court's error in

refusing to give the inverse jury instructions did not contribute to the jury's verdict. Accordingly, this error was harmless and relief is not warranted.

Finally, even assuming without deciding, that the district court abused its discretion by failing to give the vagrancy instruction as a lesser-included offense, we conclude the error was harmless. *See Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (defining nonconstitutional harmless error); *Barnier v. State*, 119 Nev. 129, 132, 67 P.3d 320, 322 (2003) (reviewing jury instruction issues for harmless error). The jury convicted Sanchez of the greater offense and our review of the record reveals there was overwhelming evidence to support the jury's verdict.

Having concluded Sanchez is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk