

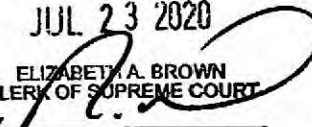
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARBY NEAGLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80670-COA

FILED

JUL 23 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Darby Neagle appeals from a district court order denying a motion for arrest of judgment for conviction for driving and being in control of a motor vehicle while under the influence of an intoxicating liquor resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

While under the influence of alcohol, Neagle drove his vehicle on South Rainbow Boulevard and then up onto the sidewalk in front of a liquor store, and pinned a male pedestrian to a wall, causing him substantial bodily harm.¹ By way of amended information, the State charged Neagle with two category B felonies: one count of driving and/or being in physical control of a motor vehicle while under the influence of an intoxicating liquor or alcohol resulting in substantial bodily harm and one count of leaving the scene of an accident. When describing the location of the former charge, the amended information alleged that Neagle caused another person substantial bodily harm when he drove intoxicated "on a highway or on premises to which the public has access."

Through pre-trial motions, Neagle twice challenged how the amended information pled the location of the crime. After his challenges

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

were denied, Neagle accepted a plea offer wherein he pleaded guilty to one count of driving and/or being in physical control of a motor vehicle while under the influence of an intoxicating liquor or alcohol resulting in substantial bodily harm, a category B felony under NRS 484C.430. As part of the plea agreement, Neagle admitted that the facts alleged in the amended information sufficiently supported the elements of the offense to which he pleaded guilty, that he discussed the original charges with his attorney, and that he understood the nature of the charges.

At the sentencing hearing three months later, the district court adjudicated Neagle guilty, but before it could impose sentence Neagle filed a motion for arrest of judgment under NRS 176.525, arguing that the district court lacked jurisdiction to convict him. Neagle contended that the amended information did not charge a public offense because of the way it described the location of the crime. Specifically, Neagle argued that the amended information combined different elements of NRS 484C.430 and NRS 484C.110 together and, in doing so, the State failed to adequately charge him with a criminal offense. The district court denied Neagle's motion, concluding that the amended information charged a public offense under NRS 484C.430 and provided facts supporting each element. The district court further concluded that the error in the amended information did not prejudice Neagle.

When charging a defendant by way of information, the State must provide a "plain, concise and definite written statement of the essential facts constituting the offense charge . . . [and] the official or customary citation of the statute . . . which the defendant is alleged therein to have violated." NRS 173.075. When the information "does not charge an offense or if the court was without jurisdiction of the offense charged," a defendant may move for arrest of judgment. NRS 176.525.

Both NRS 484C.110(1) and NRS 484C.430(1)(f) criminalize driving or operating a vehicle while intoxicated. NRS 484C.110(1) criminalizes being intoxicated with a blood or breath alcohol concentration of 0.08 or more while driving or being “in actual physical control of a vehicle on a highway or on premises to which the public has access.” NRS 484C.430(1)(f), on the other hand, states that a defendant who:


Has a prohibited substance in his or her blood or urine, as applicable, in an amount that is equal to or greater than the amount set forth in subsection 3 or 4 of NRS 484C.110, and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle *on or off the highways of this State*, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, another person, is guilty of a category B felony


(Emphasis added.) “Highway” is defined as “the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposes of vehicular traffic, whether or not the public authority is maintaining the way.” NRS 484A.095. Thus, under NRS 484C.430, a defendant who, while intoxicated, drives a vehicle anywhere in Nevada and causes a victim substantial bodily harm is guilty of a category B felony. *See Hudson v. Warden*, 117 Nev. 387, 395-96, 22 P.3d 1154, 1160 (2001) (determining that the district court had jurisdiction over offenses occurring both on the highway and off the highway under NRS 484.3795 (later substituted by NRS 484C.430)).

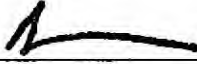
In this case, the amended information omitted “off the highways” from NRS 484C.430 and added “on premises to which the public has access” from NRS 484C.110, creating what Neagle claims is a “hybrid” location element. But when a criminal statute covers multiple alternatives, there is no requirement that a criminal charge recite every iteration that the

statute covers; a charge is permitted to include only the alternatives that apply to the case at hand and omit alternatives that do not apply. Although the amended information included extraneous language taken from NRS 484C.110, it clearly charged Neagle with driving while intoxicated on South Rainbow Boulevard in front of the liquor store and off a Nevada highway, resulting in substantial bodily harm, which are all of the necessary elements to charge a crime under NRS 484C.430. Further, the amended information charged Neagle with a category B felony for causing substantial bodily harm, which unambiguously means the charge was brought pursuant to NRS 484C.430. While the amended information cites to both NRS 484C.110 and NRS 484C.430, NRS 173.075(3) provides that “[e]rror in the citation or its omission is not a ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant’s prejudice.” Significantly, Neagle failed to argue that the error in the amended complaint misled him to his prejudice. We therefore conclude that the district court did not err in denying Neagle’s motion for arrest of judgment because the amended information, while imperfect, cited to NRS 484C.430, laid out the elements, and set forth facts in support. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Law Offices of John G. Watkins
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk