

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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STATE OF NEW MEXICO,

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-42464

JOSEPH STEWARD,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Drew D. Tatum, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Thomas J. Lewis, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Defendant appeals from his conviction for aggravated battery, contending that
the evidence was insufficient to support his conviction. This Court issued a calendar
notice proposing to affirm. Defendant has filed a memorandum in opposition, which
we have duly considered. Unpersuaded, we affirm.

1 {2} Defendant maintains that the evidence was insufficient to prove he committed
2 aggravated battery because there was no evidence of a “painful temporary
3 disfigurement.” [MIO 6] We disagree. Defendant acknowledges that Victim testified
4 to having suffered a broken cheekbone and sought treatment for the injury at the
5 hospital in Amarillo, Texas. [MIO 2, 6] Victim also testified that Defendant struck
6 him in the face with the butt of a gun. [MIO 2, 6] There was also evidence from
7 another witness that Defendant struck Victim in the face with his hand, and during
8 the altercation, Victim’s glasses flew off his face. [MIO 3] Defendant testified to
9 having slapped Victim in the face. [MIO 3] As explained in our proposed
10 disposition, the testimony of a single witness is sufficient evidence to support a
11 conviction. [CN 3] *See State v. Soliz*, 1969-NMCA-043, ¶ 8, 80 N.M. 297, 454 P.2d
12 779. Accordingly, Defendant’s suggestion that the absence of medical testimony or
13 documents verifying Victim’s injury renders the testimony insufficient to establish
14 a “painful temporary disfigurement” is unpersuasive.

15 {3} Defendant also continues to assert that it was error for the State to amend the
16 aggravated battery charge in the complaint so that rather than allege that Defendant
17 did “touch or apply force” to Victim, it alleged Defendant touched or applied force
18 by “hitting with a closed fist.” [MIO 4, 6, 7] Specifically, Defendant now argues that
19 the district court “applied an incorrect legal standard that failed to give [Defendant]
20 notice of what actions he needed to defend against.” [MIO 7] According to

1 Defendant, if the injury was caused by the rifle, his acquittal on the assault charge
2 “would negate the sufficiency of the evidence to prove aggravated battery.” [MIO 7]
3 Defendant acknowledges that he did not present this argument to the district court.
4 [MIO 8]

5 {4} The district court “may at any time allow the indictment or information to be
6 amended in respect to any variance to conform to the evidence.” Rule 5-204(C)
7 NMRA. The criminal information in this case alleged that Defendant “did touch or
8 apply force to [Victim].” [RP 1] Defendant has not explained how the State’s
9 decision to amend the aggravated battery charge to include “hitting with a closed
10 fist” rendered him unable to reasonably anticipate what the nature of the proof
11 against him would be. [MIO 4] *See State v. Ferguson*, 2023-NMCA-029, ¶ 22, 528
12 P.3d 707 (“A variance is not fatal unless the accused cannot reasonably anticipate
13 from the indictment what the nature of the proof against him will be.” (internal
14 citation and quotation marks omitted)). Defendant was fairly on notice that his
15 altercation with Victim on the night in question would be subject to scrutiny. *See*
16 *State v. Stevens*, 2014-NMSC-011, ¶ 50, 323 P.3d 901 (“A criminal indictment or
17 information need not contain exacting detail as long as the defendant is given
18 sufficient notice of the charges.”). Moreover, the evidence proffered to the district
19 court supported the amendment to the information—there was testimony that
20 Defendant struck Victim with his hand. [MIO 3]

1 {5} Not only was the amendment permissible under Rule 5-204, the specificity it
2 provided is specifically contemplated in UJI 14-321 NMRA. *See id.* use notes
3 (identifying aggravated battery’s four essential elements, the first of which is that
4 the defendant “touched or applied force” to the victim and includes an “ordinary
5 language” description of the touching or application of force). In addition, we note
6 that Defendant has not cited any authority to suggest that the act of “hitting with a
7 closed fist” was not among the type of conduct contemplated by aggravated battery’s
8 prohibition against touching or application of force. *See State v. Vigil-Giron*, 2014-
9 NMCA-069, ¶ 60, 327 P.3d 1129 (“[A]ppellate courts will not consider an issue if
10 no authority is cited in support of the issue and . . . , given no cited authority, we
11 assume no such authority exists.”).

12 {6} We therefore conclude Defendant has not demonstrated that the amendment
13 to the information violated his due process rights by failing to give him reasonable
14 notice of the charges. Additionally, we conclude that the amendment to the
15 information did not constitute fundamental error under the circumstances of this
16 case. *See State v. Romero*, 2013-NMCA-101, ¶ 8, 311 P.3d 1205 (recognizing that
17 an unpreserved assertion of error regarding amending indictments is reviewed for
18 fundamental error); *State v. Silva*, 2008-NMSC-051, ¶ 13, 144 N.M. 815, 192 P.3d
19 1192 (“[W]e will use the doctrine [of fundamental error] to reverse a conviction only
20 if the defendant’s guilt is so questionable that upholding a conviction would shock

1 the conscience, or where, notwithstanding the apparent culpability of the defendant,
2 substantial justice has not been served.”).

3 {7} Defendant also asserts that the district court “erred by failing to hold the State
4 to its burden to disprove [Defendant’s] exercise of his right to self-defense.” [MIO
5 5] As Defendant acknowledges, the district court agreed to take into account
6 Defendant’s self-defense theory. [MIO 10] *See* UJI 14-5190 NMRA (Persons
7 exercising the right of self-defense of habitation or property may stand their ground
8 and defend themselves.). Defendant asserts that the State therefore had the burden
9 of disproving that theory but failed to offer such evidence. [MIO 12] As support,
10 Defendant points to evidence that was presented in the district court and that suggests
11 he acted in self-defense. [MIO 12]

12 {8} In making this assertion, Defendant functionally asks that we reweigh the
13 evidence presented to the district court. We decline to do so. As discussed in our
14 proposed disposition, the fact-finder was free to reject Defendant’s self-defense
15 theory, and it is not for this Court to reweigh the evidence or substitute its judgment
16 for that of the fact-finder. [CN 5] *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126
17 N.M. 438, 971 P.2d 829 (“[T]he [fact-finder] is free to reject [the d]efendant’s
18 version of the facts.”); *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986
19 P.2d 482 (recognizing that it is for the fact-finder to resolve any conflicts and
20 determine weight and credibility in the testimony); *State v. Griffin*, 1993-NMSC-

1 071, ¶ 17, 116 N.M. 689, 866 P.2d 1156 (stating that appellate court does not reweigh
2 the evidence and may not substitute its judgment for that of the fact-finder as long
3 as there is sufficient evidence to support the verdict).

4 {9} Accordingly, for the reasons stated in our notice of proposed disposition and
5 herein, we affirm Defendant's conviction.

6 {10} **IT IS SO ORDERED.**

7 
8 **JACQUELINE R. MEDINA, Chief Judge**

9 **WE CONCUR:**

10 
11 **J. MILES HANISEE, Judge**

12 
13 **SHAMMARA H. HENDERSON, Judge**