

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE ASHBY GRAVES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43531

FILED

NOV 04 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of sexual assault and false imprisonment. Second Judicial District Court, Washoe County; James W. Hardesty, Judge. The district court sentenced appellant Willie Ashby Graves to serve a prison term of 10 to 25 years for the sexual assault count and a concurrent jail term of 12 months for the false imprisonment count.

Graves first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. In particular, Graves contends that the evidence only supports a finding that the sexual intercourse was consensual, and the victim's "numerous inconsistent statements . . . established that her testimony [that she did not consent to have intercourse] was unreliable and not credible." We conclude that Graves' contention lacks merit.

The standard of review for a challenge to the sufficiency of the evidence to support a criminal conviction is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier

of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>1</sup>

NRS 200.366(1) provides that:

A person who subjects another person to sexual penetration . . . against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

The use of overt physical force is not required to support a conviction under NRS 200.366.<sup>2</sup> Rather, the statute “only requires the commission of the act of sexual penetration against the will of the victim.”<sup>3</sup> An inquiry into the issue of non-consensual sexual intercourse, as an element of sexual assault, considers whether the victim reasonably demonstrated a lack of consent and whether a reasonable person, from the defendant’s view, would have concluded the victim manifested consent.<sup>4</sup> “A rape victim is not required to do more than her age, strength, and the surrounding facts and attending circumstances would reasonably dictate as a manifestation of her opposition.”<sup>5</sup> Finally, this court has recognized

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<sup>1</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

<sup>2</sup>McNair, 108 Nev. at 57, 825 P.2d at 574.

<sup>3</sup>Id.

<sup>4</sup>Id. at 56-57, 825 P.2d at 574.

<sup>5</sup>Id. at 57, 825 P.2d at 574.

that "the uncorroborated testimony of a victim, without more, is sufficient to uphold a rape conviction."<sup>6</sup>

In this case, Graves testified at trial, admitting that he had anal intercourse with the victim, but insisted that it was consensual. The victim, however, a mentally challenged twenty-year-old woman, testified that the sexual intercourse was not consensual. She described how she met Graves at her workplace and agreed to a date because she thought he was nice; the victim went over to Graves' apartment to watch movies. The victim testified that, while at the apartment, she went into Graves' bedroom with him on two different occasions to talk and the two engaged in consensual kissing. According to the victim, Graves then asked her if she would have sex, and she told him she was not ready to have sex.<sup>7</sup> As the victim stood up, Graves pulled her pants down; the victim told Graves "no" and pulled her pants back on, but Graves pulled them down again. Eventually, Graves engaged in anal intercourse with the victim against her will; the victim testified that she told Graves to stop, but he did not, and that he hurt her and she cried. After the assault, Graves told the victim not to tell anybody what had occurred. The victim then attempted to exit the apartment on more than two occasions but Graves prevented her from leaving, insisting that he would drive her home. Eventually, the victim promised Graves that she would not tell anybody what had occurred and left the apartment, walked home in the dark and immediately told her family.

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<sup>6</sup>Hutchins v. State, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994).

<sup>7</sup>The victim had previously informed Graves that she was a virgin.

The victim's testimony was corroborated by the testimony of registered nurse Debra Robison. Nurse Robison testified that she examined the victim and discovered four significant anal tears, as well as some hemorrhaging. Nurse Robison testified that the victim's injuries were consistent with non-consensual sexual activity. Although, on cross-examination, Robison admitted that it was possible that the victim's injuries could have occurred in the course of consensual intercourse, she also explained that such injuries were more likely to occur in cases of non-consensual sexual activity. Additionally, the victim's sister testified that, after the attack, the victim arrived home late and she was upset and crying.

Although Graves argues that the victim's testimony describing the particularities of the assault was replete with inconsistencies,<sup>8</sup> we note that the victim's testimony that she did not consent to sexual intercourse with Graves was unequivocal. Moreover, although Graves testified that the victim never told him "no" and consented to the intercourse, it is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>9</sup>

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<sup>8</sup>Graves, for example, argues that the victim was inconsistent about: (1) when she and Graves discussed going to his apartment instead of the movies; (2) whether she allowed Graves to kiss her breasts; and (3) whether she was lying on the bed or standing up when the assault occurred.

<sup>9</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Graves also contends that the district court abused its discretion in denying his motion for a psychological evaluation of the victim. In particular, Graves contends that a compelling reason for the examination existed because it was undisputed that the victim was mentally challenged, functioning at a level well below her age of 20 years old, and her mental state may have affected her veracity. Graves also argues that the district court should have granted his request for a psychological evaluation because "there was little or no corroboration of [the victim's] testimony." We conclude that Graves' contention lacks merit.

Recently, this court modified Koerschner v. State<sup>10</sup> and held "that a defendant is entitled to a psychological examination of an alleged sexual assault victim only where: (1) the State notifies the defendant that it intends to examine the victim by its own expert and (2) the defendant makes a prima facie showing of a compelling need for a psychological examination."<sup>11</sup> In considering whether a compelling need exists, the district court must consider whether the victim's testimony is corroborated, as well as whether there is a reasonable basis for the defendant's claim that the victim's mental or emotional state has affected her veracity.<sup>12</sup>

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<sup>10</sup>116 Nev. 1111, 13 P.3d 451 (2000), modified by State v. Dist. Ct. (Romano), 120 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 69, September 16, 2004).

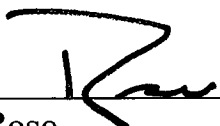
<sup>11</sup>State v. Dist. Ct. (Romano), 120 Nev. at \_\_\_, \_\_\_ P.3d at \_\_\_.


<sup>12</sup>Id.

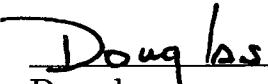
In this case, we conclude the district court did not abuse its discretion in denying the motion for a psychological evaluation of the victim. First, the State neither conducted its own psychological examination of the victim nor presented an expert at trial on the psychological condition of the victim. Additionally, Graves failed to demonstrate a compelling need for the examination. As previously discussed, the victim's testimony was corroborated by medical testimony, detailing physical injuries consistent with non-consensual anal intercourse. Additionally, although the victim was mentally challenged, there is no indication in the record that the victim's mental state affected her ability to be truthful. The victim was able to appropriately respond to counsel's questions about the sexual assault, and her testimony that she did not consent to the sexual intercourse was consistent and unequivocal. Accordingly, a psychological examination of the victim was not required.

Having considered Graves' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. James W. Hardesty, District Judge  
Bruce D. Voorhees  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk