

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL EUGENE HUBER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44800 **FILED**

JAN 12 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of sexual assault and one count each of attempted sexual assault, robbery, battery with intent to commit a crime, and first-degree kidnapping. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant as follows: count 1, sexual assault, a prison term of 120 months to life; count 2, sexual assault, a prison term of 120 months to life consecutive to count 1; count 3, attempted sexual assault, a maximum term of 144 months and a minimum of 32 months concurrent with count 2; count 4, robbery, a maximum term of 120 months and a minimum of 26 months concurrent with count 3; count 5, battery with intent to commit a crime, a maximum term of 120 and a minimum of 26 months concurrent with count 4; and count 6, first-degree kidnapping, life concurrent with counts 1 & 2 and with 424 days credit for time served.¹

¹Based on the documents before this Court, it appears that an amended judgment of conviction was entered on August 15, 2005. The sentence for count 4, robbery, was amended to a maximum term of life and a minimum of 60 months in the Nevada Department of Corrections concurrent with count 3. The sentence for count 6, first degree kidnapping

continued on next page . . .

Huber contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Huber argues that the evidence was insufficient because of the lack of DNA evidence and the discrepancy between the victim's initial description of her attacker's height and Huber's height. 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.²

In particular, we note that the victim testified that she was punched, grabbed by the hair and dragged approximately 50 feet behind a store. The victim further testified that her attacker penetrated her vagina with his fingers and penis and attempted to place his penis in her mouth. After the attack, the victim found her purse strewn about the parking lot where she was initially grabbed, and approximately \$30 was missing. Finally, the victim testified that she was able to observe Huber's face during the attack, and she identified him the day of the attack and at trial.

The jury could reasonably infer from the evidence presented that Huber was the individual who attacked the victim and committed the crimes for which he was convicted. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict

... continued

was amended to a maximum term of 60 months to life concurrent with counts 1 and 2.

²See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

Having considered Huber's contentions and concluded that they are without merit, we affirm the judgment of conviction. Our review of the judgment of conviction, however, reveals a clerical error. The judgment of conviction incorrectly states that Huber was convicted pursuant to a guilty plea. The judgment of conviction should have stated that appellant was convicted pursuant to a jury verdict. We therefore conclude that this matter should be remanded to the district court for correction of the judgment of conviction. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

cc: Hon. John S. McGroarty, District Judge
Paul E. Wommer
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk