

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTURO GAXEOLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47723

FILED

NOV 15 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of child abuse and neglect. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court sentenced appellant Arturo Gaxeola to a prison term of 12-30 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed 3 years.

Gaxeola contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Gaxeola argues that there was no evidence presented demonstrating that the victim suffered either physical or mental injury "as defined by the jury instructions." We disagree.

A review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹ In particular, we note that the amended criminal information charged Gaxeola with permitting the 5-year-old victim "to suffer unjustifiable physical pain . . . by striking the [victim] on the leg with an

¹See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

electrical cord.” The jury was instructed that “[p]hysical injury’ means permanent or temporary disfigurement or impairment of any bodily function or organ of the body.” (Emphasis added.) The mother of the victim, Gaxeola’s wife, testified at trial that the victim was in the bedroom with her when Gaxeola attacked her. She stated that Gaxeola became angry with the victim’s crying and shouting, and “then he grabbed the cord from the heater and hit him. . . . On the legs on the back.” Officer Robert Chamberlin testified that he was dispatched to Gaxeola’s residence the day after the incident and he observed visible marks, “consistent with an electrical cord,” across the two legs of the victim. Senior Crime Scene Analyst Peter Schellberg testified that he collected “an electric space heater, with a six-foot cord” from the bedroom.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Gaxeola committed the crime beyond a reasonable doubt.² 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, sufficient evidence supports the verdict.³ Moreover, we note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to support the jury’s verdict.


²See NRS 200.508(1). The jury found Gaxeola not guilty of two counts of assault with a deadly weapon, one count of child abuse and neglect, and one count of battery constituting domestic violence.


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).

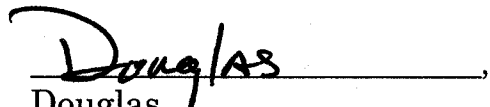
⁴See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Having considered Gaxeola's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Gibbons

 J.
Maupin

 J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk