IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY DEAN SCHEFFELMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49182

FILED

NOV 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of indecent or obscene exposure. First Judicial District Court, Carson City; William A. Maddox, Judge. The district court sentenced appellant Ricky Dean Scheffelman to serve a prison term of 19 to 48 months.

Scheffelman first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Scheffelman contends that the only witness to the crime was not credible, and "[i]n view of the discrepancies between [the victim's and the reporting officer's] testimonies, the verdict was not supported by substantial evidence."

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.[1] In particular, we note that the victim testified that she was working at an adult novelty store in Carson City, when Scheffelman came in the store and picked up a tube of lubricant. He went

[1]See 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).

into the 18-and-over room, and when he returned, he placed two DVDs on the counter to purchase. The victim testified that she glanced down and observed that Scheffelman's penis was exposed and pressed up against the glass counter. The victim called the business owner, who responded to the store. The business owner testified that he observed Scheffelman inside his vehicle parked in front of the store with his penis exposed. We conclude that the jury could reasonably infer that Scheffelman intentionally exposed his penis in public.[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, substantial evidence supports the verdict.[3]

Scheffelman next contends that the district court erred in denying his motion to dismiss based on the State's failure to gather and preserve allegedly exculpatory evidence. Specifically, Scheffelman claims that police officers should have collected the lubricant samples found at the scene and compared them to the lubricant Scheffelman had in his possession.

When the State fails to gather evidence, the defendant must demonstrate that the evidence was material, i.e. "that there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different."[4] Only

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[2]NRS 201.220(1); Young v. State, 109 Nev. 205, 849 P.2d 336 (1993).

[3]See 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).

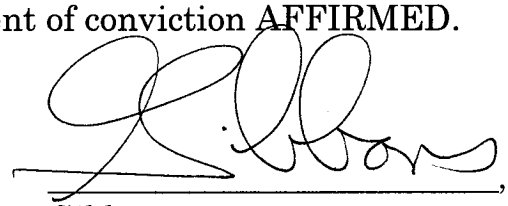
[4]Daniels v. State, 114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998).

when the State has acted in bad faith is dismissal of the charges an available sanction.[5]

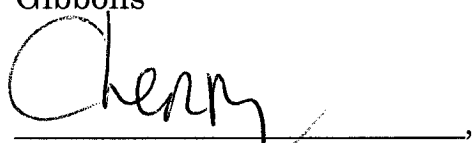
We conclude that the district court did not err in denying Scheffelman's motion to dismiss. The lubricant was not material to the charges of obscene exposure, nor was there a reasonable probability that if the lubricant had been collected and preserved that the results of the proceedings would have been different.

Having considered Scheffelman's contentions and concluded that they are without merit, we

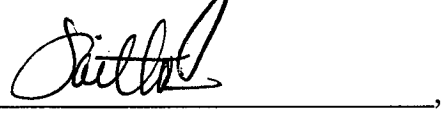
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. William A. Maddox, District Judge
Robert B. Walker
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk

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[5]Id.