IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DAVID BROWNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50590

FILED

APR 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of open or gross lewdness. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant John David Browning to a jail term of twelve months.

Browning contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Browning contends that the evidence demonstrated that he merely made a "pass" at the victim which was verbally rejected, and that there was no showing that he meant any action to be "offensive."

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 riding on a bus, sitting next to Browning, and awoke to find Browning rubbing her vaginal area over her pants. She testified that she received cigarettes from Browning, but did not recall talking to Browning.

[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).

Further, she testified that she had not touched Browning in a suggestive manner, and did not consent to the touching.

Browning testified that during the ride he touched the victim, but not on the vagina. He claimed that the victim had her leg and knee pressed against his and would lean over and touch him with her breast, and that he felt that the victim was flirting with him. He further testified that he dozed off and was awoken by the victim yelling.

Despite Browning's testimony, the jury could reasonably infer from the evidence presented that Browning committed intentional public sexual contact.[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]

Having concluded that Browning's contention lacks merit, we ORDER the judgment of conviction AFFIRMED.

_____, J.
Maupin

_____, J.
Cherry

_____, J.
Saitta

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[2]See NRS 201.220(a); 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).

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Elko County District Attorney
Elko County Clerk