

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLAN FRED ALTERGOTT,

No. 34802

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 11 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, burglary with the use of a deadly weapon, robbery with the use of a deadly weapon, sexual assault with the use of a deadly weapon, and first degree kidnapping with the use of a deadly weapon. On appeal, Altergott contends that there was insufficient evidence adduced at trial to sustain his conviction for sexual assault with a deadly weapon and that the district court erred in giving the jury an expert witness instruction.¹

First, Altergott argues that there was insufficient evidence to sustain the sexual assault charge because the victim may have subconsciously or otherwise misidentified Altergott as the masked assailant who committed the assault. We disagree. The victim testified that Altergott was the masked intruder who sexually assaulted her and that he never left her alone until the time Altergott was stopped by the police. We conclude there was sufficient evidence identifying Altergott to support the jury's conviction for sexual assault. See *Hutchins v. State*, 110 Nev. 103, 107-08, 867 P.2d 1136, 1139 (1994) (upholding sexual assault conviction based on uncorroborated testimony of victim); *Bolden v. State*, 97 Nev.

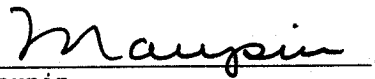
¹Pursuant to NRAP 34(f)(1), we have concluded that oral argument is not warranted.

71, 73, 624 P.2d 20, 20 (1981) (jury's role is to determine the weight and credibility to give various testimony).

Next, Altergott alleges that the district court committed prejudicial error by giving an expert witness instruction to the jury despite the State's failure to submit a notice of expert witnesses or to qualify any witness as an expert. We disagree. We conclude that any error the district court may have committed was harmless because it did not affect Altergott's substantial rights. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Accordingly, having concluded that Altergott's arguments lack merit, we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk