IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54413

FILED

JAN 13 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of indecent exposure. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

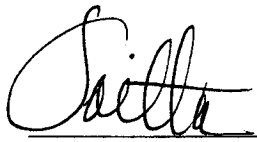
Appellant Joel Burkett contends that insufficient evidence was adduced at trial to support his conviction because the evidence of his criminal conduct was equally supportive of non-criminal conduct and therefore should have been resolved in his favor. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Correctional Officer Sharon Sommervoid testified that inmates are counted at 11:00 p.m., 1:00 a.m., 3:00 a.m., and 4:30 a.m. during the graveyard shift. The officer conducting the count enters the prison wing through a metal door that makes a loud noise when it is rolled shut and peers through the cell door windows to ensure that the inmates are present and alive. When Officer Sommervoid conducted her 3:00 a.m. inmate count, she observed Burkett lying on his bed, unclothed, and masturbating with the light on; his penis was erect and he "did not exercise any type of modesty." We conclude that a rational juror could

reasonably infer from this testimony that Burkett intentionally, openly, and indecently or obscenely exposed himself. See NRS 201.220(1); State v. Castaneda, 126 Nev. ___, ___, ___, P.3d ___, ___ (Adv. Op. No. 45, November 24, 2010) (applying common law definitions to NRS 201.220). 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. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

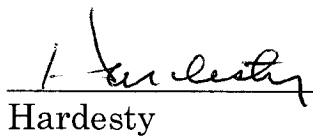
Burkett also contends that NRS 201.220 is unconstitutionally vague and overbroad, both on its face and as applied to him. He argues that NRS 201.220 fails to provide the ordinary person with sufficient notice as to what conduct is prohibited; authorizes and encourages arbitrary and discriminatory enforcement; and criminalizes conduct that is not observed, open, or lewd. He further argues that he could not have reasonably known that engaging in this "normal male behavior" while alone in his prison cell would constitute criminal conduct. We conclude that both arguments lack merit. See Castaneda, 126 Nev. at ___, ___, P.3d at ___ (holding that NRS 201.220 is not unconstitutionally vague or overbroad).

Having considered Burkett's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Saitta



_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Carson City
Attorney General/Ely
White Pine County District Attorney
White Pine County Clerk