

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME JAMES JOHNSON,

No. 35072

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 20 2000

WILLETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of sexual assault. The district court sentenced appellant to serve two consecutive and two concurrent life sentences, with parole eligibility after ten years.

Appellant Jerome Johnson contends that the evidence presented at trial was insufficient to support his conviction of four counts of sexual assault. We disagree.

"The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of a defendant's guilt beyond a reasonable doubt." *Kazalyn v. State*, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992). Further, when the sufficiency of the evidence is challenged on appeal, "[t]he relevant inquiry for this court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."" *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))).

The definition of sexual assault is set forth in NRS 200.366. Specifically, NRS 200.366 provides as follows:

A person who subjects another person to sexual penetration, or who forces another

person to make a sexual penetration on himself or another . . . against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

Johnson argues that his conviction of four counts of sexual assault should be reversed because the State failed to prove beyond a reasonable doubt that the sexual acts between him and the alleged victim were not consensual.

In support of his argument, Johnson asserts that the evidence demonstrates that the victim was of legal age to give consent and had sufficient mental capacity to consent to sex. Additionally, Johnson argues that the State failed to present any evidence that Johnson used force or threats to compel the victim to engage in sexual activity. Moreover, Johnson asserts that the evidence indicates that the sex was consensual because they used a lubricant and the victim could have walked out of the bedroom at anytime. According to Johnson, the only reason the victim is claiming that the sex was not consensual is because of the victim's views concerning homosexuality.

We conclude that the State presented sufficient evidence to prove beyond a reasonable doubt that the victim did not consent.

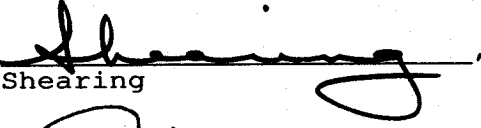
A sexual assault victim's testimony alone is sufficient to uphold a conviction. See *May v. State*, 89 Nev. 277, 279, 510 P.2d 1368, 1369 (1973); accord *Hutchins v. State*, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994). The victim's testimony regarding the sexual assault and the forensic examiner's corroborating testimony regarding the victim's internal injuries constitute substantial evidence to support Johnson's conviction of sexual assault. Although the victim did not physically resist Johnson, testimony adduced at

trial showed that Johnson was bigger than the victim. Further, the victim testified that he was afraid to fight back because he did not want Johnson to hurt him "sexually." Based on the difference in size between the victim and Johnson, coupled with the fact that the victim was stricken with cerebral palsy and that Johnson was a healthy male, we conclude that the jury could reasonably conclude that the victim's lack of resistance did not amount to consent.

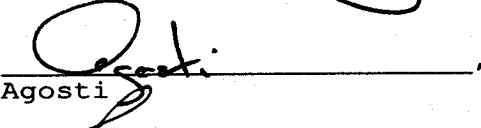
The jury heard Johnson's denial and his attempt to establish that the victim consented to the sexual acts. However, the jury weighed the conflicting evidence and determined that the victim's testimony was more credible. "[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Based on the evidence adduced by the State, we conclude that the jury could reasonably infer that the sex acts between Johnson and the victim were not consensual and that Johnson sexually assaulted the victim.

Having considered Johnson's contentions on appeal and concluded that they lack merit, we affirm the judgment of conviction.

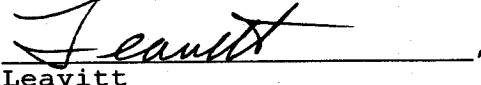
It is so ORDERED.



Shearing J.



Agosti J.



Leavitt J.

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk