

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONOVAN JOSEPH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67345

FILED

DEC 17 2015

ORDER OF AFFIRMANCE

TRACY K. LINDSEMAN
CLERK OF DISTRICT COURT
BY *Angela*
CHIEF DEPUTY CLERK

This is an appeal from a jury trial in which appellant was convicted of sexual assault and open or gross lewdness. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

As the parties are familiar with the facts, we need not delineate them here except as necessary to our disposition. On appeal, the only issue presented is whether the evidence was sufficient to uphold the jury's verdict. Appellant argues that the victim was too intoxicated at the time of the events to be a credible witness at trial, and, therefore, the convictions must be vacated for insufficient evidence.¹ We conclude the evidence is sufficient to support the jury's verdict.

Evidence is sufficient if "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."

¹Appellant also contends the victim's testimony was not corroborated by the evidence as the victim willingly accompanied appellant to his room, no one in the vicinity of the hotel room reported hearing the victim scream, and the crime scene analysts found no evidence of a struggle in the room or any female hair on the bedding.

Thompson v. State, 125 Nev. 807, 816, 221 P.3d 708, 714-15 (2009) (internal quotation marks omitted). We will not overturn a jury's verdict if substantial evidence supports that verdict. *Id.* Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion." *Id.* The jury, not the court, assesses the witness's credibility and the weight of the evidence. *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Testimony of a sexual assault victim, even without corroborating evidence, is generally considered sufficient to uphold a conviction. *Deeds v. State*, 97 Nev. 216, 217, 626 P.2d 271, 272 (1981); *Henderson v. State*, 95 Nev. 324, 326, 594 P.2d 712, 713 (1979).

Here, substantial evidence supported the jury's verdict for sexual assault and open or gross lewdness.² The victim testified in detail to the crimes, her pleas for appellant to stop, and her efforts to escape from the appellant. Further, video surveillance from the hotel reflected the victim entered appellant's hotel room around 11 p.m. and thereafter ran away, nude, from appellant's room around 12 a.m. Surveillance video then showed appellant fleeing into a stairwell, where the victim's clothes, shoes, and purse were later discovered by security. Appellant then

²Sexual assault occurs when one person subjects a victim to any sexual penetration, including fellatio, against the victim's will. NRS 200.364, NRS 200.366. A person commits open or gross lewdness under NRS 201.210, by perpetuating an obviously objectionable act of lewdness upon a victim that is intended "to be offensive to his victim." *Berry v. State*, 125 Nev. 265, 280-82, 212 P.3d 1085, 1095-96 (2009) (abrogated on other grounds); see also *Ranson v. State*, 99 Nev. 766, 766-67, 670 P.2d 574, 575 (1983) (discussing open or gross lewdness).

attempted to leave the hotel, under the guise of meeting his wife at the airport, although appellant's wife's flight was not scheduled to arrive for another eight hours.


The victim suffered physical injuries to many parts of her body, especially the genital area, which was consistent with her testimony. In fact, a Sexual Assault Nurse Examiner who had done between 400-500 examinations of sexual assault victims testified the laceration to this victim's labia was unusually severe and would have been very painful. DNA evidence corroborated several aspects of the victim's testimony and did not disprove the remaining aspects. Specifically, appellant's DNA was found on the victim's panties—which were found in the stairwell appellant briefly visited immediately after the assault—and the victim's DNA was found on appellant's hand, corroborating her testimony that the appellant stroked her underwear and digitally penetrated her vagina with his fingers before proceeding to rape her. Swabs taken from both the victim's and appellant's genitals showed the presence of semen.³ Further, appellant's statement to police that he had been alone in his hotel room was belied by the surveillance tape, which showed that the victim had been in his room for an hour.


³Although the DNA tests did not reveal the presence of sperm, sperm may not be present for various reasons, including a low sperm count or if the male wore a condom. Here, appellant told the victim that he had been "fixed," and he may have been wearing a condom when he ejaculated.

The overwhelming facts here reflect that appellant's argument that insufficient evidence existed is without merit. The substantial evidence, viewed in the light most favorable to the prosecution, was sufficient that a rational trier of fact could find the elements of the crime beyond a reasonable doubt. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk