

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN GARCIA DIAZ,

No. 36754

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 16 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of first-degree kidnapping, battery with the intent to commit a crime, robbery, and attempted grand larceny, and two counts of sexual assault with substantial bodily harm. The district court sentenced appellant to three consecutive terms of life in prison with the possibility of parole after 15 years and various consecutive prison terms totaling 9 to 26 years, to be served consecutively to the life sentences. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant's sole contention is that the State presented insufficient evidence to support the jury's verdict on the first-degree kidnapping charge. In particular, appellant argues that the victim was not moved and that the restraint of the victim was incidental to the assault. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry 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."¹ Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."²

¹Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis omitted), quoted in Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

²McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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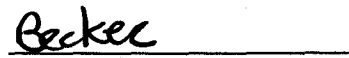
The State charged appellant with first-degree kidnapping based on his use of physical restraint to hold or detain the victim for purposes of committing a robbery.³ Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. In particular, we conclude that appellant's physical restraint of the victim was sufficient to establish kidnapping as an additional offense.⁴ Moreover, the kidnapping was not incidental to the robbery because the restraint increased the risk of harm.⁵ Finally, appellant's restraint of the victim had an independent purpose and significance in that it was essential to the accomplishment of the sexual assault.⁶

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing J.


Rose J.


Becker J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

³See NRS 200.310(1).

⁴See Clem v. State, 104 Nev. 351, 354, 760 P.2d 103, 105 (1988).

⁵Id.

⁶Id.