

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BLAKE LAWRENCE ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75776-COA

FILED

NOV 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Blake Lawrence Anderson appeals from a judgment of conviction, pursuant to a jury verdict, of impersonation of an officer, oppression under color of office, first degree kidnapping with use of a deadly weapon, battery with intent to commit sexual assault with use of a deadly weapon, two counts of battery with intent to commit sexual assault, and three counts of sexual assault with use of a deadly weapon. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

During a jury trial, M.F., the victim in this case, testified that on March 29, 2016, appellant Blake Lawrence Anderson sexually assaulted her. According to M.F., she was working as a prostitute near the Las Vegas Strip when Anderson approached her and requested sexual favors in exchange for money.¹ Although outward appearances indicated that Anderson was an Uber driver—there was an Uber sticker on his vehicle's windshield, his phone showed the Uber app, and he had bottled water in his car—M.F. was concerned that Anderson was in fact a police officer.

After smoking a cigarette with Anderson, M.F. felt comfortable enough to allow Anderson to drive them to another location. M.F. suggested several locations, but Anderson ignored her suggestions and parked in an

¹We do not recount the facts except as necessary to our decision.

industrial complex behind a buzzing electrical generator. Anderson told M.F. to move to the backseat, and she complied. As Anderson moved to join her, she asked, "Are you sure you're not the police?" At that moment, Anderson entered the backseat holding a gun. Anderson pressed the gun to M.F.'s left temple and said, "I am the police, bitch. Put your hands behind your back." M.F. obeyed, and Anderson proceeded to duct tape her arms together. M.F. testified at this point she no longer believed he was a police officer. She began crying and told Anderson that she had children waiting for her at home and to "[d]o whatever you need to do. Just let me get back."

Anderson then subdued M.F. with both a gun and a knife and forced her to perform a number of sexual acts.² The medical evidence presented at trial supported the nonconsensual nature of the acts. After Anderson had finished, he told M.F. to get out of the car. He cut the tape binding her arms, nicking her, and threw her clothes out after her. M.F. memorized his license plate as he drove away. M.F. walked to Desert Cab Company to call for a ride. She initially returned home to see her children before deciding to go to University Medical Center (UMC) for a medical exam.

The State presented significant evidence at trial to support M.F.'s account of the facts. Two employees of Desert Cab Company testified that M.F. came in crying on March 29, 2016, and asked to use the phone. A Las Vegas Metropolitan Police Department (LVMPD) officer and detective testified that M.F. told them largely the same information detailed above in addition to finding corroborating evidence at the crime scene. LVMPD crime scene analysts testified that incriminating items identified in M.F.'s

²The parties know the facts of this case, and we decline to elaborate further here.

testimony were found in Anderson's home and vehicle, including the gun. The nurse who examined M.F. testified that M.F. suffered injuries consistent with sexual assault. An LVMPD forensic scientist testified that DNA found on M.F. was consistent with Anderson's DNA profile.

In an effort to challenge M.F.'s version of the facts and support a defense of consent, during cross-examination, Anderson pointed out that M.F. told the police officer and detective that she was picked up by an Uber driver. Additionally, M.F. initially refrained from telling the detective that she was a prostitute. Anderson also pointed out the inconsistencies in M.F.'s testimony about which sexual acts occurred, but he did not connect these inconsistencies to the issue of consent.

The jury found Anderson guilty of impersonation of an officer, oppression under color of office, first degree kidnapping with use of a deadly weapon, battery with intent to commit sexual assault with use of a deadly weapon, two counts of battery with intent to commit sexual assault, and three counts of sexual assault with use of a deadly weapon. The jury found Anderson not guilty of one count of sexual assault with use of a deadly weapon and one count of battery with use of a deadly weapon. The district court sentenced Anderson to an aggregate 300 months to life in the Nevada Department of Corrections and lifetime supervision after his term of imprisonment is completed, and the district court stated that Anderson must register as a sex offender when he is released from custody. This appeal followed.

On appeal, Anderson argues there was insufficient evidence to convict him of kidnapping, sexual assault,³ battery with intent to commit sexual assault, impersonating a police officer, and oppression under color of law.⁴ We disagree.

In reviewing the sufficiency of the evidence, we must decide “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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). “[I]t is the jury’s function, not that of the [reviewing] 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).

Kidnapping in the first degree requires the following: “[a] person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault” NRS 200.310(1). “A person is guilty of sexual assault if he or she[s]ubjects another person to sexual penetration . . . against the will of the victim.” NRS 200.366(1)(a). The Nevada Supreme Court has “repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction.” *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992).

³Anderson admits that he had sexual intercourse with M.F. but argues that it was consensual.

⁴Anderson does not dispute the “with use of a deadly weapon” element in any of his convictions.

"[T]he victim must testify with *some* particularity regarding the incident in order to uphold the charge." *Id.* A person is guilty of battery with intent to commit sexual assault when he imposes "any willful and unlawful use of force or violence upon the person of another" with the intent to commit a sexual assault. NRS 200.400(1)(a) & (4).

"Every person who shall falsely personate a . . . police officer . . . and in such assumed character shall do any act purporting to be official, whereby another is injured or defrauded, shall be guilty of impersonating a police officer. NRS 199.430. "[A] person pretending to be an officer, who unlawfully and maliciously, under pretense or color of official authority: (a) Arrests or detains a person against the person's will; . . . or (d) Does any act whereby the person, property or rights of another person are injured, commits oppression." NRS 197.200(1).

Here, the evidence presented at trial was such that a rational trier of fact could conclude that Anderson committed the charged crimes. To Anderson's kidnapping conviction, M.F. testified that she suggested multiple parking locations to Anderson, who ignored her in favor of a particularly private and noisy location, which furthered his ability to commit sexual assault without interruption. She also testified that Anderson duct taped her arms together behind her back and threatened her with both a gun and a knife before sexually assaulting her. As to Anderson's sexual assault convictions, M.F. testified that Anderson forced her to commit a number of sexual acts against her will, and the SANE nurse testified that M.F.'s injuries were consistent with sexual assault.

As to Anderson's battery with intent to commit sexual assault convictions, M.F. testified that Anderson pushed a gun into her neck, grabbed M.F. by the back of her head and forced her to commit to certain

sexual acts as well as pushing her into the car door. As to Anderson's impersonating a police officer and oppression under color of law convictions, M.F. testified that Anderson pointed a gun at her, told her that he was a police officer and to put her arms behind her back as if he were going to handcuff and arrest her, and then instead duct taped her arms behind her back and sexually assaulted her.

While Anderson did point out some inconsistencies between M.F.'s trial testimony and what she told the LVMPD police officer, detective, and UMC nurse regarding her employment and how she was anally penetrated, it was for the jury to assess M.F.'s credibility. Ultimately, the jury found her version credible.

Anderson makes one additional argument. He argues that there was insufficient evidence to convict him of both kidnapping and sexual assault because the kidnapping was incidental to the sexual assault under *Mendoza v. State*, 122 Nev. 267, 130 P.3d 176 (2006). We disagree.

[T]o sustain convictions for both [sexual assault] and kidnapping arising from the same course of conduct, any movement or restraint must stand alone with independent significance from the act of [sexual assault] itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of [sexual assault], or involve movement, seizure or restraint substantially in excess of that necessary to its completion.

Mendoza, 122 Nev. at 275, 130 P.3d at 181. "Whether the movement of the victim is incidental to the associated offense and whether the risk of harm is substantially increased thereby are questions of fact to be determined by the trier of fact in all but the clearest cases." *Guerrina v. State*, 134 Nev. 338, 343, 419 P.3d 705, 710 (2018) (quoting *Curtis D. v. State*, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982)).


In *Guerrina*, the perpetrator “accosted” the victim in public and “forced her to accompany him into the secluded store, where he later demanded her personal wallet and cellphone.” 134 Nev. at 343, 419 P.3d at 710. There, the supreme court affirmed *Guerrina*’s convictions for both robbery and kidnapping because moving the victim from a public place to a private place substantially increased the risk of harm to the victim and substantially exceeded the movement necessary to complete the robbery. *Id.* at 343-44, 419 P.3d at 710-11. The supreme court further stated that “a rational trier of fact could have concluded that pouring liquid around the door and then locking [the victim] within the store constituted restraint substantially in excess of that necessary to the robbery’s completion.” *Id.* at 344, 419 P.3d at 711 (inner punctuation and citation omitted).

Here, a rational trier of fact could have concluded that Anderson moved M.F. in excess of that necessary to complete the sexual assault. Anderson could have sexually assaulted M.F. when he first asked her for a “date,” but he did not. He drove M.F. to a more private location instead. Additionally, M.F. suggested multiple parking options, which Anderson ignored and instead chose a particular, hidden location behind a loud generator. A rational trier of fact could also have concluded that Anderson restrained M.F. in excess of that necessary to complete the sexual assault by pointing a gun at M.F. and by duct taping her arms behind her back, causing M.F. to fear for her life. Furthermore, the jury was properly instructed on the requirements for a dual conviction of kidnapping and sexual assault because the jury instruction used at trial was the same as the suggested instruction in *Mendoza*. See *Mendoza*, 122 Nev. at 275-76, 130 P.3d at 181; *Pascua v. State*, 122 Nev. 1001, 1005, 145 P.3d 1031, 1033 (2006).

Therefore, reviewing the facts in the light most favorable to the prosecution, a rational trier of fact could conclude that Anderson both kidnapped and sexually assaulted M.F., battered M.F. with the intent to commit sexual assault, impersonated a police officer, and committed oppression under the color of law. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk