IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENYA KEITH HALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78353-COA

ORDER OF AFFIRMANCE

Kenya Keith Hall appeals from a judgment of conviction, pursuant to a jury verdict, of second-degree kidnapping, battery, attempted sexual assault, coercion with use of force, battery resulting in substantial bodily harm constituting domestic violence, and open or gross lewdness. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

The State charged Hall with first-degree kidnapping, battery with intent to commit sexual assault resulting in substantial bodily harm, three counts of sexual assault, coercion with use of force, and battery resulting in substantial bodily harm constituting domestic violence for an attack on T.S., Hall's on-and-off again girlfriend.[1] The State later filed an amended criminal complaint, replacing one count of sexual assault with one count of attempted sexual assault.[2] The case proceeded to a seven-day trial where the jury heard testimony from several witnesses, including T.S. and Hall.

T.S. testified that Hall went to her apartment one evening despite the two being separated at that time. Shortly after Hall arrived,

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[1]We do not recount the facts except as necessary to our disposition.

[2]The State also charged Hall with open or gross lewdness for a separate incident arising on April 8, 2018, involving another victim, D.B.

T.S. received repeated phone calls, none of which she answered. Hall eventually took T.S.'s phone, answered it, and told the male caller that T.S. could not talk. Hall asked T.S. about the caller, who she said was a man she recently met. Hall took her cell phone, grabbed her by the neck, and took her to the living room to discuss the call further. T.S., fearing for her safety, attempted to call 9-1-1 through her Apple Watch. But Hall saw—and ended—the outgoing call from T.S.'s iPhone. He removed T.S.'s smartwatch from her wrist and threw it against the wall, breaking it. He did the same with T.S.'s cell phone.

Hall, angry that she tried to call 9-1-1, punched T.S., tasered her, and hit her bare buttocks with a frying pan. Hall demanded she perform fellatio and have sexual intercourse. Hall stopped to warn her that she was going to get "the punishment": anal intercourse. Hall made her get on her hands and knees and "tried to penetrate [her] anally" despite her telling him no. T.S. began to cry and hyperventilate, and Hall stopped. Hall allowed T.S. to get some fresh air to help her calm down, and he eventually fell asleep in T.S.'s apartment. Days later, T.S. went to urgent care to receive treatment for her injuries and filed a police report about the events.

At trial, Hall testified that he had sexual intercourse with, received fellatio from, spanked, and performed cunnilingus on T.S. that night. However, Hall testified all of this was consensual and consistent with their previous sexual interactions. Aside from spanking T.S. with a frying pan, Hall denied physically abusing her. Hall did not clarify whether he attempted to have anal sex with T.S. that night. On cross-examination, Hall read the statement he gave to a detective. In that statement, Hall admitted that "the punishment" referred to a purported arrangement with T.S. whereby he could have anal intercourse with her when she upset him.

The jury convicted Hall of second-degree kidnapping, battery, attempted sexual assault, coercion with use of force, battery resulting in substantial bodily harm constituting domestic violence, and open or gross lewdness, but acquitted him of the two counts of sexual assault. The district court sentenced Hall in the aggregate to 54 to 180 months of incarceration.

On appeal, Hall argues that the jury acquitting him of two counts of sexual assault necessarily means that there was insufficient evidence for it to find him guilty of attempted sexual assault.[3] Hall contends that the jury verdict is deficient because it shows that the jury relied on both T.S.'s and Hall's testimony when it should have relied on one or the other. The State, in response, argues that Hall failed to make cogent arguments or cite to any specific evidentiary deficiencies. The State also contends that Hall's arguments are meritless because the jury need not convict him of sexual assault to convict him of attempted sexual assault and that the evidence supports the jury's verdict.

We will not reverse a jury's verdict on appeal if that verdict is supported by substantial evidence. *Moore v. State*, 122 Nev. 27, 35, 126 P.3d 508, 513 (2006). "There is sufficient evidence if the evidence, viewed in the light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." *Leonard v. State*, 114 Nev. 1196, 1209-10, 969 P.2d 288, 297 (1998). "[T]o prove attempted sexual assault, the prosecution must establish that (1) appellant intended to commit sexual assault; (2) appellant performed some act toward the commission of the crime; and (3) appellant failed to consummate its commission." *Van Bell v. State*, 105 Nev. 352, 354, 775 P.2d

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[3]We note that Hall challenges only his attempted sexual assault conviction on appeal.

1273, 1274 (1989); *see also* NRS 193.330(1) (defining "attempt"); NRS 200.366(1)(a) (defining "sexual assault").

After reviewing Hall's opening brief, we conclude that Hall failed to cogently argue how the jury verdict is unsupported by substantial evidence. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (noting that issues not cogently argued or supported by relevant authority "need not be addressed by this court"). Without providing any legal authority or citations to the record, Hall's argument consists of four conclusory sentences in which he avers that this court must reverse his attempted sexual assault conviction because the jury acquitted him of two counts of sexual assault. *See* NRAP 28(a)(10)(A) (requiring an appellant to cite to the legal authorities and parts of the record that support his or her arguments).

We nonetheless address the merits of Hall's argument and conclude that his attempted sexual assault conviction is supported by substantial evidence. The State charged Hall with attempted sexual assault for attempting anal intercourse with T.S., one count of sexual assault for forcing T.S. to perform fellatio, and one count of sexual assault for forcing T.S. to have sexual intercourse. Each of these charges are separate chargeable acts. *See Wright v. State*, 106 Nev. 647, 650, 799 P.2d 548, 549-50 (1990) (holding that a defendant could be convicted of sexual assault and attempted sexual assault because they were separate acts despite occurring in a single encounter within a brief period of time). Because each action supported a separate charge, the State did not need to provide sufficient evidence that Hall forced T.S. to perform fellatio, forced her to have sexual intercourse, and then attempted to have anal intercourse to convict him of attempting to have anal intercourse. To the contrary, the

State needed to prove only that Hall attempted to have nonconsensual anal intercourse with T.S.

A rational jury could find Hall guilty of attempted sexual assault if it believed T.S.'s testimony that, after beating and tasering her, Hall tried to have anal intercourse with her against her will as "the punishment" for upsetting him and stopped only after she began to cry and hyperventilate. The jury's verdict is supported by Hall's testimony that he was angry and upset with T.S. that night, and his statement to the detective: "Every time she pisses me off, I get to fuck her in the ass." Thus, a rational jury could have concluded that Hall was angry and sought to punish T.S. with anal intercourse for receiving a call from another man or calling 9-1-1 or both. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (providing that the jury's role is "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts").

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Lipp Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk