IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE M. YOUNKIN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38565

FILED

AUG 21 2002

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree kidnapping, three counts of sexual assault and two counts of battery constituting domestic violence. The district court sentenced appellant Clarence Younkin to serve two concurrent and two consecutive terms of life in the Nevada State Prison with the possibility of parole after a combined total of 280 months, plus two terms of 137 days in the Clark County Jail.

Appellant first contends that the prosecutor improperly redefined reasonable doubt in her closing argument. During closing argument, the prosecutor made the following comments regarding reasonable doubt:

> [B]eyond a reasonable doubt . . . it's not an insurmountable burden. It doesn't mean beyond all imaginary doubt . . . It means you have to have a reason to say not guilty. If you have just this little tweak in the back of your mind . . . that maybe he didn't mean to do all that . . .

At this point, the trial court upheld defense counsel's objection to the prosecutor's redefinition of reasonable doubt. Appellant acknowledges that this court is reluctant to find reversible error for such improper argument where, as here, the jury instruction correctly defined reasonable doubt pursuant to NRS 175.211(1). He argues, however, that reversal is appropriate in his case for the following reasons: (1) the evidence was

"close"; (2) the verdict was based solely on the testimony of the victim and appellant; and (3) the prosecutor "twisted" the reasonable doubt standard "in a cavalier manner" that demeaned appellant's defense.

Appellant is not entitled to relief on this claim. First, this court has "consistently deemed incorrect explanations of reasonable doubt to be harmless error as long as the jury instruction correctly defined reasonable doubt."[1] Second, appellant's case is not one that nonetheless mandates reversal. Although appellant contested the victim's account of the incident, "[t]he jury is at liberty to reject the defendant's version of events."[2] Also, "[i]t is well established law in Nevada that a jury may convict an individual of sexual assault based upon the victim's uncorroborated testimony."[3] Moreover, the record shows that the verdict was not based solely on the testimony of the victim and appellant. The testimony of the sexual assault nurse corroborated the victim's testimony. Finally, the trial court sustained defense counsel's objection, promptly terminating any improper attack on appellant's defense. We conclude that the prosecutor's redefinition of reasonable doubt was harmless error.

Appellant next argues that his conviction for first-degree kidnapping cannot lie because any restraint of the victim, appellant's wife, was incidental to the underlying offense of sexual assault. Appellant cites Wright v. State[4] in support of his argument. In Wright, this court held that where the accused is convicted of first-degree kidnapping and an

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[1]Randolph v. State, 117 Nev. ___, ___, 36 P.3d 424, 431 (2001) petition for cert. filed, (May 23, 2002) (No. 01-10471).

[2]Porter v. State, 94 Nev. 142, 146, 576 P.2d 275, 278 (1978).

[3]Washington v. State, 112 Nev. 1067, 1073, 922 P.2d 547, 551 (1996).

[4]94 Nev. 415, 581 P.2d 442 (1978).

associated offense, the kidnapping conviction will not lie if the movement of the victim was incidental to the associated offense and did not increase the risk of harm to the victim beyond that necessarily present in the associated offense.[5] Additionally, appellant contends that "the doors were never locked" and that appellant "never told his wife that she was not free to leave." He also claims that the victim never suggested that appellant demanded that she remain in the residence.

Appellant's reliance on Wright is inapposite because his restraint of the victim was not incidental to the sexual assaults. Appellant confined the victim to her home for at least fifteen hours, a period greatly exceeding that necessary for commission of the sexual assaults. Moreover, he repeatedly battered the victim during the interval. And appellant prevented the victim from seeking assistance by removing all telephones from her control. Thus, appellant's restraint of the victim increased the likelihood of harm.[6] Further, contrary to appellant's factual claims, the victim testified that the house was entirely secured and that appellant repeatedly told her not to move. We conclude that sufficient evidence supports appellant's first-degree kidnapping conviction.

Appellant finally alleges that insufficient evidence supports his sexual assault convictions. In support of this claim, appellant appears to argue that the jurors' rejection of the State's charges of battery with use of a deadly weapon suggests that they "did not believe" the victim and that photographs coupled with medical evidence "did not support blows to the body with" a broom handle and a barstool leg.

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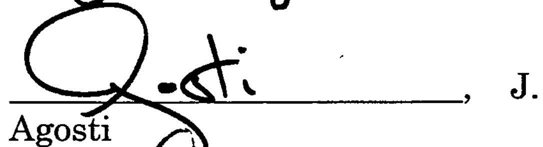
[5] Id. at 417-18, 581 P.2d at 443-44.

[6] Cf. Clem v. State, 104 Nev. 351, 354, 760 P.2d 103, 105 (1988) (holding that kidnapping was not incidental to extortion where the restraint increased the risk of harm), overruled on other grounds by Zgombic v. State, 106 Nev. 571, 798 P.2d 548 (1990).

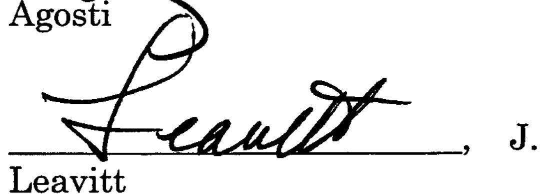
This argument is frivolous. Appellant presents nothing to impugn his conviction for sexual assault. Instead, he endeavors to poke holes in the verdict by relying on the jurors' rejection of entirely unrelated charges. Moreover, the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[7] The victim testified that she only submitted to appellant's sexual acts out of fear. As noted above, her testimony alone is sufficient to support appellant's sexual assault convictions.[8] Additionally, the sexual assault nurse concluded that the victim had been subjected to a sexual assault. We conclude that the record on appeal does not support appellant's request for relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.



Agosti, J.



Leavitt, J.

cc: Hon. Valorie Vega, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

[7]See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980).

[8]Washington, 112 Nev. at 1073, 922 P.2d at 551.