

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNIE PEARROW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39963

FILED

APR 09 2003

ORDER OF AFFIRMANCE

JANEITE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault on a child.

The district court convicted appellant Ronnie Pearrow, pursuant to a jury verdict, of one count each of sexual assault on a child and lewdness with a child under the age of 14 years. The court sentenced him to concurrent terms of life imprisonment with a minimum parole eligibility of 20 years.

Appellant contends that insufficient evidence supports his conviction of sexual assault on a child. While he concedes that he digitally penetrated the victim's vagina and that he did so willfully, he contends that he did not do so against her will and that the State did not prove this element of the offense beyond a reasonable doubt. In support, appellant contends that he did not use force or threats to accomplish the digital penetration. Appellant argues that the victim never manifested a wish that he stop and notes that she testified on cross-examination that she felt that she could say no. Appellant concludes that from his perspective, it was reasonable to believe that the victim had consented. Appellant further argues that because he refrained from engaging in a sexual act with the victim on a subsequent occasion pursuant to her request, it is

reasonable to conclude that he would not have sexually penetrated her had she protested on the occasion of the sexual assault.

In reviewing the evidence supporting a jury's verdict, this court need not be convinced of the defendant's guilt beyond a reasonable doubt; instead, it must determine whether the jury, acting reasonably, could have been so convinced by competent evidence.¹

A person is guilty of sexual assault if he subjects someone to sexual penetration "against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting."² The term "against the will of the victim" is not limited to use of physical force or threats of death or great bodily harm; the court must also consider the relationship between the perpetrator and the victim, the victim's age and maturity, and indications of the victim's expression of unwillingness.³ "Submission is not the equivalent of consent."⁴ A victim "is not required to do more than her age, strength, and the surrounding facts and attending circumstances would reasonably dictate" to manifest her opposition.⁵

We conclude the evidence was more than sufficient for the jury to reasonably find that appellant subjected the victim to sexual penetration against her will. First, a rational trier of fact could determine

¹Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980).

²NRS 200.366(1).

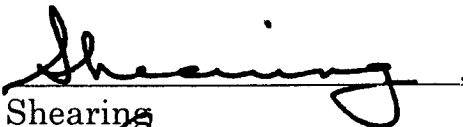
³See Shannon v. State, 105 Nev. 782, 790, 783 P.2d 942, 947 (1989).

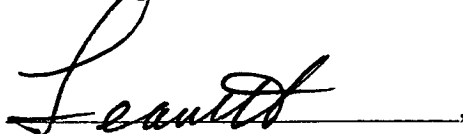
⁴McNair v. State, 108 Nev. 53, 57, 825 P.2d 571, 574 (1992).

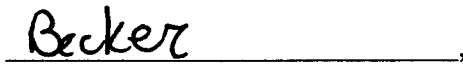
⁵Id.

from the victim's age and relationship to appellant that appellant should have known that she was mentally and physically incapable of resisting.⁶ Appellant is the victim's father, and the victim was twelve years old at the time of the incident. These facts alone provide a sufficient basis for sustaining appellant's conviction. And on the same basis, the jury could reasonably determine that the sexual assault was against the victim's will.⁷ Further, the diary entry in which the victim wrote of the pain caused by the sexual penetration indicates that she did not consent to it, as does her subsequent explicit rejection of her father's advances, documented in a later diary entry. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See NRS 200.366(1).

⁷See Shannon v. State, 105 Nev. at 790, 783 P.2d at 947.