

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS MIGUEL BALDOVINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44538

FILED

MAR 16 2006

ORDER OF AFFIRMANCE

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

Appeal from a judgment of conviction, upon a jury verdict, of one count of lewdness with a child under the age of 14. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Luis Baldovinez was sentenced to a prison term of life with parole eligibility after 10 years. Baldovinez contends that the evidence presented at trial was insufficient to support the jury's finding of guilt as to lewdness, and instead, he should have been found guilty of statutory sexual seduction. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note Baldovinez essentially asserts the victim's behavior amounts to her consenting to the crime. The behavior of a 12 year old, especially after being supplied with an ample amount of alcohol by Baldovinez,² is not a defense to the crime of lewdness with a

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

²The victim had a blood alcohol level of .31.

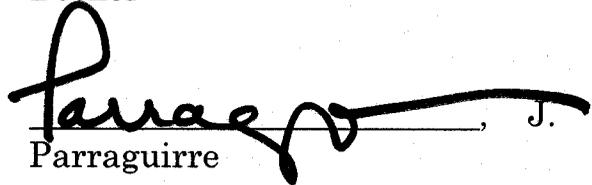
child under the age of 14 years, "even if the sex was consensual."³ The jury could reasonably infer from the evidence presented that Baldovinez was guilty of lewdness with a child under the age of 14 years. The jury heard from multiple witnesses regarding acts of digital penetration and groping of the victim in the back seat of a vehicle. Further evidence established that the victim was 12 years old, while Baldovinez was an adult.

It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁴ Therefore we,

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

³State v. Koseck, 113 Nev. 477, 479, 936 P.2d 835, 838 (1997); NRS 201.230.

⁴See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk