IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL A. BASIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46147

FILED

MAR 02 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction and sentence. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On October 20, 2005, appellant Paul A. Basil was convicted, pursuant to a jury verdict, of nine counts of sexual assault of a child under the age of 16, 24 counts of lewdness with a minor under the age of 14, and one count of attempted sexual assault of a child under the age of 16. He was sentenced to serve concurrent and consecutive terms totaling 200 years to life in prison. This appeal followed.

Basil argues first that the evidence was insufficient to sustain his convictions. "The relevant inquiry for this court is '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.'"[1]

The victim, Basil's daughter, testified to six acts of digital penetration, three acts of cunnilingus, and one incident where Basil

[1]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis omitted)).

attempted to penetrate her vaginally with his penis. She also testified to six incidents each of Basil placing his hands on her breasts and buttocks, placing his mouth on her breasts, and placing her hands on his penis. She also testified that she recanted her first statements to Child Protective Services about the abuse because after Basil was removed from her home, she felt guilty for breaking up her family and upsetting her mother. Basil confessed that he had touched the victim's vagina five to six times and had placed the victim's hands on his penis once or twice. Three of Basil's friends testified that he made statements to them about the allegations, including that he had done something really bad, he had ruined his daughter's life, and God would not forgive him for what he had done. We conclude this evidence was sufficient to sustain the jury's verdicts.

Second, Basil argues that the evidence was insufficient to sustain his convictions because the State failed to prove that the lewdness counts were not incidental to the sexual assault counts. We disagree. Basil was convicted of six counts of digital penetration of the victim's vagina and three counts of cunnilingus on the victim. He was not charged with any lewdness counts relating to touching of the victim's vagina; rather, the lewdness counts all related to Basil's touching the victim's breasts and buttocks and to his placing the victim's hands on his penis.

Basil notes three prior cases where we have held that a touching followed by a sexual assault could not support separate convictions for lewdness and sexual assault. However, in those three cases, the lewd act was incidental to the sexual assault because it was performed upon the part of the victim's body that was also subject to the

sexual assault: in Crowley v. State[2] and Gaxiola v. State,[3] the defendant touched the victim's penis with his hands and then performed fellatio on the victim; in Ebeling v. State, the defendant rubbed his penis on the victim's buttocks and then anally penetrated the victim with his penis.[4] Similarly, in Braunstein v. State, we concluded that a single act of digital penetration of the victim could not support dual convictions for lewdness and sexual assault.[5]

In contrast, Basil was charged with lewdness for touching the victim's breasts and buttocks with his hands and mouth; he was charged with sexual assault for digitally penetrating the victim's vagina. Even if the touching and penetration occurred simultaneously, they involved different acts by the defendant and different parts of the victim's body. Thus, the touching was not incidental and did not merge with the sexual assaults.

This conclusion is supported by Townsend v. State,[6] in which we held that an act of touching the victim's breasts and then digitally penetrating her could sustain separate convictions for lewdness and sexual assault, "particularly in light of the fact that Townsend stopped

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[2]120 Nev. 30, 34, 83 P.3d 282, 285-86 (2004).

[3]121 Nev. 638, 651-53, 119 P.3d 1225, 1234-36 (2005).

[4]120 Nev. 401, 404, 91 P.3d 599, 601 (2004).

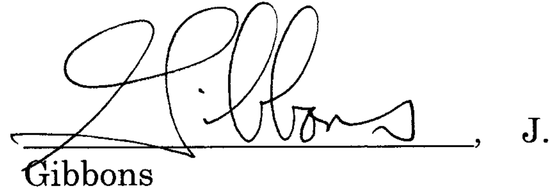
[5]118 Nev. 68, 78-79, 40 P.3d 413, 420-21 (2002).

[6]103 Nev. 113, 734 P.2d 705 (1987).

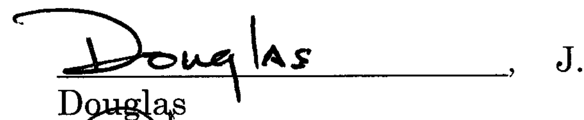
that activity before proceeding further."[7] This language indicates that while the break in activity was relevant to our analysis, it was not the sole factor in concluding that the two acts could sustain separate convictions. Here, the victim did not testify as to whether there was a break in Basil's actions, but she did testify that Basil touched her breasts and buttocks and digitally penetrated her on a daily to weekly basis for approximately four years; even if we were to conclude that some of the lewdness and sexual assault counts were redundant in this case, there were sufficient acts of both lewdness and sexual assault on different occasions to sustain separate convictions.

Having reviewed Basil's arguments and concluded he is not entitled to relief, we

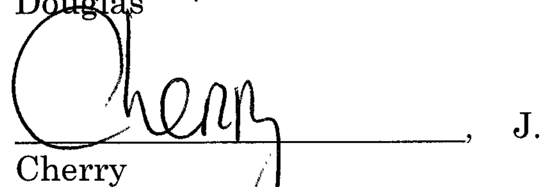
ORDER the judgment of the district court AFFIRMED.



_______________, J.
Gibbons



_______________, J.
Douglas



_______________, J.
Cherry

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[7]Id. at 121, 734 P.2d at 710; see also Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 549 (1990) (upholding dual convictions for attempted sexual assault and sexual assault when the defendant attempted the assault, stopped while a car passed him and the victim, then resumed and successfully assaulted the victim).

cc: Eighth Judicial District Court Dept. 16, District Judge
Gregory L. Denue
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk