

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERARDO PALACIOSJUAREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78695-COA

**FILED**

**MAY 11 2020**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Yocum  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Gerardo Palaciosjuarez appeals from a judgment of conviction entered pursuant to a jury verdict of first-degree kidnapping, attempted sexual assault, sexually motivated coercion, and battery with the intent to commit sexual assault. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

First, Palaciosjuarez argues there was insufficient evidence presented at trial to support his conviction for first-degree kidnapping because the State failed to prove any movement of the victim substantially increased the risk of harm or that the movement was not incidental to the commission of attempted sexual assault. 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. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The evidence and testimony produced at trial demonstrated Palaciosjuarez took the victim to a secluded area outside of the resort. The victim testified that Palaciosjuarez stated that no one would hear her scream after they arrived at the secluded area. Palaciosjuarez did not attempt to sexually assault the victim until after they reached the secluded

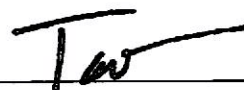
area, but he then used force to restrain the victim and attempted to sexually assault her. The movement to the secluded area was not necessary to complete the attempted sexual assault and substantially increased the risk of danger to the victim. *See Mendoza v. State*, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006). Given the evidence and testimony, the jury could reasonably find Palaciosjuarez committed first-degree kidnapping. *See* NRS 200.310(1). 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. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Second, Palaciosjuarez argues the district court committed plain error by failing to instruct the jury that it had to find any movement of the victim substantially increased the risk of harm or that the movement was not incidental to the commission of attempted sexual assault in order to convict him of first-degree kidnapping. Palaciosjuarez did not request such an instruction, and thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018), *cert. denied*, 139 S. Ct. 415 (Oct. 29, 2018). Under the plain error standard, we determine whether there was an error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights. *Id.* As stated previously, the evidence and testimony demonstrated Palaciosjuarez moved the victim to a secluded area and that movement substantially increased the victim's risk of harm and was not necessary to complete an attempted sexual assault. Under these circumstances, Palaciosjuarez failed to demonstrate that any failure to instruct the jury regarding the movement necessary to sustain a kidnapping

conviction affected his substantial rights. Therefore, we conclude Palaciosjuarez is not entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Eric Johnson, District Judge  
The Draskovich Law Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk