

NOTE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 08/02/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0069
)
Appellee,)
) DEPARTMENT E
v.)
) **MEMORANDUM DECISION**
JESSE MATA GONZALEZ,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-100544-001 DT

The Honorable Robert L. Gottsfield, Judge (Retired)

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Division
Katia Mehu, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

T I M M E R, Presiding Judge

¶1 Jesse Mata Gonzalez appeals his conviction and resulting sentence imposed after a jury found him guilty of aggravated robbery. For the reasons that follow, we affirm.

BACKGROUND

¶2 Late one evening in early January 2010, the victim, then a pizza delivery driver, received a delivery order for an address near 24th Street and McDowell in Phoenix. Gonzalez and two other Hispanic men were waiting outside of the delivery address when the victim arrived. When she exited her car, the three men approached, blocked her in against the car, and - without paying for the order - demanded their "change." When the victim refused to give them money, Gonzalez held her against the car while another man punched her repeatedly. Gonzalez and one other man then rifled through the victim's car while the third man pinned the victim to the ground and continued to beat her.

¶3 The victim eventually managed to escape and found a police officer at a nearby restaurant. She gave the police a description of each of the three attackers, characterizing Gonzalez as a short-haired Hispanic male with a tattoo on his neck, wearing dark jeans and a white hooded sweatshirt partially covered by a dark shirt or jacket. On the basis of this description, officers detained Gonzalez a few blocks north of the crime scene a short time later.

¶14 Phoenix Police Officer Timothy Lynch transported the victim for a one-on-one identification of Gonzalez. Immediately upon seeing Gonzalez, the victim stated she was 100 percent sure he was one of her attackers. She explained she recognized his clothing and the tattoo on his neck as well as certain characteristics of his posture. The police then arrested Gonzalez and the State charged him with aggravated robbery.

¶15 Before trial, Gonzalez moved to preclude the victim's pretrial identification, claiming it was unduly suggestive and unreliable. During the hearing on the motion, the victim asked the prosecutor about a never-before-mentioned second identification she said she made on the night of the robbery. The victim claimed that, after she positively identified Gonzalez, the police transported her to a second line-up at which she identified two other men, who were led away in handcuffs. No police report reflected a second identification and no police officer involved recalled a second line-up, much less a second positive identification and arrest. The victim had not previously mentioned a second line-up to the prosecutor, and the victim could not recall speaking with investigating officers about the matter. After hearing testimony from two officers and the victim - including her description of a second line-up - the court denied Gonzalez's motion to preclude, finding that although suggestive, the victim's one-on-one

identification of him bore sufficient indicia of reliability to permit evidence of the identification at trial.

¶16 At trial, each police officer denied knowing about the second line-up described by the victim. When the victim took the stand, she described both her pretrial identification of Gonzalez and her recollection of the second line-up. At the close of the State's case, defense counsel moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20, arguing that the fundamental inconsistency between the victim's testimony and that of police officers rendered her testimony incredible and her identification of Gonzalez insufficient to establish identity. The court denied the motion.

¶17 The jury found Gonzalez guilty as charged and, after a separate aggravation trial, found the State had proved two aggravating factors. After the court imposed sentence, this timely appeal followed.

DISCUSSION

¶18 Gonzalez's sole argument on appeal is that the trial court erred by denying his Rule 20 motion. He contends the State presented insufficient evidence linking him to the crime because the victim's testimony, which is the only evidence

linking Gonzalez to the crime, is insufficient to support a verdict of guilt beyond a reasonable doubt.¹

¶9 We review the trial court's denial of a Rule 20 motion de novo viewing the evidence and all reasonable inferences in the light most favorable to sustaining the jury's verdict. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011); *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997). A judgment of acquittal under Rule 20 is appropriate only if "no substantial evidence" supports a conviction. Ariz. R. Crim. P. 20; *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). Substantial evidence must be "more than a mere scintilla" of proof, *Mathers*, 165 Ariz. at 67, 796 P.2d at 869, that "reasonable persons could accept as adequate and sufficient to support a conclusion of [the] defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). Both direct and circumstantial evidence are relevant to the inquiry, and either or both may constitute the requisite substantial evidence. *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981); *West*, 226 Ariz. at 562, ¶ 16, 250 P.3d at 1191.

¶10 Gonzalez argues that because the victim recounted an uncorroborated second line-up, her testimony as a whole was

¹ Gonzalez does not challenge the court's determination that the victim's pretrial identification was sufficiently reliable to be admissible at trial.

entirely incredible and therefore insufficient to support a guilty verdict as a matter of law. But a conflict in the evidence - even one as stark as this - does not preclude a jury finding of guilt beyond a reasonable doubt. There may exist substantial evidence precluding a Rule 20 judgment of acquittal even in the face of conflicting testimony from which reasonable people could draw different conclusions. *State v. Mercer*, 13 Ariz. App. 1, 2, 473 P.2d 803, 804 (1970). And "[n]o rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Cox*, 217 Ariz. 353, 357, ¶ 27, 174 P.3d 265, 269 (2007) (citation omitted); see also *State v. Hall*, 204 Ariz. 442, 455, ¶ 55, 65 P.3d 90, 103 (2003).

¶11 Cross-examination gave Gonzalez every opportunity to impeach the victim's credibility and highlight reasons for the jury to disbelieve her identification. Indeed, the defense took that opportunity to impeach her extensively with prior inconsistent statements, prior drug use, and prior convictions, in addition to the lack of other evidence regarding a second line-up. The jury was well positioned to assess the victim's credibility in light of the officers' contrasting testimony.

¶12 Additionally, defense counsel argued at length against the victim's credibility in closing, highlighting

inconsistencies in her testimony and spotlighting for the jury the lack of corroboration for the victim's story of a second line-up. The jury was properly instructed on reasonable doubt and witness credibility. "The jury apparently found [the victim] credible despite counsel's meticulous impeachment" and argument. See *Hall*, 204 Ariz. at 455, ¶ 55, 65 P.3d at 103.

¶13 We do not reweigh the evidence on review. *Lee*, 189 Ariz. at 603, 944 P.2d at 1217. The victim squarely testified Gonzalez was one of the men who attacked her, and we cannot now usurp the role of the fact-finder to conclude her testimony regarding a second line-up renders her identification insufficient to support a guilty verdict.

CONCLUSION

¶14 For the foregoing reasons, we affirm Gonzalez's conviction and sentence.

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
Patricia A. Orozco, Judge

/s/
Diane M. Johnsen, Judge