NOTICE: 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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. GABRIEL OCTAVIO ESTRADA, Appellant.	)	2 CA-CR 2012-0095 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20112742001

Honorable Richard S. Fields, Judge

AFFIRMED

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E S P I N O S A, Judge.

¶1 Following a jury trial, appellant Gabriel Estrada was convicted of attempted robbery and aggravated assault causing temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of

any body part. The trial court sentenced him to concurrent, presumptive prison terms, the longer of which is 4.5 years. Estrada contends the court erred when it denied his motion for a judgment of acquittal on both counts, made at the close of the state's case. Ariz. R. Crim. P. 20. For the reasons stated below, we affirm.

¶2 A motion for a judgment of acquittal should be granted only if "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20; *see also State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (judgment of acquittal appropriate only if no substantial evidence warrants conviction). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We review the denial of a Rule 20 motion de novo. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). "If reasonable minds can differ on the inferences to be drawn from the evidence, a trial court has no discretion to enter a judgment of acquittal and must submit the case to the jury." *State v. Alvarez*, 210 Ariz. 24, ¶ 10, 107 P.3d 350, 353 (App. 2005), *vacated in part on other grounds*, 213 Ariz. 467, 143 P.3d 668 (App. 2006).

¶3 In determining whether substantial evidence exists, we view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdict. *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005). So viewed, the evidence established that W. was sitting on a park bench in Mission Manor Park in

Tucson when he saw someone punch and kick the victim, V., multiple times.[1] Although W. was unable to identify Estrada as the person who had assaulted V., he described the assailant as "a younger Mexican guy, like around his 20s," who had a tattoo and was wearing a "white muscle shirt and blue jeans." Another witness testified that V. "was trying to . . . protect himself, . . . blocking his face, kind of curled up." Yet another witness described the assailant as an Hispanic male who was wearing "khaki shorts and a striped shirt," who was "[t]hin" and not much taller than the witness, who is five feet, two inches tall.

¶4 An investigating police officer testified V. had "facial injuries, blood all over his face, several cuts and lacerations, [and] some bumps." One of the witnesses testified the assailant had "sped away" in a "tan Chevy Astro van" after the incident. And witnesses provided police with the license plate number of the van, which was registered to Estrada. Officers subsequently located the van parked in the backyard of a residence and covered with "netting . . . kind of like the typical military type netting, camouflage type."

¶5 A police detective described the procedure for the photographic lineup and testified that of the three witnesses who had viewed the photographs, one was unable to recognize anyone, while one witness, M., and another witness identified Estrada as "looking familiar," although they were not certain he was the assailant. M. also testified

[1]W. first testified he had seen the assailant kick and punch V. "[m]ore than nine times," but after defense counsel pointed out he previously had told the police he saw the assailant strike V. six times, he acknowledged he had estimated, rather than actually counted the number of blows.

she had "looked at [the assailant] pretty good," and that she was "[n]inety percent" certain the person she had identified in the photographic lineup was the assailant. Notably, she also identified Estrada in the courtroom as the assailant.

¶6 W. also testified that although he had seen the assailant "going through [V.'s] pockets," he did not see him remove anything. M. similarly testified that the assailant was "patting [V.] down" and placing his hands on V.'s clothing "checking to see what he had" while V., who "looked like he was passed out," was lying on the "floor."

¶7 Estrada urges us to reverse the trial court's denial of his motion for a judgment of acquittal and to vacate his convictions and sentences, asserting there was insufficient evidence to convict him of attempted robbery because there was no evidence he believed V. had property to take or that he had used force to remove that property, *see* A.R.S. § 13-1902(A),[2] nor was there evidence to identify him as the individual who had assaulted V. In denying Estrada's motion for judgment of acquittal, the court found that although the evidence he had tried to remove something from V.'s pocket during the altercation was "real thin," the court was "going to let it go to the jury," and there was "substantial evidence" to send the aggravated-assault charge to the jury.

¶8 Evidence may be substantial whether circumstantial or direct. *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981). It is for the jury as the trier of fact to weigh the evidence, resolve any conflicts, and assess the credibility of the

[2]Section 13-1902(A) provides "[a] person commits robbery if in the course of taking any property of another from his person" that person "threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property." *See also* A.R.S. § 13-1001(A) ("attempt" defined).

witnesses. *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005). Based on the facts set forth above, there was substantial evidence to allow the jury to find beyond a reasonable doubt that Estrada was the individual who had assaulted V. and that he had intended to remove something from V.'s pockets. In light of the testimony regarding the pretrial identifications of Estrada, the fairness of which Estrada apparently has not challenged, combined with M.'s in-court identification and the fact Estrada owned the vehicle in which the assailant left the scene, along with evidence the assailant placed his hands inside V.'s pockets, the trial court properly concluded there was substantial evidence to submit the case to the jury.

¶9 Because the trial court did not err in denying Estrada's motion for a judgment of acquittal, the convictions and sentences imposed are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge