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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. MANUEL LUIS GARCIA, Appellant.	)	2 CA-CR 2010-0366 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20091371001

Honorable John S. Leonardo, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Myles A. Braccio — Phoenix
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Alex D. Heveri — Tucson
Attorneys for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, appellant Manuel Garcia was convicted of second-degree burglary, first-degree burglary, aggravated assault with a deadly weapon or dangerous instrument, two counts of kidnapping, and fourteen counts of sexual assault. The trial

court sentenced him to aggravated, enhanced, and consecutive sentences totaling 544 years' imprisonment. Garcia argues on appeal that the court erred in denying his motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P.

¶2 A trial court must grant a Rule 20 motion "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a); *see also State v. Leyvas*, 221 Ariz. 181, ¶ 33, 211 P.3d 1165, 1175 (App. 2009). Substantial evidence is that which reasonable minds could consider sufficient to establish the defendant's guilt beyond a reasonable doubt. *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). We review a trial court's decision on a Rule 20 motion de novo. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). Our review is deferential, however, to the extent that we view the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against the defendant. *See id*.

¶3 On December 31, 2005, S. woke to find Garcia standing by her bed. He told her he was looking for "Sam," the name of one of S.'s roommates, because Sam owed him money. He then attacked S., holding her down and covering her head with a blanket. He performed oral sex on her and raped her vaginally and anally. He ejaculated on the back of her thigh and leg. He told S. he would kill her if she called the police, and left. Although Garcia apparently turned on the lights during the attack, S. was unable to identify Garcia at trial because the room had been dark before the attack began, she needs contacts to see, and her head was covered during Garcia's assault. S. told police that her

assailant had a "thick, heavy Hispanic accent," was between 5'7" and 6' tall, and weighed between 170 and 190 pounds.

¶4 On June 5, 2007, J. woke in her home after hearing her bedroom door open. Garcia entered the room, showed her a gun, and said "where the fuck is Mark?" He stated that "Mark" had stolen "a hundred thousand dollars from [him]." After J. told Garcia she did not know Mark, Garcia pulled his t-shirt over his nose and attacked her, pulling her comforter over her head. When J. began screaming, Garcia threatened to shoot her. He digitally penetrated her vagina, turned on the lights, licked her vagina and anus, and raped her vaginally and anally multiple times over the next five to five-and-a-half hours. After demanding money, Garcia took a small amount of cash from J.'s desk, raped her again, and pushed her into a closet, closing the door. Garcia then stole J.'s cellular telephone and left.

¶5 J. told police Garcia was a "light skinned African American," around 5'10" tall and between 180 and 200 pounds. She did not see Garcia's face but told police she saw a tattoo on his left wrist beginning with "a big cursive letter," "like an A." with "smaller cursive letter[s]" across his wrist. Garcia has a tattoo on his wrist reading "Elesha" with a large, cursive "E" followed by smaller letters. J. identified Garcia's tattoo at trial as being the same as the tattoo she had seen on her attacker's wrist.

¶6 Profiles of Garcia's deoxyribonucleic acid (DNA) matched the autosomal profile of DNA from swabs taken from S.'s right calf and her blanket. A criminalist testified that the "frequency of occurrence for this profile among unrelated individuals in the U.S. population is estimated to be . . . one in 590 trillion Southwestern Hispanics." Nor could Garcia be excluded as a minor contributor to an autosomal DNA profile taken from swabs of J.'s underwear. Additionally, Garcia could not be excluded as a

contributor to a Y-STR profile, a profile excluding female DNA, derived from swabs taken from J.'s underwear. According to the criminalist, Garcia's Y-STR profile "is expected to occur in one in every 200 Hispanics."

¶7 Garcia asserts there was insufficient evidence identifying him as J.'s assailant because, inter alia, she incorrectly described him as a "light skinned African American" when he is instead "100% Mexican-American," her description of his tattoos was incorrect, and the Y-STR DNA evidence was "meaningless" because it lacked "statistical quantification." These arguments are unavailing.

¶8 First, Garcia is mistaken that the Y-STR evidence lacked quantification—as we noted above, a criminalist testified that Garcia's profile would only recur in approximately one in two hundred Hispanics. And the jury readily could conclude that J. was merely mistaken in her description of Garcia as African-American given that she saw him only briefly in very low light before he covered her head with a blanket. Indeed, she also described her attacker merely as "darker than a Caucasian" and stated at trial that the color of Garcia's skin in a photograph was the same as the person she described to police. Further, Garcia apparently attempted to mislead J. about his race and age during the attack, describing himself, for example, as a "forty-year old black man," which J. testified contributed to her describing him as African-American.

¶9 Garcia's argument regarding his tattoos is equally unavailing. As we have stated, J. identified at trial the tattoo on his wrist as being the same as her attacker's. Although she previously had given a different description of the tattoo, the description was extremely similar. And it was for the jury to decide if her identification at trial was reliable. *See State v. Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d 265, 269 (2007) ("'No 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.'"), *quoting State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974). Garcia, who has a tattoo on his pelvis, also argues the identification evidence was insufficient because J. did not state her attacker had a similar tattoo. But, as the state correctly points out, J.'s view of Garcia's pelvis was obstructed. Additionally, Garcia's girlfriend testified at trial that, although Garcia had the tattoo at the time of the attack, he did not complete it until 2008. Thus, the jury could conclude J. simply had not seen the tattoo.

¶10 The evidence plainly was sufficient for the jury to conclude Garcia had been J.'s attacker.[1] Thus, the trial court did not err in denying his Rule 20 motion. We therefore affirm Garcia's convictions and sentences.

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

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

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

[1]Because we find the identity evidence sufficient, we need not address Garcia's argument related to shoeprints found at the scene.