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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: 02/08/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0163
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
LUIS ENRIQUE REYES,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-126587-001 DT

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals Section/Capital Litigation Section
And Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

Janelle A. Mc Eachern Attorney at Law Chandler
By Janelle A. Mc Eachern
Attorney for Appellant

O R O Z C O, Judge

¶1 Luis Reyes (Defendant) appeals his convictions and sentences for drive-by shooting and aggravated assault. Because

there is sufficient evidence to support the jury's verdict, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In March 2009 a drive-by shooting occurred in front of a Phoenix home where three witnesses were present outside; several shots rang out, however no one was injured. Witnesses described three passengers in the vehicle, a green Grand Marquis, and identified Defendant as the driver. In particular, witnesses described the driver as a Hispanic male who appeared to be in his forties, had a goatee and black hair, was wearing a white "muscle shirt" tank top, and had tattoos on his upper chest and shoulders. One witness also identified a residence in the neighborhood where he had previously seen the green Grand Marquis parked.

¶3 In April, a witness spotted both the car and Defendant about a mile away from the scene of the crime and notified police. Officers responded and determined that while Defendant was not the owner of the car, he was known to use it. Officers questioned Defendant and subsequently arrested him. At the time of his arrest, Defendant had a goatee, black hair, and tattoos "around the collar" and "upper shirt area." Defendant was charged with one count of drive-by shooting and three counts of aggravated assault.

¶4 At trial, Defendant testified that while his wife was the registered owner of the green Grand Marquis, he drove the car "a lot." Defendant also confirmed both that he frequently wore white muscle shirts, and that he was acquainted with the man alleged to be the shooter.

¶5 Defendant was convicted on all four counts; he was sentenced to 10.5 years' imprisonment for the drive-by shooting and 7.5 years' each for three counts of aggravated assault, all sentences running concurrently. Defendant timely appealed and we have jurisdiction in accordance with Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1. (2003), 13-4031, and -4033.A. (2010).

DISCUSSION

¶6 On appeal, Defendant argues that the jury's verdict was not supported by substantial evidence. Specifically, Defendant argues that "substantial evidence existed to show that [Defendant] was NOT the driver of the Grand Marquis." However, in making his argument Defendant misstates the standard of review in a way that implies this Court should re-weigh the evidence presented to the jury. We disagree with Defendant's characterization of our prerogative.

¶7 At trial, the State must prove that Defendant is guilty beyond a reasonable doubt. *State v. Hunter*, 142 Ariz. 88, 89, 688 P.2d 980, 981 (1984). It is the province of the jury to

resolve questions of fact pertaining to the guilt or innocence of Defendant on the charges. See *State v. Meador*, 132 Ariz. 343, 346, 645 P.2d 1257, 1260 (App. 1982). "Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury." *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993) (internal citation omitted).

¶18 A claim of lack of substantial evidence to sustain a conviction is reviewed de novo. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). "[W]e view the evidence in the light most favorable to supporting the verdict and will reverse only if there is a complete absence of 'substantial evidence' to support the conviction." *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996); accord *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) ("If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the defendant."); *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) ("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.").

¶19 "Substantial evidence is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a

reasonable doubt." *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87, 84 P.3d 456, 477 (2004); accord *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981) (substantial evidence is "more than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached"). "If reasonable persons may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial." *Davolt*, 207 Ariz. at 212, ¶ 87, 84 P.3d at 477. (quotation marks and citation omitted).

¶10 "[I]t [i]s for the jury to weigh the evidence and determine the credibility of the witnesses." *State v. Williams*, 209 Ariz. 228, 231, 99 P.3d 43, 46 (App. 2004). "On appeal, this Court will not engage in re-weighing the evidence." *Tison*, 129 Ariz. at 552, 633 P.2d at 361.

¶11 Thus, as a matter of law, it is inconsequential whether some evidence may vitiate Defendant's guilt. Our inquiry is to determine whether there exists substantial evidence to support the jury's verdict, and we hold that there does.

¶12 Indeed, one witness was unable to make an in-court identification of Defendant. Another witness, upon being presented a photo line-up during the initial investigation, may have confused Defendant for the shooter. And a third witness was at first unable to identify Defendant in a photo line-up, though subsequently identified Defendant as the driver.

¶13 However, all three witnesses gave a similar description of the driver of the green Grand Marquis to police after the shooting, a description matching Defendant's appearance upon his arrest. Two witnesses were able to make in-court identifications and two witnesses ultimately made photo line-up identifications during the pre-trial investigation. Moreover, other circumstantial evidence supports a finding that Defendant was the driver: he was known to drive a green Grand Marquis, he lived near the scene of the crime and he admitted knowing the alleged shooter. Thus, there was substantial evidence to support the jury's verdict.

CONCLUSION

¶14 For the forgoing reasons, Defendant's convictions and sentence are affirmed.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

PATRICIA K. NORRIS, Presiding Judge

/S/

JOHN C. GEMMILL, Judge