

**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,	)	2 CA-CR 2008-0165
	)	DEPARTMENT B
	)	
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
RAUL SANTOS SILVAS,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	
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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20063683

Honorable Richard S. Fields, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Amy M. Thorson

Tucson  
Attorneys for Appellee

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Tucson  
Attorney for Appellant

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B R A M M E R, Judge.

¶1 Appellant Raul Silvas appeals his convictions of aggravated assault, aggravated robbery, and armed robbery. He asserts there was insufficient evidence identifying him as the perpetrator of those crimes. We affirm.

### **Factual and Procedural Background**

¶2 We view the facts in the light most favorable to sustaining Silvas's convictions. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In the early morning hours of September 20, 2006, a group of four people, including Silvas, approached F. as he was sitting in his parked car. Believing Silvas wanted to speak to him, F. rolled down his window to signal that he could not hear what Silvas was saying because he was deaf. Silvas then punched F. and another member of the group sprayed a fire extinguisher in F.'s face. The group then pulled F. out of his car and drove it away. F. walked to a local hospital, where he was treated for lacerations to his face and neck.

¶3 Later that morning, B. arrived at her house to find a group of at least eight people, including Silvas, across the street yelling and throwing bottles. When B. asked the group to "please hold it down," Silvas approached B. and hit her repeatedly. Another member of the group hit B. over the head with a glass bottle, and he and Silvas hit and kicked B. until a bystander intervened. After the group left in a car driven by Silvas, B. and her daughter contacted law enforcement authorities, providing them a partial license plate number of the car Silvas had been driving. Shortly thereafter, investigating officers apprehended Silvas, who was driving F.'s car.

¶4 A grand jury charged Silvas with aggravated assault with a deadly weapon or dangerous instrument of F. and B., aggravated robbery and armed robbery of F., and theft of a means of transportation.<sup>1</sup> After a three-day trial, the jury found Silvas guilty of all charges. The jury also found that the aggravated robbery of F., the armed robbery of F., and the aggravated assaults of F. and B. were of a dangerous nature. After finding Silvas had two prior felony convictions, the trial court sentenced him to a combination of presumptive and mitigated, concurrent and consecutive terms of imprisonment, totaling 23.75 years. This appeal followed.

### Discussion

¶5 As his sole argument on appeal, Silvas asserts there was insufficient evidence to sustain his convictions of aggravated robbery, armed robbery, and aggravated assault of F. Silvas does not dispute sufficient evidence supported the jury's conclusion that someone had committed aggravated robbery, armed robbery, and aggravated assault of F. Instead, Silvas asserts the evidence was insufficient to support the jury's conclusion that it was he who had committed them.

¶6 As we previously stated, we view the facts in the light most favorable to upholding Silvas's convictions and resolve all reasonable inferences against him. *See State v. George*, 206 Ariz. 436, ¶ 3, 79 P.3d 1050, 1054 (App. 2003). "We will not disturb a

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<sup>1</sup>The grand jury also charged Silvas with aggravated assault, aggravated robbery, and armed robbery of another victim, L. The state apparently withdrew those charges before trial.

defendant's conviction unless there is a complete absence of probative facts to support the verdict, and unless rational jurors could not have found the defendant guilty beyond a reasonable doubt." *Id.* (citation omitted). That is, we will reverse only if it "clearly appear[s] 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). Evidence remains sufficient to sustain a conviction even "if reasonable minds can differ on inferences to be drawn therefrom." *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶7 At trial, F. testified his assailant was an Hispanic man who had tattoos on his upper body and who was wearing a tank top. F. identified Silvas as his assailant based on a photograph taken of Silvas shortly after his arrest. The photograph depicted Silvas, an Hispanic man, with prominent tattoos on his chest, neck, and arm and wearing a tank top. And, Tucson Police Department officer John Richardson testified Silvas had been driving F.'s vehicle when officers apprehended him.

¶8 Silvas, nonetheless, asserts this evidence is insufficient to support his convictions because F. was unable to identify Silvas as his assailant at trial. Silvas further argues a jury could not reasonably have concluded he was F.'s assailant because the photograph from which F. had identified him "did not substantially match" F.'s description of his assailant. Silvas notes that F. testified his assailant had tattoos covering his "entire"

upper body and was “almost bald.” In the photograph taken of Silvas after his arrest, however, Silvas had closely cropped black hair and no visible tattoos on his back.

¶9 But “it is not necessary that the identification of the defendant as the perpetrator of the crime be made positively or in a manner free from inconsistencies.” *State v. Dutton*, 83 Ariz. 193, 198, 318 P.2d 667, 670 (1957), quoting *People v. Houser*, 193 P.2d 937, 941 (Cal. Dist. Ct. App. 1948). Rather, sufficient evidence supports a defendant’s conviction if the evidence presented would allow reasonable minds to infer the defendant committed the charged crimes. See *Arredondo*, 155 Ariz. at 316, 746 P.2d at 486; *George*, 206 Ariz. 436, ¶ 3, 79 P.3d at 1054. That other inferences may be drawn from the evidence or that conflicting evidence may have existed are issues for the jury to resolve. See *Dutton*, 83 Ariz. at 198, 318 P.2d at 670 (“It is the function of the jury to pass upon the strength or weakness of the identification.”), quoting *Houser*, 193 P.2d at 941; *State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004). We do not reweigh the evidence on appeal. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶10 Based on F.’s identification of Silvas in a photograph taken shortly after his arrest and Richardson’s testimony that Silvas was driving F.’s car when apprehended by police, sufficient evidence supported the jury’s conclusion that Silvas had committed the aggravated assault, aggravated robbery, and armed robbery of F. See *State v. Williams*, 121 Ariz. 213, 214-15, 589 P.2d 456, 457-58 (App. 1978) (victim’s identification of defendant from photograph and other circumstantial evidence sufficient to support conviction

notwithstanding victim’s inability to identify defendant in person at trial); *see also State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005) (“The substantial evidence required for conviction may be . . . circumstantial.”).

**Disposition**

¶11 For the foregoing reasons, we affirm Silvas’s convictions and sentences.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge