

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ROBERTO OCHOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44642

**FILED**

JUL 01 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Jose Roberto Ochoa to serve two consecutive prison terms of 32 to 144 months.

Ochoa's sole contention is that there is insufficient evidence to sustain the conviction. Specifically, Ochoa argues that the evidence presented at trial established that he could not have stabbed the victim, and that the victim's account of the stabbing was inaccurate and could not be believed by a reasonable juror. We conclude that Ochoa's contention lacks merit.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup> In particular, we note that the victim testified that, on April 3, 2004, he went to retrieve a blanket from Ochoa, his roommate. Ochoa told the victim "he wanted to be respected" and then attacked him in the

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<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

kitchen with a utility knife, stabbing him in the chest. The victim escaped from the apartment, and went to a neighbor, Tracy Holys, for help. Holys's preliminary hearing testimony was read into the record at trial. Holys testified that she observed the victim with "a hole in his chest and bleeding everywhere."<sup>2</sup> The victim told her that Ochoa had stabbed him, and she observed Ochoa running down the apartment stairway with a steak knife in his hand. Holys explained that Ochoa still had the knife in his hand when the police arrived.

Las Vegas Metropolitan Police Officer Brent Becker responded to the scene. He testified that he arrested Ochoa, and did not see any blood on his clothing and did not find a knife on his person. In examining the apartment, Officer Becker found two knives, but did not see any blood in the kitchen where the stabbing occurred.<sup>3</sup> Las Vegas Metropolitan Police Officer Johnny Rodriguez also responded to the scene. Officer Rodriguez testified that he interviewed the victim at the hospital and the victim told him that, "Robert," his roommate of a few weeks, stabbed him in the chest after a dispute over a blanket. Officer Rodriguez explained that, according to the victim, Ochoa walked up to him with a knife and said he was going to kill him.

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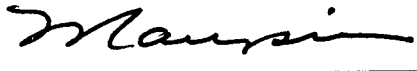
<sup>2</sup>Although Holys described seeing blood squirting everywhere from the victim, a paramedic who treated the victim testified that the victim had minimal blood loss.


<sup>3</sup>One of the knives was impounded and admitted into evidence at trial. However, the knife did not have Ochoa's fingerprints or the victim's blood on it, and the victim testified at trial that the knife in evidence was not the knife that Ochoa used to stab him.


Two of Ochoa's neighbors testified on behalf of the defense. Both neighbors testified that they did not hear anyone arguing, and spoke with Ochoa after the stabbing occurred and he did not seem angry or act like anything was wrong. Although Ochoa argues that the victim's testimony is not credible and notes that no fingerprint or blood evidence was presented at trial, the jury could reasonably infer from the testimony presented that Ochoa stabbed the victim with the intent to kill him.<sup>4</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.

Having considered Ochoa's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>See NRS 200.010; NRS 193.330(1); NRS 193.165.

cc: Hon. Michael A. Cherry, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk