

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE VERGARA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44842

FILED

JAN 11 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of robbery with the use of a deadly weapon and two counts of conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court sentenced appellant Steve Vergara to serve two consecutive prison terms of 36-120 months for each of the four robbery counts, and 12-48 months for each of the two conspiracy counts; all of the counts were ordered to run concurrently. Vergara was also ordered to pay \$2,120.00 in restitution.

Vergara's sole contention on appeal is that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt on all six counts. Vergara claims that there was insufficient evidence presented to (1) establish a conspiracy; and (2) "overcome a reasonable doubt that [he] had falsely confessed to the alleged crimes simply as a means of trying to protect his cousin, the co-defendant." We disagree with Vergara's contention.

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.¹ In particular, we first note that Cesar Arcos testified that he was waiting at a bus stop when Vergara approached him, cursed at him, placed something “cold and pointy” up against his neck that he believed was a knife, and demanded Arcos’ wallet and cellular phone. Arcos was afraid and cooperated. Arcos testified that he got a good look at Vergara, and he positively identified Vergara as the perpetrator at a police show-up the day after the robbery, and in court during the trial.

Second, Vincent Sinatra testified that while sitting at a bus stop, Vergara drove up and asked for directions. Sinatra saw two men in the vehicle, “[t]alking back and forth,” for approximately 45 seconds after giving them directions. Soon after, Vergara exited the vehicle, approached Sinatra, placed a screwdriver up against his ribs, and demanded that he turn over his wallet. While he was being robbed, Sinatra noticed the other person who remained in the vehicle “just sitting there looking over at us, looking forward. He was slumped down in the seat, and he was just looking back and forth, straight, or over toward us.” Sinatra testified that “[o]nly a couple hours later,” he positively identified Vergara as the perpetrator at a police show-up as the perpetrator. Sinatra also positively identified Vergara at trial.

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

Finally, Agustin Villa testified that he was with his friend, Jose Arias, when Arias drove to an ATM so Villa could withdraw some money. Villa testified that he exited the vehicle and withdrew \$1,000.00 from the ATM. Immediately after withdrawing the money, Villa was approached by Vergara who demanded that Villa give him the money. Vergara, however, did not wait and “snatched the money out” of Villa’s hands. When Villa protested, Vergara reached behind his back and pulled out a screwdriver. Vergara then proceeded towards Arias, waiting in the vehicle, and demanded that Arias give him the keys to his vehicle. Arias testified that Vergara was holding a screwdriver. Vergara ordered Arias out of the vehicle and grabbed the keys out of the ignition. Both Villa and Arias testified that there was another individual seated in Vergara’s vehicle during the commission of the crime. Both Villa and Arias also positively identified Vergara as the perpetrator at a police show-up that same day, and later during the trial.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Vergara committed the crimes of robbery with the use of a deadly weapon and conspiracy to commit robbery.² 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, sufficient evidence supports the verdict.³

²See NRS 200.380(1); NRS 193.165(1); NRS 199.480(1)(a).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Having considered Vergara's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk