

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MANUEL JUAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47393

FILED

JAN 10 2007

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

ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a firearm, one count of conspiracy to commit robbery, four counts of robbery with the use of a deadly weapon, three counts of battery with the use of a deadly weapon, and three counts of battery with intent to commit a crime. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Juan Manuel Juarez first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note that three of the victims were able to identify Juarez as the man who entered Cancun Restaurant with a firearm, battered the victims, took money from the cash register and directed his confederate to take valuables from the victims. Further,

¹See 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).

Juarez' vehicle matched the description given by one of the victims, and a sawed-off rifle that matched the description of the gun used by the robber was discovered in Juarez' home.

The jury could reasonably infer from the evidence presented that Juarez was the robber, despite testimony by Juarez, his wife, and daughter-in-law that Juarez has a brother who looks just like Juarez. 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.²

Juarez also contends that his convictions for robbing victims Antonio Lerma and Sandra Santa-Cruz are redundant because both the charges were for the removal of money from the cash register. Our review of the record, however, indicates sufficient evidence to demonstrate that Lerma and Santa-Cruz had joint possession and control of the money that Juarez took by use of force or fear and in their presence and, therefore, Juarez could properly be convicted of two counts of robbery for the taking of the money from the register.³


Finally, Juarez contends that his convictions for battery with the use of a deadly weapon and battery with intent to commit a crime are redundant as they arose from the same act. Juarez was convicted of two counts of battery as to each of the four victims. Three of the victims were

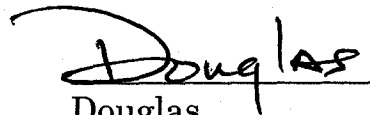
²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

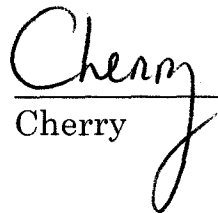
³See Klein v. State, 105 Nev. 880, 784 P.2d 970 (1989) (affirming conviction for two counts of robbery where evidence demonstrated that defendant robbed a store by overcoming resistance of two employees who had joint possession and control of the store's money).

battered in two separate incidents during the course of the robbery, and those convictions are therefore not redundant. As to the fourth victim, Margarita Segura, there was actually only one incident of battery. The convictions for Count 9 (battery of Segura with a deadly weapon) and Count 12 (battery of Segura with the intent to commit a crime) are therefore redundant and one of them must be vacated.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Valorie Vega, District Judge
Steven B. Wolfson, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Salazar v. State, 119 Nev. 224, 227-28, 70 P.3d 749, 751-52 (2003) (holding that this court will reverse redundant convictions that arise from and punish a single illegal act).