

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNARDO CRUZ-MOSQUERA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49195

**FILED**

DEC 06 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY A. Alvarado  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the use of a firearm. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Bernardo Cruz-Mosquera to serve a prison term of 30 to 120 months with an equal and consecutive term for the firearm enhancement.

Cruz-Mosquera's sole contention is that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Cruz-Mosquera contends that there was no direct evidence presented that he was the individual who committed the robbery. 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.<sup>1</sup>

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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).

In particular, we note that a McDonald's restaurant employee testified that a masked, medium-built Hispanic man robbed him at gunpoint. The employee testified that he placed a tracking device in the bag of money taken by the robber. Police officers testified that they traced the tracking device to a vehicle parked at a casino located in Sparks, Nevada. Inside the casino, Cruz-Mosquera was seated at a slot machine at the bar. Cruz-Mosquera acknowledged that he owned the vehicle that contained the tracking device. After obtaining a search warrant, police found in Cruz-Mosquera's locked vehicle clothing matching the description given by the McDonald's employee, a firearm, and a bag of money, which contained the tracking device.

The jury could reasonably infer from the evidence presented that Cruz-Mosquera robbed the McDonald's employee of money at gunpoint.<sup>2</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.<sup>3</sup> Moreover, we note that circumstantial evidence alone may sustain a conviction.<sup>4</sup>

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<sup>2</sup>See NRS 200.380(1); NRS 193.165(1).

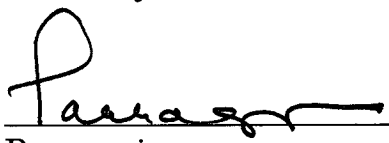
<sup>3</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

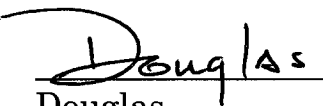
<sup>4</sup>See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Having considered Cruz-Mosquera's contention and concluded it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

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

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

cc: Hon. Steven P. Elliott, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk