

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN C. GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41001

FILED

MAY 28 2004

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 conspiracy to commit robbery (count I), burglary while in possession of a firearm (count II), and two counts of robbery with the use of a deadly weapon (counts III and IV). The district court sentenced appellant Juan C. Garcia to serve a prison term of 12 to 32 months for count I, a consecutive prison terms of 24 to 84 months for count II, and four consecutive prison terms of 24 to 84 months for counts III and IV.

Relying on Heglemeier v. State,¹ Garcia contends that reversal of his conviction is warranted because the eyewitness identification testimony presented at trial was unreliable and uncorroborated. In particular, Garcia contends that he was convicted primarily on "questionable eyewitness testimony" because one of the victim-eyewitnesses, Martha Nunez, admitted at trial that she was told by the robbers to look away and that, during the robbery, she "was so nervous

¹111 Nev. 1244, 903 P.2d 799 (1995) (holding that the State failed to present sufficient evidence corroborating the accomplice's testimony to sustain the conviction as a matter of law).

that her head wasn't working right." 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.²

In particular, we note that Nunez testified that four men and a woman, each with a gun, entered her house and told Nunez and her daughter that they had been sent to rob them. Unlike the perpetrators in Heglemeier, the robbers were not wearing masks, and Nunez positively identified Garcia as one of the robbers in both a photographic lineup and at trial.³ Although Nunez admitted that the robbers told her not to look at their faces, Nunez testified that she did in fact look at the robbers when they first walked into the house and later when they were upstairs in her bedroom, attempting to open a safe containing approximately \$40,000.00 worth of cash and jewelry. The jury could reasonably infer from the evidence presented that Nunez's identification testimony was reliable, and that Garcia was one of the individuals involved in the robbery at issue. 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.⁴


²See 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).

³Cf. Heglemeier, 111 Nev. at 1251-52, 903 P.2d at 804 (eyewitness's testimony describing only the approximate height of the masked perpetrators insufficient to corroborate the accomplice testimony).


⁴See 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).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph S. Pavlikowski, Senior Judge
Gregory L. Denué
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk