

Affirmed and Opinion filed December 30, 1999.



In The

Fourteenth Court of Appeals

NO. 14-97-00902-CR

JORGE ANTONIO ALVARADO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 743,351**

OPINION

Jorge Antonio Alvarado appeals a conviction for aggravated robbery on the ground that the evidence is factually insufficient to prove that a firearm was used in the robbery. We affirm.

Standard of Review

A factual sufficiency review takes into consideration all of the evidence and weighs that which tends to prove the existence of the fact in dispute against the contradictory evidence. *See Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999), *cert.denied*, ___ S.Ct. ___ (1999). That a different verdict would be more reasonable is insufficient to justify reversal; rather, the jury's verdict will be upheld unless it is so against the great weight of the evidence that it is clearly wrong and unjust. *See id.* at 272.

Sufficiency Review

Appellant argues that the jury's rejection of the lesser included offense of robbery is so contrary to the great weight of the evidence as to be manifestly unjust because his and his fellow assailants' testimony that they were not armed during the robbery was more credible than the contrary testimony of the State's witnesses.

One of the complainants, Hernandez, testified that he was cornered in the garage of his brother's apartment and that appellant's co-defendant, Donaldo Saenz, pulled a gun from his jacket. Saenz then placed the gun in the back of Hernandez's head and ordered him to enter the apartment. Hernandez also saw appellant with a gun. Appellant and Saenz forced Hernandez into the apartment at gunpoint and placed him face down on a sofa. Hernandez testified that, while on the sofa, he was hit with guns at the base of his head and a gun was placed on the back of his head.

According to a second complainant, Zamudio, when Hernandez entered the apartment from the garage, Saenz was pointing a gun at his head. Zamudio also saw appellant with a gun. After Hernandez was placed on the sofa, the four men also forced Zamudio onto the sofa. Zamudio corroborated that Hernandez was then repeatedly hit and threatened with a gun.

Conversely, appellant testified that at no time during the robbery did anyone have a gun or did he have a weapon of any kind. Appellant commented that during the planning of the robbery, no plans were made to use weapons because they knew Hernandez and Zamudio would be scared enough without them. Appellant's co-defendant, Saenz, stated that one of the guns admitted into evidence at trial had been taken from his apartment several days before the robbery and he had not seen it since. Saenz also testified that no one involved in the robbery had a gun or any other weapon.

Although the testimony of appellant and Saenz directly controverts that of Hernandez and Zamudio, it does not render the verdict so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Because appellant's point of error therefore fails to demonstrate that the evidence is factually insufficient to prove the use of a firearm, it is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 30, 1999.

Panel consists of Justices Hudson, Edelman, and Wittig.

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