
No. 96-3078SD

United States of America,

Appellee,

v.

Barry Douglas Stead, also
known as Barry D. Snead, also
known as Garitano, also known
as Horelio Garitano,

Appellant.

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Appeal from the United States
District Court for the District
of South Dakota.

[UNPUBLISHED]

Submitted: February 13, 1997

Filed: March 6, 1997

Before McMILLIAN, JOHN R. GIBSON, and FAGG, Circuit Judges.

PER CURIAM.

Barry Douglas Stead challenges the sufficiency of the evidence to support his convictions for second-degree murder and assaulting a federal officer. Contrary to Stead's view, the record contains strong evidence of Stead's guilt. Essentially, Stead asks this court to reexamine conflicting testimony, a task that can only be resolved by the jury. Here, notwithstanding a full array of defensive instructions, the jury resolved the conflicts in favor of the Government, and there was sufficient evidence for the jury to reach its verdicts. Stead also challenges the sentence imposed by the district court. Although Stead argues the district court improperly failed to depart downward, the district court made clear that it did not find a downward departure warranted by the facts in this case. Thus, the district court's refusal to depart is a

nonreviewable exercise of discretion. We affirm Stead's convictions and sentence. See 8th Cir. R. 47B.

JOHN R. GIBSON, Circuit Judge, concurs in the result and in the judgment in this case.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.