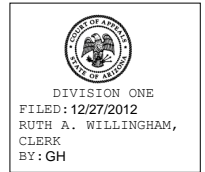


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) No. 1 CA-CR 11-0901  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
KENNETH CASEY JACKSON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-164957-001 DT

The Honorable Carolyn A. Passamonte, Judge *Pro Tempore*

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Joseph T. Maziarz, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

James J. Haas, Maricopa County Public Defender Phoenix  
By Terry J. Reid, Deputy Public Defender  
Attorneys for Appellant

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**B R O W N**, Judge

¶1 Kenneth Casey Jackson appeals from his conviction and resulting sentence for burglary in the third degree, a class four felony. For the following reasons, we affirm.

## BACKGROUND<sup>1</sup>

¶12 In the early morning hours of July 11, 2009, Jackson parked his car outside a residence in Paradise Valley and scaled the six-foot high wall surrounding the property. Security cameras captured video showing Jackson as he opened the driver's side door of the victim's vehicle, which was left unlocked in the front driveway. Without permission, and using a flashlight, he looked around the car and eventually opened the trunk.

¶13 Meanwhile, Sergeant C., who was providing overnight private security services for the owners of the residence, heard a sound "like a metal door or lid or metal on metal closing" and walked out to the driveway to investigate. He noticed the vehicle's trunk was open and that a light was coming from the inside of the passenger area. As he approached the car to investigate, Jackson came around from the driver's side, pointing his light in Sergeant C.'s face and aggressively yelling profanities. Sergeant C. identified himself as a police officer and Jackson calmed down.

¶14 Sergeant C. called for backup and an investigation ensued. Nothing was missing from the vehicle, it was not damaged, and the officers did not find any tools or other devices on Jackson, except the flashlight. When questioned,

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<sup>1</sup> We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Salman*, 182 Ariz. 359, 361, 897 P.2d 661, 663 (App. 1994).

Jackson denied being in the car, opening the trunk, or committing a burglary. However, he offered conflicting stories as to why he was in a highly secured yard without permission in the middle of the night. To one officer, Jackson said his car had been burglarized, he chased the perpetrator over the wall into the property, and he then looked in the victim's car for the perpetrator. To another officer, he stated that a woman who was in his car grabbed money from his console, ran away, jumped over the wall into the secured property, and he jumped the wall in pursuit. Based on their investigation and their opinions that the stories were fabricated, the officers arrested Jackson.

¶15 The State indicted Jackson on two counts of third-degree burglary, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1506(A)(1) (2010).<sup>2</sup> Count 1 was premised on his unlawful presence in a "fenced residential yard" and Count 2 was premised on his unlawful presence "in . . . a non-residential structure." Prior to trial, the State moved to dismiss Count 1 without prejudice, which the trial court granted.

¶16 A jury trial was held on Count 2. At the close of the State's evidence, Jackson moved for a Rule 20 judgment of acquittal, arguing the State failed to prove beyond a reasonable

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<sup>2</sup> Absent material revisions after the relevant date, we cite a statute's current version.

doubt that Jackson intended to commit a theft or felony in the vehicle. The court denied the motion and submitted the case to the jury, which returned a guilty verdict. The court found Jackson had two prior felony convictions and sentenced him to a mitigated term of eight years' imprisonment. This timely appeal followed.

#### DISCUSSION

¶7 Jackson argues there is insufficient evidence to support his conviction. We resolve all reasonable inferences and conflicts in the evidence against a defendant, and we will "affirm the conviction if there is 'substantial evidence' to support the guilty verdict. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (internal quotations and citations omitted). Substantial evidence is "more than a 'mere scintilla' . . . but it nonetheless must be evidence that reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Stroud*, 209 Ariz. 410, 411-12, ¶ 6, 103 P.3d 912, 913-14 (2005) (internal quotations and citation omitted). "The substantial evidence required to warrant a conviction may be either circumstantial or direct," and a conviction may be sustained solely on circumstantial evidence. *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981) (citation omitted).

¶18 To convict Jackson of third-degree burglary, the State was required to prove beyond a reasonable doubt that (1) Jackson entered or remained unlawfully, (2) in or on a nonresidential structure, (3) with the intent to commit any theft or any felony therein. A.R.S. § 13-1506(A)(1). Jackson disputes only the third element, asserting the State did not present sufficient evidence of his "intent to commit a theft or felony" in the vehicle. Relying on *State v. Rood*, 11 Ariz. App. 102, 462 P.2d 399 (1969), he argues the State failed to meet its burden because it did not provide any independent evidence other than Jackson's presence in the vehicle to show his intent.

¶19 In *Rood*, our court reversed a third-degree burglary conviction for insufficiency of the evidence. 11 Ariz. App. at 104-05, 462 P.2d at 402-03. Jackson believes *Rood* resolves the issue before us; however, we read that case as supporting the general proposition that we look to the totality of the circumstances in each case to determine whether intent to commit a theft can be inferred. See *id.* at 104, 462 P.2d at 401 ("We distinguish this case from those in which the mode of entry is something more suspicious than simply walking into a building through an unlocked door."); see also *State v. Ortiz*, 9 Ariz. App. 116, 119, 449 P.2d 953, 956 (1969) (noting "sufficient inferences can be drawn from the totality of circumstances, flight, presence, time and place, and an absence of any rational

explanation for the defendant's presence" to sustain conviction). Thus, the unique factual situation in *Rood* does not justify reversal here.

¶10 Under a "totality of the circumstances" analysis, sufficient evidence exists in the record to support the intent element of burglary. See *State v. Routhier*, 137 Ariz. 90, 99, 669 P.2d 68, 77 (1983) (recognizing that intent must often be shown by circumstantial evidence such as a defendant's conduct and comments); see also *State v. Noriega*, 187 Ariz. 282, 286, 928 P.2d 706, 710 (App. 1996) (stating that a "jury will usually have to infer [intent] from [a defendant's] behaviors and other circumstances surrounding the event"). Jackson climbed over a six-foot fence surrounding a highly secured home at 3:30 in the morning. He approached the victim's car and opened the door. With a flashlight, he rummaged around the inside of the vehicle and then opened the trunk of the car. Before his search could continue, however, he was apprehended. After being caught, Jackson gave two versions of why he was on the property at such an early morning hour without permission.

¶11 Based on this evidence, a jury could infer that (1) Jackson entered the secured yard of the private residence with the intent to commit a crime; (2) he used the flashlight to search for items of value in the vehicle; (3) he opened the trunk because he was unable to find anything of value in the

passenger compartment; and (4) he was untruthful because he gave inconsistent explanations for his behavior. Thus, the jury could reasonably conclude the State presented sufficient evidence, considered in light of all of the relevant circumstances, that Jackson intended to commit a theft within the vehicle.

**CONCLUSION**

¶12 For the foregoing reasons, we affirm Jackson's conviction and sentence.

\_\_\_\_\_  
/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

\_\_\_\_\_  
/s/

ANDREW W. GOULD, Judge

\_\_\_\_\_  
/s/

DONN KESSLER, Judge