DIVISION ONE
FILED: 7/9/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 12-0360
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
STEVEN RAY BOLTON,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-130444-002

The Honorable William L. Brotherton, Jr., Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals Section
and Jana Zinman, Assistant Attorney General
Attorneys for Appellee

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W I N T H R O P, Presiding Judge

¶1 Steven Ray Bolton ("Appellant") appeals his conviction for burglary in the second degree. He argues the trial court

erred in denying his motion for a judgment of acquittal. *See* Ariz. R. Crim. P. 20(a). For the following reasons, we affirm.

BACKGROUND[1]

¶2 On June 21, 2011, a grand jury issued an indictment, charging Appellant with burglary in the second degree, a class three felony.[2] *See* Ariz. Rev. Stat. ("A.R.S.") § 13-1507 (West 2013).[3]

¶3 The State presented the following evidence at trial: On April 23, 2011, at approximately 11:00 a.m., D.B. and C.B. (collectively, "the victims") were loading their recreational vehicle for an overnight trip to Lake Pleasant, when D.B. noticed a small, black, "older import type of car" with dark tinted windows parked approximately five hundred feet from his driveway. D.B. approached the vehicle, but the driver drove away. Before leaving for Lake Pleasant, the victims locked all of the doors to their home and re-enforced the garage doors.

¶4 When the victims returned at approximately 12:00 p.m. the next day, D.B. noticed that two big doors leading to the

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[1] We view the facts and reasonable inferences therefrom in the light most favorable to sustaining the verdict. *See State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983).

[2] The indictment also charged Robert James Neese with burglary in the second degree and possession of burglary tools, a class six felony. The trial court granted the State's subsequent motion to sever, and Neese pled guilty as charged.

[3] Absent material revisions to a statute after the date of an alleged offense, we cite the statute's current version.

garage had been opened, and someone had pried open the garage's steel side door. At the same time, C.B. entered the home and discovered the home appeared to have been burglarized. C.B. went outside and advised D.B. that something was wrong. D.B. called 911, and the victims waited outside for law enforcement officers to arrive.

¶5 Soon afterward, a deputy and his supervisor arrived and "cleared" the home to verify no intruders were inside. Subsequently, a detective arrived to investigate. The detective and D.B. walked through the home and discovered someone had opened all of the doors except the front door, which had been left locked. The home had been ransacked, with numerous drawers and cabinets pulled out and opened, and items strewn on the floor.

¶6 In the home office, a blue bank deposit bag and a clear plastic bag labeled "coin wrappers" were on the desk instead of inside the cabinet, and valuable coins were missing from the bags and cabinet. Rolled coins, which had been under the items now lying on the desk, were missing, meaning someone had moved those items to get to the coins. An old cigar box that had contained old coins and other valuables had been moved and emptied, and other coins were missing from a coin cylinder.

¶7 In the master bedroom and bathroom, drawers had been pulled open and articles of clothing strewn about. Several

rings and a solid gold watch were missing from C.B.'s closet, and watches and keepsakes had been removed from a jewelry box in D.B.'s closet. In total, more than $12,000 worth of property had been stolen from the victims' home.[4]

¶8 The detective requested the assistance of a crime scene technician, who preserved several shoe impressions from patios around the home.[5] Additionally, the blue bank deposit bag, a plastic Ziploc bag and the plastic coin wrapper bag, and the plastic coin cylinder holder were retained for fingerprinting and evidentiary purposes.

¶9 Two latent prints on the plastic bags taken from the victims' home matched Appellant's fingerprints.[6] The detective

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[4] By the time of trial, the victims had not recovered any of the stolen items or the value of their damaged property.

[5] Some of the shoe prints directly matched prints later taken from Neese's shoes. Neese was arrested in May 2011, and the shoe comparison helped link him to the crime. The shoe prints were not checked against the shoes of Appellant, who was arrested in June 2011.

[6] A crime laboratory analyst testified that four of the twelve latent fingerprints obtained from the home office exhibits were of sufficient quality to be entered into the Automated Fingerprint Information System ("AFIS"), an Arizona fingerprint database. All four prints were lifted from the plastic Ziploc bag and plastic coin wrapper bag. The analyst requested that AFIS provide him with the ten closest potential matches after he entered the fingerprints into the system. The analyst then visually examined the fingerprints of the candidates provided by AFIS and concluded that Candidate 1, Appellant, matched two of the four fingerprints submitted. The other candidates' fingerprints did not match any of the prints submitted to AFIS. Next, the analyst used the "analyze,

was unable to determine why Appellant's prints would be in the victims' home other than in connection with the burglary, because the victims did not know Appellant or Neese, had never seen them before, and had not given them permission to enter or take anything from the victims' home.

¶10 After the State rested, Appellant moved for a judgment of acquittal, arguing that the State failed to present substantial evidence he had burglarized the victims' house. The State argued it had proven beyond a reasonable doubt that Appellant burglarized the victims' house because "two actual prints from [Appellant's] right hand [] were found on a bag in the victim's home on the victim's desk and that bag wasn't just sitting on the shelf. It had been moved to get to the coins underneath it." The trial court denied Appellant's motion, finding that substantial evidence existed to warrant a conviction.

¶11 Appellant testified and presented additional evidence that at approximately 7:50 a.m. on April 23, 2011, his mother picked him up and drove him to the fast food restaurant where he

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compare, evaluate, and verify" methodology to confirm that the two latent prints were an absolute match to Appellant's prints. After conducting this analysis, the analyst stated he was one hundred percent certain that the two latent prints taken from the plastic bags were Appellant's fingerprints. The analyst's supervisor independently verified his conclusions.

worked.[7] He arrived shortly before 8:00 a.m., punched in at 8:40 a.m., took a break from 1:20 to 1:42 p.m., and clocked out at 3:29 p.m. His now-former girlfriend picked him up in her father's 1999 black two-door Honda Accord, which had tinted windows, and they eventually went to her mother's house that evening. The following morning, he went to his mother's house and stayed there most of the day, except for a few hours spent at his girlfriend's mother's house. Appellant testified he did not know the victims, had never seen them before, and had never been to their house.

¶12 The jury found Appellant guilty as charged. The court suspended sentencing and placed Appellant on three years' probation, with the requirement that he serve three months' incarceration in the county jail as a condition of probation. We have jurisdiction over Appellant's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

ANALYSIS

¶13 Appellant argues the trial court erred in denying his motion for a judgment of acquittal because the State failed to present substantial evidence to warrant his conviction. We disagree.

[7] The restaurant was less than two miles from Appellant's mother's residence, the house where Appellant was living, and the victims' home.

¶14 A judgment of acquittal is appropriate only "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (citation omitted). Arizona law does not distinguish between direct and circumstantial evidence, *State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993), and if reasonable minds can differ on the inferences to be drawn from the evidence, a trial court lacks discretion to grant a motion for a judgment of acquittal and must submit the case to the jury. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶15 We review *de novo* a denial of a motion for a judgment of acquittal and the sufficiency of the evidence to support a conviction. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). We will not set aside a jury verdict for insufficient evidence unless it "clearly appear[s] that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) (citation omitted). For reversible error based on insufficiency of the evidence to occur, there must be a complete absence of probative facts to support the conviction. *State v. Soto-Fong*, 187 Ariz. 186, 200,

928 P.2d 610, 624 (1996) (citation omitted). The jury, not this court, determines credibility and the weight to give conflicting evidence. *See State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶16 "A person commits burglary in the second degree by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein." A.R.S. § 13-1507(A). "A person commits theft if, without lawful authority, the person knowingly . . . [c]ontrols property of another with the intent to deprive the other person of such property[.]" A.R.S. § 13-1802(A)(1).

¶17 In this case, the State presented substantial evidence to satisfy the elements of burglary in the second degree and withstand Appellant's motion for a judgment of acquittal. The State initially presented evidence that a person or persons entered the victims' residence through forced entry of the side garage door and that property was taken from the victims' home. Given this evidence, Appellant concedes "there can be no dispute . . . that a burglary occurred at the [victims'] residence while they were camping at Lake Pleasant."

¶18 The State also presented undisputed evidence that latent fingerprints lifted from the victims' home office matched Appellant's fingerprints. The crime laboratory analyst stated he was one hundred percent certain of the match, which was

verified by his supervisor. Appellant concedes that "the presence of [his] fingerprint[s] on a plastic bag in [D.B.'s] office, inarguably leads to a reasonable inference that he was present therein while the [victims] were away." Furthermore, the victims both testified they did not know Appellant, had never seen him before, and did not give him permission to enter or take anything from their home. Consequently, the State presented substantial evidence that Appellant "enter[ed] or remain[ed] unlawfully in or on [the victims'] residential structure" while the victims were away.

¶19 Appellant nonetheless contends that "reasonable doubt exists regarding whether or not Appellant entered the home in order to commit a theft therein." However, evidence that Appellant's prints were found on a plastic bag from which coins were stolen, and that had been moved during the burglary to allow access to other stolen property, constitutes substantial evidence that Appellant entered the home "with the intent to commit a[] theft."[8]

[8] The following circumstantial evidence also links Appellant to the burglary: (1) Appellant's girlfriend's father's vehicle matched the description of the suspicious vehicle that D.B. observed stopped near the victims' driveway shortly before they left for Lake Pleasant; and (2) Appellant had been in his girlfriend's father's vehicle during the time period the burglary was committed. Additionally, even assuming the jury found Appellant's testimony credible, there were time periods during April 23 to 24 for which he did not account.

¶20 Appellant suggests the possibility that Neese alone or with some other person may have entered the victims' home and burglarized it, and that he happened to be in the neighborhood and entered the house "for the purpose of investigating why the side garage door was open." We find his suggestion unavailing. Appellant was free to argue this possibility to the jury, but he chose not to do so. And, even had he done so, the jury simply would have had to weigh this possibility against the substantial evidence presented. Additionally, Appellant's suggestion contradicts his own testimony that he did not know the victims and had never been to their house. Further, Appellant's suggestion does not fully explain why his fingerprints were found on a plastic bag inside the victims' home office.[9]

CONCLUSION

¶21 The State presented substantial evidence that Appellant committed burglary in the second degree, and the trial court did not err in denying his motion for a judgment of

[9] We also reject Appellant's assertion that the evidence failed to establish any connection between himself and Neese as well as any connection between himself and the property taken from the home. Appellant was independently tried and convicted of burglary in the second degree based on the presence of his fingerprints in the home, and his conviction did not require any connection to another perpetrator, including Neese. Further, the evidence established a connection between Appellant and the property taken from the home because his fingerprints were found inside the victims' home office on a plastic bag from which coins were removed during the burglary.

acquittal. Appellant's conviction, suspension of sentence, and terms of probation are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Judge

_____/S/_____
DIANE M. JOHNSEN, Chief Judge