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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS
AUTHORIZED. ARIZ. R. SUP. CT. 111(c).

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

BRANDON JAY FELBER, *Appellant*.

No. 1 CA-CR 12-0808

FILED 12-26-2013

Appeal from the Superior Court in Maricopa County

No. CR2011-008239-001

The Honorable William L. Brotherton, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Colby Mills

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Kathryn L. Petroff

Counsel for Appellant

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MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kenton D. Jones joined.

NORRIS, Judge:

¶1 Brandon Jay Felber appeals his conviction and sentence for aggravated assault.¹ On appeal, Felber argues the State presented insufficient evidence to prove he had the necessary intent for aggravated assault because it failed to show he had entered the “private home of another with the intent to commit the assault.” See Ariz. Rev. Stat. (“A.R.S.”) § 13-1204(A)(5) (Supp. 2013).² Because the record reflects the State presented sufficient evidence to support this conviction,³ we disagree and therefore affirm. See *State v. Sharma*, 216 Ariz. 292, 294, ¶ 7, 165 P.3d 693, 695 (App. 2007) (review of sufficiency of the evidence is limited to whether substantial evidence supports verdict).

¶2 As relevant here, a person commits aggravated assault if he “commits the assault after entering the private home of another with the intent to commit the assault.” A.R.S. § 13-1204(A)(5). Although Felber concedes the State presented sufficient evidence he assaulted the victim, see A.R.S. § 13-1203 (2010), he argues A.R.S. § 13-1204(A)(5) requires the State to prove he formed the intent to commit the assault before he entered the victim’s home. Based on this construction of the statute, he

¹Although Felber appealed all of his convictions and sentences, on appeal he argues only that the State failed to present sufficient evidence to support his conviction for aggravated assault. Therefore, we limit our discussion to that charge and affirm his convictions and sentences on the other charges.

²The Arizona Legislature amended statutes cited in this decision after the date of Felber’s offenses, but the revisions are immaterial. Thus, we cite to the current version of these statutes.

³We view the facts in the light most favorable to sustaining the jury’s verdict and resolve all reasonable inferences against Felber. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

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argues the State only presented evidence he and his accomplice had decided to assault the victim after the victim returned home and discovered them in his home.

¶3 Although we agree with Felber’s construction of A.R.S. § 13-1204(A)(5), the State presented sufficient evidence Felber entered the home with this intent. “[T]he requisite intent is a state of mind which is seldom, if ever, susceptible of proof by direct evidence and must ordinarily be proven by circumstantial evidence. Intent may be inferred from the acts of the accused and the circumstances of the assault.” *State v. Lester*, 11 Ariz. App. 408, 410, 464 P.2d 995, 997 (1970) (citations omitted).

¶4 In this case, the victim testified he came home and was five feet inside of the front door when he saw “them guys.” Although the victim tried to run out of the house, Felber and his accomplice “held [him] back in and just beat [him].” Felber and his accomplice then tied the victim up with various items including handcuffs, a tie, a rope, and a bandana, and beat him until he was unconscious. Felber and his accomplice did not communicate with each other before attacking the victim, which supports they had a plan of attack.

¶5 The fact that Felber and his accomplice prevented the victim from escaping and immediately attacked and restrained the victim when he saw them is evidence the jury could reasonably rely on in finding they had formed the requisite intent to commit the assault before they entered the victim’s home. The State, therefore, presented sufficient evidence to support Felber’s conviction for aggravated assault. *See Sharma*, 216 Ariz. at 294, ¶ 7, 165 P.3d at 695 (substantial evidence to support a conviction is “proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” (quoting *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990))).

¶6 For the foregoing reasons, we affirm Felber’s convictions and sentences, including his conviction and sentence for aggravated assault.



Ruth A. Willingham - Clerk of the Court
FILED: mjt