IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RUBEN BARKSDALE, *Appellant*.

No. 1 CA-CR 16-0072
FILED 5-23-2017

Appeal from the Superior Court in Maricopa County
No. CR2013-003691-001
The Honorable Bradley H. Astrowsky, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
Counsel for Appellee

The Stavris Law Firm, PLLC, Scottsdale
By Christopher Stavris
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

S W A N N, Judge:

¶1 Ruben Barksdale appeals his conviction for first-degree murder. He contends that the state failed to present sufficient evidence to support the conviction, and that the superior court therefore erred by denying his motion for a judgment of acquittal under Ariz. R. Crim. P. ("Rule") 20 and by failing to order a new trial under Rule 24.1 *sua sponte*. Our review of the record reveals ample evidence to support Barksdale's conviction. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 At trial, the state presented evidence of the following facts. In the afternoon and evening of September 29, 2013, a group of young friends, E., I., J., and F., were smoking marijuana and drinking alcohol at E.'s father's house. E. and I. did not get along with T. They regularly exchanged "trash talk" with T., and a day or so before, the group had engaged in a verbal altercation that led to a physical fight between T. and another individual. When T. and A. arrived at the house around sunset that evening, E. and I. continued "bickering" with T. on the porch.

¶3 Barksdale, who is I.'s older brother, arrived at the house, wearing a black hooded sweatshirt with a front pocket. He remained quiet as the bickering continued. When the group and T. began walking toward a nearby park to fight, Barksdale accompanied them. As they walked, Barksdale told F., who was then twelve years old, to go home because he was not going to like what he would see. He also stated, "[t]hey don't know me."

¶4 T. stopped walking in front of some apartments. It was dark in the street, but not so dark that those in the group could not discern each other's identities. I. approached T. J. then saw Barksdale, who was standing just a few feet away from T., pull a gun from his sweatshirt pocket and shoot T. T. fell to the ground. J., and also F., then saw Barksdale stand over T. and shoot him several more times. A., who was some distance away

from the group, saw the sparks from the gun. J. had seen I. and Barksdale's cousins with a firearm earlier that night or the night before. Nobody else had a weapon at the fight.

¶5 When law enforcement responded to the scene, they found T., apparently dead, lying face-down in the middle of the street. They recovered nine .22-caliber casings from the scene. They also found, at Barksdale's sister's nearby apartment, what appeared to be blood on the wall beneath a broken window and on a tissue. J., F., and E. all told police that Barksdale was the shooter. An autopsy revealed that T. died from multiple gunshot wounds.

DISCUSSION

¶6 We review the sufficiency of the evidence de novo. *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011). We view the evidence in the light most favorable to upholding the verdict, and we resolve all conflicts in the evidence against the defendant. *State v. Girdler*, 138 Ariz. 482, 488 (1983). We do not reweigh the evidence or determine the credibility of witnesses. *See State v. Williams*, 209 Ariz. 228, 231, ¶ 6 (App. 2004).

¶7 We will reverse only if "there is a complete absence of probative facts to support the conviction." *State v. Scott*, 113 Ariz. 423, 424–25 (1976). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316 (1987). Sufficient evidence may be either direct or circumstantial, and may support differing reasonable inferences. *State v. Anaya*, 165 Ariz. 535, 543 (App. 1990). Criminal intent and premeditation may be shown by the defendant's conduct and comments. *State v. Nelson*, 229 Ariz. 180, 185, ¶ 16 (2012); *State v. Routhier*, 137 Ariz. 90, 99 (1983).

¶8 Under A.R.S. § 13-1105(A)(1), "[a] person commits first degree murder if[, i]ntending or knowing that the person's conduct will cause death, the person causes the death of another person . . . with premeditation." Section 13-1101(1) defines "premeditation" as meaning:

> that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

¶9 Here, the state presented sufficient evidence to support Barksdale's conviction for first-degree murder. The state presented evidence that Barksdale caused T.'s death by shooting him. Further, the state presented evidence that Barksdale caused T.'s death intentionally and with premeditation. Barksdale observed that his brother and his brother's group of friends had a conflict with T. As the group relocated to resolve the conflict, Barksdale accompanied them, stating "[t]hey don't know me" and warning F. that he should go home because he would not like what he was going to see. Barksdale then removed a gun from his sweatshirt pocket and shot T. at close range multiple times, continuing to shoot even after T. fell to the ground. The evidence supports the reasonable inference that Barksdale intended to kill T. and that he not only had ample opportunity to reflect before acting, but actually did so.

¶10 Barksdale contends that "the evidence was contradictory and unreliable" because of inconsistencies in the witnesses' testimony and in the initial police dispatch and briefing reports. He also contends that no physical evidence linked him to the crime. Barksdale's arguments are unpersuasive. We cannot reweigh the evidence or make credibility determinations on appeal. Further, "[p]hysical evidence is not required to sustain a conviction where the totality of the circumstances demonstrates guilt beyond a reasonable doubt." *State v. Cañez*, 202 Ariz. 133, 149, ¶ 42 (2002), *superseded on other grounds by Rule*, Rule 16.2(b), *as recognized in*, *State v. Valenzuela*, 239 Ariz. 299 (2016). The evidence presented was sufficient to support the jury's verdict. The court did not err by denying Barksdale's Rule 20 motion.

¶11 Nor did the court err by failing to order a new trial under Rule 24.1. Because Barksdale did not move for a new trial in the superior court, we may not reverse unless Barksdale demonstrates fundamental error that caused him prejudice. *State v. Henderson*, 210 Ariz. 561, 567–68, ¶¶ 19–20 (2005). "The court may grant a new trial . . . [when t]he verdict is contrary to law or to the weight of the evidence." Rule 24.1(c)(1). The court may weigh the evidence and make credibility determinations. *State v. Clifton*, 134 Ariz. 345, 348 (App. 1982). We presume that the trial court knew and applied the law. *See State v. Lee*, 189 Ariz. 608, 616 (1997). On this record, we discern no error, much less fundamental error, in the court's determination that the jury's verdict conformed with the law and the weight of the evidence.

CONCLUSION

¶12 We affirm for the reasons set forth above.

AMY M. WOOD • Clerk of the Court
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