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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/03/09
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 08-0830
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
AMANDA L. MATTHEW,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-113889-001 SE

The Honorable Connie Contes, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Aaron J. Moskowitz, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Karen M. V. Noble, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Amanda L. Matthew appeals from her conviction and sentence for one count of aggravated assault. Matthew contends the superior court should have granted her motion for judgment

of acquittal because the State failed to present substantial evidence she "[k]nowingly touch[ed]" Officer S. "with the intent to injure, insult or provoke" him as required by Arizona Revised Statutes ("A.R.S.") section 13-1203(A)(3) (2001). See Ariz. R. Crim. P. 20. For the following reasons, we disagree with Matthew's argument, and affirm her conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On or about May 1, 2008, Matthew was inside the home of an acquaintance when she heard a commotion outside. Matthew walked out the front door and saw the acquaintance on the ground and bleeding, and several police officers on the premises. At trial, Officer S. testified Matthew "began to approach the patrol car, very loud, demanding badge numbers for every officer that was there." He described her demeanor as "[v]ery upset, agitated." Officer S. told Matthew "to stop," and "to back up" until they were finished dealing with her acquaintance. According to Officer S., Matthew initially stopped, but then,

She continued to come towards the car. She didn't listen to my commands, at which point I stepped out from the door. . . . She was walking towards the vehicle, animated, very boisterous. I walked up to her, put my hands on her shoulders, and I explained to her that we were going to address her concerns as soon as we were finished dealing

¹We view the facts in the light most favorable to sustaining the conviction and resolve all inferences against Matthew. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

with [her acquaintance]. She continued to try and walk past me, at which point I pushed back on her shoulders and escorted her back onto the property. . . . At that point she became upset, and she yelled at me, get your hand off me, and that's when she moved her right hand and struck my left hand and forearm. . . . At that point my arm came off her. I grabbed her right arm, I came behind her, and she was escorted to the ground.

¶13 Before Officer S. "put both [of his] hands on her shoulders," he told Matthew to stay back from the officers three times. Each time she failed to comply. After "escort[ing]" Matthew to the ground, Officer S. arrested her.

¶14 The State charged Matthew with aggravated assault, a class six felony, because Officer S. "had to take action to keep her from compromising our officers' safe move." See A.R.S. § 13-1204(A)(8)(a), (B) (Supp. 2008).² On the State's motion, the superior court amended Matthew's charge to a class one misdemeanor. At a bench trial, the superior court found Matthew guilty as charged, suspended imposition of sentence and ordered Matthew serve six months of supervised probation.

¶15 Matthew timely appealed her conviction and sentence. We have jurisdiction pursuant to Article 6, Section 9, of the

²Although certain statutes cited in this decision were amended after the date of Matthew's offense, the revisions are immaterial. Thus, we cite to the current versions of these statutes.

Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001) and -4033 (Supp. 2008).

DISCUSSION³

¶16 Although Matthew contends she did not knowingly touch with the intent to provoke Officer S. as required by A.R.S. § 13-1203(A)(3), the State provided substantial evidence to warrant conviction. First, Officer S.'s testimony Matthew "struck" or "smacked" him is evidence she knowingly touched him. See A.R.S. § 13-105(9)(b) (Supp. 2008) (effective January 1, 2009, this section is numbered § 13-105(10)(b)) ("'[k]nowingly' means . . . a person is aware or believes that the person's conduct is of that nature").

¶17 Second, Officer S.'s testimony reflects Matthew acted to provoke him. "Provoke" means "[t]o stir to action," to "evoke," or "[t]o bring about deliberately." The American Heritage Dictionary 1412 (4th ed. 2006). Officer S. "perceived [Matthew] smacked my hand" to stop what he was doing with the other officers and to compel him to deal with her "now." Matthew's "boisterous" behavior and failure to comply with Officer S.'s commands also indicate she intended to provoke him.

³We review the superior court's denial of a Rule 20 motion for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, 510, ¶ 32, 154 P.3d 1046, 1056 (App. 2007). We will not reverse the superior court's denial of a motion for a judgment of acquittal unless there is a complete absence of probative facts supporting the defendant's conviction. *State v. Johnson*, 215 Ariz. 28, 29, ¶ 2, 156 P.3d 445, 446 (App. 2007).

See *State v. Bearup*, 221 Ariz. 163, ___, ¶ 16, 211 P.3d 684, 688 (2009) (quoting *State v. Routhier*, 137 Ariz. 90, 99, 669 P.2d 68, 77 (1983)) (“[c]riminal intent, being a state of mind, is shown by circumstantial evidence. Defendant’s conduct and comments are evidence of his state of mind”).

¶8 Although Matthew testified differently,⁴ the superior court was in the best position to resolve conflicting testimony. See *State v. Lee*, 217 Ariz. 514, 516, ¶ 10, 176 P.3d 712, 714 (App. 2008) (although the defendant’s testimony contradicted the officers’ testimony on all of the key facts, “it is the trier of fact’s role, and not this court’s, to ‘resolve conflicting testimony and to weigh the credibility of witnesses.’” (quoting *State v. Alvarado*, 158 Ariz. 89, 92, 761 P.2d 163, 166 (App. 1998))). Given the officer’s testimony, the State presented substantial evidence Matthew knowingly touched Officer S. with the intent to provoke him. See *Bearup*, 221 Ariz. ___, ¶ 16, 211 P.3d at 688.

⁴Matthew testified she “never touched [Officer S.] or approached him.”

CONCLUSION

¶19 For the foregoing reasons, we affirm Matthew's conviction and sentence.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

SHELDON H. WEISBERG, Judge

/s/

MARGARET H. DOWNIE, Judge