

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



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FILED: 04-22-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0237
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
CRYSTAL BLUE SAMSON,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Yavapai County

Cause No. P-1300-CR-0020080597

The Honorable Thomas B. Lindberg, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Julie A. Done, Assistant Attorney General
Attorneys for Appellee

Rosemary Gordon Panuco Tucson
Attorney for Appellant

P O R T L E Y, Judge

¶1 Defendant Crystal Blue Samson appeals her convictions.

For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 The victim, H.M.² was injured in a bar fight on Whiskey Row in Prescott, Arizona, on May 4, 2008. H.M. was talking to Defendant and her friend, Sheri, at the Moctezuma bar and bought them drinks. H.M.'s girlfriend, Tasha, arrived and began talking to the women. The women then took their drinks and went onto the dance floor. H.M. followed Tasha and grabbed her arm to get her to leave. He felt something wet on his face and, as he wiped his face, he was hit in the head with something hard. Tasha testified that Defendant spit her beer on H.M. She testified that she then saw a beer bottle come over her shoulder and hit H.M. in the head. She turned around and saw Defendant. Other Moctezuma patrons testified that they saw Defendant hit H.M. with a glass beer bottle. The bottle lacerated the upper right portion of H.M.'s forehead, and he was treated at the hospital.

¶3 Defendant was subsequently arrested and charged with: one count of aggravated assault for recklessly causing serious physical injury, a class three felony; one count of aggravated assault for using a deadly weapon or instrument, a class three

¹ We review the evidence in the light most favorable to upholding the trial court's ruling. *State v. Sullivan*, 205 Ariz. 285, 287, ¶ 6, 69 P.3d 1006, 1008 (App. 2003).

² We use the initials of the victim throughout this decision to protect his privacy. See *State v. Maldonado*, 206 Ariz. 339, 341 n.1, 78 P.3d 1060, 1062 n.1 (App. 2003).

felony; one count of aggravated assault for recklessly causing injury, which caused temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of any body part, a class four felony; and one count of disorderly conduct, a class one misdemeanor.³

¶4 At the close of the State's case, Defendant unsuccessfully moved for judgment of acquittal. The jury was subsequently instructed, but found Defendant guilty of aggravated assault with a dangerous instrument and aggravated assault causing temporary but substantial disfigurement/loss or impairment of body organ/part. Defendant was sentenced to mitigated, concurrent terms on both offenses.

¶5 Defendant appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001) and -4033 (Supp. 2008).

DISCUSSION

¶6 Defendant argues that the trial court erred when it denied her motion for judgment of acquittal because there was insufficient evidence to convict her of aggravated assault using

³ The jury was not instructed on the charges of aggravated assault for recklessly causing injury and disorderly conduct, and those charges were subsequently dismissed.

a dangerous instrument,⁴ and aggravated assault causing temporary but substantial disfigurement/loss or impairment of body organ/part.

¶7 A trial court is required to enter judgment of acquittal pursuant to Arizona Rule of Criminal Procedure 20 "if there is no substantial evidence to warrant a conviction." "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. Molina*, 211 Ariz. 130, 133, ¶ 8, 118 P.3d 1094, 1097 (App. 2005) (quoting *State v. Hall*, 204 Ariz. 442, 454, ¶ 49, 65 P.3d 90, 102 (2003)). We will affirm the denial of a Rule 20 motion "if reasonable minds could differ on the inferences drawn from the evidence." *Sullivan*, 205 Ariz. at 287, ¶ 6, 69 P.3d at 1008.

A. Aggravated Assault with a Dangerous Instrument

¶8 Defendant argues that the State presented insufficient evidence that she assaulted H.M. with a "dangerous instrument," A.R.S. § 13-1204(A)(2) (2010),⁵ because H.M. only sustained minor injuries and "[w]hether an object is considered a 'dangerous

⁴ Defendant also argues there was insufficient evidence to convict her of aggravated assault with a deadly weapon. Because she was not convicted of aggravated assault *with a deadly weapon* we will not address the argument.

⁵ We cite to the current versions of A.R.S. § 13-1204 and -105 because they have not been amended in any way relevant to this decision.

instrument' depends upon how serious the victim's injuries were." We disagree.

¶9 A dangerous instrument is statutorily defined as: "anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury." A.R.S. § 13-105(12) (Supp. 2009). Although Defendant argues that the victim's injuries determine whether an object is a dangerous instrument, we addressed and rejected the argument in *Molina*, 211 Ariz. at 133, ¶¶ 9-10, 118 P.3d at 1097.

¶10 In *Molina*, the defendant argued that there was "insufficient evidence that the ignited alcohol had been used in a manner consistent with the statutory definition of 'dangerous instrument' because no serious physical injury resulted from the assault." 211 Ariz. at 133, ¶ 9, 118 P.3d at 1097. We rejected the argument and stated that "[w]hether a victim actually suffered a serious physical injury is not an essential element of aggravated assault under § 13-1204(A)(2)" because "the jury could conclude that [a defendant] committed aggravated assault if he used a dangerous instrument to inflict any physical injury to another person." *Id.* at ¶ 10 (internal quotations omitted).

¶11 Defendant acknowledges that physical injury is not required to sustain a conviction of aggravated assault, but argues that "the severity of the victim's injuries" determines

"whether an ordinary object or thing is considered a dangerous instrument." We fail to see the distinction.

¶12 Defendant further argues that there was insufficient evidence that the beer bottle was a "dangerous instrument." When an object is not inherently dangerous as a matter of law, the jury determines whether the item became a deadly weapon or a dangerous instrument based on how a defendant used the item. See *State v. Schaffer*, 202 Ariz. 592, 595, ¶ 9, 48 P.3d 1202, 1205 (App. 2002); *State v. Caldera*, 141 Ariz. 634, 637, 688 P.2d 642, 645 (1984).

¶13 Here, there was sufficient evidence for the jury to find that the beer bottle was a "dangerous instrument." First, two officers testified that they would draw their weapon if a suspect came at them with a glass beer bottle.⁶ Moreover, another witness testified the bottle was used "like a bat." See *People v. Cordero*, 206 P.2d 665, 668 (Cal. Dist. Ct. App. 1949) (stating "a beer bottle, which, used as club or a missile, constitutes a deadly weapon"); *Bald Eagle v. State*, 355 P.2d 1015, 1017 (Okla. Crim. App. 1960) (holding that there was

⁶ Defendant argues that the beer bottle was not a dangerous instrument because the bottle was intact when it hit H.M. The jury had to determine whether the object was used in a manner that constitutes a dangerous weapon. Although there was some testimony from the officers that related to the dangers of a broken beer bottle, the fact that the bottle did not shatter until impact does not lessen the dangerous manner in which the bottle was used.

sufficient evidence that a beer bottle became a dangerous instrument when the bottle was used to hit and beat a woman on the head). Consequently, there was sufficient evidence for the jury to find that the way Defendant used the glass bottle made it a "dangerous instrument." See *State v. Pamilton*, 979 So.2d 648, 654 (La. Ct. App. 2008) (holding that there was sufficient evidence of aggravated assault with a deadly weapon where a victim was hit with a glass liquor bottle).

B. Aggravated Assault Causing Temporary But Substantial Disfigurement or Loss/Impairment of Any Body Organ/Part

¶14 Defendant also challenges the denial of her Rule 20 motion for aggravated assault causing temporary but substantial disfigurement, or loss/impairment of any body organ or part. She argues that there was insufficient evidence to demonstrate that H.M.'s scar, which was covered by his hair at the time of trial, met the substantial disfigurement element of A.R.S. § 13-1204(A)(3) (2010). She cites to *State v. Garcia* for the proposition that the disfigurement must be visible. 138 Ariz. 211, 673 P.2d 955 (App. 1983). We disagree.

¶15 In *Garcia*, the defendants were convicted of kidnapping, sexual assault, aggravated robbery and aggravated assault. 138 Ariz. at 213, 673 P.2d at 957. The two defendants had sexually assaulted the victim, while hitting and kicking her. *Id.* The appellate court ruled that because mental or

emotional health is not synonymous with serious physical injury, the conviction for aggravated assault could not stand. *Id.* at 214, 673 P.2d at 958. The court also held that the fact that the victim's hymenal membrane was broken during the assault did not constitute a serious and permanent disfigurement because "the injury [did] not impair the visible appearance of the victim." *Id.* The appellate court, however, found that the evidence was sufficient for assault and ordered the conviction for aggravated assault reduced. *Id.*

¶16 *Garcia* is not analogous. Here, H.M.'s head was cut, he was taken to the hospital, and the wound was closed with two staples. The laceration healed and left an inch-long scar. A scar is more than a temporary disfigurement, it is evidence of a "serious and permanent disfigurement." See *State v. Pena*, 209 Ariz. 503, 505-06, ¶¶ 8-9, 104 P.3d 873, 875-76 (App. 2005). Although H.M. could, at the time of trial, hide the scar with his hair, that does not change the permanent nature of the scar. See *People v. Newton*, 287 N.E.2d 485, 486 (Ill. App. Ct. 1972) (holding that the jury could find that a small scar hidden by hair was a permanent disfigurement). As a result, there was sufficient evidence for the jury to find that H.M. had a temporary but substantial disfigurement.

¶17 Defendant also argues that there was insufficient evidence that H.M.'s headaches and numbness meet the alternative injury element of a temporary but substantial loss or impairment because the testimony was not substantiated by any medical testimony or records. See A.R.S. § 13-1204(A)(3).

¶18 The jury heard the testimony, and testimony from the victim and witnesses can be sufficient to show injury where their opinions are rationally based on their perception. *State v. Tiscareno*, 190 Ariz. 542, 544, 950 P.2d 1163, 1165 (App. 1997). Because there was relevant and admissible testimony about H.M.'s injuries, it was the province of the jury to determine whether H.M. had a substantial impairment.

¶19 Defendant also argues that the evidence was insufficient to establish that H.M. was substantially impaired because he was still able to work and the pain in his left temple could not be attributed to the laceration on the upper right portion of his forehead. It is for the jury, however, to determine "the nature and degree of the impairment." *State v. Martinez*, 220 Ariz. 56, 58-59, ¶ 9, 202 P.3d 521, 523-24 (App. 2008). Because the State presented sufficient evidence to have the jury determine whether Defendant committed the acts charged, the trial court did not err when it denied her Rule 20 motion.

CONCLUSION

¶20 Based on the foregoing, we affirm Defendant's convictions.

/s/ _____
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/ _____
LAWRENCE F. WINTHROP, Judge

/s/ _____
MARGARET H. DOWNIE, Judge