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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 03/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0908
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
)
ROBERT MARSHALL EGGERS,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-171634-001 SE

The Honorable Samuel A. Thumma, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals Section/Capital Litigation Section
Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

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

J O H N S E N, Judge

¶1 Robert Eggers appeals his conviction of aggravated assault and the resulting sentence. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Witnesses testified Eggers approached the victim on a sidewalk and punched him in the face.¹ The victim fell to the ground, but Eggers continued to punch and kick him. Among other injuries, the victim suffered a fractured jaw - his right mandible.

¶3 Eggers was charged with aggravated assault, a Class 4 felony. After a four-day trial, the jury found Eggers guilty. The court suspended sentence and placed Eggers on probation for four years.

¶4 Eggers timely appealed. 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), 13-4031 and -4033 (2012).²

DISCUSSION

¶5 Aggravated assault as charged in the complaint is "assault by any means of force that causes . . . a fracture of

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Eggers. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

² Absent material revisions after the date of the offense, we cite a statute's current Westlaw version.

any body part." See A.R.S. § 13-1204(A)(3) (2012). Eggers argues the superior court erred by denying his motion for judgment of acquittal because there was insufficient evidence that he caused the victim's jaw fracture. He argues the superior court should have reduced the charge to simple assault. See A.R.S. § 13-1203 (2012).

¶16 Under Arizona Rule of Criminal Procedure 20, the defendant may move for a judgment of acquittal before the verdict if there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). We review the superior court's denial of a Rule 20 motion for abuse of discretion and will reverse only when "there is a complete absence of substantial evidence to support the charges." *State v. Carlos*, 199 Ariz. 273, 276, ¶ 7, 17 P.3d 118, 121 (App. 2001). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980)). "If reasonable minds could differ on the inferences to be drawn from the evidence, the motion for judgment of acquittal must be denied." *State v. Sullivan*, 205 Ariz. 285, 287, ¶ 6, 69 P.3d 1006, 1008 (App. 2003). Both direct and circumstantial evidence may support a conviction, and

"[a] conviction may be sustained on circumstantial evidence alone." *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981).

¶7 Eggers does not dispute that he assaulted the victim or that the victim's jaw was fractured. He argues only that there is insufficient evidence that what he did caused the fracture. See A.R.S. § 13-203(A) (2012) ("Conduct is the cause of a result when . . . [b]ut for the conduct the result in question would not have occurred [and] [t]he relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.").

¶8 Contrary to Eggers's contention, the record contains substantial evidence from which a jury could infer beyond a reasonable doubt that Eggers caused the fracture. The victim testified Eggers punched him in the face. Although the victim remembered nothing after that first punch, other witnesses testified that after the victim fell to the ground, Eggers punched him in the face multiple times and kicked him in the head. A police officer who responded testified the victim was lying on the ground with multiple lacerations on his face and ear, bleeding from his face, nose and ear. The officer also testified that the right side of the victim's face, the same side with the fractured jaw, was bleeding profusely.

¶9 A radiologist testified that in a CT scan taken the day of the assault, the fracture appeared to have "just happened." He further testified that although the fracture could have been up to a week old, it would have been painful. The fracture could have resulted from a punch anywhere on the jaw, including the other side of the victim's face.

¶10 Eggers argues the State failed to call the treating physician or an emergency room doctor to testify about causation. But other testimony that Eggers punched and kicked the victim in the head and the radiologist's testimony that the fracture was recent and could have been caused by force applied anywhere on the mandible constituted sufficient evidence from which a reasonable jury could find causation beyond a reasonable doubt. See *Mathers*, 165 Ariz. at 67, 796 P.2d at 869. Eggers also notes that medical personnel did not wire shut the victim's jaw until two weeks after the incident, suggesting the fracture could have been caused by some event after the fact. But the record contains no evidence of any other incident involving the victim that might have caused the fracture.

CONCLUSION

¶11 For the foregoing reasons, we affirm the conviction and the resulting imposition of probation.

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
DONN KESSLER, Judge

/s/
ANDREW W. GOULD, Judge