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



DIVISION ONE
FILED: 05/22/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0071
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RICHARD DELBERT COX,) Rule 111, Rules of
) the Arizona Supreme
Appellant.) Court)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-123144-001DT

The Honorable Robert L. Gottsfield, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
And Angela Corinne Kebric, Assistant Attorney General
Attorneys for Appellee

Janelle A. McEachern Chandler
Attorney for Appellant

O R O Z C O, Judge

¶1 Appellant Richard Delbert Cox (Defendant) appeals his conviction and sentence for aggravated assault. He argues: (1)

the trial court erred in denying his motion for judgment of acquittal, pursuant to Rule 20 of the Arizona Rules of Criminal Procedure; and (2) the State failed to present sufficient evidence to support the jury's verdict. For the following reasons, we affirm Defendant's conviction and sentence.

PROCEDURAL AND FACTUAL HISTORY

¶2 On April 9, 2010, Defendant was at the residence of David L. and Maureen E. because Maureen asked Defendant for help after she had an argument with David. While at the residence, Defendant was involved in an altercation with David, during which he stabbed David with a knife.

¶3 Defendant was charged with one count of aggravated assault, a class 3 dangerous felony. At trial, Defendant admitted to stabbing David but asserted a justification of self-defense. During the State's case-in-chief, David testified that Defendant stabbed him without provocation while the two men were leaving the residence in the course of an argument. The other persons present during the incident also testified, although none of them witnessed the actual stabbing or the events immediately preceding. At the conclusion of the State's case, Defendant made a Rule 20 motion for judgment of acquittal, which the trial court denied.

¶4 Defendant then testified in his own defense. According to Defendant, David was upset and angry while Defendant was at

the residence. When Defendant attempted to leave, David confronted him in an aggressive manner and began yelling and pointing a screwdriver in Defendant's face. As Defendant was leaving, he was struck from behind, causing him to fall and "see[] stars." Believing David had hit him, Defendant continued to communicate his intent to leave and grabbed a knife that was laying on the ground in order to "deter" David.

¶15 According to Defendant, he was then attacked by David and David's Rottweiler. Defendant stood up with the knife and told David to "get back," but David began to "thrash[]" around with his arm" in an apparent attempt to "hit [Defendant] in the head." At that point, Defendant testified that he was thinking: "I'm going to either have to pull [the knife] out and kill him or get out of here." Defendant "spun and took about three steps," and then David "ran into [Defendant] and [David] didn't even know the knife was there." Defendant heard David say, "I can't believe you stabbed me," but Defendant testified that he was unaware David had been injured and he left the residence.

¶16 A jury found Defendant guilty. The trial court sentenced him to the presumptive term of 7.5 years' imprisonment, with 261 days of pre-sentence incarceration credit. Defendant filed a timely notice of appeal. 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 (2010) and 13-4033.A.1 (2010).

DISCUSSION

¶7 Defendant makes two arguments on appeal. He first contends the trial court erred in denying his Rule 20 motion for judgment of acquittal. He next argues the State failed to present sufficient evidence to support the jury's guilty verdict. We address each argument in turn.

Judgment of Acquittal

¶8 We review de novo the trial court's ruling on a motion for judgment of acquittal and also independently review the court's constitutional and legal conclusions. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011) (*citing State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993)); *State v. Gay*, 214 Ariz. 214, 217, ¶ 4, 150 P.3d 787, 790 (App. 2007). Judgment of acquittal is appropriate when there is no substantial evidence to support each element of the offense beyond a reasonable doubt. Ariz. R. Crim. P. 20.a; *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). Substantial evidence is "such proof as a reasonable mind would employ to support the conclusion reached," and if reasonable persons could differ as to whether the evidence establishes a fact in issue, then the evidence is substantial. *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981) (citation omitted). In determining the

sufficiency of the evidence to withstand a Rule 20 motion, we view the evidence in a light most favorable to sustaining the verdict. *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984).

¶19 Defendant contends his Rule 20 motion should have been granted because he asserted a justification of self-defense and the State failed to prove beyond a reasonable doubt that he was not justified in using deadly physical force against the victim. Defendant correctly argues that when the jury is presented with the "slightest evidence" that the defendant acted in self-defense, the State bears the burden of proving beyond a reasonable doubt that the defendant did not act with justification. See A.R.S. § 13-205.A (2010); *State v. King*, 225 Ariz. 87, 90, ¶ 14, 235 P.3d 240, 243 (2010) (*citing State v. Lujan*, 136 Ariz. 102, 104, 664, P.2d 646, 648 (1983)). Assuming that Defendant elicited sufficient evidence during the State's case in chief for a juror to reasonably infer that he acted in self-defense, David's testimony that Defendant's attack was unprovoked created a jury question as to whether Defendant reasonably acted in self-defense. See *State v. Johnson*, 108 Ariz. 42, 43, 492 P.2d 703, 704 (1972). David's testimony, therefore, constituted "substantial evidence" sufficient to allow the State to overcome Defendant's Rule 20 motion, and the trial court did

not err in denying his motion on this basis. See *Tison*, 129 Ariz. at 553, 633 P.2d at 362.

Sufficiency of the Evidence

¶10 We review claims challenging the sufficiency of the evidence de novo. *Bible*, 175 Ariz. at 595, 858 P.2d at 1198. However, “[t]o 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, 746 P.2d 484, 486 (1987). Accordingly, we will reverse only when there was a complete lack of probative evidence supporting the jury’s verdict. *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). In addition, we will not re-weigh the evidence and we view the evidence in the light most favorable to sustaining the verdict, resolving all conflicts against the defendant. *Id.*; *Mincey*, 141 Ariz. at 432, 687 P.2d at 1187.

¶11 Defendant argues the State failed to present sufficient evidence to meet its burden of proving beyond a reasonable doubt that Defendant was not justified in using deadly physical force against David. See A.R.S. § 13-205.A; *King*, 225 Ariz. at 90, ¶ 14, 235 P.3d at 243.

¶12 Although Defendant testified that he acted only in self-defense and that he used reasonable force, Defendant’s version of the events was contradicted by David’s testimony.

According to David, as he and Defendant were leaving the residence during their argument, Defendant turned around, produced a knife and stabbed David. David testified that the attack was unprovoked, stating that he "never even saw the blade coming" and that he "didn't even have time to react." David also testified that he was neither holding a weapon nor had access to one and that he did not verbally or physically threaten Defendant before Defendant stabbed him.

¶13 It is the duty of the jury to weigh the evidence and determine the credibility of witnesses. *State v. Brown*, 125 Ariz. 160, 162, 608 P.2d 299, 301 (1980). Furthermore, when a defendant claims self-defense, the jury must also determine whether the defendant was justified in using force and whether the use of force was reasonable under the circumstances. See *Johnson*, 108 Ariz. at 43, 492 P.2d at 704; *Everett v. State*, 88 Ariz. 293, 299, 356 P.2d 394, 398 (1960).

¶14 Accordingly, it was the role of the jury in this case to resolve the conflict in evidence as to whether Defendant justifiably acted in self-defense. The jury was free to reject Defendant's testimony and draw its own conclusions based on other evidence, including the testimony of the victim. See *State v. Williams*, 111 Ariz. 175, 177-78, 526 P.2d 714, 716-17 (1974). Based on David's testimony, a rational juror could find that the attack was unprovoked and that Defendant was the aggressor. We

thus find the State presented sufficient evidence to support the verdict and allow the jury to reject Defendant's justification defense.

CONCLUSION

¶15 For the foregoing reasons, we affirm Defendant's conviction and sentence.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

JON W. THOMPSON, Judge

/S/

DIANE M. JOHNSEN, Judge