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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. MARION L. HAMPTON, Appellant.	)	2 CA-CR 2011-0153 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200600823

Honorable Boyd T. Johnson, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Alan L. Amann
Tucson
Attorneys for Appellee

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E S P I N O S A, Judge.

¶1 Appellant Marion Hampton appeals from his conviction after a jury trial of simple assault, a class two misdemeanor and a lesser-included offense of the charged

offense of aggravated assault, contending there was insufficient evidence to support the guilty verdict. We affirm for the reasons stated.

¶2 "We review the sufficiency of the evidence by determining whether substantial evidence supports the jury's finding, 'viewing the facts in the light most favorable to sustaining the jury verdict.'" *State v. Kuhs*, 223 Ariz. 376, ¶ 24, 224 P.3d 192, 198 (2010), *quoting State v. Roseberry*, 210 Ariz. 360, ¶ 45, 111 P.3d 402, 410-11 (2005). Evidence is substantial if it is such that reasonable jurors would find it sufficient to support their conclusion that the elements of the offense have been proved beyond a reasonable doubt. *Id*. We will not set aside a conviction unless we conclude 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).

¶3 In order to find Hampton guilty of assault, the jury was required to find beyond a reasonable doubt he had placed the victim "in reasonable apprehension of imminent physical injury." A.R.S. § 13-1203(A)(2). The evidence presented at trial established Hampton is disabled and received certain services through Pinal/Gila Long Term Care. L., a case manager for the organization, went to his home for a scheduled visit, in accordance with agency policy requiring case managers to visit clients quarterly and make sure they are "doing well medically" and that their needs are being met by the services the agency is providing. Having never met Hampton, L. introduced herself as the new case manager and, consistent with protocol, asked him about the services the agency was providing and "how he was doing." Hampton was seated on the sofa, his dog next to him, and several guns were laid out on the coffee table in front of him. L.

testified Hampton's responses to her questions "became disjointed" and he became "irate," and as they continued their conversation, "the situation became escalated." L. explained, "He became more and more irate and saying things like I wasn't listening to him, I didn't understand his perception, that the services weren't good enough for his military comrades and himself, and some other disjointed things . . . ."

¶4 L. testified Hampton at one point said "he didn't care about himself, he could kill himself, me and the dog at any time." L. stated, "[T]hose comments scared me. I thought that there was some validity when he said those things," adding, "I felt that I was in danger. . . . I felt endangered for my life. I was very nervous." She explained that his gestures and the fact that he had leaned towards the weapons caused her even greater concern. He was "screaming and yelling and ranting." L. waited for the safest moment to leave the residence and did so when Hampton readjusted himself on the sofa because she felt she had enough time to leave before he could "pick up a gun and shoot [her]." She admitted on cross-examination that she did not see Hampton actually pick up a gun, but added, she "wasn't going to wait around for him to pick up the gun," and remembered "feeling" that he had picked it up and "very much thought there was a possibility" she was in danger.

¶5 L. went down the street and around a corner. As per protocol, she immediately called the director of case management, whose responsibility it was to make sure others who might be going to the home as care providers would be alerted to the possibly dangerous situation. A conference call was then arranged so that she could report the matter to the 9-1-1 dispatcher. When L. was asked why she had moved out of

sight, she responded, "Because I was afraid I was going to be shot. I wanted to get out of there as quickly as I could; and I also wanted to make sure that no one else was going in there."

¶6 In challenging the sufficiency of the evidence, Hampton relies primarily on his own testimony and portions of L.'s testimony elicited during cross-examination. He argues that L.'s claim that she "had a reasonable apprehension of imminent physical injury," was "dispelled" by his own testimony. He argues regardless of how L. may have felt, there was insufficient evidence he had intended to place her in reasonable apprehension of imminent physical harm, focusing on his testimony that he was simply cleaning the guns, which he insists was corroborated by the way they were lined up on the coffee table, the direction they were facing, the fact that one had already been disassembled, and his version of their conversation. He makes much of the fact that even L. testified he never picked up a gun, the fact that the jury did not find him guilty of aggravated assault, and a sheriff's deputy's observation that Hampton appeared calm when the officer questioned him shortly after the incident and that L. was calm as well. Again relying primarily on his own testimony, Hampton contends he never threatened to shoot anyone or place L. in reasonable apprehension of imminent physical harm. And, he asserts his only intent was to compel L. to listen to his complaints about services he had not been told were available to him and his "suggestion about how to improve her company's long-term care services."

¶7 To a large degree, Hampton is asking this court to reweigh the evidence and consider it, and the inferences that may be drawn from it, in his favor. But that is not an

appellate court's function. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). As previously noted, when a defendant challenges a conviction on appeal and claims there was insufficient evidence to support a jury's verdict, we view the evidence and the inferences reasonably permitted by that evidence, in the light most favorable to sustaining the conviction, not reversing it. *See Kuhs*, 223 Ariz. 376, ¶ 24, 224 P.3d at 198. It was for the jury, not this court, to weigh the evidence and assess the credibility of witnesses who testified at trial. *See Guerra*, 161 Ariz. at 293, 778 P.2d at 1189. And when, as here, there are conflicts in the evidence, the jury, as the trier of fact, must resolve them. *State v. Manzenedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005).

¶8 With respect to the element of intent, unless a person admits he intended to place another in reasonable apprehension of imminent physical harm, that intent "must necessarily be ascertained by inference from all relevant surrounding circumstances." *In re William G.*, 192 Ariz. 208, 213, 963 P.2d 287, 292 (App. 1997); *see also State v. Salman*, 182 Ariz. 359, 363, 897 P.2d 661, 665 (App. 1994) (defendant's intent may be inferred from circumstances). Proof of a defendant's intent or the victim's apprehension of imminent physical harm, like all mental states, "almost invariably" will be "circumstantial in nature." *State v. Lester*, 11 Ariz. App. 408, 411, 464 P.2d 995, 998 (1970). It appears the jury believed L.'s version of what had taken place, and it could infer from her testimony about Hampton's threatening words and his body language, including his proximity to and movement towards the guns, that he had intended to threaten her, intimidate her, and cause her to fear for her physical safety. From the evidence presented, the jury also could find L. reasonably had felt threatened and in

imminent danger. Hampton's assertion in his reply brief that he had done nothing to "place a reasonable person in fear of harm," disregards the evidence, including L.'s testimony about the effect of his conduct on her. And whether her subjective fear and apprehension of imminent physical harm was reasonable under the circumstances was for the jury to determine. Although direct testimony by a victim that he or she had felt fear or apprehension of imminent harm is not required, *State v. Valdez*, 160 Ariz. 9, 11, 770 P.2d 313, 315 (1989), *overruled on other grounds by Krone v. Hotham*, 181 Ariz. 364, 890 P.2d 1149 (1995), such testimony is evidence that supports these elements of the statute, *see State v. Sands*, 145 Ariz. 269, 275, 700 P.2d 1369, 1375 (App. 1985).

¶9 Because ample evidence supports the verdict, Hampton's conviction is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge