

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

FILED BY CLERK

DEC 11 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0123
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL RAY WHITE,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20101747001

Honorable Terry L. Chandler, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
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K E L L Y, Judge.

¶1 Appellant Michael White was convicted after a jury trial of third-degree burglary and fraudulent scheme and artifice and sentenced to concurrent, mitigated prison

terms, the longer of which is three years.¹ He argues on appeal that insufficient evidence supported his conviction of fraudulent scheme and artifice.

¶2 We view the evidence in the light most favorable to upholding the jury’s verdict. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). The evidence presented at trial established that White pawned six guns at a pawn shop where he was employed. White filled out the pawn tickets and established the loan amounts on those tickets, which far exceeded the value of the guns. He was fired and did not repay the loans, and his guns therefore were forfeited to the shop. The pawn store owner was not aware White had pawned the guns until after he had been fired.

¶3 This court reviews claims of insufficient evidence “only to determine whether substantial evidence supports the jury’s verdict.” *State v. Cox*, 217 Ariz. 353, ¶ 22, 174 P.3d 265, 269 (2007). “Substantial evidence has been described as ‘more than a mere scintilla’ of evidence; but it nonetheless must be evidence that ‘reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.’” *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 913-14 (2005), quoting *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997). Substantial evidence “may be either circumstantial or direct.” *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003). We will reverse a conviction “only if ‘there is a complete absence of probative facts to support [the jury’s] conclusion.’” *State v. Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d

¹White was acquitted of an additional count of third-degree burglary as well as seven counts of trafficking in stolen property.

391, 394 (App. 2000), quoting *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

¶4 A person commits a fraudulent scheme if he or she, “pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises, or material omissions.” A.R.S. § 13-2310(A). “Reliance on the part of any person,” however, “shall not be a necessary element of the offense.”² § 13-2310(B). White argues that he did not obtain a benefit—the loan—“by means of” a false pretense. He reasons, relying on *State v. Rios*, 792 P.2d 1065 (Kan. 1990), that because he did not use the falsified pawn tickets “to convince [the pawn shop owner] or any other employe[e] . . . to give him the money,” his pawning of the guns at an inflated value was instead “merely a tool to cover up” his theft of money from the pawn shop.

¶5 In *Rios*, the defendants, department store employees, had created false refund vouchers which they subsequently exchanged for cash and, as a result, were convicted of, inter alia, “theft by deception.” 792 P.2d at 1066-69. The Kansas Supreme Court determined that, in order to convict the defendants of theft by deception, “the State

²We recognize that, in *State v. Johnson*, our supreme court stated in relation to a charge of fraud that “the false pretense must actually cause the victim to rely and, as a result, give property or money to the defendant.” 179 Ariz. 375, 378, 880 P.2d 132, 135 (1994). But, as this court observed in *State v. Proctor*, that statement was dicta and the *Johnson* court did not intend “to hold, in direct contravention of the language of [§ 13-2310(B)] and the basic rules of statutory construction, that reliance is required to prove a fraudulent scheme and artifice.” 196 Ariz. 557, 562, 2 P.3d 647, 652 (App. 1998) (citations omitted).

would have to prove that the defendants obtained control over [the store's] money by means of a false statement or representation, that the false statement or representation deceived [the store], and that [the store] relied in whole or in part upon the false statement in giving up control of the money to the defendants.” *Id.* at 1072. Thus, because the employees were “the highest ranking . . . employee[s] in [their] respective store[s]” with access to the safes, cash rooms, and vouchers, the vouchers were used only “to cover up the thefts, not to cause the corporation to part with the monies represented by the vouchers.” *Id.*

¶6 *Rios* plainly is distinguishable; unlike Arizona’s § 13-2310, the Kansas fraud statute required reliance—that is, a successful deception. The fact the pawn shop owner here was unaware of White’s deception is not material to his guilt or innocence of fraudulent scheme and artifice. And the evidence plainly supports the jury’s conclusion that White used the pawn tickets containing falsified values to engineer improper loans by which he obtained cash—which clearly constitutes “obtain[ing] any benefit by means of false or fraudulent . . . representations.” § 13-2310(A). Nor does the evidence compel a conclusion that White had used the tickets to conceal a theft, rather than as a means of committing it. White acknowledged during his testimony that he had pawned the guns using inflated values, but asserted he had obtained permission from the store owner to do so. And he stated another employee, who had entered the loans into the computer at White’s request based on documents White had completed, had given him the money for those loans. The jury was free to accept or reject the trial testimony, including White’s, in

whole or in part. *See State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974) (“No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury.”).

¶7 For the reasons stated, White’s conviction for fraudulent scheme and artifice is affirmed.

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

CONCURRING:

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

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