IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SONNY JEAN,
Appellant.

No. 2 CA-CR 2015-0184
Filed May 16, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20142148001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Jonathan Bass, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Michael J. Miller and David J. Euchner, Assistant Public Defenders, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

E C K E R S T R O M, Chief Judge:

¶1 Following a jury trial, appellant Sonny Jean was convicted of two counts of aggravated assault and sentenced as a category-three repetitive offender to presumptive, concurrent prison terms of 11.25 years. On appeal, he challenges the sufficiency of the evidence supporting the convictions and the legality of using an out-of-state conviction to enhance his sentence. We affirm for the reasons that follow.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the convictions. *State v. Kuhs*, 223 Ariz. 376, n.2, 224 P.3d 192, 195 n.2 (2010). We also disregard acquittals on other charges when analyzing the sufficiency of evidence supporting the jury's verdicts of guilt. *State v. Williams*, 233 Ariz. 271, ¶ 10, 311 P.3d 1084, 1087 (App. 2013).

¶3 Under these standards, the evidence shows that on May 8, 2014, Jean shot two people, V.G. and E.V., outside a residence before running them over with a car as he "peel[ed] out" and fled the scene. V.G. died during the incident, but E.V. survived and testified at trial. An indictment charged Jean with five felony offenses related to the altercation. The jury acquitted him of three offenses but found him guilty of two crimes against E.V.: aggravated assault causing serious physical injury and aggravated assault with a dangerous instrument (a motor vehicle).

¶4 The trial court subsequently found that Jean had two historical prior felony convictions: one from Arizona and one from Florida. Over Jean's objection, the court determined that because he had been convicted of three prior felony drug offenses in Florida, the third offense there qualified as a historical prior felony conviction under Arizona law. The court then sentenced him as noted above, and this appeal followed the entry of judgment and sentence.

Sufficiency of the Evidence

¶5 Emphasizing his acquittals on the related charges, Jean contends the jury "resolved the disputed evidence in [his] favor" and accepted his account "that he was trying to escape from a dangerous situation and was not aware of [the victims'] locations." From this premise, Jean claims the evidence that he assaulted and injured E.V. with his car was insufficient because the state offered proof "of the *actus reus* but not of the *mens rea*." We reject this argument.

¶6 A jury is entitled to disregard any portion of a defendant's testimony, *see State v. Izzo*, 94 Ariz. 226, 230, 383 P.2d 116, 118 (1963), and a jury's acquittal does not necessarily signify acceptance of a defense. Such a verdict could be the result of either lenity or compromise. *Williams*, 233 Ariz. 271, ¶ 10, 311 P.3d at 1087. We therefore do not draw any inferences from acquittals on other charges. *Id.*

¶7 We review the sufficiency of evidence de novo, *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011), and will uphold a conviction so long as each element of the offense is supported by substantial evidence. *See Kuhs*, 223 Ariz. 376, ¶ 24, 224 P.3d at 198. "'Substantial evidence is proof that reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Id.*, *quoting State v. Bearup*, 221 Ariz. 163, ¶ 16, 211 P.3d 684, 688 (2009) (alteration in *Kuhs*).

¶8 With respect to both aggravated assault charges here, the state was required to prove, at minimum, that Jean acted recklessly, meaning he consciously disregarded a substantial and unjustifiable risk of injuring another person. *See* A.R.S.

§ 13-1203(A)(1); 2012 Ariz. Sess. Laws, ch. 190, § 1 (A.R.S. § 13-105(10)(c)); 2011 Ariz. Sess. Laws, ch. 90, § 6 (A.R.S. § 13-1204(A)(1), (2)). Jean's testimony implied that he knew V.G. and E.V. had fallen to the ground near his car after being shot. He further testified that he "tried to [back out] with caution . . . because [he] kn[e]w these guys were close to the car." Yet a witness described the car's movement as "peeling out."

¶9 As the trial court correctly suggested at sentencing, the jury could have concluded that Jean assaulted E.V. by recklessly driving over the victim when he was lying on the ground and no longer posed any danger. To the extent reasonable people could fairly disagree about whether the evidence established this culpable mental state, the evidence was substantial and the verdicts must be upheld. *See State v. Rodriguez*, 192 Ariz. 58, ¶ 10, 961 P.2d 1006, 1008 (1998). "We do not reweigh the evidence on appeal." *Williams*, 233 Ariz. 271, ¶ 8, 311 P.3d at 1087.

Sentences

¶10 Jean next contends his Florida conviction did not qualify as a "historical prior felony conviction" under the former A.R.S. §§ 13-703 and 13-105 in effect in 2014 and applicable to this case. *See* 2013 Ariz. Sess. Laws, ch. 55, § 3; 2012 Ariz. Sess. Laws, ch. 190, § 1. The interpretation of sentencing statutes is a question of law we review de novo. *State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001). We interpret a statute to give effect to the enacting legislature's intent, *Lewis v. Debord*, 238 Ariz. 28, ¶ 8, 356 P.3d 314, 316 (2015), which we determine by first examining the text of the law. *Members of Bd. of Educ. of Pearce Union High Sch. Dist. v. Leslie*, 112 Ariz. 463, 465, 543 P.2d 775, 777 (1975). When statutory language is clear and unambiguous, we apply that language without resorting to other methods of construction. *State v. Christian*, 205 Ariz. 64, ¶ 6, 66 P.3d 1241, 1243 (2003).

¶11 Section 13-703(C) provided for an enhanced "category three" sentencing range for anyone who "has been tried as an adult and stands convicted of a felony and has two or more historical prior felony convictions." 2013 Ariz. Sess. Laws, ch. 55, § 3. For purposes of this subsection, § 13-703(M) specified that, for any

offense other than possessing weapons, "a person who has been convicted *in any court outside the jurisdiction of this state* of an offense that was punishable by that jurisdiction as a felony is subject to this section." 2013 Ariz. Sess. Laws, ch. 55, § 3 (emphasis added). Section 13-105(22), in turn, listed various definitions of convictions that qualified as "historical prior felony conviction[s]." 2012 Ariz. Sess. Laws, ch. 190, § 1. Under § 13-105(22)(d), the phrase included "[*a*]*ny felony conviction* that is a third or more prior felony conviction." 2012 Ariz. Sess. Laws, ch. 190, § 1 (emphasis added).

¶12 We agree with the state that the plain language of these statutes resolves the issue. Section 1-213, A.R.S., informs us that statutory language typically carries its common meaning. In its natural and ordinary sense, the word *any* is "'broadly inclusive,'" *State v. Barr*, 183 Ariz. 434, 438, 904 P.2d 1258, 1262 (App. 1995), *quoting City of Phoenix v. Tanner*, 63 Ariz. 278, 280, 161 P.2d 923, 924 (1945), and indicates a "lack of restrictions or limitations on the term modified." *United States ex rel. Barajas v. United States*, 258 F.3d 1004, 1011 (9th Cir. 2001). We must read a statute "according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation." *United States v. Temple*, 105 U.S. 97, 99 (1881); *see* A.R.S. § 13-104 (rejecting strict construction and requiring "fair meaning of . . . terms" in title 13). Thus, when our legislature referred to *any* third felony conviction in § 13-105(22)(d), that language included third felony convictions from *any* court of another state under § 13-703(M).

¶13 Jean suggests a different interpretation, basing his argument mainly on legislative materials involving a 2015 amendment. That year, the legislature added a sentence to § 13-105(22)(d). 2015 Ariz. Sess. Laws, ch. 74, § 1. The provision continued to define a historical prior felony conviction as "[a]ny felony conviction that is a third or more prior felony conviction," but it also specified: "For the purposes of this subdivision 'prior felony conviction' includes any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony." *Id.* In Jean's view, this development signified a legislative intent to

include foreign convictions that previously had been excluded from § 13-105(22)(d).

¶14 As we observed in *Dennis Development Co. v. Department of Revenue*, legislative history and the canons of statutory construction "are, like Joseph's coat, varied and multicolored, but really only come into operation where an initial determination is made that an ambiguity exists as to the legislative intent in enacting a particular statute." 122 Ariz. 465, 469, 595 P.2d 1010, 1013 (App. 1979); *accord State v. Riggs*, 189 Ariz. 327, 333 & n.4, 942 P.2d 1159, 1165 & n.4 (1997). Because we have found the former §§ 13-703(C), (M), and 13-105(22)(d) to be unambiguous, the actions of a subsequent legislature are irrelevant. Clear statutory text is determinative on the question of meaning, *State v. Hansen*, 215 Ariz. 287, ¶ 7, 160 P.3d 166, 168 (2007), and precludes a court from considering secondary rules of construction. *Janson ex rel. Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991); *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 12, 97 P.3d 876, 880 (App. 2004). Furthermore, even if we assume arguendo these sentencing statutes were ambiguous, we would interpret the 2015 amendment as clarifying rather than modifying the law. *See Staples v. Concord Equities, L.L.C.*, 221 Ariz. 27, ¶¶ 22-23, 209 P.3d 163, 167-68 (App. 2009). After simplifying the use of out-of-state historical prior felony convictions in 2012, *see State v. Moran*, 232 Ariz. 528, ¶ 21, 307 P.3d 95, 102 (App. 2013), the legislature did not intend the same operative phrase ("[a]ny felony conviction") to achieve opposite results, excluding some foreign felonies while including others.

¶15 We also reject Jean's argument that the former § 13-105(22)(d) did not broadly apply to out-of-state felony convictions because "the wording . . . [wa]s different" from the former § 13-105(22)(e). *See* 2012 Ariz. Sess. Laws, ch. 190, § 1. The latter subdivision expressly referred to felony offenses "committed outside the jurisdiction of this state" and defined such offenses as historical prior felony convictions if they were "committed within the five years immediately preceding . . . the present offense." 2012 Ariz. Sess. Laws, ch. 190, § 1. In this respect, subdivision (22)(e) was similar to subdivisions (22)(b) and (c), which defined historical prior felony convictions from Arizona. *See* 2012 Ariz. Sess. Laws, ch. 190,

§ 1. Under the statutory scheme, a court had to assess the relative time of a prior conviction unless that conviction was a third or subsequent felony conviction or the nature of the offense always made it a historical prior felony conviction. *See id.* Accordingly, the different language in § 13-105(22)(d) and (e) gave no indication that the legislature intended to exclude foreign felony convictions such as Jean's third conviction from Florida.

Disposition

¶16 For the foregoing reasons, the convictions and sentences are affirmed.