IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SHAWN MICHAEL YOUNG,
Appellant.

No. 2 CA-CR 2015-0420
Filed August 16, 2016

Appeal from the Superior Court in Pima County
No. CR20134417001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Mariette S. Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

Roach Law Firm, LLC, Tucson
By Brad Roach
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 Shawn Young appeals from his multiple convictions and sentences stemming from an armed robbery. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In October 2013, M.M. was staying in a hotel room with her boyfriend, B.S., and their pit bull. She heard a knock on the door. When she looked through the peephole, she saw a woman named Elizabeth Beatty. B.S. told M.M. to let Elizabeth in.

¶3 When she opened it, two men with bandanas over their mouths entered the room and displayed a gun. The men attacked B.S. and told M.M. to sit behind the door. The intruders took B.S.'s backpack, M.M.'s purse, and the couple's dog. They shot B.S., pointed the gun at M.M., and said, "You're next, bitch," then left the hotel room. Elizabeth left with the men.

¶4 M.M. called 9-1-1, and police arrived about ten minutes later. M.M. identified one of the men as Cody Barker. She described the second man as "[w]hite or Mexican" and wearing "[a] black hoodie" and black bandana.

¶5 That same day, police officers staked out an address associated with Cody Barker. The officers saw two men and a woman approaching the house walking a pit bull. The officers knew a pit bull had been stolen during the robbery, so they decided to approach.

¶6 Officers identified the two men as Cody Barker and Young and the woman as Elizabeth Beatty. Young was wearing a

backpack that contained "a black case with the initials B and S on it" and some of B.S.'s personal documents. In Young's pockets, the officers found a blue bandana and B.S.'s driver's license.

¶7 After a jury trial, Young was convicted of two counts each of armed robbery, kidnapping, aggravated assault with a deadly weapon or dangerous instrument, aggravated robbery, and one count of first-degree burglary, all dangerous offenses. He was sentenced to concurrent prison terms, the longest of which were 10.5 years. This appeal followed.

Sufficiency of the Evidence

¶8 Young first claims the evidence was insufficient to identify him as the third person involved in the hotel room robbery. We review the sufficiency of the evidence de novo, and, in our review, we determine only whether a conviction is supported by substantial evidence. *State v. Pena*, 235 Ariz. 277, ¶ 5, 331 P.3d 412, 414 (2014). Substantial evidence is evidence that reasonable jurors could accept as sufficient to find the defendant guilty beyond a reasonable doubt. *State v. Miller*, 234 Ariz. 31, ¶ 33, 316 P.3d 1219, 1229 (2013). In determining whether evidence is sufficient, we view the facts in the light most favorable to upholding the jury's verdict. *State v. Cox*, 217 Ariz. 353, ¶ 22, 174 P.3d 265, 269 (2007).

¶9 Young claims the evidence was insufficient because no witness identified him as one of the perpetrators, he did not have a black hoodie or a black bandana when he was found, and he explained that he only had the property of the victim because Cody Barker had given it to him. However, Young was found shortly after the crime with Elizabeth Beatty and Cody Barker, both of whom were identified by M.M. He had items of B.S.'s stolen property on his person. He did not have a black bandana, but he did have a blue bandana. Although he offered an alternative explanation for his possession of B.S.'s property, the jury was not obliged to believe him. *See State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 38, 312 P.3d 123, 133 (App. 2013) ("[T]he credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury."), *quoting Cox*, 217 Ariz. 353,

¶ 27, 174 P.3d at 269. Accordingly, we conclude the trial court did not err in finding the evidence sufficient.

Jury Instruction

¶10 Young next claims the trial court erred by not, sua sponte, instructing the jury on theft. Young testified that Cody Barker had given him B.S.'s property and that he had known "th[e] stuff didn't belong to Cody and [he] shouldn't have it." Young now claims that, because he essentially admitted the elements of theft, the trial court should have given the jury an instruction on this crime.

¶11 However, when the trial court asked the parties if they wanted lesser included offense instructions, Young explicitly told the court, "I don't want lessers." The crux of Young's argument on appeal is that the jury could have found he had committed theft because he had property that he knew was stolen. But during closing argument, Young's counsel stated, "You are not going to decide whether or not [Young] shouldn't have had some stuff that was stolen" and argued that the trial was solely about what had happened in the hotel room.

¶12 If a party has invited error, the issue is waived on appeal.[1] *See State v. Logan*, 200 Ariz. 564, ¶ 9, 30 P.3d 631, 632-33 (2001). "The purpose of the [invited error] doctrine is to prevent a party from 'inject[ing] error in the record and then profit[ing] from it on appeal.'" *Id.* ¶ 11, *quoting State v. Tassler*, 159 Ariz. 183, 185, 765 P.2d 1007, 1009 (App. 1988) (first alteration added, second and third alterations in *Logan*). Young expressly declined any instruction on lesser included offenses such as theft. *See State v. Musgrove*, 223 Ariz. 164, ¶ 9, 221 P.3d 43, 46 (App. 2009) (defendant who "expressly informed the trial court that he did not want a lesser included offense instruction" invited error). He also argued the jury could

[1]Young suggests that, because he did not request a jury instruction on theft, we should review this issue for fundamental error. But, as we determine below, Young has waived review of this issue under that standard of review by expressly declining the instruction.

not find him guilty based on anything but what had happened at the hotel, demonstrating that the decision not to seek a lesser included-offense instruction was purposeful and strategic. We conclude Young invited any error, and the issue is therefore waived. *See Logan*, 200 Ariz. 564, ¶ 9, 30 P.3d at 632-33.

Disposition

¶13 For the foregoing reasons, we affirm Young's convictions and sentences.