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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THE STATE OF ARIZONA, Appellee, v. FRED AARON ETHRIDGE, Appellant.	2 CA-CR 2010-0187 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063404

Honorable Terry L. Chandler, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
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Attorneys for Appellee

Barton & Storts, P.C.
By Brick P. Storts, III — Tucson
Attorneys for Appellant

K E L L Y, Judge.

¶1 Following a jury trial, Fred Ethridge was convicted of one count of sale of a dangerous drug. The trial court sentenced him to a substantially mitigated 10.5-year

prison term. Ethridge appeals on the ground there was insufficient evidence supporting the conviction. We disagree and therefore affirm.

Background

¶2 We review the facts in the light most favorable to sustaining the jury's verdict and "resolve all inferences against [the] defendant." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). In July 2006, Paul Cardwell, a Tucson police officer working in an undercover capacity, called Ethridge and "asked for a quarter." Cardwell testified that in the drug community "a quarter" is "slang for a quarter ounce of methamphetamine." Cardwell then went to Ethridge's residence. Ethridge used Cardwell's cellular telephone to make a call and "requested a quarter" from the party on the other end. Following the call, Ethridge told Cardwell "it would take about half an hour."

¶3 Cardwell left and returned approximately one-half hour later. When he went to Ethridge's door, Cardwell was informed that Ethridge was not at home. Cardwell returned to his vehicle to wait, and then saw Ethridge return to his residence followed by a vehicle occupied by Mark Shannon and a female passenger. Ethridge introduced Cardwell to Shannon and suggested the group go "to get [the] methamphetamine." Concerned for his safety, Cardwell persuaded the men that only one of them should accompany him, so only Shannon went with Cardwell.

¶4 Cardwell testified he had not negotiated the sale of drugs with Shannon because the terms "had been established with Mr. Ethridge." Shannon directed Cardwell to a trailer park. After Cardwell gave Shannon $225, Shannon got out of the vehicle.

When he returned, Shannon instructed Cardwell to drive to a particular fast-food restaurant where Shannon got into a parked vehicle. When he returned to Cardwell's vehicle, he indicated he had obtained the methamphetamine. Cardwell asked whether they should weigh the drugs, but Shannon said they would "wait to get back to [Ethridge]'s house." Cardwell and Shannon then returned to Ethridge's residence where Ethridge and Shannon weighed the drugs on Ethridge's scale and gave Cardwell "four small, little plastic baggies containing a white crystalline substance." The substance "later tested positive as methamphetamine."

¶5 Ethridge and Shannon both were charged with sale of a dangerous drug as accomplices under A.R.S. §§ 13-301 through 13-303.[1] Following their joint trial, the jury found Shannon guilty, was unable to reach a verdict as to Ethridge, and the trial court declared a mistrial as to Ethridge. After Ethridge rejected a plea offer, a second jury found him guilty. This appeal followed.

Discussion

¶6 Ethridge argues there was insufficient evidence to support his conviction because the state failed to establish the intent necessary to convict him as an accomplice. Ethridge claims the case against him is "based wholly upon assumptions" and "that Officer Cardwell ask[ing him] for a quarter does not constitute proof." We review claims of insufficient evidence de novo. *See State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). We limit our review, however, "to whether substantial evidence supports

[1]Shannon also was charged with transportation of a dangerous drug for sale, but he was acquitted of that offense.

the verdict." *State v. Sharma*, 216 Ariz. 292, ¶ 7, 165 P.3d 693, 695 (App. 2007). "Substantial evidence is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Id.*, *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). We reverse "'only where there is a complete absence of probative facts to support the conviction.'" *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), *quoting State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976).

¶7 "A person is criminally accountable as an accomplice if, 'with the intent to promote or facilitate the commission of an offense,' the person solicits, aids, or '[p]rovides means or opportunity to another person to commit the offense.'" *State v. King*, 226 Ariz. 253, ¶ 16, 245 P.3d 938, 943 (App. 2011), *quoting* A.R.S. § 13-301. Intent may be, and typically is, proven by circumstantial evidence. *See State v. Routhier*, 137 Ariz. 90, 99, 669 P.2d 68, 77 (1983) ("intent, being a state of mind, is shown by circumstantial evidence").

¶8 Ethridge maintains that "[a]t best, the evidence established that [he had] permitted . . . Shannon to use his scale to weigh the methamphetamine," and that because the state failed to establish that Ethridge had introduced Cardwell to Shannon "for the purpose of . . . purchasing methamphetamine . . . [he] cannot be liable under an accomplice theory." We disagree. Here, the evidence showed that Ethridge had used Cardwell's telephone to call someone and had requested "a quarter"; that when Ethridge had returned to his house, Shannon had "follow[ed] right behind"; and that Ethridge had introduced Cardwell to Shannon. The evidence also showed that Ethridge had asked

"you don't mind me ridin', do you?" when Cardwell and Shannon were leaving Ethridge's house, and that Cardwell and Shannon had returned to Ethridge's house to weigh the drugs. This evidence permitted the jury to reasonably infer that Ethridge had intended to assist Shannon in selling methamphetamine to Cardwell. *See Spears*, 184 Ariz. at 290, 908 P.2d at 1075 (evidence viewed in light most favorable to sustaining the jury's verdict); *Routhier*, 137 Ariz. at 99, 669 P.2d at 77 (intent may be shown by circumstantial evidence).

¶9 Ethridge contends the state's accomplice theory "relies upon the unproven assertion that [he] procured . . . Shannon's presence" and the "unproven assertion that the introduction was to facilitate a drug transaction." He also argues, as he did below, that the state did not disprove the possibility that Shannon's arrival and the subsequent drug transaction with Cardwell was more than a mere coincidence and that he did not intend to assist the transaction. Although Ethridge argues, "there [was] no evidence that [he] called . . . Shannon, or anyone connected with . . . Shannon," the jury could reasonably have inferred his phone call had resulted in Shannon's arrival or that he personally had gone to get Shannon. It is the jury's function to weigh all of the evidence and to assess witness credibility. *State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004). Further, in reviewing the record to determine whether substantial evidence existed to support a conviction, we make no distinction between circumstantial and direct evidence. *State v. Jensen*, 106 Ariz. 421, 423, 477 P.2d 252, 254 (1970). We therefore conclude the jury's verdict was supported by substantial evidence.

Disposition

¶10 Ethridge's conviction and sentence are affirmed.

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

CONCURRING:

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

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge