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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RUSSELL JOSEPH BARON, *Appellant*.

No. 1 CA-CR 16-0769
FILED 1-30-2018

Appeal from the Superior Court in Maricopa County
No. CR2013-441152-001
The Honorable Dean M. Fink, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Janelle A. McEachern Attorney at Law, Chandler
By Janelle A. McEachern
Counsel for Appellant

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Paul J. McMurdie and Judge Rebecca W. Berch¹ joined.

S W A N N, Judge:

¶1 Russell Baron challenges the sufficiency of the evidence to support his murder conviction. We hold that the conviction was well-supported by the evidence, and we therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 A grand jury indicted Baron for second degree murder of K.A. Baron pled not guilty, and the matter proceeded to a jury trial.

¶3 At trial, the state presented evidence of the following facts. At approximately 9:00 in the evening on June 7, 2013, Baron and K.A., a longtime on-and-off couple, purchased alcohol at a store and then went to K.A.'s residence. At some point that evening, K.A.'s next-door neighbor heard the couple argue outside the residence.

¶4 The next morning, Baron called both 911 and K.A.'s father to report that K.A. was dead. K.A.'s father arrived soon after the first responders, and he helped Baron remove a large dog that was protecting K.A.'s body. The first responders found K.A. dead, lying across a loveseat and couch. They noticed that K.A.'s postmortem lividity was inconsistent with her position.

¶5 K.A.'s father noticed that Baron appeared to have recently showered, and a police officer noticed that Baron had a small red mark on his arm and smelled strongly of alcohol. Baron told police that he and K.A. had purchased and consumed alcohol and had fallen asleep watching movies on the pushed-together loveseat and couch. Baron stated that he last saw K.A. alive around 1:00 or 1:30 that morning, and he denied having argued with her. He stated that when he woke, he saw that K.A. had fallen between the two pieces of furniture, pulled her free, and discovered that

¹ The Honorable Rebecca White Berch, retired Justice of the Arizona Supreme Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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she was dead. Police saw no sign of a break-in at the home, and Baron confirmed that he and K.A. were the only occupants that night. Testing of both K.A. and Baron's blood revealed that each had consumed a substantial amount of alcohol the night before.

¶6 An autopsy revealed that K.A. died from blunt-force trauma and strangulation, estimated to have occurred the evening before her body's recovery. She had multiple injuries on her face, including a broken nose and black eyes, and she had fresh bruises on her scalp and legs. Her internal neck tissue and esophagus were bruised, and her thyroid cartilage and hyoid were fractured. She also had petechiae in her eyes. She had a large area of bruising in the center of her chest, fresh rib fractures over healing ones, a lacerated and perforated heart, and a lacerated liver. Several abrasions on her chin and neck were consistent with defensive injuries, as was bruising on her hand and wrist.

¶7 Baron presented the testimony of a forensic pathologist who opined that K.A. was not strangled but suffered fatal blunt-force trauma likely caused by one or more falls. Baron also presented the testimony of a forensic anthropologist who opined that K.A.'s internal neck injuries could have been caused by either strangulation or a fall.

¶8 The jury found Baron guilty as charged, and found several aggravating circumstances. The superior court entered judgment on the verdict and sentenced Baron to an aggravated prison term of 24 years. Baron timely appeals.

DISCUSSION

¶9 Baron challenges the sufficiency of the evidence to support his conviction. We review the sufficiency of the evidence *de novo*. *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011). We view the evidence in the light most favorable to upholding the verdict. *See State v. Girdler*, 138 Ariz. 482, 488 (1983). We do not reweigh the evidence or determine the credibility of witnesses. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6 (App. 2004).

¶10 We will reverse only if "there is a complete absence of probative facts to support the conviction." *State v. Scott*, 113 Ariz. 423, 424-25 (1976). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316 (1987). Sufficient evidence may be either direct or circumstantial, and may support differing reasonable inferences. *State v. Anaya*, 165 Ariz. 535, 543 (App. 1990).

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¶11 A person commits second degree murder, as charged here, if, without premeditation, under circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person. A.R.S. § 13-1104(A)(3). We have no difficulty concluding that the state presented sufficient evidence from which the jury could reasonably have found that Baron committed second degree murder. The state presented evidence that Baron and K.A. spent the night alone together, and that at some point during that time K.A. was strangled and subjected to blunt-force trauma sufficient to break her ribs and lacerate her heart and liver. The state also presented evidence that, contrary to Baron's representations, the couple argued on the night of K.A.'s death and she died hours before the last time he claimed to have seen her alive. To the extent that Baron presented conflicting evidence, the conflicts were for the jury to resolve.

CONCLUSION

¶12 For the foregoing reasons, we affirm Baron's conviction and sentence.



AMY M. WOOD • Clerk of the Court
FILED: AA