IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MATAT ILIASOV, *Appellant*.

No. 1 CA-CR 17-0177
FILED 2-22-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-134382-001
The Honorable Danielle J. Viola, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Gracynthia Claw
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Paul J. Prato
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Jon W. Thompson delivered the decision of the Court, in which Judge Peter B. Swann and Judge James P. Beene joined.

T H O M P S O N, Judge:

¶1 Matat Iliasov (defendant) appeals from his convictions and sentences for two counts of assault with a deadly weapon or dangerous instrument. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY[1]

¶2 On July 21, 2015, E.Z., her sister M.Z., her sister's friend, her children, and her boyfriend E.K. were visiting E.Z.'s parents at their home in Scottsdale. Defendant, who was a friend of E.Z.'s father and staying at the residence, got into a verbal altercation with E.Z., E.K., and M.Z. The altercation escalated, and defendant pulled out a gun and pointed it at E.Z. and E.K. E.Z. was holding one of her children at the time. E.Z. sent her friend K.N. a message on Facebook stating, "EMERGENCY, [DEFENDANT] PULLED A GUN OUT ON ME. In my dad's house." K.N. called 9-1-1 and reported the incident. E.Z., M.Z., and E.K. left with the children. The next day, E.Z. called 9-1-1 and stated:

> There was a little argument and it kind of escalated to where [defendant] pulled a gun out on my boyfriend, my sister, me, my kids . . . and we ended up leaving from there. Now, I would like to make a police report because they said that the police went there as well, but . . . I don't know what's going on, but I'm scared because I'm afraid he might come to my home and hurt me or something.

Officer Patrick Hinberg called E.Z. back that same day and she described the events of July 21 to Officer Hinberg in a recorded call. E.Z. told Officer

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[1] We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against defendant. *See State v. Nihiser*, 191 Ariz. 199, 201 (App. 1997).

Hinberg that defendant first pointed the gun at E.K. after defendant called her a bitch and E.K. told him to "shut his mouth." He then pointed the gun at E.Z.; she saw the barrel of the gun. E.Z. stated that she wanted to press charges because she was scared for her life and she did not know whether defendant would come after her.

¶3 About five days after the incident, E.Z. told police she no longer wanted to press charges because the incident was "a small family thing." She also submitted a written statement stating: "I [E.Z.] take back my statement. I do not wish to press any charges or prosecute [defendant]. This is a family matter that got blown out of proportion. I might have been mistaken about the weapon due to the panic of the situation."

¶4 The state charged defendant with three counts of aggravated assault, class 3, dangerous felonies (counts 1-3), one count of endangerment, a class 6, dangerous felony (count 4), and one count of misconduct involving weapons, a class 4 felony (count 5). Prior to trial, the court granted defendant's motion to sever count five. On the first day of trial, the court granted the state's motion to dismiss count 4 without prejudice. At trial, E.Z. testified that she had no recollection of her Facebook message to K.N., her call to 9-1-1, or the statement she made to Officer Hinberg, and that she did not remember defendant pointing a gun at her. The court allowed the state to treat E.Z. as a hostile witness. At the close of the state's case the court granted defendant's Arizona Rule of Criminal Procedure 20 (Rule 20) motion for directed verdict as to count 3 (victim M.Z.) but denied the motion as to counts 1 and 2 (victims E.Z. and E.K).

¶5 A jury convicted defendant of counts 1 and 2 and found there were aggravating circumstances. The trial court sentenced defendant to concurrent sentences of 7.5 years in prison for each count. The trial court allowed defendant to file a delayed notice of appeal and he did so. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2018), 13-4031 (2018), and -4033(A)(1) (2018).[2]

DISCUSSION

¶6 Defendant raises one issue on appeal: whether the trial court erred by denying his Rule 20 motion for judgment of acquittal. We review the trial court's ruling on a Rule 20 motion for judgment of acquittal de

[2] We cite to the current version of any statute unless the statute was amended after the pertinent events and such amendment would affect the result of this appeal.

novo. *State v. West*, 226 Ariz. 559, ¶ 15 (2011) (citation omitted). "On all such motions, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at ¶ 16 (internal quotation omitted). We do not reweigh the evidence. *State v. Tison*, 129 Ariz. 546, 552 (1981). We view the evidence in the light most favorable to sustaining the verdict. *State v. Girdler*, 138 Ariz. 482, 488 (1983).

¶7 In this case, the state was required to show that defendant used a deadly weapon or dangerous instrument to intentionally place E.Z. and E.K. in reasonable apprehension of imminent physical injury. *See* Ariz. Rev. Stat. §§ 13-1203(A)(2) (2018), -1204(A)(2) (2018). "Intent may be inferred from the acts of the accused and the circumstances of the assault." *State v. Lester*, 11 Ariz. App. 408, 410 (1970).

¶8 Substantial evidence warranted the guilty verdicts. E.Z.'s 9-1-1 call and recorded interview with Officer Hinberg established that defendant pulled out a gun and pointed it at E.K. and E.Z, who was holding her child, from five to six feet away after a heated verbal altercation. E.Z. sent a message to K.N. saying that defendant pulled out a gun on her. Defendant argues that "[t]he sufficiency of the evidence issues . . . center on the reliability of E.Z.'s testimony viewed in the context of her pretrial statements which are inconsistent with her trial testimony, coupled with the fact that no gun was located . . . ." He also argues that the jury was left to speculate that data had been deleted from E.Z.'s parents' surveillance system. The fact that police did not locate defendant's gun or recover corroborating video footage, however, does not mean that a rational trier of fact could not find defendant guilty of counts 1 and 2 beyond a reasonable doubt. Moreover, E.Z.'s recantation and the credibility of her testimony was properly put to the jury. *See State v. Krum*, 183 Ariz. 288, 294 (1995). We find no error.

CONCLUSION

¶9 For the foregoing reasons, we affirm defendant's convictions

and sentences.

AMY M. WOOD • Clerk of the Court
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