IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JOHN GUSTAV HEBNER, *Appellant*.

No. 1 CA-CR 18-0606
FILED 9-26-2019

Appeal from the Superior Court in Maricopa County
No. CR2016-134354-001
The Honorable Joseph P. Mikitish, Judge

AFFIRMED

COUNSEL

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

Barbara L. Hull, Attorney at Law, Phoenix
By Barbara L. Hull
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Michael J. Brown and Judge Kent E. Cattani joined.

S W A N N, Chief Judge:

¶1 John Gustav Hebner challenges the sufficiency of the evidence supporting his conviction for aggravated assault. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 One evening in July 2016, guests at a Phoenix hotel informed the security guard that another guest, Hebner, had urinated on the side of the building. The guard found evidence of urination on the building and a sidewalk, and asked Hebner to leave the property. Hebner, who appeared to be under the influence of alcohol, became agitated and refused to leave. Police officers arrived at the hotel shortly thereafter, and the guard asked the officers to assist in removing Hebner from the property. Hebner eventually agreed to leave. The guard and the officers escorted Hebner to his room to gather his belongings.

¶3 Hebner went into the room, pulled out a loaded gun, and aimed it at one of the officers. That officer drew his weapon on Hebner, who lowered the gun and put it down on a counter. The officer ordered Hebner to move away from the gun but he did not do so. The officer kicked Hebner twice and he moved away from the gun. The officers secured Hebner's gun and arrested him.

¶4 The state charged Hebner with one count of aggravated assault. A jury found Hebner guilty as charged. The superior court sentenced Hebner to a presumptive prison term of 10.5 years, with credit for 670 days of presentence incarceration. Hebner appeals.

DISCUSSION

¶5 Hebner raises one issue on appeal: whether the state presented sufficient evidence to sustain his conviction. We review de novo the sufficiency of the evidence and will reverse only if no substantial evidence supports the conviction. *State v. Snider*, 233 Ariz. 243, 245, ¶ 4 (App. 2013). "When reviewing whether sufficient evidence supports a

criminal conviction, we determine if '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Johnson*, 210 Ariz. 438, 440, ¶ 5 (App. 2005) (citation omitted).

¶6 As applicable here, a defendant commits aggravated assault by using a firearm to "[i]ntentionally plac[e] another person in reasonable apprehension of imminent physical injury."[1] A.R.S. §§ 13-105(15), -1203(A)(2), -1204(A)(2). "'Intentionally' or 'with the intent to' means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct." A.R.S. § 13-105(10)(a). Criminal intent "will rarely be provable by direct evidence and the jury will usually have to infer it from [a defendant's] behaviors and other circumstances surrounding the event." *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996).

¶7 Hebner argues that the state did not provide any evidence of the requisite intent. We disagree. The evidence showed that Hebner pointed a loaded gun directly at a police officer. Hebner's argument that he was too intoxicated to form the requisite intent is not persuasive because A.R.S. § 13-503 "prohibits the jury from using voluntary intoxication to negate intent." *State v. Payne*, 233 Ariz. 484, 517, ¶ 149 (2013).

¶8 Hebner further argues that his "obvious mental illness" negated the culpable mental state of "intentionally." In evaluating whether substantial evidence exists to support the jury's verdict, we consider the entire record. *State v. Alvarado*, 178 Ariz. 539, 541 (App. 1994). Hebner acknowledges that no evidence of his mental illness was presented to the jury. We do not consider as evidence the bench conference at which Hebner's attorney asked for more time to explain the proceedings to him, nor do we consider as evidence Hebner's pretrial restoration proceedings. And "evidence of a defendant's mental disorder short of insanity" is not allowed to negate the culpable mental state of a crime. *State v. Mott*, 187 Ariz. 536, 541 (1991).

¶9 Here, the evidence presented at trial clearly supported the jury's finding that Hebner intentionally placed the police officer in

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[1] Assault also may constitute aggravated assault if the defendant knows or has reason to know that the victim is a peace officer. A.R.S. § 13-1204(A)(8)(a). The jury was not instructed on that theory of aggravated assault in the guilt phase, though it did find in the aggravation phase that the victim was a peace officer engaged in official duties.

reasonable apprehension of imminent physical injury by pointing a gun at him.

CONCLUSION

¶10 For the foregoing reasons, we affirm Hebner's conviction and sentence.

AMY M. WOOD • Clerk of the Court
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