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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

ABRAHAM PUENTES-ORTIZ, *Appellant*.

No. 1 CA-CR 19-0620  
FILED 12-22-2020

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Appeal from the Superior Court in Coconino County  
No. S0300CR201800750  
The Honorable Cathleen Brown Nichols, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Jana Zinman  
*Counsel for Appellee*

Janelle A. Mc Eachern, Attorney at Law, Chandler  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Peter B. Swann joined.

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**CAMPBELL**, Judge:

¶1 Abraham Puentes-Ortiz appeals his convictions for kidnapping and assisting a criminal street gang. Abraham argues no substantial evidence was presented to support either guilty verdict. A conviction must be supported by substantial evidence from which a reasonable juror could conclude, beyond a reasonable doubt, that the defendant committed the crime. *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87 (2004). For the reasons set forth below, we affirm.

**BACKGROUND**

¶2 Adonis Encinas-Velarde rented a room in a friend's house. He and his girlfriend ("Victim") would often hang out with the homeowner who also lived in the house with her two children. One evening, Abraham came over to drink with Adonis and the Victim. The homeowner and her children were also present. When Abraham arrived, he appeared agitated. Abraham displayed a .45 caliber Glock handgun (".45") which made the Victim uncomfortable. After finishing a bottle of vodka, Abraham and Adonis drove to the store to buy more alcohol. During this trip, Abraham told Adonis, "[s]omeone's going to get F[ed] up tonight." They returned to the house and continued drinking. Because Abraham continued to exhibit agitated behavior, Adonis took him outside to talk.

¶3 About a week before, Abraham had given Adonis a 9mm handgun with the serial number scratched off. While they were outside, Adonis shot one round from that gun into the dirt in the yard, trying to prove a point to Abraham. Alarmed, the Victim went outside and told Abraham and Adonis they needed to leave because they were upsetting the homeowner and her children. Adonis put the 9mm under a blanket on his bed, then the two men went for a walk. The Victim went back inside the house with the homeowner and her children.

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¶4 When Abraham and Adonis returned, the 9mm was not where they left it. They confronted the Victim and demanded she return the weapon. The Victim and homeowner told them they did not know where it was. Adonis kept asking them and kept pushing the issue of “[w]here’s the gun?” When the Victim refused to answer, things began to escalate.

¶5 The strange behavior of the two men scared the Victim, who felt threatened and left the room to call her mom for a ride home. Abraham then looked at Adonis and said, “[t]ell me what to do and we’ll do it -- and I’ll do it.” The homeowner testified that Abraham and Adonis looked crazy, which caused her to become frightened for her safety. The homeowner forcefully told them to leave. They left her room and went to find the Victim.

¶6 Abraham and Adonis entered the room with the Victim and stood in front of the room’s only doors. The Victim was on the phone with her mother, trying to get a ride home. While she was still on the phone, Abraham pulled out the .45 and shot the Victim in the head three times.

¶7 After killing the Victim, the two men drove to Abraham’s home and picked up an AR-15 assault rifle (“AR-15”). They drove to the house of a man who a gang wanted dead. When they arrived at the house, Abraham explained he was there to “take care of some business.” Adonis was afraid Abraham would kill another person, so he grabbed the AR-15 and shot at the house twice from the vehicle. Abraham then drove off. Racked with emotion, Adonis later turned himself in to the police. Based on the information provided by Adonis, Abraham was arrested the following morning.

¶8 The State charged Abraham with multiple charges, including kidnapping and assisting a gang. After resting its case, defense counsel moved for a directed verdict on all counts. As relevant here, the defense argued that there was no evidence to prove Abraham restrained the Victim or that Abraham assisted a criminal street gang. The court found the State had presented substantial evidence to support each charge and the jury found him guilty of both offenses. On appeal, Abraham renews his claim that the State presented insufficient evidence of kidnapping and assisting a gang.

**DISCUSSION**

¶9 The sufficiency of evidence is a question of law, which we review de novo. *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011). Substantial

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evidence is that which a reasonable person “could accept as sufficient to support a guilty verdict beyond a reasonable doubt.” *Davolt*, 207 Ariz. at 212, ¶ 87. Evidence may be direct or circumstantial. *State v. Blevins*, 128 Ariz. 64, 67 (App. 1981). We view the evidence in the light most favorable to sustaining the verdict and resolve all inferences against the defendant. *Davolt*, 207 Ariz. at 212, ¶ 87; *see also State v. Parker*, 231 Ariz. 391, 407, ¶ 70 (2013) (“[T]he 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.”) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “A judgment of acquittal should only be granted if there is no substantial evidence to warrant conviction.” *State v. Stevens*, 184 Ariz. 411, 412 (App. 1995) (citing Ariz. R. Crim. P. 20(a)). To mandate a reversal on appeal, “there must be a complete lack of probative evidence supporting the verdict.” *State v. Girdler*, 138 Ariz. 482, 488 (1983).

**I. Substantial Evidence of Kidnapping**

¶10 Abraham argues that the State did not present any evidence of the Victim’s movement being restrained as is necessary for a conviction on the kidnapping charge. A person commits kidnapping by knowingly restraining another person with the intent to place that victim in reasonable apprehension of imminent physical injury. A.R.S. § 13-1304(A)(4). Abraham points to the fact that he “never ordered the Victim to go or stay or directed her movements in any way.” He argues that without evidence to establish restraint, the kidnapping charge should be dismissed.

¶11 When determining the sufficiency of the evidence, “[n]o particular piece of evidence . . . is required as a prerequisite . . . . The totality of circumstances must add up to proof beyond a reasonable doubt.” *State v. Fulminante*, 193 Ariz. 485, 494, ¶ 26 (1999). In *Fulminante*, for example, there was no direct evidence to link the defendant to the crime scene or the crime. *Id.* Our Supreme Court enumerated the circumstantial evidence presented by the State, including evidence of: guilt—inconsistent statements; motive—a bad relationship with his step-daughter, the victim, who the defendant perceived as a threat to his marriage; opportunity—his wife was in the hospital and not present at their home; and a missing gun barrel and ammunition with no explanation for why they were missing—“strengthening an inference they might have been used to kill [the victim].” *Id.* at ¶ 27. The court explained this circumstantial evidence was “sufficient evidence from which the jury could have pieced together a web of suspicious circumstances tight

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enough that a reasonable person could conclude, beyond a reasonable doubt, that [the defendant] was the perpetrator.” *Id.* at ¶ 28.

¶12 Here, the Victim knew that Abraham had been drinking and was armed with a .45. The Victim heard a gunshot coming from outside the house earlier in the evening. The Victim was aware that either Adonis or Abraham had fired a weapon, as inferred from her demand that they both leave the residence. When the men came back and began demanding the return of the 9mm, the Victim felt threatened. The men went to the room where the Victim was calling for a ride home and each man blocked a door, precluding her ability to leave the room. Shortly thereafter, Abraham shot the Victim three times in that room.

¶13 The State was required to present sufficient evidence that Abraham’s actions, in conjunction with his accomplice Adonis, restrained the Victim’s movements sufficiently enough to support a kidnapping conviction. According to Arizona law,

“Restrain” means to restrict a person’s movements without consent, without legal authority, and in a manner which interferes substantially with such person’s liberty, by either moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by . . . [p]hysical force, intimidation or deception.

A.R.S. § 13-1301(2)(a). Based on the totality of the circumstances, Abraham’s actions—the display of a weapon, the blocking all avenues of escape and the aggressive demands—culminated in the Victim’s movement being restricted.

¶14 The evidence presented at trial supports the inference that Abraham intimidated the Victim and restricted her movement without her consent. While the record lacks an explicit order directing the Victim to go or stay anywhere, such an order is not required for a rational factfinder to conclude Abraham restrained the Victim’s movement. At a minimum, these facts are sufficient for reasonable factfinders to “fairly differ as to whether [they] establish[] a fact in issue,” and, therefore, the evidence must be considered substantial. *State v. Rodriguez*, 186 Ariz. 240, 245 (1996).

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**II. Substantial Evidence of Assisting a Gang**

¶15 Abraham next argues there was no substantial evidence that he was affiliated with a criminal street gang. He contends that the only evidence suggesting gang affiliation was his blue bandana, baseball cap, and statement about “taking care of business.” Abraham argues that without substantial evidence of affiliation with a criminal street gang, the conviction for assisting a gang should be reversed.

¶16 Assisting a criminal street gang involves “committing any felony offense . . . for the benefit of, at the direction of or in association with any criminal street gang.” A.R.S. § 13-2321(B). A criminal street gang is “an ongoing formal or informal association of persons in which members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and that has at least one individual who is a criminal street gang member.” A.R.S. § 13-105(8). A criminal street gang member is a person “to whom at least two of the following seven criteria that indicate criminal street gang membership apply: (a) Self-proclamation. (b) Witness testimony or official statement. (c) Written or electronic correspondence. (d) Paraphernalia or photographs. (e) Tattoos. (f) Clothing or colors. (g) Any other indicia of street gang membership.” A.R.S. § 13-105(9).

¶17 At trial, the State argued that Abraham assisted a gang by committing a drive-by shooting for a gang. Adonis told the police that Abraham was in a gang, listened to gang affiliated music, and wore gang colors. A detective testified that Adonis believed Abraham was affiliated with the West Side gang and “that he believed Abraham was a Crip.” Adonis also told the detective that they “had discussions of the gang affiliation and things that [Abraham] was involved with as far as a gang; and that he had talked about going to an East Siders house, taking out an East Sider and shooting the house.”

¶18 The intended victim of the drive-by-shooting testified that at that time he was affiliated with the West Side Diablos Trece, blue was his gang’s color, and a blue bandana was his gang’s “flag.” He stated that he and Abraham were associated with the same people. He also testified that he knew a “hit” had been put on his life by a gang at the time of the drive-by.

¶19 The night of the shootings, Abraham was wearing a blue bandana around his neck, had a blue keychain with him, and had the .45 concealed in his waistband. Abraham drove to the second victim’s house,

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stating he had to “take care of some business.” When he was arrested, Abraham had a .45 in his waistband and a blue bandana in his back-left pocket, and officers found a blue DBS hat in his bedroom.

¶20 At trial, an officer testified that in his experience, wearing a blue bandana on the left side of one’s body in Flagstaff indicated an association with a West Side gang, such as the Diablos. A detective testified that Diablos Trece gang members typically wore blue and specifically wore a blue bandana. He also testified that the letters DBS were associated with the Diablos gang.

¶21 In sum, the State presented evidence that: a felony offense was committed for the benefit of a criminal street gang; there was an ongoing association of individuals that engaged in a felony act; and that Abraham exhibited three out of seven indicia of criminal street gang membership. The evidence at trial—specifically, witness testimony—established his gang affiliation. This was further verified by his possession of gang paraphernalia, clothing, and his wearing of gang colors. Based on this evidence, a jury could reasonably conclude, beyond a reasonable doubt, that Abraham’s actions were to assist a criminal street gang.

¶22 Viewing the evidence in the light most favorable to sustaining the verdict and resolving all reasonable inferences against Abraham, we find substantial evidence to support each element of assisting a gang. We find no error.

**CONCLUSION**

¶23 The State presented substantial evidence to support Abraham’s convictions of kidnapping and assisting a gang. We affirm.



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