IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

LARRY ONEAL SANDERS, JR., *Appellant*.

No. 1 CA-CR 20-0068

FILED 11-17-2020

Appeal from the Superior Court in Maricopa County
No. CR2019-000201-001
The Honorable Ronee Korbin Steiner, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By David R. Cole
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Mark E. Dwyer
Counsel for Appellant

MEMORANDUM DECISION

Judge Maria Elena Cruz delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Paul J. McMurdie joined.

C R U Z, Judge:

¶1 Larry Oneal Sanders, Jr., appeals his conviction and sentence for attempted robbery. For the following reasons, we affirm.

FACTUAL[1] AND PROCEDURAL HISTORY

¶2 One morning in September 2018, J.C. drove to downtown Phoenix for a court hearing and parked her car at a metered spot on the street. While J.C. was retrieving her briefcase from the trunk, Sanders approached and repeatedly demanded that she give him "everything in [the] trunk." J.C. refused, and Sanders "put his hand on his pocket and told [her], I ain't playing with you, B." J.C. believed Sanders had a gun or knife in his pocket.

¶3 A landscaper, A.W., was working nearby and witnessed the events. When J.C. saw A.W., she asked him to call 9-1-1. Hearing Sanders' "verbally aggressive" demands, A.W. grabbed his broom in case he needed to intervene, but Sanders walked away after seeing him. J.C. immediately reported the incident to sheriff's deputies at the court. Within an hour of the incident, a detective found Sanders in the area, and both J.C. and A.W. later identified him as the perpetrator.

¶4 The State charged Sanders with attempted robbery. Following the close of the State's evidence, Sanders moved for a judgment of acquittal under Arizona Rule of Criminal Procedure ("Rule") 20, arguing the State failed to present any evidence of "his intent or what he intended to get from [J.C.]." The superior court denied the Rule 20 motion, agreeing with the State that the jurors could reasonably conclude Sanders intended to rob J.C. Sanders did not present evidence in his defense.

[1] We view the evidence in the light most favorable to sustaining the conviction. *See State v. Cropper*, 205 Ariz. 181, 182, ¶ 2 (2003).

¶5 The jury found Sanders guilty as charged. The superior court sentenced Sanders as a Category 1 repetitive offender to a presumptive term of 1.5 years' imprisonment. Sanders timely appealed, and this court has jurisdiction pursuant to Arizona Constitution Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

I. Exclusion of Sanders' Statements to the Detective

¶6 Sanders first argues the superior court erred in excluding his statements to the detective, asserting the court improperly sustained the State's hearsay objection. The State agrees the superior court erred but contends the error was harmless. "We review a trial court's ruling on the admissibility of evidence over hearsay objections for abuse of discretion." *State v. Chavez*, 225 Ariz. 442, 443, ¶ 5 (App. 2010).

¶7 During cross-examination of the detective, Sanders' counsel sought to elicit two statements Sanders made to the detective when she first found him: (1) that his job was "to sit on the wall and tell people where to go and what to do" and (2) that "Tom Hanks [was] a good photographer." The prosecutor objected, arguing the statements were impermissible hearsay. Sanders' counsel responded that the statements were offered to show Sanders' state of mind, not to prove the truth of the matters asserted. The superior court ultimately sustained the State's objection.

¶8 On appeal, the State concedes the superior court erred in excluding the statements as hearsay, and we accept its concession. Because the defense did not offer the statements to prove the truth of the matters asserted, they were not hearsay. *See* Ariz. R. Evid. 801(c), 802.

¶9 "[T]his court will not reverse a conviction if an error is clearly harmless." *State v. Doerr*, 193 Ariz. 56, 64, ¶ 33 (1998); *see State v. Bible*, 175 Ariz. 549, 588 (1993) (explaining an error is harmless when, beyond a reasonable doubt, it "did not contribute to or affect the verdict."). "The inquiry . . . is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." *Bible*, 175 Ariz. at 588 (quotation omitted).

¶10 The superior court's decision to exclude Sanders' statements resulted in no more than harmless error.[2] *See id.* The uncontroverted evidence established that Sanders repeatedly demanded J.C.'s property by yelling at her and gesturing in a manner suggesting he had a weapon, causing a bystander to believe he needed to intervene. Sanders' unrelated statements to a detective nearly an hour after the incident did nothing to undermine this evidence.

¶11 Sanders argues the statements would have shown the jurors he did not have the required mental state to commit robbery. But the statements did not significantly add to the other evidence presented to the jury demonstrating Sanders' mental state.

¶12 First, A.W. testified that Sanders looked like he was "possessed" and had a "mental issue." Thus, testimony regarding Sanders' statements to the detective would have been cumulative, given that the witness' perceptions at the time of the incident were significantly more probative of Sanders' state of mind than his statements an hour later. *See State v. Wargo*, 145 Ariz. 589, 589-90 (App. 1985) (precluding marginally relevant testimony was not reversible error when it was merely cumulative of stronger evidence). Second, the detective testified that although Sanders was calm when she initially contacted him, he quickly became agitated and incoherent. Accordingly, Sanders suffered no prejudice from the error.

II. Motion for Judgment of Acquittal

¶13 Sanders further argues the superior court erred in denying his Rule 20 motion, a ruling we review de novo. *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011). Rule 20 directs the superior court to enter a judgment of

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[2] Although not argued by the State, we note that the statements were permissibly excludable under Arizona Rule of Evidence 403. The minimal probative value of the statements was substantially outweighed by the potential that they would allow the jurors to decide the case on an improper basis, such as diminished capacity or sympathy. *See State v. Mott*, 187 Ariz. 536, 541, 545 (1997) ("Arizona does not allow evidence of a defendant's mental disorder short of insanity either as an affirmative defense or to negate the *mens rea* element of a crime. . . . Unfair prejudice results if the evidence has an undue tendency to suggest decision on an improper basis . . . ."); *see also State v. Perez*, 141 Ariz. 459, 464 (1984) (a reviewing court is obliged to affirm a decision if it is legally correct for any reason).

acquittal when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a)(1).

¶14 In reviewing the sufficiency of the evidence, we test the evidence "against the statutorily required elements of the offense," *State v. Pena*, 209 Ariz. 503, 505, ¶ 8 (App. 2005), and neither reweigh conflicting evidence nor assess witnesses' credibility, *see State v. Buccheri-Bianca*, 233 Ariz. 324, 334, ¶ 38 (App. 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." *West*, 226 Ariz. at 562, ¶ 16 (quotation omitted). Sufficient evidence may be direct or circumstantial. *Id.* "[T]he jury will usually have to infer [a defendant's mental state] from [the defendant's] behaviors and other circumstances surrounding the event." *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996).

¶15 As charged in this case, "[t]he essential elements of an attempted robbery are (1) intent to commit robbery and (2) an overt act towards that commission." *State v. Clark*, 143 Ariz. 332, 334 (App. 1984); *see also* A.R.S. § 13-1001(A)(2). "A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property." A.R.S. § 13-1902(A); *see also* A.R.S. § 13-1901(4) (defining "threat" as "a verbal or physical menace of imminent physical injury to a person.").

¶16 Sanders asserts the State "presented no evidence that [he] used force or threatened to use force or took any step in that direction." Sanders further suggests that although his actions were "rude and demanding," they amounted to "panhandling," not attempted robbery.

¶17 The evidence, as described *supra* ¶¶ 2-3, refutes his assertion: (1) Sanders repeatedly yelled at J.C. to surrender her property; (2) when J.C. refused, Sanders insisted he was not "playing"; (3) J.C. believed Sanders "was going to attack me or hit me"; (4) J.C. feared Sanders had a weapon when he reached into his pocket; and (5) A.W. prepared to intervene, thinking J.C. was in danger. Therefore, because the record contains sufficient evidence from which a reasonable juror could conclude that Sanders intended to threaten J.C. while attempting to take her property, the superior court did not err by denying his Rule 20 motion.

CONCLUSION

¶18 For the foregoing reasons, we affirm Sanders' conviction and sentence.

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