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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

HERMELINDO SANCHEZ, *Appellant*.

No. 1 CA-CR 20-0173

FILED 9-30-2021

Appeal from the Superior Court in Maricopa County

No. CR2018-139386-001

The Honorable Stephen M. Hopkins, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Jana Zinman

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Jessie Finn Turner

Counsel for Appellant

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge D. Steven Williams and Judge David B. Gass joined.

M O R S E, Judge:

¶1 Hermelindo Sanchez appeals his convictions and sentences for second-degree murder and endangerment, arguing the weight of the evidence did not support the jury's verdict. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Sanchez spent an August evening drinking beers with John,¹ his neighbor, in John's front yard. John's son, Jordan, joined the men for most of the night and three others – John's other son, Michael; his nephew, Andrew; and his daughter's boyfriend, Adam – also spent time at the house. Someone brought out two guns belonging to John's sons, and the men posed for photos. Michael told Andrew to take the guns back inside the house. At some point, Sanchez left.

¶3 Around nine p.m., John told his wife, Megan, that Sanchez had left and asked her to come outside with their ten-month-old grandchild, Erin. Megan brought Erin outside and they sat on a swing on the side of the house as John, Jordan, and Adam stood nearby. Megan heard a vehicle drive up and saw Sanchez approach the house looking angry. Sanchez raised a gun and fired six shots, hitting John, Jordan, and Adam. Megan and Erin hid behind a truck in the driveway. Jordan was shot three times, including once in the head, and died in the driveway. John and Adam each were shot once in the chest and staggered back into the house before dying. Michael heard gunshots and shouting and came out of the house to see Sanchez drive away. Michael called 911, but police and emergency responders did not arrive for over forty minutes. Meanwhile, Andrew jumped into his car and chased Sanchez back to Sanchez's home. Sanchez also called 911 and told the operator that men with guns were chasing him. During the 911 call, he did not mention the shooting at John's house. Later, Sanchez told police that he had shot his gun into the air. After

¹ We use pseudonyms to protect the privacy of victims and witnesses.

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police arrived, Megan identified Sanchez as the shooter. Police never found Sanchez's gun.

¶4 A grand jury indicted Sanchez with three counts of first-degree murder and two counts of endangerment. At trial, Sanchez claimed self-defense, testifying that as he returned to John's house, Jordan pointed a gun at him and threatened to kill him. In contrast, every member of the victims' family said John, Jordan, and Adam had been in a good mood before the shooting and all denied seeing or moving weapons from the bodies.

¶5 The jury convicted Sanchez of endangerment and the lesser-included offense of second-degree murder. Arguing the jury's verdicts were against the weight of the evidence, Sanchez moved for a new trial, which the superior court denied. *See* Ariz. R. Crim. P. 24.1(c)(1). The court sentenced Sanchez to concurrent aggravated and presumptive terms for a total of twenty years in prison. Sanchez timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶6 Sanchez argues that the superior court erred by denying his motion for a new trial. We review the denial of a motion for new trial for an abuse of discretion. *State v. Fischer*, 242 Ariz. 44, 48, ¶ 10 (2017).

¶7 The superior court may grant a new trial if "the verdict is contrary to law or the weight of the evidence." Ariz. R. Crim. P. 24.1(c)(1).

[I]n deciding a motion for new trial, a trial court may weigh the evidence and make its own determination of the credibility of the witnesses. If, after full consideration of the case, the court is satisfied that the verdict was contrary to the weight of the evidence, it may set the verdict aside, even if substantial evidence supports it.

Fischer, 242 Ariz. at 49-50, ¶ 17 (citing *Young Mines Co. v. Citizens' St. Bank*, 37 Ariz. 521, 525 (1931)). The superior court's discretion is broad, but not unlimited. *Id.* at 50, ¶ 20. The court may not act as a "super juror" and overturn a verdict merely because the court personally disagrees with it." *Id.*

¶8 On appeal from denial of a motion for new trial, this Court may not reweigh the evidence on review. *Id.* at 52, ¶ 28. The appellate

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court's role is not to determine whether evidence supports the verdict, but "whether, resolving every conflict in the evidence in support of the order, substantial evidence supports the trial judge's order." *Id.* at 52, ¶¶ 27-28. Applying this standard, we reject Sanchez's argument and conclude that substantial evidence supports denial of the motion for new trial.

¶9 Because the superior court likened Sanchez's motion for new trial to his prior motion for acquittal under Rule 20, Sanchez argues the court applied the wrong standard. *Compare* Ariz. R. Crim. P. 24.1(c)(1), *with* Ariz. R. Crim. P. 20(a)(1) ("[T]he court must enter a judgment of acquittal . . . if there is no substantial evidence to support a conviction."). However, the record does not support Sanchez's argument. Though the superior court alluded to the Rule 20 motion, it stated the correct standard in deciding the motion for new trial under *Fischer*. The court said it may have had doubts about a first-degree murder conviction, but noted the jury convicted Sanchez of lesser-included charges. The court found that the jury's verdicts were not against the weight of the evidence.

¶10 Sanchez further argues that denial of the motion for new trial was error because the jury and the superior court should have construed conflicting trial evidence in his favor. Specifically, Sanchez points to numerous inconsistencies in Megan's and Michael's testimony and claims that Sanchez's testimony should have been believed. Sanchez buttresses his self-defense claim by pointing to the fact that weapons—but no ammunition—were found in John's house, implying that the victims' family sanitized the crime scene before police arrived. Although the court did not make any credibility findings on the record, we presume the court fully considered and weighed the witnesses' credibility in denying the motion. The superior court recognized the complexity of the conflicting evidence and statements made by witnesses but found the evidence supported the jury's verdict.

¶11 After reviewing the record, we conclude substantial evidence supported the court's denial of Sanchez's motion for new trial. Megan testified she saw Sanchez shoot John, Jordan, and Adam. Every member of the family denied hearing an argument before the shooting, and no one saw a gun by Jordan's body. Sanchez told inconsistent stories about the shooting to the 911 operator, the police, and during trial. And his gun was never found. The superior court did not abuse its discretion.

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CONCLUSION

¶12

Sanchez's convictions and sentences are affirmed.



AMY M. WOOD • Clerk of the Court
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