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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 08-0225
)
Appellee,) Department A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RIGOBERTO CAMPOS-ESPINOZA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-171687-002 DT

The Honorable Michael D. Gordon, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
And Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

Janelle A. McEachern, Attorney at Law Chandler
By Janelle A. McEachern
Attorneys for Appellant

S W A N N, Judge

¶1 Rigoberto Campos-Espinoza ("Defendant") appeals from his convictions and sentences on one count of second degree murder, a class one dangerous felony and a violation of Arizona Revised Statutes ("A.R.S.") § 13-1104, and one count of aggravated assault, a class three dangerous felony and a violation of A.R.S. § 13-1204. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 In an indictment filed on December 1, 2006, the State charged Defendant with one count of second degree murder and one count of aggravated assault.² Trial by jury commenced on January 2, 2008. The evidence presented by the State in its case in chief revealed the following.

¶3 On the evening of July 30, 2006, two vehicles, a car and a truck, were involved in a minor collision in the parking lot of an enclosed swap meet. Driving the car was Abel Beltran-Leon ("Beltran-Leon"); Defendant and Jose Aldaba ("Aldaba") were two of the four passengers. Driving the truck was C.A.M.; F.A.V. and L.M.V. were passengers.

¹ We view the evidence in favor of upholding the verdict. *State v. Nunez*, 167 Ariz. 272, 278, 806 P.2d 861, 867 (1991).

² The indictment charged both Defendant and a co-defendant, but a defense motion to sever the defendants was granted before trial.

¶14 After the collision, the occupants of the car and the truck exited their vehicles and a discussion ensued. A sheriff's deputy working as off-duty security at the swap meet was called to the scene and spoke to the drivers of both vehicles. Though a language barrier impeded her conversation with C.A.M., the deputy ascertained that neither party desired an accident report, and observed that all of the individuals appeared calm and relaxed. Within about ten minutes, the deputy left.

¶15 Beltran-Leon told C.A.M. that he wanted to come to an agreement outside of the parking lot. Beltran-Leon, Aldaba, and Defendant got back into the car and C.A.M., F.A.V., and L.M.V. got back into the truck. C.A.M. drove the truck out of the parking lot and Beltran-Leon followed in the car. According to C.A.M., he was scared and did not intend to stop to talk with the car's occupants again, so he "drove really fast" and was able to lose the car. After the occupants of the car lost sight of the truck, Beltran-Leon pulled the car over into a side street. The three men exited the car, and Defendant got a rifle out of the back of the car. The men then reseated themselves in the car, with Beltran-Leon driving, Aldaba in the back seat, and Defendant in the front passenger seat with the rifle on the side of his left leg. Defendant inserted a magazine and chambered a round.

¶16 Beltran-Leon continued driving, and the occupants of the car again saw the truck driven by C.A.M. They followed the truck, which pulled into a neighborhood and parked to the side of a street. C.A.M., F.A.V., and L.M.V. were exiting the truck when Beltran-Leon pulled the car alongside the truck and Defendant began shooting the rifle out of the rolled-down driver's side window. C.A.M. was shot in the foot and injured, and F.A.V. was fatally shot in the abdomen. After Defendant fired about five shots, Beltran-Leon drove the car out of the neighborhood.

¶17 A crime scene specialist who responded to the scene testified that the weapon had been fired progressively from the back to the front of the truck. A forensic medical examiner testified that an autopsy of F.A.V. revealed results consistent with F.A.V. having been shot through the door of a vehicle.

¶18 At the close of the State's case in chief, Defendant moved for a judgment of acquittal pursuant to Ariz. R. Crim. P. 20 ("Rule 20"). That motion was denied, and Defendant took the stand in his own defense.

¶19 Defendant testified that it was not his idea to follow the truck out of the swap meet parking lot after the accident, and he did not know why Beltran-Leon was following the truck or what he intended to do. Defendant testified that when the occupants of the car lost sight of the truck, it was Beltran-

Leon who retrieved the rifle from the trunk of the car. He further testified that when the group pulled alongside the truck, Beltran-Leon stopped the car and shot the rifle.

¶10 At the close of evidence, and after closing arguments, the jury found Defendant guilty of both charged offenses, and found both offenses dangerous. The court entered the judgment and sentenced Defendant to concurrent presumptive terms of 16 years for the second degree murder offense and 7.5 years for the aggravated assault offense.

¶11 Defendant timely appeals. We have jurisdiction under Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001), and -4033(A)(1) (Supp. 2008).

DISCUSSION

¶12 Defendant's sole argument on appeal is that the evidence at trial was insufficient to show that Defendant was the party who engaged in the conduct underlying the charged offenses. Defendant contends that the superior court, therefore, erred in denying his Rule 20 motion, and that there was insufficient evidence to support the jury verdicts. We disagree.

I. Rule 20 Motion

¶13 We review the denial of a Rule 20 motion for an abuse of discretion. *State v. McCurdy*, 216 Ariz. 567, 573, ¶ 14, 169

P.3d 931, 937 (App. 2007). We will reverse if there is a complete absence of probative facts to support a conviction. *State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990).

¶14 Rule 20(a) provides that a court "shall enter a judgment of acquittal of one or more offenses charged in an indictment, information or complaint after the evidence on either side is closed, if there is no substantial evidence to warrant a conviction." "Substantial evidence is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt. 'If reasonable [persons] may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.'" *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87, 84 P.3d 456, 477 (2004) (citations omitted). Substantial evidence may be either direct or circumstantial. *State v. Pena*, 209 Ariz. 503, 505, ¶ 7, 104 P.3d 873, 875 (App. 2005). In determining whether there is substantial evidence to warrant a conviction, the superior court must "giv[e] full credence to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences therefrom." *State v. Clifton*, 134 Ariz. 345, 348, 656 P.3d 634, 637 (App. 1982).

¶15 The sufficiency of the evidence is tested against the statutorily required elements of the offense. *Pena*, 209 Ariz.

at 505, ¶ 8, 104 P.3d at 875. When a Rule 20 motion is made at the close of the State's case, the sufficiency of the evidence is tested at that point. *Mathers*, 165 Ariz. at 66, 796 P.2d at 868.

¶16 Defendant challenges only the sufficiency of the evidence to establish that he fired the shots. Defendant argues that Aldaba, the only witness who was able to testify that he saw Defendant fire the shots, was "extremely incredible" and "extremely unreliable."³ That assertion appears to be based on the theory that Aldaba had a motive to testify against Defendant because Aldaba was also involved in the incident.

¶17 In ruling on Defendant's Rule 20 motion, however, the court was required to defer to the prerogative of the jury to determine the credibility of Aldaba. Aldaba testified that he was in the car with Defendant and saw Defendant retrieve the rifle from the back of the car, load it, and fire it at the victims. Reasonable people could accept Aldaba's testimony, along with the other evidence presented in the State's case in chief, as sufficient to support Defendant's conviction on both

³ Though Defendant briefly asserts that "[a]side from this very incredible testimony by Jose Aldaba, the evidence against [Defendant] is circumstantial, at best" and not "baseline sufficient," he develops no argument on this point. We note, however, that circumstantial evidence is not legally disfavored, and a conviction may be sustained on circumstantial evidence alone. *State v. Green*, 111 Ariz. 444, 446, 532 P.2d 506, 508 (1975).

charges beyond a reasonable doubt. Therefore, we find that the court did not err in denying Defendant's Rule 20 motion.

II. Jury Verdicts

¶18 Our review of the sufficiency of the evidence to support a jury verdict is the same as our review of the sufficiency of the evidence to support the denial of a Rule 20 motion. See *State v. Sharma*, 216 Ariz. 292, 294, ¶ 7, 165 P.3d 693, 695 (App. 2007) ("Our review of the sufficiency of the evidence is limited to whether substantial evidence supports the verdict."). In support of his challenge to the insufficiency of the jury verdicts, Defendant sets forth the same arguments he propounded in support of his challenge to the denial of his Rule 20 motion.

¶19 Defendant's testimony after the denial of his Rule 20 motion conflicted in many ways with Aldaba's testimony and the State's other evidence. We have already found that the State's evidence was sufficient. It was for the jury to weigh the evidence and determine the credibility of those who testified. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). Given the record before us, we find that there was sufficient evidence to support the jury's verdicts.

CONCLUSION

¶20 For the reasons set forth above, we affirm Defendant's convictions and sentences.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

JOHN C. GEMMILL, Judge