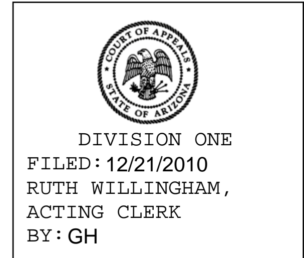
NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24


DIVISION ONE
FILED: 12/21/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	No. 1 CA-CR 09-0202
v.	DEPARTMENT E
KERA ANN MAYS, Appellant.	**MEMORANDUM DECISION** (Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-128668-002 DT

The Honorable George H. Foster, Jr., Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Edith M. Lucero, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Kera Ann Mays appeals her conviction and sentence for first degree burglary. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Matthew B., Taylor O. and Justin H. shared an apartment. On May 5, 2008, Matthew and Taylor passed Charles Vaughn, whom they did not know, on the stairs as they returned to their apartment. Matthew got a "strange vibe" and watched as Vaughn got into a parked sedan. Matthew heard people walking on the apartment balcony and saw "feet moving around" when no one was supposed to be there. He looked up and saw a head over the top of the balcony. Taylor ran to the apartment while Matthew stayed below. Matthew heard someone jump off the balcony, saw Jeremiah Weddel[2] on the ground and proceeded toward him. But Matthew froze when he saw that Weddel held a shotgun. The men made eye contact and circled each other. Weddel held the shotgun up "like he was shooting" it, but Matthew could see there was no shell in the chamber. Matthew decided to go after Weddel, but stopped when Weddel chambered a shell. Matthew heard Mays jump off the balcony and land behind him. Mays was "pinned up against the wall" and Matthew figured he had a "better chance" grabbing her. But he stopped and immediately

---

[1] We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against the defendant. *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997).

[2] Mays and Weddel were tried together. Because Weddel does not join in this appeal, we reference him only as necessary to develop Mays's issues on appeal.

walked away when Weddel raised the shotgun barrel toward him. Mays and Weddel got in the car with Vaughn and drove away. Matthew followed them, but lost them in the neighborhood. He returned to the apartment, which had been ransacked. Personal and electronic items were bagged up and "anything of value" was out in the open. Justin reported that a $100 bill, folded in fourths and kept in the top drawer of his dresser, was missing.

¶3 A police officer patrolling the neighborhood stopped Vaughn's car when it ran a stop sign. Vaughn sat in the driver's seat, Weddel sat in the front passenger seat, and Mays sat in the back seat. The officer saw a shotgun sticking straight up between the driver and passenger seats, and held the passengers at gunpoint until backup arrived. Thereafter, another officer handcuffed Mays and confiscated a $100 bill folded in fourths from her bra. Officers at the scene heard a radio call describing a burglary in progress with a description that matched the stopped vehicle and passengers.

¶4 Other officers responded to Taylor's 9-1-1 call and explained they had suspects in custody. Matthew identified Mays, Weddel, and Vaughn. Taylor identified Vaughn as the man who passed him on the stairs. Justin identified the confiscated shotgun as one he kept "right next to [his] bed, with three shells in it."

¶5 Mays was indicted for burglary in the first degree, a class 2 dangerous felony, in violation of A.R.S. §§ 13-1508 and -1507. Mays and Weddel were tried together during a five-day jury trial. At the conclusion of the State's case, Mays moved for a judgment of acquittal pursuant to Ariz. R. Crim. P. 20. The motion was denied. Weddel testified,[3] but Mays did not. The jury found Mays guilty of burglary in the first degree and the court sentenced her to seven years in prison. She timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033.

DISCUSSION

¶6 Mays acknowledges that there was sufficient evidence to support a second-degree burglary conviction. She contends, however, that the trial court erred in denying her motion for acquittal because no evidence was presented that she intended to commit first degree burglary.[4] Mays's theory is that Weddel

---

[3] Weddel testified as follows: Vaughn agreed to give him a ride to his mother's house located in the same neighborhood as the apartment. Along the way, they picked up Mays. During the drive, Weddel fell asleep in the front passenger seat and he woke up immediately before the police stopped the vehicle.

[4] Mays also quotes the jury instruction from her trial and notes a discrepancy in its wording. She does not, however, provide any legal argument on this topic. Similarly, she refers to statements made during the State's closing argument but provides no legal argument about those statements. A party must present significant arguments, set forth his or her position on the issues raised, and include citations to relevant authorities, statutes, and portions of the record. *See* ARCAP 13(a)(6).

stole the shotgun while in the apartment, and she did not aid or facilitate Weddel in his possession or use of a weapon. We disagree.

¶7 Our decision in this case is based upon our interpretation of A.R.S. § 13-1508(A). Questions of statutory interpretation are questions of law that an appellate court reviews de novo. *State v. Ditsworth (Patel)*, 216 Ariz. 339, 341, ¶ 8, 166 P.3d 130, 132 (App. 2007). A.R.S. § 13-1508(A) provides that burglary in the first degree is committed when a "person or an accomplice" commits second degree burglary "and knowingly possesses explosives, a deadly weapon or a dangerous instrument in the course of committing any theft or felony."[5] An

> "accomplice" means a person . . . who with the intent to promote or facilitate the commission of an offense:
>
> 1. Solicits or commands another to commit the offense; or
>
> 2. Aids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense.
>
> 3. Provides means or opportunity to another person to commit the offense.

Issues not clearly raised and argued in a party's appellate brief are waived. *Schabel v. Deer Valley Unified Sch. Dist. No. 97,* 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996). We therefore decline to address those issues.

[5] Theft is committed when a person "[c]ontrols property of another with the intent to deprive the other person of such property." A.R.S. § 13-1802(A)(1).

A.R.S. § 13-301.

¶8 As Mays acknowledges, a reasonable jury could have concluded that she intended to enter the apartment to commit theft. *See State v. Talley*, 112 Ariz. 268, 269, 540 P.2d 1249, 1250 (1975) ("Evidence that an individual was found in the possession of property from the building may support an inference that he had the requisite intent to commit a crime at the time he entered the premises."). And there was abundant evidence that Mays and Weddel were accomplices.

¶9 Second degree burglary is elevated to burglary in the first degree when a "person *or an accomplice* violates . . . § 13-1507 and knowingly possesses . . . a deadly weapon or a dangerous instrument in the course of committing any theft or any felony." A.R.S. § 13-1508(A) (emphasis added). Here, Weddel jumped from the balcony holding the shotgun, which he pointed at Matthew.[6] A shotgun is a deadly weapon. *See* A.R.S. § 13-3101(A)(1),(4) (defining "deadly weapon" as anything designed for lethal use, including any loaded or unloaded shotgun); *see also State v. Tabor*, 184 Ariz. 119, 119-20, 907 P.2d 505, 505-06 (App. 1995) (explaining that a dangerous weapon procured as "loot" can satisfy the provisions of A.R.S. § 13-1508(A)).

---

[6] Mays and Weddel were "in the course of committing" the burglary when they jumped from the balcony. *See* A.R.S. § 13-1501(7) (defining that term to include "any acts that are performed by an intruder from the moment of entry to and including flight from the scene of a crime").

Under the plain language of the statute, therefore, Mays's accomplice possessed a deadly weapon while committing second degree burglary, and this is sufficient to warrant Mays's conviction for first degree burglary.

¶10 Mays contends she is "criminally accountable only for an offense [she] *intended* to aid or aided another in planning or committing." *See State v. Phillips,* 202 Ariz. 427, 436, ¶ 37, 46 P.3d 1048, 1057 (2002). She analogizes her situation to *State v. Johnson,* 215 Ariz. 28, 156 P.3d 445 (App. 2007), which is readily distinguishable from this case. In *Johnson,* the defendant and others planned to lure an intended victim from a shed in a residential backyard, throw him in the back of a van, and beat him up. *Id.* at 30, ¶¶ 7-8, 156 P.3d at 447. Johnson waited in the van while the others entered the backyard and learned that the victim was not in the shed. *Id.* at 31, ¶ 10, 156 P.3d at 448. "On the 'spur of the moment,'" *id.* at 33, ¶ 22, 156 P.3d at 450, the others entered the residence and killed one of the occupants. *Id.* at 31, ¶¶ 10-11, 156 P.3d at 448. Johnson was convicted of felony murder. *Id.* at 29, ¶ 1, 156 P.3d at 446. We reversed Johnson's conviction because there was no substantial evidence that she knew, intended, or even expected that the residence might be burglarized. *Id.* at 34, ¶¶ 26, 28, 156 P.3d at 451. Here, the evidence demonstrated that Mays was inside the apartment without the residents' consent and

that she possessed a quarter-folded $100 bill like the one Justin owned. We conclude that Mays's reliance on *Phillips* is inapposite.

CONCLUSION

¶11 For the reasons discussed above, we affirm Mays's conviction of burglary in the first degree.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PHILIP HALL, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge