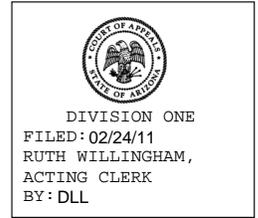


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0239
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
GARRICK BURNS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-136239-002SE

The Honorable Steven P. Lynch, Judge Pro Tem

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Garrick Burns (Appellant) appeals his convictions from one count of aggravated robbery, a class three non-dangerous

felony, and one count of armed robbery, a class two dangerous felony.

FACTS AND PROCEDURAL HISTORY

¶12 In May 2009, Dustin S. (Victim) was walking home carrying his cell phone and wallet in his hands. As Victim was walking, he passed Appellant and the co-defendant, Angel O.

¶13 Appellant grabbed Victim's left arm and pulled him down. Appellant began to punch Victim in the face, hitting him approximately eight times. These repeated punches caused Victim to drop his wallet and cell phone. Appellant picked up the wallet and cell phone and told Victim, "shit happens."

¶14 Appellant and Angel O. then got into a pickup truck. In hopes of getting his belongings back and to better identify Appellant and Angel O, Victim hopped into the bed of the truck. The truck stopped and Victim jumped out of the bed. Angel O. got out of the truck with another person and pulled a handgun from his waistband. Victim began to run from the truck after Angel O. pointed the handgun at him.

¶15 Victim went to a neighbor's home and called the police. Officer Garena (Garena) arrived at the neighbor's home and asked for Victim's cell phone number. Garena began to call the phone number, and after dialing five times, Angel O. answered. Pretending to be someone else, Garena told Angel O. he was owed money by the owner of the cell phone. After continually

provoking Angel O., Garena was challenged to a fight and Angel O. gave him his address.

¶16 Officers arrived at the address given by Angel O. and ordered the occupants out of the apartment. The officers conducted a protective sweep of the apartment and found Victim's cell phone. During a search of Angel O., incident to arrest, officers found Victim's debit card. During a subsequent interrogation, Angel O. told officers Victim's wallet and the handgun could be found inside the apartment.

¶17 A few days later, Appellant was interviewed by Detective C. Appellant said that he was attempting to catch a bus to Phoenix when Victim "brushed against him." Victim did not back away, but instead came towards Appellant at which point Appellant punched Victim in the face.

¶18 At trial, a jury convicted Appellant of one count of aggravated robbery and one count of armed robbery. The jury found two aggravating circumstances related to the aggravated robbery and four related to the armed robbery. Appellant had two prior felony convictions and was sentenced to aggravated, concurrent terms of twenty and eighteen years' imprisonment, respectively.

¶19 Appellant filed a timely notice of appeal. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona

Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031, and -4033.A (2010).¹

DISCUSSION

¶10 Appellant argues the State presented insufficient evidence of intent to support the aggravated robbery and armed robbery verdicts.

¶11 When reviewing an insufficiency of evidence claim, we do not reweigh or reevaluate the evidence, but instead "view the evidence in the light most favorable to sustaining the verdict, and we must resolve all reasonable inferences against defendant." *State v. Atwood*, 171 Ariz. 576, 596, 832 P.2d 593, 613 (1992), *overruled on other grounds by State v. Nordstrom*, 200 Ariz. 229, 241, ¶ 25, 25 P.3d 717, 729 (2001); *see State v. Garfield*, 208 Ariz. 275, 277, ¶ 6, 92 P.3d 905, 907 (App. 2004). In our review, we do not distinguish "between the probative value of direct and circumstantial evidence." *State v. Bible*, 175 Ariz. 549, 560 n.1, 858 P.2d 1152, 1163 n.1 (1993). The State does not have "to negate every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence." *State v. Nash*, 143 Ariz. 392, 404, 694 P.2d 222, 234 (1985). When determining one's intent, absent an admission, the court uses

¹ We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

inferences "from all relevant surrounding circumstances." *In re William G.*, 192 Ariz. 208, 213, 963 P.2d 287, 292 (App. 1997).

¶12 Arizona's robbery statute states that robbery is committed if a person, "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 (2009). The term, "[i]n the course of" committing or taking any property means "any of the defendant's" actions from the beginning of the initiation through the end of the flight from the robbery. A.R.S. § 13-1901.2 (2009). Under Arizona's robbery statute the element of force must be "found to have been used to either take the property or to resist the retaking of the property." *State v. Celaya*, 135 Ariz. 248, 252, 660 P.2d 849, 853 (1983).

¶13 A robbery becomes aggravated, if during the course of the robbery a "person is aided by one or more accomplices." A.R.S. § 13-1903.A (2009). The act becomes an armed robbery, if during the course of the robbery the defendant or accomplice is armed with a deadly weapon or threatens to use a deadly weapon. A.R.S. § 13-1904.A.1-2 (2009).

¶14 Appellant argues that because he did not verbally demand the cell phone or wallet from Victim, he did not have the

requisite intent to commit robbery. The question for the jury was whether Appellant repeatedly punched the Victim in the face, to coerce him into dropping or handing over the wallet and cell phone in his hand. The jury decided that is what occurred and this factual determination will not be second guessed on appeal. See *State v. Dickens*, 187 Ariz. 1, 21, 926 P.2d 468, 488 (1996). Furthermore, the jury made a determination that Appellant committed aggravated robbery and armed robbery with the expectation or in consideration for anything of pecuniary value.

¶15 Appellant committed the robbery with an accomplice and therefore subjected himself to aggravated robbery charges. See A.R.S. § 13-1903.A. Furthermore, Angel O., Appellant's accomplice, was armed with a handgun during the robbery and their flight from the scene. The presence of a deadly weapon during a robbery classifies the act as an armed robbery. See A.R.S. § 13-1904.A.1-2.

¶16 The jury was presented with sufficient evidence to determine Appellant's intent and that Appellant committed armed and aggravated robbery.

CONCLUSION

¶17 For the foregoing reasons we affirm Appellant's convictions and sentences.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

PATRICIA K. NORRIS, Presiding Judge

/S/

JOHN C. GEMMILL, Judge