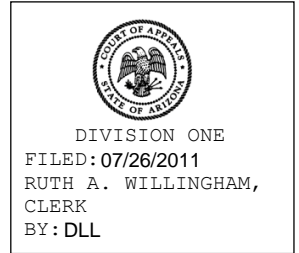


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0356
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
BRIAN DEAN CHRIST,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-118151-003 DT

The Honorable Paul J. McMurdie, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Defendant Brian Dean Christ appeals his convictions
and sentences for first-degree felony murder, second-degree

burglary, and kidnapping. On appeal, he only argues that the superior court should have granted his motion for judgment of acquittal on the murder charge because the State did not present evidence as to the victim's cause of death. We disagree. Although the State did not present evidence showing an exact cause of the victim's death, it did present substantial evidence from which the jury could infer Christ acted as an accomplice to the kidnapping and that the victim died as a result of a head injury sustained during that kidnapping.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 At 1:12 a.m. on March 12, 2009, Glendale police and fire personnel responded to a fully engaged house fire. The 71-year-old victim's extensively burned body was discovered in the remains. His hands were bound behind his back.

¶13 During their investigation of the matter, police learned Christ had been at the victim's home immediately before the fire with Brian King and Breana Vance, Christ's live-in girlfriend. Police also discovered personal items that belonged to the victim and his family in Christ's truck and at Christ's and King's residences.

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Christ. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶14 The State charged Christ with first-degree felony murder in violation of Arizona Revised Statutes ("A.R.S.") section 13-1105(A)(2) (2010),² second-degree burglary in violation of A.R.S. § 13-1507(A) (2010), and kidnapping in violation of A.R.S. § 13-1304(A)(3) (2010).³ The State included in its allegations a theory of accomplice liability. See A.R.S. §§ 13-301 to -303 (2010).

¶15 At trial, the medical examiner who autopsied the victim testified the victim died from homicidal assault. She explained that, before the fire started, the victim sustained blunt force trauma to the head that would have rendered him "unconscious" or "at least . . . dazed." She further explained, based on the absence of soot in the victim's lungs, the victim died before the fire started. Because of the extensive burns to the body, however, the medical examiner could not conclusively opine on the precise direct cause or "mechanism" of death. She testified:

²Although the Arizona Legislature amended certain statutes cited in this decision after Christ's offenses, the revisions are immaterial. Thus, we cite to the current versions of these statutes.

³King was charged with, and convicted of, the same offenses as well as one count of misconduct involving weapons. This court affirmed King's convictions and sentences. *State v. King*, 1 CA-CR 10-0394, 2011 WL 2434080 (Ariz. App. June 16, 2011) (mem. decision). The State charged Vance with one count of "recklessly attempt[ing] to traffick in the property of [the victim]."

The injuries in and of themselves, I wouldn't say they are fatal, but, again, they're just a marker, when a person has an injury to the surface of the brain such as in these [sic] type of bruising, they [sic] can die from seizures even following the injury by a period of time.

So certainly a person may die and have only the injuries that I saw at the autopsy [of the victim].

¶6 After the State rested, Christ moved under Arizona Rule of Criminal Procedure ("Rule") 20 for judgment of acquittal on the murder charge. The superior court denied the motion, and the jury found Christ guilty of the charged offenses.⁴ The superior court sentenced Christ to natural life for the first-degree murder conviction to be served concurrently with terms of imprisonment for the other convictions. Christ appealed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1) (2003) and 13-4033(A)(1) (2010).

DISCUSSION

¶7 Christ contends the superior court should have granted his Rule 20 motion because, as he argued at trial, the State failed to prove the victim's cause of death. We review de novo the superior court's denial of Christ's request for judgment of acquittal. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993).

⁴The jury also found that the murder and kidnapping offenses were dangerous.

¶18 A judgment of acquittal is appropriate if there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "'Substantial evidence' is evidence that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). If reasonable minds could differ on the inferences to be drawn from the evidence, whether direct or circumstantial, the case must be submitted to the jury. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶19 We reject Christ's argument. In order to obtain a felony murder conviction, the State was not required to prove the precise cause of death. Specifically, the State was not limited, as Christ contends, to proving the victim's death resulted from his hands being bound behind his back. Rather, the State had to show beyond a reasonable doubt Christ, either alone or with another, committed or attempted to commit kidnapping, "and, in the course of and furtherance of the offense or immediate flight from the offense, [Christ] or another person cause[d] the death of [the victim]." A.R.S. § 13-1105(A)(2).

¶10 The State made this showing and thus the superior court properly denied the Rule 20 motion. The evidence revealed Christ drove King and Vance to the victim's home late in the

evening of March 11, 2009. The proclaimed purpose of the visit was for Vance, an exotic dancer by trade, to "dance" for the victim.⁵ After Vance finished her dance, she and Christ talked with the victim. King then entered the home, restrained the victim, and Christ and King went through the home collecting "stuff." During his police interview, Christ repeatedly acknowledged he gave King the tape to tie up the victim, and Christ demonstrated how King bound the victim's hands behind his back. Christ also admitted that, while driving to the victim's home, he gave King a can of carburetor cleaner, which is a known fire accelerant.⁶ Vance testified that, while Christ and King loaded Christ's truck with valuables from the victim's home, she observed the victim tied up on the floor. He was not visibly injured, "he wasn't slurring his speech or anything like that," and he raised his head and looked at her. She then returned to Christ's truck and waited 20 to 25 minutes while Christ and King continued loading the truck. The three left together shortly after 1 a.m. As he drove away, Christ saw smoke coming from the

⁵According to Vance, she and Christ had been to the victim's Glendale home on three prior occasions after initially meeting the victim in Las Vegas.

⁶The fire investigator testified the fire at the victim's home was not accidentally caused, and he stated the charring pattern of the baseboards near the victim's body was "highly suggestive" of the use of an "ignitable liquid."

victim's home. Police discovered the home engulfed in flames shortly thereafter at about 1:14 a.m.

¶11 The foregoing evidence, in addition to the medical examiner's testimony, *see supra* ¶ 5, allowed the jury to reasonably infer Christ assisted King in kidnapping the victim and the victim died from a head injury inflicted by either King or Christ. The evidence showed Christ provided transportation to and from the victim's home and provided the duct tape to tie up the victim and the accelerant to start the fire.⁷ The evidence also showed the victim was alive and observant when Vance left the home to wait in the truck, *see supra* ¶ 10, King and Christ were in the home by themselves for another 20 to 25 minutes, the home was on fire as they were leaving, but the fire did not cause the victim's death. This evidence, taken together, allowed the jury to reasonably infer that Christ or King inflicted a head injury to the victim during that 20 to 25 minutes that led to the victim's death before the fire engulfed the home. Thus, the jury could infer Christ himself or Christ as an accomplice of King "cause[d]" the victim's death "in the course and in the furtherance" of the kidnapping. A.R.S. § 13-1105(A)(2).

⁷The evidence also allowed the jury to reasonably infer Christ or King set the victim's home on fire in an attempt to destroy evidence of the charged offenses.

¶12 Accordingly, the superior court properly denied Christ's Rule 20 motion. See *State v. Lacy*, 187 Ariz. 340, 349-50, 929 P.2d 1288-89 (1996) (whether a murder occurs in the course and furtherance of a predicate felony or immediate flight from such offense "is ordinarily a question to be determined by the trier of fact").

CONCLUSION

¶13 For the foregoing reasons, we affirm Christ's convictions and sentences.

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

_____/s/_____
PHILIP HALL, Judge

_____/s/_____
DONN KESSLER, Judge