

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

DANIEL ADAM DENUZZI,  
*Appellant.*

No. 2 CA-CR 2013-0510  
Filed February 24, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Appeal from the Superior Court in Gila County  
No. S0400CR201100643  
The Honorable Peter J. Cahill, Judge

**AFFIRMED**

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COUNSEL

Mark Brnovich, Arizona Attorney General  
Joseph T. Maziarz, Section Chief Counsel, Phoenix  
By Amy M. Thorson, Assistant Attorney General, Tucson  
*Counsel for Appellee*

Emily Danies, Tucson  
*Counsel for Appellant*

STATE v. DENUZZI  
Decision of the Court

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**MEMORANDUM DECISION**

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

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VÁSQUEZ, Judge:

¶1 On a submitted record, the trial court found Daniel Denuzzi guilty of attempted first-degree murder, arson of an occupied structure, two counts of aggravated assault with a deadly weapon or dangerous instrument, and threatening or intimidating. The court sentenced Denuzzi to concurrent prison terms, the longest of which was eight years. On appeal, Denuzzi argues the court erred by not finding “he was guilty except insane pursuant to A.R.S. [§] 13-502.” For the reasons that follow, we affirm.

**Factual and Procedural Background**

¶2 “We view the evidence and all reasonable inferences therefrom in the light most favorable to upholding [Denuzzi]’s conviction[s].” *State v. Wright*, 214 Ariz. 540, ¶ 2, 155 P.3d 1064, 1065 (App. 2007). Denuzzi spent the better part of the morning of November 18, 2011, yelling threats at his neighbor, R.M., who lived across the street. Later, R.M. was in his backyard when he heard Denuzzi “getting louder and louder.” R.M. went into his house but as he looked outside, Denuzzi swung an ax through the window, almost hitting R.M. in the face. Denuzzi then threw an ignited gasoline canister into the home and, when R.M. ran outside, Denuzzi “chased him with the axe trying to kill him with it.” Denuzzi was “yelling . . . over and over he was going to kill [R.M.] and his family.” C.O., who was driving past R.M.’s home on her way to work, slowed her vehicle when she saw Denuzzi. Denuzzi ran after C.O.’s vehicle with the ax.

¶3 A sergeant with the Gila County Sheriff’s Office was first to respond to the area. He saw Denuzzi, whom he recognized from “numerous involvements,” carrying an ax. According to the sergeant, “Denuzzi was enraged and was yelling something

STATE v. DENUZZI  
Decision of the Court

undistinguishable.” Denuzzi complied when he was ordered to drop the ax and lie on the ground. Denuzzi later claimed he had attacked R.M. because he saw R.M. shoot his girlfriend—an apparent hallucination. Denuzzi suffers from chronic paranoid schizophrenia and schizoaffective disorder.

¶4 A grand jury indicted Denuzzi for two counts of attempted first-degree murder, two counts of aggravated assault with a deadly weapon or dangerous instrument, arson of an occupied structure, criminal damage of more than \$10,000, and threatening or intimidating. In January 2012, his counsel filed a motion pursuant to Rule 11, Ariz. R. Crim. P., for an examination to determine Denuzzi’s competency to stand trial. The trial court granted the motion and appointed Dr. Jack Potts and Dr. Barry Morenz to evaluate Denuzzi. After conducting separate evaluations, both doctors concluded Denuzzi was not competent, and in August 2012, the court entered an order for Denuzzi to be committed for restoration to competency.

¶5 In December 2012, the trial court found Denuzzi had been restored to competency. Denuzzi then gave notice of his intent to raise a defense of guilty except insane. He submitted a supplemental report from Morenz, stating: “At the time of the alleged instant offense . . . Denuzzi was likely floridly psychotic. . . . Denuzzi probably did not know that his acts were wrong at the time.” The state’s expert, Dr. Joel Parker, disagreed. Parker acknowledged Denuzzi suffered from “a psychotic disorder,” as evidenced by “previous psychiatric hospitalizations, delusions, hallucinations, and treatment with antipsychotic medications.” However, he concluded “there is evidence that [Denuzzi] was aware of the wrongfulness of his actions at the time of the offense.”<sup>1</sup>

¶6 Denuzzi waived his right to a jury trial and submitted the case to the trial court for a determination of guilt on the basis of a

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<sup>1</sup>In his May 8, 2012, report concerning Denuzzi’s competency to stand trial, Potts stated: “Whether or not he knew the wrongfulness of his conduct is an issue on which I have no opinion.” He apparently was not asked to provide a supplemental opinion.

STATE v. DENUZZI  
Decision of the Court

stipulated record. The court found Denuzzi guilty of attempted first-degree murder of R.M., arson of an occupied structure, two counts of aggravated assault, and threatening or intimidating. However, the court found him not guilty of attempted murder of C.O. and criminal damage in an amount of \$10,000 or more, finding the state had failed to present evidence of “the dollar-value of the damage” Denuzzi had caused. The court then sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

**Discussion**

¶7 Denuzzi argues the trial court erred by failing to find “he was guilty except insane pursuant to A.R.S. [§] 13-502.” We construe his argument as a challenge to the sufficiency of the evidence supporting his convictions, an issue we review *de novo*. See *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). We will not disturb a judgment of guilt “if it is supported by substantial evidence.” *State v. Garfield*, 208 Ariz. 275, ¶ 6, 92 P.3d 905, 907 (App. 2004). Substantial evidence “‘is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191, quoting *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). That evidence may be either direct or circumstantial. *State v. Snider*, 233 Ariz. 243, ¶ 4, 311 P.3d 656, 658 (App. 2013).

¶8 “[L]egal insanity is an affirmative defense.” § 13-502(A). Accordingly, Denuzzi was required to present clear and convincing evidence that “at the time of the commission of the criminal act [he] was afflicted with a mental disease or defect of such severity that [he] did not know the criminal act was wrong.” § 13-502(A), (C). In this context, “wrong” refers to our “‘societal standards’” regarding legality or morality. *State v. Tamplin*, 195 Ariz. 246, ¶ 11, 986 P.2d 914, 916 (App. 1999), quoting *People v. Serravo*, 823 P.2d 128, 137-38 (Colo. 1992). Thus, the insanity defense does not apply if the defendant knew the act was morally and legally wrong “‘as defined by a community standard’” even though he personally believed the act was right. *Id.* ¶ 7, quoting *State v. Corley*, 108 Ariz. 240, 242-43, 495 P.2d 470, 472-73 (1972).

STATE v. DENUZZI  
Decision of the Court

¶9 In this case, the mental health experts did not dispute Denuzzi suffered from a mental disease or defect. Rather, the issue was whether Denuzzi knew the various acts he committed on November 18, 2011, were wrong. As to the attack on R.M., Parker stated in his report:

When I asked him to describe his rationale for the offense, . . . DeNuzzi told me that his intent was “to scare [R.M.],” and he wanted to “beat the crap out of him.” He wanted to attack the victim, [R.M.], in direct retaliation for [R.M.] shooting his girlfriend . . . . DeNuzzi’s actions flow from his wish to punish [R.M.] for his (imagined) behavior.

But, Denuzzi also told Parker he understood “beating up his neighbor was against the law.” Thus, although Denuzzi’s hallucination may have provided him a motive for attacking R.M., it did not render him incapable of understanding his conduct was wrong.

¶10 Although Denuzzi told Parker “he had no recollection whatsoever of the firebombing,” Morenz’s first report on Denuzzi’s competency indicates that Denuzzi was aware “he lit some gasoline on fire and threw it in his neighbor’s house.” And, as Parker explained in his report, the fact that Denuzzi “immediately complied” with the sergeant’s commands at the time of his arrest “indicate[d] his awareness of his environment and . . . that his thoughts were not so disturbed as to be unaware of his actions at the time.” *Cf. State v. Ganster*, 102 Ariz. 490, 494, 433 P.2d 620, 624 (1967) (evidence of “defendant’s acts immediately before, at the time, and subsequent to” criminal act indicative of sanity).

¶11 Neither the police reports nor the reports prepared by Parker, Morenz, and Potts include Denuzzi’s explanation for why he had chased after C.O.’s vehicle with the ax. Accordingly, we find nothing in the record to directly support Denuzzi’s insanity defense concerning the aggravated assault committed against C.O. *See Ariz. R. Crim. P. 31.13(c)(1)(vi); State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d

STATE v. DENUZZI  
Decision of the Court

830, 838 (1995) (issue waived when argument insufficient to permit appellate review).

¶12 In sum, we cannot say the trial court erred when it rejected Denuzzi's defense. *See West*, 226 Ariz. 559, ¶ 15, 250 P.3d at 1191. Denuzzi nevertheless argues Morenz's opinion was more reliable than Parker's. Morenz concluded that "Denuzzi probably did not know that his acts were wrong at the time of the alleged instant offense." And Denuzzi points out that Parker evaluated him after he was restored to competency and alleges Parker's report is "replete with erroneous conclusions." However, once Denuzzi had waived his right to a jury trial, it was the trial court's responsibility to weigh the evidence and determine the reliability of the expert opinions.<sup>2</sup> *See State v. Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d 265, 269 (2007) (credibility of witnesses and weight of evidence questions exclusively for fact finder); *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995) ("The finder-of-fact, not the appellate court, weighs the evidence and determines the credibility of witnesses."). Therefore, we will not revisit the issue on appeal.

**Disposition**

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

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<sup>2</sup>Notably, Denuzzi declined the opportunity for "argument before [the court made] a final decision" on the submitted record.