IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAMES VANDON GERMANY,
Appellant.

No. 2 CA-CR 2016-0019
Filed January 20, 2017

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NOT FOR PUBLICATION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.

Appeal from the Superior Court in Pima County
No. CR20143126001
The Honorable Christopher Browning, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Mariette S. Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Rebecca A. McLean, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 After a jury trial, appellant James Germany was convicted of second-degree burglary, and the trial court sentenced him to an enhanced, "slightly mitigated," 5.5-year term of imprisonment. On appeal, Germany argues the state presented insufficient evidence to support his conviction. We disagree, and therefore affirm.

¶2 In reviewing a claim of insufficient evidence, we review the evidence "in the light most favorable to sustaining the conviction" and resolve all reasonable inferences against the defendant. *State v. Haas,* 138 Ariz. 413, 419, 675 P.2d 673, 679 (1983), *quoting State v. Tison,* 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). In January 2012, the victims discovered someone had broken into their home and stolen jewelry. The victims found a piece of electronic "cable" in the house that did not belong to them. Germany's DNA[1] was found on the cable and no one else's DNA was present.

¶3 Germany argues that the DNA evidence was insufficient to establish that he committed the burglary. A conviction must be supported by "substantial evidence," Ariz. R. Crim. P. 20, which is "such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers,* 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), *quoting State v. Jones,* 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will reverse a conviction for insufficient evidence "only where there is a complete absence of

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[1]Deoxyribonucleic acid.

probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), *quoting State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). And, evidence remains sufficient to sustain a conviction even "if reasonable minds can differ on inferences to be drawn therefrom." *State v. Landrigan,* 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶4 "A person commits burglary in the second degree by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein." A.R.S. § 13–1507(A). The victims testified the cable did not belong to them and Germany's single-source DNA was found on it. The victims had not given Germany permission to be in their home. They also testified one to two hundred pieces of jewelry were missing from the house. "It is well established in our State that a crime may be proven by circumstantial evidence alone," and DNA, like fingerprint evidence, is "a means of positive identification by which a defendant may be linked with the commission of the offense." *State v. Carter*, 118 Ariz. 562, 563-64, 578 P.2d 991, 992-93 (1978), *quoting State v. Brady*, 2 Ariz. App. 210, 213, 407 P.2d 399, 402 (1965); *see also United States v. Wright,* 215 F.3d 1020, 1025, 1028 (9th Cir. 2000) (DNA taken from blood left at robbery scene was "alone overwhelming[]" evidence establishing defendant's identity).

¶5 Germany's argument on appeal essentially asks us to reweigh the evidence presented at trial. That we will not do. *Haas,* 138 Ariz. at 419, 675 P.2d at 679. Rather, we evaluate only "whether there was sufficient evidence that a rational trier of fact could have found the defendant guilty beyond a reasonable doubt." *Id.*

¶6 Here, from the testimony presented, the jury could reasonably infer from the DNA sample, showing him as its single source, that Germany had been the last person to touch the cable. The jury could also infer from the testimony of the victims that the burglar had left the cable there. These two reasonable inferences, combined with the fact that Germany had no permission to enter the home, would allow a reasonable jury to conclude beyond a reasonable doubt that Germany committed the offense.

¶7 As both the trial court and prosecutor acknowledged, such evidence did not present an irrefutable case against Germany and indeed this presents a very close case on sufficiency. Our holding is therefore limited to the specific facts of this case. We do not hold that the DNA of a person found on a new item at a crime scene will, standing alone, always constitute evidence sufficient to survive a motion for judgment of acquittal.

¶8 We conclude there was sufficient evidence to support the jury's verdict, and therefore affirm Germany's conviction and sentence.