IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

FRANCISCO JAVIER MARTINEZ,
Appellant.

No. 2 CA-CR 2016-0111
Filed April 5, 2017

Appeal from the Superior Court in Pima County
No. CR20150848001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Kevin M. Burke, Interim Pima County Public Defender
By Abigail Jensen, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 After a jury trial, appellant Francisco Martinez was convicted of possession of marijuana for sale. The trial court sentenced Martinez to a minimum four-year prison term. On appeal, he claims there was insufficient evidence to support his conviction based on accomplice liability. We affirm.

¶2 "We view the facts in the light most favorable to sustaining the verdict, resolving all reasonable inferences against the defendant." *State v. Almaguer*, 232 Ariz. 190, ¶ 2, 303 P.3d 84, 86 (App. 2013). In April 2014, police conducted surveillance on a gold minivan, which led them to a home on the east side of Tucson ("Cartamo residence"), to which the van returned repeatedly, parked for a few hours, and then drove away. When officers stopped the van on May 1, 2014, the occupants fled; inside the van, officers discovered multiple bales of marijuana weighing 463 pounds, "wrapped up for transport and retail," and in the center console of the van, a cellular telephone belonging to one of the van's occupants, which included contact information for Martinez.

¶3 Police then obtained a search warrant for the Cartamo residence, which yielded the following: in the master bedroom and bathroom, multiple bales of marijuana that were "stacked floor to ceiling"[1]; in the living room/office, a utility bill in Martinez's name for the Cartamo residence and a "ledger indicating drug sales"; also in the living room/office, a computer and hard drive containing

[1]The total weight of the marijuana removed from the residence, including the garage, was approximately 3300 pounds.

photographs of Martinez, an email address for which the user name was "F. Martinez in kind of abbreviated fashion," and email correspondence between Martinez and his girlfriend; and in the garage, more bales of marijuana, "bags of marijuana wrappings [and] burlap sacks" and a hydraulic press used to break down and repackage large bales of marijuana. Other records showed that the water and electric services for the Cartamo residence were terminated on May 5 and 8, 2014; around the same time, Martinez terminated service for the cellular telephone number associated with his name, the same number found in the cellular telephone officers had discovered in the van. The property manager for the Cartamo residence also provided officers with an April 2014 air-conditioning service invoice signed by Martinez.[2]

¶4 At trial, Martinez testified that he had been working as a handyman in 2009 when he first performed work at the Cartamo residence for an individual named Patrick, who had offered Martinez additional work at the residence if Martinez would agree to put the utilities for the house in his name, which he did. This relationship continued for "years," during which Martinez never observed anything "strange" at the residence, nor did he see any marijuana. Martinez testified that he was present when the air-conditioning service occurred in April 2014, and stated that he did not know why his telephone number was found in the cellular telephone that had been discovered in the van.

¶5 During trial, Martinez moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. The state argued that Martinez's conduct was "consistent with someone who is involved in [a] stash house," and the trial court denied the motion. At the conclusion of the evidence, the court "consider[ed]" Martinez's motion for a judgment of acquittal "renewed," and again denied it. The jury found Martinez guilty of possession of marijuana for sale, and this appeal followed.

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[2]In response to a question asked by the prosecutor, one of the testifying officers agreed that marijuana should be stored in a cool environment to prevent spoilage.

¶6 On appeal, Martinez argues the verdict was "based on speculation and conjecture" rather than "substantial evidence." He further maintains that although the evidence connected him to the Cartamo residence, it does not show he had "knowledge that the residence was used to store marijuana," or that he acted to aid another person in planning or committing the charged offense. He essentially argues the state failed to prove he intended to promote or facilitate the possession of marijuana for sale and therefore failed to establish accomplice liability.[3]

¶7 "The sufficiency of the evidence is a question of law we review de novo." *State v. Snider*, 233 Ariz. 243, ¶ 4, 311 P.3d 656, 658 (App. 2013). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. West*, 226 Ariz. 559, ¶ 16, 250 P.3d 1188, 1191 (2011), *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). We will reverse only if no substantial evidence supports the conviction. *State v. Rivera*, 226 Ariz. 325, ¶ 3, 247 P.3d 560, 562 (App. 2011). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Id., quoting State v.*

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[3]The trial court instructed the jury on accomplice liability. A person is guilty of possession of marijuana for sale if the person knowingly possesses marijuana for sale. A.R.S. § 13-3405(A)(2). A person is liable as an accomplice who, with the requisite intent:

> 1. Solicits or commands another person to commit the offense; or
>
> 2. Aids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense[; or]
>
> 3. Provides means or opportunity to another person to commit the offense.

A.R.S. § 13-301.

Spears, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005).

¶8 Martinez maintains correctly there was no direct evidence of his intent to promote or facilitate the possession of marijuana for sale. And although one of the officers acknowledged there was no evidence that Martinez knowingly possessed marijuana at the Cartamo address, "[i]t is axiomatic that intent or knowledge may be inferred from the circumstances surrounding a person's behavior or action." *State v. Martinez*, 15 Ariz. App. 10, 12, 485 P.2d 600, 602 (1971); *see also State v. Green*, 111 Ariz. 444, 446, 532 P.2d 506, 508 (1975) ("There is no distinction in the probative value of direct and circumstantial evidence. A conviction may be sustained on circumstantial evidence alone.").

¶9 Here, the officers found a utility bill for the Cartamo residence in Martinez's name and a computer inside the home with information linking it to Martinez. Furthermore, Martinez terminated the utilities shortly after the marijuana was discovered and permitted someone to service the air-conditioner at the residence just before the marijuana was discovered. Finally, the state presented evidence a van containing a cellular telephone with Martinez's telephone number frequently visited the home. This evidence supported the conclusion that Martinez had significant and persistent contact with the Cartamo residence. *See State v. Tison*, 129 Ariz. 546, 554, 633 P.2d 355, 363 (1981) (intent to engage in criminal venture may be shown by relationship of parties and their conduct before and after offense). In addition, the presence of bales of marijuana in the Cartamo residence, the packaging materials and drug ledger, along with repeated visits to the residence by the van, all supported the inference that the residence was used as a stash house to store drugs and that any persistent visitor would have been aware of that fact.

¶10 This evidence supports the inference that Martinez was not "merely present," but played a role in promoting or facilitating the possession of marijuana for sale by providing a location for its storage, which is sufficient to support a finding of accomplice

liability. *See State v. King*, 226 Ariz. 253, ¶ 16, 245 P.3d 938, 943 (App. 2011). Furthermore, the trial court also instructed the jurors that Martinez could not be found guilty if they concluded he was merely present where criminal activity had occurred. This clarified that accomplice liability could not be based solely on Martinez's presence at the residence. *See State v. Noriega*, 187 Ariz. 282, 286, 928 P.2d 706, 710 (App. 1996).

¶11 The state thus presented substantial evidence, albeit largely circumstantial, that the Cartamo residence was used as a stash house, that Martinez knew or had reason to know as much and therefore aided and facilitated the sale of the marijuana stored there. *See Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d at 875. The jury as the trier of fact determines what evidence to accept and reject. *State v. Ruiz*, 236 Ariz. 317, ¶ 16, 340 P.3d 396, 402 (App. 2014). And it was free to reject Martinez's story, even if uncontroverted. *See State v. Pieck*, 111 Ariz. 318, 320, 529 P.2d 217, 219 (1974) ("The jury is not compelled to accept the story or believe the testimony of an interested party."); *see also State v. Hall*, 204 Ariz. 442, ¶ 55, 65 P.3d 90, 103 (2003) (credibility of witnesses is jury matter); *State v. Dixon*, 216 Ariz. 18, ¶ 10, 162 P.3d 657, 660 (App. 2007) (rejecting insufficient-evidence argument based in defendant's testimony). To the extent Martinez asks us to reweigh the evidence on appeal, we will not do so. *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

¶12 For the foregoing reasons, we affirm Martinez's conviction and sentence.