IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

TY COLTON MORENO,
Appellant.

No. 2 CA-CR 2016-0124
Filed May 3, 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NOT FOR PUBLICATION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. CR20130931001
The Honorable Kenneth Lee, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Eliza C. Ybarra, Assistant Attorney General, Phoenix
Counsel for Appellee

Dean Brault, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Staring and Judge Espinosa concurred.

M I L L E R, Judge:

¶1 In this appeal from his convictions for aggravated assault, theft of a means of transportation, and multiple counts of burglary, appellant Ty Moreno contends there was insufficient evidence to sustain his convictions for first-degree burglary and the trial court erred in denying his motion pursuant to Rule 20(a), Ariz. R. Crim. P. Finding no error, we affirm.

¶2 "We view the facts in the light most favorable to upholding [the] convictions and sentences." *State v. Delgado*, 232 Ariz. 182, ¶ 2, 303 P.3d 76, 79 (App. 2013). During the night of December 12 to 13, 2012, Moreno stole a white Dodge Stratus, by dismantling the ignition and using a screwdriver to start the vehicle. On the morning of December 14, Moreno and Orlando Molina burglarized three different homes or yards over the course of approximately six and a half hours, taking jewelry, electronics, and various other items. At the third home, a neighbor noticed them and called the police. Moreno and Molina fled in the Stratus and crashed into a wall not far from the burglaries. A resident of a nearby home saw Moreno jump over a wall, and when the resident got out of the vehicle in which he had been sitting, Moreno pointed a gun at him. Items taken from the homes were found in the white Stratus, and Moreno was found and identified by the man at whom he had pointed the gun.

¶3 After a jury trial, during which Moreno moved for a judgment of acquittal pursuant to Rule 20(a), he was convicted of aggravated assault, third-degree burglary, theft of a means of transportation, and two counts of first-degree burglary. The trial

court imposed enhanced, concurrent, presumptive and minimum prison terms, the longest of which was 15.75 years.

¶4 In the sole issue raised on appeal, Moreno argues there was insufficient evidence to sustain his convictions for first-degree burglary and the trial court erred in denying his motion pursuant to Rule 20(a) "[b]ecause there was no evidence that Moreno or his accomplice were armed during the burglaries." "[T]he controlling question" in a motion for judgment of acquittal "is solely whether the record contains 'substantial evidence to warrant a conviction.'" *State v. West*, 226 Ariz. 559, ¶ 14, 250 P.3d 1188, 1191 (2011), *quoting* Ariz. R. Crim. P. 20(a). Substantial evidence is evidence that reasonable jurors could accept as sufficient to find the defendant guilty beyond a reasonable doubt, *State v. Miller*, 234 Ariz. 31, ¶ 33, 316 P.3d 1219, 1229 (2013), considering "[b]oth direct and circumstantial evidence," *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. We review de novo a trial court's ruling on a Rule 20 motion. *West*, 226 Ariz. 559, ¶ 15, 250 P.3d at 1191. And we will reverse a conviction for insufficient evidence only if no substantial evidence supports the conviction. *State v. Rivera*, 226 Ariz. 325, ¶ 3, 247 P.3d 560, 562 (App. 2011).

¶5 "A person commits burglary in the first degree if such person or an accomplice" commits a burglary while he or she "knowingly possesses explosives, a deadly weapon or a dangerous instrument in the course of committing any theft or any felony." A.R.S. § 13-1508(A). "'In the course of committing' means any acts that are performed by an intruder from the moment of entry to and including flight from the scene of a crime." A.R.S. § 13-1501(7). Moreno argues that by the time he was seen with the gun after jumping the wall "he had previously left the scenes of the burglaries" and was therefore "no longer in the course of committing" them.

¶6 We agree with the state, however, that Moreno's possession of the gun when he and Molino crashed the vehicle carrying the stolen goods was circumstantial evidence that a reasonable juror could accept as sufficient to establish Moreno had possessed the gun during the burglaries. Moreno and Molino

committed the burglaries over a relatively short period of time, using the same vehicle that still contained the stolen property from the various homes at the time it crashed into the wall. Moreno was seen with the gun immediately near the crashed vehicle. From this evidence, viewed in the light most favorable to the prosecution, a reasonable juror could conclude Moreno had the gun with him throughout the day's crimes. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (critical inquiry for sufficiency of evidence "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. 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."). Moreno posits that different inferences can be drawn from these facts, essentially asking us to re-weigh the evidence, but that is beyond our purview on appeal and something we will not do. *See State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). We therefore cannot agree with Moreno that there was no substantial evidence to support the convictions. *See Rivera*, 226 Ariz. 325, ¶ 3, 247 P.3d at 562.

¶7 We affirm Moreno's convictions and sentences.