

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ADRIAN ZAMBRANO,
Appellant.

No. 2 CA-CR 2016-0129
Filed March 2, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201402642
The Honorable Steven J. Fuller, Judge

AFFIRMED

COUNSEL

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

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

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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 Adrian Zambrano was convicted of third-degree burglary. The jury found the state had proven two aggravating circumstances, and the trial court found Zambrano had two or more historical prior felony convictions and sentenced him to an enhanced, maximum prison term of fifteen years. For the reasons stated below, we affirm.

Factual Background

¶2 D.R., E.H.'s next-door neighbor, saw Zambrano and another man walking around E.H.'s house and knocking on his door, apparently "looking for [him]." D.R. believed the men had arrived in a silver Dodge truck that was parked at E.H.'s house. E.H. was not at home, and D.R. heard Zambrano say to the other man, "Let's take the – an air compressor." D.R. later saw the truck being driven away with E.H.'s all-terrain vehicle (ATV), along with the frame of another ATV, loaded onto its truck bed. E.H. testified that the ATV and frame had been in his fenced horse corral, with the gate closed, when he left his house that morning, and that they were missing when he returned. E.H. confronted Zambrano that evening, and Zambrano told him "[he] wasn't going to get the four-wheelers back," because E.H. "owed [Zambrano] money."¹

¹ E.H. explained to the investigating officer that he had purchased a motor from Zambrano's girlfriend or wife some years ago, and Zambrano was "not happy about that" and had sworn to receive payment from E.H. or to "get back" at him for non-payment.

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¶3 Zambrano was charged with third-degree burglary, based on the allegation that he had entered or remained unlawfully in E.H.'s fenced residential yard with the intent to commit a theft. A.R.S. § 13-1506. The jury was instructed on the statutory definitions of "Burglary," "Fenced Residential Yard," and "Intent" and returned a guilty verdict.

Discussion

¶4 On appeal, Zambrano argues the evidence was insufficient to support his conviction. We review the sufficiency of the evidence *de novo*, and in our review we determine only whether a conviction is supported by substantial evidence. *State v. Pena*, 235 Ariz. 277, ¶ 5, 331 P.3d 412, 414 (2014). 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). In making this determination, we view the facts in the light most favorable to upholding the jury's verdict. *State v. Cox*, 217 Ariz. 353, ¶ 22, 174 P.3d 265, 269 (2007).

¶5 Third-degree burglary is defined, in relevant part, as "entering or remaining unlawfully in or on a nonresidential structure or in a fenced commercial or residential yard with the intent to commit any theft or any felony therein." A.R.S. § 13-1506(A)(1). In challenging the sufficiency of the evidence, Zambrano first argues the state failed to prove he entered a "[f]enced residential yard," which is defined as "a unit of real property that immediately surrounds or is adjacent to a residential structure and that is enclosed by a fence, wall, building or similar barrier or any combination of fences, walls, buildings or similar barriers." A.R.S. § 13-1501(5).

¶6 Zambrano maintains E.H.'s "residential yard . . . was not 'enclosed' by a fence . . . or similar barriers." To the extent the

E.H. testified he had, in the past, told Zambrano to leave his property and "to not come back."

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statutory definition refers to real property “that immediately surrounds” a residential structure, Zambrano is correct that E.H.’s house was not surrounded by a fence. In conclusory fashion, without addressing the definition’s inclusion of an enclosed “unit of real property that . . . is adjacent to a residential structure” he also asserts “the horse corral containing [the ATVs] . . . does not fall within the plain meaning” of § 13-1501(5).

¶7 Zambrano argues no one described the residential yard as “fenced.” Although the portion of the yard immediately surrounding the house was not fenced, the investigating officer testified the corral was enclosed by a fence on all four sides, such that it could be entered only by breaching or scaling the fence or going through the gate. Thus, the jury could find that area from which the ATV and frame were taken was enclosed by a fence.

¶8 Zambrano also appears to challenge a finding that the horse corral was “adjacent to” E.H.’s house, asserting, “The area that [he] entered to remove the ATV and frame was the unlocked horse corral towards the back of the property.” But “[w]ords and phrases shall be construed according to the common and approved use of the language,” A.R.S. § 1-213, and “[a]djacent” has been defined to mean “[l]ying near or close to, but not necessarily touching,” Black’s Law Dictionary (10th ed. 2014). Whether the horse corral met the statutory definition was an issue of fact for the jury, and photographs of E.H.’s property, admitted as evidence, were sufficient to support a finding that the corral was “near or close to” E.H.’s house.

¶9 Zambrano next argues the state failed to establish he had entered the corral with the intent to commit theft or another felony. He maintains the evidence showed he had taken E.H.’s property because of a dispute over money and had “engaged in self-help replevin to recover what [he believed] he was owed.”

¶10 “A person commits theft if, without lawful authority, the person knowingly . . . [c]ontrols property of another with the intent to deprive the other person of such property.” A.R.S. § 13-1802(A)(1). The element of intent is also a question of fact for the

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jury's determination, and it "may be inferred from all the facts and circumstances disclosed by the evidence and need not be established by direct proof." *State v. Quatsling*, 24 Ariz. App. 105, 108, 536 P.2d 226, 229 (1975) (citation omitted). Thus, although Arizona courts have held the "requisite intent" to commit burglary "may not be inferred from mere entry or theft alone, any additional factor may be sufficient to warrant such an inference." *State v. Malloy*, 131 Ariz. 125, 130, 639 P.2d 315, 320 (1981). Here, Zambrano's statement to his associate, suggesting that they "take" property belonging to E.H., was an additional factor giving rise to the inference that Zambrano had entered the corral with the intent to commit theft. He has cited no authority suggesting "self-help replevin" is legal justification for such conduct, and we are aware of none.

Disposition

¶11 Sufficient evidence supported the jury's verdict finding Zambrano guilty of burglary. Accordingly, we affirm his conviction and sentence.