IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CHRISTOPHER PERRY WILLIAMS,
Appellant.

No. 2 CA-CR 2016-0212
Filed May 18, 2017

Appeal from the Superior Court in Pima County
No. CR20150625001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Diane Leigh Hunt, Assistant Attorney General, and
Katherine Herriot, a student certified pursuant to
Rule 38(d), Ariz. R. Sup. Ct., Tucson
Counsel for Appellee

Dean Brault, Pima County Legal Defender
By Joy Athena, 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 Christopher Perry Williams was convicted after a jury trial of one count of aggravated robbery, one count of robbery, and one count of residential burglary in the second degree. He was sentenced to concurrent prison terms, the longest of which is 6.5 years. On appeal, Williams challenges the trial court's denial of his motion for judgment of acquittal brought pursuant to Rule 20, Ariz. R. Crim. P., as to the robbery and aggravated robbery charges, arguing that the evidence was insufficient to support a finding that he had threatened or used force against the victim to coerce surrender of property or to prevent resistance to the taking or retaining of property. For the reasons that follow, we affirm in part and vacate in part.

Factual and Procedural Background

¶2 In reviewing the sufficiency of the evidence, "we view the facts in the light most favorable to sustaining the jury verdict and resolve all inferences against [Williams]." *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005). Late on March 29, 2014, O.M., the 102-year-old victim, was alone at his home, asleep, when Williams and another adult male broke the glass on his exterior bedroom door. Shards landed on O.M.'s bed, causing cuts to both of his arms. Williams reached through the broken window, unlocked the door, and they entered O.M.'s bedroom.

¶3 The two men demanded O.M. give them his money and his bank book. When he refused to cooperate, Williams and his accomplice turned on the lights and began to search through O.M.'s belongings. During the search, O.M. pressed the alarm on an ADT alert bracelet he was wearing. An ADT agent telephoned in response to the alarm. O.M. answered the phone, and started to tell the agent that robbers were inside his house. They seized the phone from O.M., told the agent she had the wrong number, and hung up. Williams then removed the alarm bracelet from O.M.'s wrist in order to prevent him from contacting ADT again. The two robbers resumed searching through O.M.'s belongings. Eventually they found a roll of currency hidden in a pair of his socks. They took the money and fled. Several witness, including the first responder and O.M.'s daughter-in-law, testified that in the immediate aftermath of the incident O.M. was "distraught" and shaken up.

¶4 Detectives identified Williams's accomplice through a latent fingerprint found at the scene. The accomplice subsequently confessed to his participation in the robbery and implicated Williams. Additional DNA analysis placed Williams at the scene.

¶5 Williams was indicted on one count of aggravated robbery, one count of robbery, and one count of residential burglary in the second degree. He moved for judgment of acquittal under Rule 20 on the robbery counts at the close of the state's case-in-chief, and renewed the motion at the close of his case-in-chief, arguing there was insufficient evidence to support a finding that he had threatened or used force against O.M. to coerce surrender of property or to prevent resistance to the taking or retaining property. *See* A.R.S. § 13-1902. The trial court denied the motions and the jury found Williams guilty on all counts.

¶6 Williams appeals his convictions and sentences, and we have jurisdiction pursuant to A.R.S. §§ 13-4031 and 13-4033.

Discussion

¶7 We review the sufficiency of evidence to determine if substantial evidence exists to support the jury's verdicts. *Stroud*, 209

Ariz. 410, ¶ 6, 103 P.3d at 913. "Substantial evidence is more than a 'mere scintilla' and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997), *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). "Judgment of acquittal is appropriate when there is no substantial evidence to warrant a conviction." *Id*. We separately address the motion as to each conviction.

¶8 The crime of robbery is committed "if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property." § 13-1902(A). A person commits aggravated robbery "if in the course of committing robbery as defined in § 13-1902, such person is aided by one or more accomplices actually present." A.R.S. § 13-1903(A). "Force" means "any physical act directed against a person as a means of gaining control of property." A.R.S. § 13-1901(1). "Threat" means "a verbal or physical menace of imminent physical injury to a person." § 13-1901(4).

¶9 The first responding officer testified that O.M. was "obviously distraught and shooken up by what happened," and O.M.'s daughter-in-law testified that O.M. was "[s]hook[,] [d]azed[,] [s]tunned."[1] Their testimony, combined with O.M.'s physical injuries from the breaking glass, the rough treatment by two men who were larger and much younger than O.M., seizing the victim's phone, and the attempt to divert the alarm company personnel

[1]While it is true that O.M. stated that "there was no reason to be scared because [the intruders] weren't threatening [him], or coming at [him] . . . or anything like that," the testimony of O.M.'s daughter-in-law and the first responder suggest otherwise. The jury could "believe certain parts of the [victim's] testimony, discounting others," and "believ[e] parts of [another witness's] testimony and disbeliev[e] others." *State v. Dugan*, 125 Ariz. 194, 196, 608 P.2d 771, 773 (1980).

provided sufficient evidence from which reasonable jurors could conclude Williams coerced O.M. into surrendering his property, as well as "prevent[ed] [O.M.] from resisting him in his efforts to take or retain it." *See State v. Stevens*, 184 Ariz. 411, 412-13, 909 P.2d 478, 479-80 (App. 1995). The trial court correctly denied the Rule 20 motions.

¶10 As to the second offense, the state observed in its answering brief that robbery is a lesser-included offense of aggravated robbery and, because Williams's convictions for those crimes were based on the same incident, the dual convictions violate double jeopardy principles. We agree. *See* §§ 13–1902(A), 13–1903(A); *see also State v. Garcia*, 235 Ariz. 627, ¶ 6, 334 P.3d 1286, 1288–89 (App. 2014) (test for lesser-included offense). We vacate Williams's conviction and sentence for the redundant robbery count. *See State v. Chabolla-Hinojosa*, 192 Ariz. 360, ¶ 21, 965 P.2d 94, 99 (App. 1998) (proper remedy for convictions on both greater offense and lesser-included offense is to vacate lesser conviction).

Disposition

¶11 For the foregoing reasons, we affirm the trial court's denial of Williams's Rule 20 motions, and his convictions and sentences for burglary in the second degree and aggravated robbery. We vacate his redundant robbery conviction and sentence.