

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

DAVID HOWARD NEVILLE,
Appellant.

No. 2 CA-CR 2016-0353
Filed November 30, 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NOT FOR PUBLICATION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. CR20134840001
The Honorable Casey F. McGinley, Judge Pro Tempore

AFFIRMED

COUNSEL

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

Harriette P. Levitt, Tucson
Counsel for Appellant

STATE v. NEVILLE
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, David Neville was convicted of arson of an occupied structure and criminal damage. The trial court sentenced him to concurrent prison terms, the longer of which is 10.5 years. On appeal, Neville challenges the sufficiency of the evidence to support his convictions. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming Neville's convictions. See *State v. Musgrove*, 223 Ariz. 164, ¶ 2 (App. 2009). In October 2013, M.I. called 9-1-1 to report that the house next to his was on fire. The W.D. and L.M. Neville Family Trust owned that house, and Neville was staying there while renovating it. When the firefighters arrived, the carport had become "fully involved," and the truck parked in the carport had "completely succumbed" to the fire.

¶3 While the firefighters were extinguishing the carport fire, they discovered several other fires that had been started throughout the house. Because the truck was blocking the carport door and the front door was locked, the firefighters had to force their way into the house. During their initial search, they found no one inside. However, during a secondary search, after all the fires had been contained, one firefighter noticed a bathtub full of water with a hose extending up from the water out a nearby window. Because this appeared "very odd," the firefighter put his hand in the water, which had become "black and murky" from the smoke. Neville "jumped out" of the water and gave the firefighter "a little scare." Firefighters assisted Neville out of the bathtub and took him to the on-scene paramedics. Neville was conscious and breathing but had burns on his legs and left hand. The subsequent investigation into the cause of the fires revealed that they were "incendiary," meaning they were started by somebody using "ignitable liquid."

¶4 A grand jury indicted Neville for arson of an occupied structure and criminal damage in an amount of \$10,000 or more. He was

STATE v. NEVILLE
Decision of the Court

convicted as charged and sentenced as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶5 Neville contends the state presented insufficient evidence to support his convictions. We review de novo the sufficiency of the evidence. *State v. Snider*, 233 Ariz. 243, ¶ 4 (App. 2013). In doing so, we view the evidence in the light most favorable to sustaining the jury's verdicts and resolve all inferences against the defendant. *State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015).

¶6 A trial court "shall enter a judgment of acquittal . . . if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence 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. Sharma*, 216 Ariz. 292, ¶ 7 (App. 2007), quoting *State v. Mathers*, 165 Ariz. 64, 67 (1990). "If reasonable [persons] may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial." *State v. Davolt*, 207 Ariz. 191, ¶ 87 (2004), quoting *State v. Rodriguez*, 186 Ariz. 240, 245 (1996) (alteration in *Rodriguez*). Substantial evidence may be either direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

¶7 Neville was convicted of arson of an occupied structure and criminal damage in an amount of \$10,000 or more. Arson of an occupied structure occurs when a person "knowingly and unlawfully damage[s] an occupied structure by knowingly causing a fire or explosion." A.R.S. § 13-1704(A). An "[o]ccupied structure" includes "any building, object, vehicle, watercraft, aircraft or place with sides and a floor, used for lodging, business, transportation, recreation or storage," where "one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs." A.R.S. § 13-1701(2), (4). "A person commits criminal damage by . . . [r]ecklessly defacing or damaging property of another person." A.R.S. § 13-1602(A)(1); see A.R.S. § 13-1601(1), (2), (4) (defining "[d]amaging," "[d]efacing," and "[p]roperty of another"). Criminal damage is classified based on the amount of the damage; for example, if there is more than \$10,000 in damage, it is a class four felony. § 13-1602(B).

¶8 On appeal, with respect to both offenses, Neville maintains "[t]he evidence was insufficient to support a finding that [he] started the

STATE v. NEVILLE
Decision of the Court

fires himself.” He points out that two neighbors “saw other individuals nearby” and did not recognize the truck in the carport. Neville therefore reasons, “[T]he most likely conclusion is that someone else started the blaze and [he] was attempting to submerge himself in the bathtub and use a breathing tube until he could be rescued.”

¶9 The state presented sufficient evidence from which reasonable persons could conclude Neville committed these offenses. *See Sharma*, 216 Ariz. 292, ¶ 7. As the firefighters were putting out the carport fire, they discovered several other fires that had been started “after the fact” in the house. Neville was the only person inside the residence; the front door was locked from the inside, and the carport door was blocked from the outside by the truck. Neville had burns on his legs and left hand, which the fire investigator stated was consistent with someone setting a fire. Moreover, the investigator determined the cause of the fires to be “open flame to available combustibles and possibly ignitable liquids,” describing the fires as “incendiary” or intentionally set where they should not have been. Gasoline is an ignitable fluid. Neville had an odor of gasoline, and it was found throughout the house. A lighter was also found inside the bathtub with Neville. The insurance adjuster testified that the actual cash value of the damaged house was approximately \$110,000, which the insurance company paid to the W.D. and L.M. Neville Family Trust.

¶10 Although Neville’s neighbors testified about other people at the scene, they were describing individuals who had stopped to watch the fire. There was no suggestion that these other people were inside the house at any point or had started the fires. M.I. specifically testified that he saw no one leave the house after he called 9-1-1. A police detective described the onlookers as common because people are “curious what’s going on.” As to the truck in the carport, although M.I. testified that he did not know if Neville “drove” the truck, he stated it “was [Neville’s] truck,” explaining that Neville had previously asked him for truck parts. In addition, the police detective, who could not confirm that the truck belonged to Neville because the license plate and vehicle identification number had melted off during the fire, said he was nonetheless “confident it belonged to the residence,” explaining that Neville had a “2002 Chevy” truck registered in his name.

¶11 Neville additionally contends that “he was essentially locked in the house” because the door to the carport had been blocked and the front door was locked. He then reasons that he had submerged himself in the bathtub “as his only means of surviving.” But the firefighters were locked out of and had to force their way into the house – Neville could have

STATE v. NEVILLE
Decision of the Court

unlocked and exited the front door from the inside. In addition, the fire investigator testified a back sliding glass door might have been unlocked.

¶12 Although the evidence in this case was largely circumstantial, that “does not make it insubstantial.” *State v. Jensen*, 106 Ariz. 421, 423 (1970); *see Pena*, 209 Ariz. 503, ¶ 7. The jury as the trier of fact determined what evidence to accept and reject, *see State v. Ruiz*, 236 Ariz. 317, ¶ 16 (App. 2014), and we will not reweigh the evidence on appeal, *State v. Lee*, 189 Ariz. 590, 603 (1997). Thus, the state presented substantial evidence supporting Neville’s convictions. *See Snider*, 233 Ariz. 243, ¶ 4.

Disposition

¶13 For the reasons stated above, we affirm Neville’s convictions and sentences.