

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ESTEVAN E. ANGULO,
Appellant.

No. 2 CA-CR 2017-0209
Filed October 10, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201401560
The Honorable Kevin D. White, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Alexander M. Taber, Assistant Attorney General, Tucson
Counsel for Appellee

Michael Villarreal, Florence
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, Estevan Angulo was convicted of first-degree felony murder, aggravated assault, and unlawful imprisonment. The trial court imposed a life sentence without the possibility of release for twenty-five years for the murder conviction, a concurrent 7.5-year prison sentence for aggravated assault, and time served for unlawful imprisonment. On appeal, Angulo challenges the sufficiency of the evidence to support his murder and aggravated assault convictions. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming Angulo’s convictions. *See State v. Brown*, 233 Ariz. 153, ¶ 2 (App. 2013). The convoluted history of this case revolves around the actions of Angulo and Luis Hernandez, and their victims John Jones and Charles Vigil, most of whom knew each other because of their mutual drug use.¹ One night in March 2014, Cole Baker drove his neighbor’s white truck to pick up his girlfriend in Casa Grande. The truck, however, started to overheat, and Baker stopped at Angulo’s house. Baker waited until sunup and then knocked on the door, but Angulo’s girlfriend, who did not know Baker, turned him away. Baker drove down the street to Alex Cruz’s house. When Cruz did not answer the door, Baker approached Jones, who was sitting in his car outside of the house. After running some errands together, Jones dropped Baker off at his girlfriend’s house.

¶3 Thereafter, Jones went to Vigil’s house, and the two returned to Cruz’s to steal the white truck Baker had been driving. However, the truck stalled shortly after they left Cruz’s house. Jones and Vigil removed some of the stereo equipment from the truck, loaded it in Jones’s car, left the truck on the side of the road, and returned to Angulo’s house “looking

¹ We have changed the names of the victims and witnesses throughout this decision.

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for speed.” Angulo arrived home shortly after Jones and Vigil. He walked inside the carport, opened a drawer, and realized that his marijuana – worth \$20 – was missing. According to Vigil, Angulo became “real mad.” Angulo contacted his girlfriend to ask about the marijuana, and she mentioned that Baker had been at the house that morning. Jones confirmed that he saw a white truck in front of the house earlier.

¶4 Angulo telephoned Hernandez, whom Angulo described as someone who “doesn’t fuck around,” and Hernandez arrived shortly thereafter. When Angulo told Hernandez that “[s]ome . . . fool came by and jacked [him],” Hernandez “g[ot] hyped up” and mad. Angulo and Hernandez went to Cruz’s house, looking for Baker, but Cruz reported that Jones and Vigil had been the ones who took the white truck. When Hernandez and Angulo returned to Angulo’s house, Hernandez attacked Vigil, telling Vigil that he was “through with [him].” After Hernandez pinned Vigil on the ground, he pulled a gun from his waistband, cocked it, and held it to Vigil’s head. Hernandez asked Angulo what to do, and Angulo told him to “let [Vigil] up.”

¶5 Hernandez forced Jones and Vigil at gunpoint to go to Cruz’s house. Vigil rode with Angulo in Angulo’s truck, and Jones drove Hernandez in Jones’s car. Angulo and Hernandez asked Cruz if Vigil was at his house that morning, and Cruz explained that he was only there that afternoon. When Jones tried to speak, Angulo told him to “[s]hut . . . up” and he “already [had] one coming.” After a few minutes, Hernandez said, “Let’s take this somewhere else . . . [Cruz doesn’t] need to be involved in none of this.”

¶6 From there, with direction from Vigil, the four men drove the two vehicles to the location of the white truck. Vigil and Angulo arrived first, and Angulo checked the truck to confirm that Baker was not there. When Jones and Hernandez arrived, Hernandez got out, walked around the front of the car, and positioned himself in front of Jones, who was still seated. Hernandez then shot Jones four times. Angulo remarked, “Over some fucking weed. . . . [I]t wasn’t worth it.” Scared he was next, Vigil got back in Angulo’s truck. But Hernandez came to the truck and only pushed Vigil to the middle so he could sit in the passenger seat. The three returned to Angulo’s house, where Hernandez burned his clothes and Angulo gave Hernandez something else to wear.

¶7 Later that day, police responded to the location of the white truck after receiving a report of a dead body. Jones’s body was found inside the driver’s side of his car with his legs hanging out and the door ajar.

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Approximately two months later, Vigil provided police with information about Jones's death. They subsequently matched shell casings found at the scene with ammunition at Angulo's house. Officers also matched four pairs of tennis shoes at Angulo's house with a "running W" footprint found at the scene.

¶8 A grand jury indicted Angulo for first-degree felony murder (Jones), kidnapping (Vigil), and aggravated assault (Vigil). The jury found him guilty of first-degree felony murder, aggravated assault, and unlawful imprisonment as the lesser-included offense of kidnapping.² The court sentenced him 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

¶9 Angulo argues the state presented insufficient evidence to support his convictions for first-degree felony murder and aggravated assault.³ 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).

¶10 This court will uphold a conviction if it is supported by substantial evidence. *State v. Saez*, 173 Ariz. 624, 627 (App. 1992). "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))

²Under a separate cause number, Hernandez was convicted of first-degree felony murder, kidnapping, and aggravated assault. This court affirmed his convictions and sentences on appeal. *State v. Hernandez*, No. 2 CA-CR 2016-0376 (Ariz. App. Jan. 30, 2018) (mem. decision).

³Angulo has not challenged the sufficiency of the evidence supporting his unlawful imprisonment conviction. Accordingly, we do not address it. See *State v. Moody*, 208 Ariz. 424, n.9 (2004) (failure to argue claim constitutes abandonment and waiver).

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(alteration in *Rodriguez*). Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

¶11 As relevant here, first-degree felony murder occurs if a person “[a]cting either alone or with one or more other persons the person commits or attempts to commit . . . kidnapping under [A.R.S.] § 13-1304” and, “in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person.” A.R.S. § 13-1105(A)(2); *see also State v. Perez*, 233 Ariz. 38, ¶ 5 (App. 2013). And “[a] person commits kidnapping by knowingly restraining another person with the intent to . . . [i]nflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony.” § 13-1304(A)(3); *see also State v. Burns*, 237 Ariz. 1, ¶ 74 (2015). “‘Restrain’ means to restrict a person’s movements without consent, without legal authority, and in a manner which interferes substantially with such person’s liberty, by either moving such person from one place to another or by confining such person.” A.R.S. § 13-1301(2). It may be accomplished by “[p]hysical force, intimidation or deception.” § 13-1301(2)(a).

¶12 Aggravated assault occurs if a person “commits assault as prescribed by [A.R.S.] § 13-1203” and the person “uses a deadly weapon or dangerous instrument.” A.R.S. § 13-1204(A)(2); *see also State v. Flynt*, 199 Ariz. 92, ¶ 10 (App. 2000) (“deadly weapon” includes loaded or unloaded gun). And “[a] person commits assault by . . . [i]ntentionally placing another person in reasonable apprehension of imminent physical injury.” § 13-1203(A)(2).

¶13 The trial court in this case also instructed the jurors on accomplice liability. *See* A.R.S. § 13-302 (defendant may be guilty of offense committed by another for which such person is criminally accountable). “A person is criminally accountable for the conduct of another if . . . [t]he person is an accomplice of such other person in the commission of an offense including any offense that is a natural and probable or reasonable foreseeable consequence of the offense for which the person was an accomplice.” A.R.S. § 13-303(A)(3). An accomplice is “a person . . . who with the intent to promote or facilitate the commission of an offense . . . [s]olicits or commands another person to commit the offense;” or “[a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense;” or “[p]rovides means or opportunity to another person to commit the offense.” A.R.S. § 13-301.

¶14 Angulo “asserts the verdicts are contrary to the weight of the evidence” because “Hernandez acted alone.” He maintains that “he was

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shocked and surprised that . . . Hernandez killed . . . [Jones].” In addition, Angulo contends that, although he “saw Hernandez fight with [Vigil],” he “acted quickly and appropriately when Hernandez pulled a weapon on [Vigil].” Based on the state’s theory of accomplice liability, we disagree.

¶15 The state presented substantial evidence—and Angulo does not dispute—that Hernandez killed Jones in the course of a kidnapping and assaulted Vigil using a deadly weapon. *See* §§ 13-1105(A)(5), 13-1203(A)(2), 13-1204(A)(2), 13-1304(A)(3). First, Hernandez attacked Vigil. When Vigil fell to the ground, Hernandez got on top of him, pulled out a gun, cocked it, and pointed it at Vigil’s head. Notably, Vigil, who was scared, grabbed a nearby screwdriver for protection. Then, Hernandez forced Jones and Vigil at gunpoint to go with them to Cruz’s and later to the location of the white truck, where Hernandez shot Jones four times.

¶16 The question then becomes whether the state presented substantial evidence that Angulo acted as an accomplice. We conclude it did by establishing that Angulo—with the intent to commit the kidnapping and assault—solicited, aided, counseled, and provided the opportunity for Hernandez to act.⁴ *See* §§ 13-301, 13-303(A)(3). When Angulo suspected that his marijuana had been stolen, he was the one who reached out to Hernandez, knowing that Hernandez “really gets down to [business].” Angulo even acknowledged that Hernandez would “whip somebody . . . like [it’s a] normal thing.” Once Hernandez arrived at Angulo’s house, Angulo explained what had happened and then drove Hernandez to Cruz’s residence to investigate further. After learning that Jones and Vigil had been the ones who took the white truck, they returned to Angulo’s, where Hernandez pinned Vigil to the ground and turned to Angulo for instruction, asking, “What do you want me to do with him?” Angulo directed Hernandez to “let him up.” Then, when Vigil picked up a screwdriver for protection, Angulo commanded Hernandez to take it away.

¶17 Upon their return to Cruz’s house, it was again Angulo who questioned Cruz about Baker and the white truck. When Jones started to speak, Angulo said, “Shut . . . up. You already got one coming.” When the four left, Angulo led the way in his truck. Upon arriving at the location of

⁴ Although the jury acquitted Angulo of kidnapping Vigil, it nonetheless indicated that it thought “Angulo was [an] accomplice in the kidnapping of [Jones].” In any event, “consistency between the verdicts on the several counts of an indictment is unnecessary.” *State v. Zakhar*, 105 Ariz. 31, 32 (1969).

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the white truck, Angulo confirmed that Baker was not there. The men then returned to Angulo's house, where Angulo gave Hernandez clean clothes. In addition, ammunition at Angulo's house matched the shell casings found at the scene near Jones's car.

¶18 Angulo nevertheless contends that most of the state's evidence adduced at trial consisted of Vigil's testimony. And he points out that Vigil testified pursuant to a plea agreement for a lesser prison term on an unrelated theft offense and describes Vigil's testimony as "incredible and inconsistent with his prior statements."

¶19 Angulo's argument amounts to an attack on Vigil's credibility. Evidence about Vigil's plea agreement and prior inconsistent statements was presented to the jury. And the jury is the ultimate arbiter of credibility, which we do not reweigh on appeal. *See State v. Cid*, 181 Ariz. 496, 500 (App. 1995). Instead, our review is limited to whether substantial evidence supports the jury's verdicts. *See Sharma*, 216 Ariz. 292, ¶ 7. Such evidence exists here. *See Snider*, 233 Ariz. 243, ¶ 4.

Disposition

¶20 For the reasons stated above, we affirm Angulo's convictions and sentences.