IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOHN ROSAS SUAREZ,
Appellant.

No. 2 CA-CR 2019-0183
Filed February 22, 2021

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NOT FOR PUBLICATION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. S1100CR201801329
The Honorable Patrick K. Gard, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Michael Villarreal, Florence
Counsel for Appellant

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 After a jury trial in 2019, John Suarez was convicted of first-degree burglary, attempted armed robbery, two counts of aggravated assault, and two counts of aggravated assault of a minor under the age of fifteen. The trial court imposed consecutive and concurrent prison terms totaling 56.5 years. On appeal, Suarez contends there was insufficient evidence to support his convictions. We affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences in the light most favorable to affirming Suarez's convictions. *See State v. Molina*, 211 Ariz. 130, ¶ 2 (App. 2005). In May 2018, several men, including Suarez, invaded D.G.'s home in Arizona City at approximately 4:00 a.m. D.G. and his then-girlfriend, M.M., had been asleep in the bedroom when the incident occurred, while D.G.'s daughters, S.G. and A.G., who were ten and six years old at the time of trial, had been asleep on a couch in the nearby living room. The men demanded money and one of them "kept hitting" D.G. on the side of his head with the butt of a shotgun. Suarez pointed a gun at S.G. and A.G.

¶3 A grand jury indicted Suarez for first-degree burglary, attempted armed robbery, two counts of aggravated assault, and two counts of aggravated assault of a minor under the age of fifteen. At the conclusion of the state's case, Suarez moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. He argued that none of the state's three eyewitnesses had sufficiently identified him as one of the perpetrators and that even if he had been present when the incident occurred, there was no evidence he had assaulted anyone. The state argued there was not only evidence that Suarez had been present when the incident occurred, but there was sufficient evidence to support each of the charged offenses. The trial court denied the Rule 20 motion. Suarez was convicted and sentenced as described above. This appeal followed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Sufficiency of the Evidence

¶4 Suarez argues the evidence was insufficient to "conclusively link [him] to the crime" and the trial court therefore should have granted his motion for judgment of acquittal. He maintains "no evidence was presented . . . that reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." Specifically, he asserts that in the absence of a credible witness identifying him as a perpetrator or physical evidence placing him at the scene, there was insufficient evidence of his guilt. He asserts that the state's case was "built on a lie," pointing out that D.G. had told M.M. and S.G. to tell the police they were able to identify Suarez, a fact he acknowledges the jury was told.

¶5 We review de novo both the sufficiency of the evidence and the trial court's denial of a motion for acquittal. *See State v. West*, 226 Ariz. 559, ¶ 15 (2011). We view the evidence in the light most favorable to upholding the court's ruling and determine whether, based on the evidence presented, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. ¶ 16 (emphasis omitted) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). "[T]he controlling question is solely whether the record contains 'substantial evidence to warrant a conviction.'" *Id*. ¶ 14 (quoting Ariz. R. Crim. P. 20(a)). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Rivera*, 226 Ariz. 325, ¶ 3 (App. 2011) (quoting *State v. Spears*, 184 Ariz. 277, 290 (1996)). Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

¶6 To prove first-degree burglary under A.R.S. § 13-1508, the state was required to show Suarez or an accomplice entered or remained unlawfully in a residential structure with the intent to commit a theft or felony therein while knowingly possessing a deadly weapon, firearm, or dangerous instrument. To prove Suarez committed aggravated assault against D.G., M.M., S.G., and A.G., the state was required to demonstrate he or an accomplice intentionally, knowingly, or recklessly caused them physical injury or intentionally placed them "in reasonable apprehension of imminent physical injury" using a deadly weapon or other dangerous instrument, and that S.G. and A.G. were under the age of fifteen. A.R.S. §§ 13-301, 13-303, 13-1203(A)(1), (2), 13-1204(A)(2), (6). And, to prove Suarez committed attempted armed robbery under A.R.S. §§ 13-301, 13-303, 13-1001, 13-1902, and 13-1904, the state must establish he or an accomplice

attempted to take the property of another against the person's will using threat or force and while armed with a deadly weapon or while using or threatening to use a deadly weapon. As detailed below, the evidence presented was sufficient to support Suarez's guilt.

¶7 At trial, D.G. acknowledged that between April and May 2018, he and Suarez had sent each other multiple text messages regarding the purchase of marijuana and D.G.'s outstanding debt to Suarez for "over a pound" of "weed." D.G. testified that Suarez had sent him threatening text messages regarding the debt, telling him, "I ain't playing . . . AZ city, the . . . small G, I am gonna find you," and "you will see repercussions." D.G. also testified that he was a "thousand percent" certain that Suarez had been one of the intruders during the home invasion, specifically stating he recognized him based on his height and voice. He further testified that although Suarez had not hit anyone during the home invasion, he had pointed a gun at S.G. and A.G. He stated that one of the men had demanded money from him, and that Suarez had repeatedly said, "let[']s get out"; the men then left and M.M. called the police. D.G. explained that the incident had left S.G. and A.G. "scared, . . . traumatized, . . . [and] terrified," and testified that he had not coached his children about the incident before they participated in the forensic interview.

¶8 M.M. testified that on the night of the incident, she had awoken to find "a guy . . . with . . . a shotgun in [D.G.'s] face yelling for money" and hitting him on the head with a gun while D.G. repeated there was no money and his children were present. M.M. saw a man with a shotgun "right next to" the couch in the living room where the children had been sleeping, after which one of the men yelled, "let[']s go . . . [or] let[']s get out of here," and they left. M.M. testified that although she initially had been truthful to the officers about the facts surrounding the home invasion, she admitted she had lied during a later interview by stating that she recognized Suarez. She added that D.G. had told her to say this and explained that she had wanted the individuals to get caught so they could not harm the victims further. At trial, she acknowledged she was unable to identify the perpetrators.

¶9 S.G., ten years old at the time of trial, testified that men holding guns had entered their home, asked her father where the money was, and hit him on the head six or seven times with the bottom of the gun. She identified Suarez as one of the men, referring to him as her father's friend, "Johnny," whom she recognized based on his curly hair, skin color, voice, and long nose. After the incident, she was scared to stay in the house

because she feared the intruders would return. When asked if anyone had told her to say anything that was not true in court, S.G. responded affirmatively, explaining that D.G. had told her to say that she had seen Suarez's mask fall off during the home invasion and that he had pointed a gun at the children's faces. She added, however, that she had testified truthfully at trial and that she had, in fact, seen Suarez in her house on the night of the incident.

¶10 An investigating deputy testified that he had seen "slight swelling" on the right side of D.G.'s face, the children and M.M. had appeared "[d]istraught" and "shaken up," and one of the children had told him a "tall white [intruder had] pointed a gun" at her. During D.G.'s interview with the deputy at the scene, he identified Suarez by name as one of the intruders and showed the deputy a photograph of him. M.M. did not identify anyone to the deputy at that time.

¶11 A forensic interviewer who interviewed A.G. and S.G. after the incident testified she had not seen any evidence during the interviews that the children were coached before talking with her. She specifically noted that S.G. had mentioned "Johnny" by name, stating she knew him because he was D.G.'s "old, old, old, old friend."

¶12 A.U., a mutual acquaintance of D.G. and Suarez, testified that in the summer of 2018, Suarez had told him D.G. stole some marijuana from him. A.U. also testified that, after the home invasion, Suarez had admitted to him that he "caught up" with D.G. and "they got him," and that he had assaulted D.G., an event he described with a hand gesture and a clicking noise suggesting D.G. had been hit on the head during the assault. A.U. acknowledged that he had felt pressure to cooperate with the police, indicating there might be personal negative consequences for him if he did not.

¶13 Another deputy testified that he had removed a cell phone from Suarez's person during a search incident to his arrest in this matter. Data extracted from the phone, which had been named "John's I-phone" by its user, revealed text messages sent from the phone to other individuals, one of which contained D.G.'s address in Arizona City. The deputy testified that, on May 12, 2018, Suarez had sent a message to another individual saying, "I think we might have to ride on this MF . . . tonight," and that other messages mentioned retaliation for D.G.'s theft of Suarez's marijuana. The deputy further testified about recorded phone calls Suarez had made from jail, during which he had used the personal identification

numbers of other inmates to call various individuals seeking information about D.G.'s "whereabouts and what he was up to."

¶14 The deputy also testified that, during an interview after the home invasion, Suarez had asked why he would have anything to do with a robbery from D.G., despite the fact that the deputy had not mentioned D.G.'s involvement in the home invasion. Notably, the deputy's interview with Suarez revealed several inconsistencies, including the following: Suarez told the deputy that he had most recently been in Arizona City in November 2017, while other evidence suggested he was there on May 22, 2018; he stated he did not know where D.G. lived, while text messages retrieved from his phone contained D.G.'s address; he did not mention a recent confrontation call with D.G., or multiple calls and messages exchanged between the two, but instead indicated he had not spoken with D.G. in months; and, when asked if he knew what D.G. looked like, he said, "I think he is a black dude," but failed to mention that he had photographs of both D.G. and his daughters on his cell phone. The deputy agreed that several statements Suarez had made during the interview were "misleading."

¶15 Another deputy testified that in the month before the crime 179 calls had been placed between Suarez's and D.G.'s cell phones, including several blocked calls, and that Suarez's cell phone had been located near Arizona City on May 23, the day the home invasion occurred, at 3:58 a.m.—just before the incident occurred. The highest number of calls between Suarez and D.G. were placed on that date and on May 12, the day Suarez had sent threatening messages to D.G. In addition, a little more than an hour after the incident occurred, approximately the amount of time it takes to drive from Arizona City to Phoenix, Suarez made a blocked call to D.G.'s cell phone from Phoenix.

¶16 Here, a reasonable person could find sufficient evidence to warrant a conviction. *See Rivera*, 226 Ariz. 325, ¶ 3. As summarized above, D.G. and S.G. testified that Suarez was one of the perpetrators in the home invasion. *See State v. Dutton*, 83 Ariz. 193, 198 (1957) (identification sufficient to go to jury if witness believes defendant is the one he originally saw). In fact, as previously noted, S.G. testified that although D.G. had asked her to lie, she was not lying at trial when she positively identified Suarez as one of the perpetrators. Although Suarez maintains he is not asking us to reweigh the evidence, his arguments suggest otherwise. To the extent he points to evidence showing that his conviction permitted D.G. to "rid himself of the debt he owed" to Suarez, it is undisputed that this

information was presented to the jury and it was thus up to the jury to consider and weigh that evidence, along with the impact of evidence that D.G. had stolen marijuana from Suarez and had asked M.M. and S.G. to lie. The jury was also presented with evidence that included threatening text messages Suarez had sent to D.G., incriminating statements Suarez had made to A.U., phone calls he had made from the jail trying to locate D.G., and multiple inconsistent statements he had made during his police interview.

¶17 When the evidence suggests that reasonable persons might differ on whether it establishes a fact at issue, as here, that evidence is substantial. *See State v. Garfield*, 208 Ariz. 275, ¶ 6 (App. 2004). Therefore, we conclude the trial court did not err in denying Suarez's motion for judgment of acquittal.

Disposition

¶18 We affirm Suarez's convictions and sentences.