IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CHRISTOPHER LAMON HANDY,
Appellant.

No. 2 CA-CR 2020-0023
Filed March 17, 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NOT FOR PUBLICATION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. S1100CR201900100
The Honorable Patrick K. Gard, Judge

AFFIRMED AS CORRECTED

COUNSEL

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MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 Christopher Handy appeals from his convictions and sentences for attempted second-degree murder, aggravated assault with a deadly weapon, endangerment, and discharging a firearm at a residential structure. As the state explains, the convictions stem from "an act of road rage where [Handy] stopped his car" in a residential neighborhood, "pointed a loaded gun at a stranger, and pulled the trigger." Handy challenges the sufficiency of the evidence as to all but the aggravated assault counts. He further challenges the trial court's preclusion of certain impeachment evidence. For the reasons that follow, we affirm. We also grant the state's unopposed request that the sentencing minute entry be corrected to accurately reflect the sentence imposed on count three, the second aggravated assault count.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against the defendant." *State v. Felix*, 237 Ariz. 280, ¶ 2 (App. 2015). The events in question occurred in a residential neighborhood in San Tan Valley, on a narrow street ending in a cul-de-sac, where neighborhood gatherings were common. One Saturday night in January 2019, several of the neighbors gathered to have a bonfire and "hang out" at one of the neighborhood homes near the cul-de-sac. Its attached garage—which shared a wall with a child's bedroom—had been modified to include a bar with bar stools and a mounted television to facilitate get-togethers. Once the gathering wound down, J.W., who was intoxicated, decided to walk home and started to cross the street to his house.

¶3 As J.W. stepped into the street, a car suddenly sped out of the nearby cul-de-sac and nearly hit him. J.W. yelled, "Whoa. Slow the fuck down." Handy, the driver, slammed on the brakes and jumped out of the car, pointing a loaded gun at J.W.'s head. He yelled at J.W., "Don't you run up on me, motherfucker. Get the fuck back."

¶4 J.W., who was unarmed, froze. Handy advanced toward him aggressively, still pointing the gun at his head and telling him repeatedly to "back the fuck up," until they were about two feet apart. Two of J.W.'s neighbors—J.S. and M.C.—were standing behind J.W. in the driveway, and they both told Handy to calm down. Instead, Handy—who "seemed incredibly pissed off"—pulled the trigger. He shot directly at J.W.'s head from a distance of only two feet, and J.W. fell to the ground. The bullet traveled within feet of J.S. and M.C. before lodging in the bar inside the open, lit garage.

¶5 Emergency personnel found J.W. on the ground, bleeding from his head and moaning in pain. He woke up in an ambulance. The trauma surgeon who treated J.W. at the hospital confirmed the bullet had entered and exited his scalp, a "through-and-through wound." The bullet did not fracture J.W.'s skull, and he survived with only the scalp wound and some minor superficial injuries on his face from hitting the pavement.

¶6 At the conclusion of an eight-day trial, the jury found Handy guilty of attempted second-degree murder, two counts of aggravated assault with a deadly weapon, two counts of endangerment, and discharging a firearm at a residential structure. The jury also found all to be dangerous offenses. In the aggravation phase of the trial, the jury found the state had proven that the offenses had involved the infliction or threatened infliction of serious physical injury and had caused physical, emotional, or financial harm to the victims.

¶7 Handy filed motions for a judgment of acquittal and unproven aggravators pursuant to Rule 20(b), Ariz. R. Crim. P., and for a new trial. The trial court denied both motions[1] and sentenced Handy to concurrent prison terms, the longest of which is sixteen years, and all of which are "flat-time" terms and must therefore be served in their entirety.[2] This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

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[1]There was one limited exception with respect to the Rule 20 motion, which the trial court granted as to the physical injury aggravator for the conviction for discharging a firearm at a residential structure.

[2]We correct the sentencing minute entry for count three, as explained below (*see* ¶ 25, *infra*).

Sufficiency of the Evidence

¶8 As he did before the trial court, Handy contends "[t]he evidence was insufficient to sustain guilty verdicts" on all but the aggravated assault counts. Sufficiency of the evidence is a question of law, which we review *de novo*. *State v. West*, 226 Ariz. 559, ¶ 15 (2011). Viewing the evidence in the light most favorable to sustaining the verdicts, and resolving all inferences against the defendant, we must determine whether the state presented evidence that "reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290 (1996). "[W]e do not weigh the evidence; that is the function of the jury." *State v. Williams*, 209 Ariz. 228, ¶ 6 (App. 2004). And, if jurors could reasonably differ as to whether the evidence establishes the necessary facts, that evidence is sufficient as a matter of law. *See State v. Davolt*, 207 Ariz. 191, ¶ 87 (2004).

Attempted Second-Degree Murder

¶9 "The offense of attempted second-degree murder requires proof that the defendant intended or knew that his conduct would cause death." *State v. Ontiveros*, 206 Ariz. 539, ¶ 14 (App. 2003); *see also* A.R.S. §§ 13-1001 (attempt), 13-1104 (second-degree murder). Handy contends there was "no evidence" to support a conclusion that he intended to cause J.W.'s death. But it was sufficient that he knew his conduct would cause J.W.'s death, even if he did not intend or achieve that result. *See State v. Dickinson*, 233 Ariz. 527, ¶ 11 (App. 2013). Handy admitted at trial that he knew the gun was loaded, that it could kill, and that all he had to do to fire it was squeeze the trigger. He also agreed that gun owners should never point a gun at anything they do not want to kill or destroy.

¶10 Furthermore, there was ample evidence that Handy intended to kill J.W. At least four eyewitnesses testified that Handy had pointed a gun directly at J.W.'s head and had pulled the trigger. And, he did so after uttering remarks evidencing hostility towards J.W. Handy argues he "did not make any threats or other statements indicating an intent to kill." But multiple witnesses testified that he aggressively and angrily advanced toward J.W. with his gun pointed directly at J.W.'s head, swearing at him to "back the fuck up," before the gun discharged. This was substantial circumstantial evidence of Handy's motivation in firing the gun. *See State v. Bearup*, 221 Ariz. 163, ¶ 16 (2009) (criminal intent shown by circumstantial evidence including defendant's conduct and statements).

¶11 Handy stresses that "there was some dispute at trial as to whether the injury [J.W.] sustained could actually have been caused" by the type of bullet found in Handy's gun and lodged in the garage bar. But when reliable experts provide contradictory testimony, it is the province of the jury to determine the weight and credibility of their testimony. *See State v. Romero*, 239 Ariz. 6, ¶ 28 (2016). Moreover, injury is not an element of attempted second-degree murder. Thus, the jury did not need to find that the bullet actually hit J.W. in order to find Handy guilty. It was sufficient that he angrily pointed the gun at J.W.'s head at close range and fired, even if J.W.'s scalp wound could have been caused by hitting the pavement rather than the bullet, as Handy's firearms expert hypothesized.

¶12 Handy also implies that, because the one shot fired "nearly missed" J.W.'s head, Handy must have fired the gun accidentally and could not have intended to kill J.W. But Handy's own expert testified that J.W. might have ducked his head immediately before the gunshot—a common reaction of people trying to avoid being shot—which would explain why the bullet grazed the back of his head instead of killing him. Handy's expert also admitted that a headshot is considered "among the most difficult targets" because the head is both small and mobile.

¶13 Finally, Handy emphasizes that when he took the stand in his own defense, "he unequivocally stated that he had no intent to fire the gun, let alone to kill anyone." But an admission of intent to commit a crime is not necessary for a jury to conclude such intent existed. *See Bearup*, 221 Ariz. 163, ¶ 16 ("Criminal intent, being a state of mind, is shown by circumstantial evidence." (quoting *State v. Routhier*, 137 Ariz. 90, 99 (1983))). And, a defendant's denial does not eliminate other evidence from which a jury could reasonably infer the existence of such intent. Various witnesses confirmed the shooting did not look like an accident. "No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Cox*, 217 Ariz. 353, ¶ 27 (2007) (quoting *State v. Clemons*, 110 Ariz. 555, 556-57 (1974)). The jury was free to disbelieve Handy's self-serving testimony that the shooting was accidental. The other eyewitness testimony presented by the state was sufficient to allow the jury to infer that, because Handy had pointed a loaded gun at J.W.'s head at close range and fired, he intended to kill J.W. or, at the very least, took actions he knew would be expected to result in J.W.'s death. We therefore reject Handy's claim that his conviction for attempted second-degree murder must be vacated due to insufficient evidence.

Endangerment

¶14 "A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury." A.R.S. § 13-1201(A). There is no requirement that the victims of endangerment were actually injured or even aware of the risk. *See Campas v. Superior Court*, 159 Ariz. 343, 345 (App. 1989); *State v. Morgan*, 128 Ariz. 362, 367 (App. 1981). Nor is it required that the defendant intended to endanger the victims. Rather, the evidence is sufficient if it allows the jury to conclude that the defendant *recklessly* placed the victims in actual and substantial risk of imminent death or physical injury. *See State v. Carreon*, 210 Ariz. 54, ¶ 39 (2005); *see also* A.R.S. § 13-105(10)(c) (person acts "recklessly" when "aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists").

¶15 The two endangerment counts were based on J.S. and M.C. standing a few feet behind J.W. when Handy pointed his gun at J.W. and fired. Handy first contends the claimed positioning of the parties is inconsistent with the bullet's actual trajectory. This argument fails because it is based on a diagram to which Handy himself objected at trial because it was "not to scale." As the trial court noted when overruling Handy's objection to the diagram, it was helpful for showing the jury the "spatial relationship and . . . line of sight of where the blood was, where the fired casing was found, and where the recovered projectile [was], as well as [where the] three individuals alleged to be victims in this case were all standing at the time of the shot." But it "is very obviously not to scale" and therefore in no way demonstrates that the bullet would have hit a window rather than the bar if fired as the witnesses described.

¶16 Handy then claims the alleged victims were not actually in the line of fire, so there was no "actual, substantial risk of imminent death." But the evidence presented at trial was sufficient for the jury to reasonably conclude that J.S. and M.C. were in "close proximity" to the bullet's trajectory and only narrowly escaped being shot. *Carreon*, 210 Ariz. 54, ¶ 42 (sufficient evidence of actual, substantial risk to endangerment victims who had been sleeping in bedroom on other side of wall from where shooting occurred and bullet hit bedroom doorjamb).

¶17 Indeed, Handy admitted he was aware there were two people in the driveway when the gun was fired. J.S. and M.C. both described for the jury where they had been standing at the time of the shooting, including indicating their relative positions on diagrams. J.S. testified he had been standing directly behind J.W., only about ten feet away from Handy, and

that his body had involuntarily "jumped" to avoid the bullet. He testified he had been concerned for his own physical safety because he was "so close" to being shot. M.C. testified that he had also been standing in the driveway, about eight to ten feet from Handy and only a few feet to the side of J.S. This testimony was confirmed by another eyewitness. Handy's challenges to the credibility of these eyewitness accounts necessarily fail because "[i]t was for the jury to weigh the evidence and determine the credibility of the witnesses." *Williams*, 209 Ariz. 228, ¶ 6.

¶18 Thus, the jury reasonably could conclude that Handy knew J.S. and M.C. were behind J.W. in the driveway and that his actions placed them in actual risk of imminent death or physical injury. *See Carreon*, 210 Ariz. 54, ¶ 43. There was sufficient evidence to support these convictions.

Discharging Firearm at Residential Structure

¶19 A conviction on this count required the state to prove that Handy "knowingly discharge[d] a firearm at a residential structure." A.R.S. § 13-1211(A). Immovable structures that have been adapted for "human residence" are residential structures for purposes of this statute. § 13-1211(C)(2); *cf. State v. Browning*, 175 Ariz. 236, 237 (App. 1993) ("[A]n attached garage with a connecting door to the living quarters of a private home is such an integral part of the family sanctuary that it qualifies for the protection of the aggravated assault statute."). "Knowingly" means the defendant was aware or believed that his conduct was of the nature, or that the circumstances existed, for the elements of the crime to be met. A.R.S. § 13-105(10)(b). Handy need not have specifically aimed at a residence or intended to hit it to be found guilty of the crime. *See* § 13-1211(A).

¶20 Handy contends "[t]here was not a scintilla of evidence to establish that [he] knowingly shot at or into [a] residence" because his "focus was entirely on [J.W], no one else, and nothing else." But Handy admitted at trial that he had been aware at the time of the incident that he was in a residential neighborhood with homes all around him. He even admitted to particular knowledge of the house where the bonfire was held, which J.W. had just left and where the bullet became lodged. Multiple witnesses testified that the house was clearly illuminated by the bonfire, as well as by several lights and the television inside the open, attached, bar-equipped garage.

¶21 In addition, Handy admitted at trial that he was aware that bullets do not always stop at their intended target and can go through the target and hit something behind it. Here, the bullet lodged in the bar inside

the attached, modified garage—a "residential structure" under the statute, as noted above. *See* § 13-1211(C)(2); *cf. Browning*, 175 Ariz. at 237. Thus, a reasonable jury could infer that, when Handy shot the gun at J.W., who was standing in front of a lit residence, he "knowingly" discharged the weapon at a residential structure. *See State v. Jensen*, 217 Ariz. 345, ¶ 7 (App. 2008) ("Knowledge may [be] inferred by circumstantial evidence.").

Precluded Impeachment Evidence

¶22 Before trial, Handy filed a motion seeking permission to impeach M.C. with a number of prior convictions pursuant to Rule 609, Ariz. R. Evid. At a hearing on the motion, defense counsel explained that he was only seeking to "bring this stuff in" if M.C. testified that he had never told a lie in his life, "or something of that nature." The trial court denied the motion. It explained that all the convictions were "older than ten years" and that "their probative value [was] outweighed by the prejudicial value." The court further explained that Handy had "provided no additional information as to specific facts and circumstances to make that probative value more outweigh the prejudicial value," as required by Rule 609(b)(1).

¶23 On appeal, Handy contends the trial court "improperly precluded impeachment" of M.C. Trial courts have "wide discretion in deciding whether to exclude evidence of a prior conviction because its prejudicial effect is greater than its probative value." *State v. Ennis*, 142 Ariz. 311, 315 (App. 1984). We will not disturb such a ruling absent "a clear abuse of discretion." *Id.* Handy has established no such abuse here.

¶24 All of M.C.'s convictions were well over ten years old, and Handy failed to identify any specific facts or circumstances that would allow the court to make a finding that their probative value substantially outweighed the danger of unfair prejudice. *See* Ariz. R. Evid. 609(b)(1); *see also State v. Todd*, 244 Ariz. 374, ¶ 6 (App. 2018) (remote prior convictions rarely admissible under Rule 609(b) and only in exceptional circumstances). Thus, the trial court acted within its discretion in denying Handy's Rule 609 motion to impeach M.C.[3]

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[3]At trial, M.C. took the stand twice. At no time during his testimony did Handy seek to admit M.C.'s prior convictions, even when attempting to impeach him. Handy asserts in passing, for the first time on appeal, that the trial court should have *sua sponte* admitted M.C.'s priors under Rule 608, Ariz. R. Evid. He has waived that argument by failing to adequately

Sentence Correction

¶25 We lastly address the state's request that we modify the sentencing minute entry to reflect that the trial court sentenced Handy to eleven years on count three, the second aggravated assault conviction, not the three-year term currently reflected in the minute entry. Handy "agrees that the minute entry should be corrected" as the state requests. The transcript from the sentencing hearing clearly supports this unopposed request, and we therefore grant it. *See State v. Ovante*, 231 Ariz. 180, ¶ 38 (2013).

Disposition

¶26 We affirm Handy's convictions and sentences, and we correct the sentencing minute entry as discussed above.

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develop it in his briefing in this court. *See State v. Bolton*, 182 Ariz. 290, 298 (1995) (finding waiver due to insufficient argument on appeal); *State v. Gill*, 234 Ariz. 186, n.1 (App. 2014) (refusing to address "passing assertion" of trial court error where appellant "has failed to develop any argument" on issue in appellate briefs); *see also* Ariz. R. Crim. P. 31.10(a)(7)(A) (requiring appellant to present in opening brief an argument containing "supporting reasons for each contention" and "citations of legal authorities").