IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CAMERON DEVONTA ROSS,
Appellant.

No. 2 CA-CR 2020-0064
Filed March 9, 2021

Appeal from the Superior Court in Pinal County
No. S1100CR201703192
The Honorable Lawrence M. Wharton, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Andrew Stuart Reilly, Assistant Attorney General, Phoenix
Counsel for Appellee

Michael Villarreal, Florence
Counsel for Appellant

MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Cameron Ross appeals from his conviction following a bench trial for one count of aggravated assault. The trial court sentenced Ross to four years' imprisonment. On appeal, Ross claims that the evidence was not sufficient to sustain his conviction and that the trial court erred by finding he had failed to prove he was guilty except insane. We affirm.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the challenged conviction." *State v. Nevarez*, 235 Ariz. 129, ¶ 2 (App. 2014). In 2017, Ross was an inmate at Florence Prison. Ross was a "porter," meaning he was usually allowed to move around outside of his cell and thus had the ability to pass goods between inmates. One day in June 2017, Corrections Officer Dylan Elvey was assigned for the first time to the wing of the prison unit where Ross was housed. Elvey was not permitted to let Ross out of his cell that day because the prison was understaffed. The inmates reacted by screaming "[w]e want the porter out" for four to five hours.

¶3 The next day, Officer Elvey was again assigned to Ross's wing, this time with Corrections Officer Blake Burr. At some point that day, Elvey was alone in the wing, while Burr remotely opened cell doors from the control room so inmates could individually be let out of their cells for showers. When Ross was let out of his cell, Elvey heard another inmate say, "Hey, don't forget to do that thing, that thing that you were going to do. Don't forget that."

¶4 Ross then "aggressively" approached Officer Elvey while saying something along the lines of, "You think you're tough shit; you think you're hot shit." Upon witnessing Ross approach Elvey in this manner, Officer Burr activated an alarm for emergency assistance. The noise from the alarm caused Elvey to turn his head and look back towards Burr in the

secured room, at which time Ross punched Elvey in the back of the head, knocking him unconscious.

¶5 An ambulance transported Officer Elvey to a hospital, where he was treated for a broken nose and a laceration to the back of his head that required thirteen staples to close. The injuries forced Elvey to miss a month of work, and required follow-up appointments with a neurologist and plastic surgeon.

¶6 Ross was charged with aggravated assault. He waived his right to a jury trial. During the ensuing bench trial, Ross presented a guilty-except-insane (GEI) defense and had two expert witnesses, Drs. Brent Geary and Nicole Cooper-Lopez, testify as to his state of mind. Both doctors testified that Ross suffered from various mental disorders that rendered him GEI at the time of the incident. The state's expert witness, Dr. Celia Arenas Drake, testified that Ross was not GEI at the time of the incident but was, in fact, angry and wanted "revenge" on the corrections officers. She explained that he "wanted to assault them."

¶7 At the close of the state's evidence, Ross moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., and argued the state presented insufficient evidence of the element of a temporary but substantial disfigurement, loss, or impairment of any body part required for an aggravated assault conviction. Ross specifically claimed that there had been no medical testimony provided to inform the trial court of the "nature and extent of these injuries." The court denied the motion, concluding the state had presented sufficient evidence of injury based on the testimony of the victim and the admitted photographs.

¶8 The trial court rejected Ross's GEI defense and found him guilty of aggravated assault. The court sentenced Ross as described above, and Ross then appealed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, 13-4033(A)(1).

Analysis

Sufficiency of the Evidence

¶9 On appeal, Ross argues that the trial court erred in denying his Rule 20 motion and again claims that the state failed to present any credible evidence of a "substantial" disfigurement or fracture of a body part. He reasons that, without any medical testimony, the state merely proved an assault occurred. The state counters that medical testimony was

not necessary when sufficient evidence was nevertheless presented at trial to prove the elements of an aggravated assault.

¶10 We review the trial court's denial of a Rule 20 motion de novo. *State v. West*, 226 Ariz. 559, ¶ 15 (2011). In our review, the question is whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* ¶ 16 (emphasis omitted). "When reasonable minds may differ on inferences drawn from the facts, . . . the trial judge has no discretion to enter a judgment of acquittal." *State v. Lee*, 189 Ariz. 590, 603 (1997). A judgment of acquittal must be entered where "there is no substantial evidence to support a conviction." Ariz. R. Crim. P. 20(a)(1). "Substantial evidence" is such that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419 (1980).

¶11 An assault is committed by "[i]ntentionally, knowingly or recklessly causing any physical injury to another person." A.R.S. § 13-1203(A)(1). Section 13-1204(A)(3), A.R.S., provides that a person commits aggravated assault if "the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or a fracture of any body part." "Disfigure" means "[t]o mar or spoil the appearance or shape of," while "substantial" is defined as "[c]onsiderable" and "temporary" as "[l]asting . . . for a limited time." The American Heritage Dictionary 517 (disfigure), 1738 (substantial), 1792 (temporary) (5th ed. 2011); *see also State v. Pena*, 235 Ariz. 277, ¶ 6 (2014) (citing to The American Heritage Dictionary definitions in determining whether injury was substantial for purposes of § 13-1204(A)(3)).

¶12 Here, Officer Elvey testified that, as a result of Ross punching him, he suffered a broken nose and a laceration to the back of the head that required thirteen staples. *See State v. Tiscareno*, 190 Ariz. 542, 544 (App. 1997) (broken nose is "fracture of any body part" for purposes of aggravated assault, and "person does not have to be a medical expert to testify that her own nose has been broken."). The trial court heard testimony from Officer Burr that, immediately after the incident, he observed Elvey unconscious and severely bleeding, with two black eyes, and an approximately two-inch long laceration on the back of his head. The court also viewed photographs of Elvey's injuries.

¶13 This evidence, without the testimony of a medical expert, was sufficient for reasonable persons to find that Officer Elvey suffered either,

or both, a "fracture of any body part"—his broken nose—or a "temporary but substantial disfigurement"—the laceration in the back of his head. *See* Ariz. R. Evid. 702(a) (expert testimony permitted to help trier of fact understand evidence); *State v. Roberts*, 139 Ariz. 117, 122 (App. 1983) (if evidence can be understood by reasonable factfinder, medical testimony not necessary, even if helpful). It was then left to Ross to cross-examine and challenge Elvey's and others' testimony and to argue from the photographic evidence that Elvey did not suffer sufficient injury. Ross cites to no authority that medical expert testimony under these circumstances is required. We therefore conclude that the trial court did not err in denying Ross's Rule 20 motion.

GEI Defense

¶14 Ross further argues on appeal that the trial court erred when it found that he had failed to prove he was GEI. Ross claims there was "no basis to find [that he] failed to prove by clear and convincing evidence that he was [GEI]." We review the trial court's decision to reject Ross's GEI defense for an abuse of discretion. *See State v. Zmich*, 160 Ariz. 108, 111 (1989).

¶15 Section 13-502(A), A.R.S., provides that "[a] person may be found guilty expect insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong." Section 13-502(A) also states:

> Mental disease or defect does not include disorders that result from . . . character defects, . . . impulse control disorders . . . depravity or passion growing out of anger, jealously, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect . . . that is manifested only by criminal conduct.

The defendant bears the burden of establishing this affirmative defense by clear and convincing evidence. § 13-502(C).

¶16 As recounted above, Ross had two qualified mental-health experts testify that he was GEI at the time of the incident. Dr. Geary testified that, based on his in-person evaluations, Ross has a number of mental disorders, including schizoaffective disorder, depressive type; post-traumatic stress disorder; cannabis use disorder; and borderline intellectual

functioning. Geary concluded that, based on Ross's schizoaffective disorder, and Geary's records review, interview, and testing, Ross did not know that his actions were wrong at the time of the offense. Dr. Cooper-Lopez largely testified to the same diagnosis and conclusion as Geary.

¶17 The state's qualified mental-health expert, Dr. Drake, testified that she had reviewed Ross's records and met with him three times for psychological testing and evaluation. Ross told her that the night before the incident, "[H]e was very angry, very stressed, and he wanted to fight correctional officers and inmates. It wasn't just specific to correctional officers." He said that he was angry because, from his perception, things had been "unfairly put in a more restricted classification so he couldn't go out," and he thought this was "unjust" and "unfair." Drake testified that each time she had met with Ross she did not observe any psychosis or that he was delusional at the time. She further testified that, contrary to the other experts' opinions, although Ross has symptoms of schizoaffective disorder, with features of paranoid personality disorder, pervasive suspiciousness, and distrust, and misinterprets or makes assumptions about other people's actions and motivations, that does not classify him as being delusional. Thus, she opined that Ross was not legally insane at the time of the incident, and, under the statute, "[c]haracter defects, pressure of the circumstances, anger, revenge, hatred, and other motives" exclude Ross from being found GEI.

¶18 On appeal, Ross essentially asks us to credit his expert witnesses' testimony over the opinions of Dr. Drake. He is thus asking us to reweigh the evidence, which we will not do. *See Lee*, 189 Ariz. at 603 ("appellate court will not reweigh the evidence"); *see also Zmich*, 160 Ariz. at 111 ("The fact that only one expert testified that the defendant was not . . . insane at the time of the crime while three experts claim he was . . . is not dispositive of this issue."). The credibility of witnesses and the weight and value to be given to testimony are matters within the exclusive province of the finder of fact. *See State v. Cox*, 217 Ariz. 353, ¶ 27 (2007). We cannot say that the trial court, as the finder of fact here, abused its discretion by finding that Ross had not proven by clear and convincing evidence that he suffered from a mental-health condition that prevented him from appreciating the wrongfulness of his conduct.

Disposition

¶19 For the foregoing reasons, we affirm Ross's conviction and sentence.