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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JONATHAN ARTHUR YO-JIMBO RAMIL, Appellant.	2 CA-CR 2009-0221 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200800416

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and David A. Sullivan
Tucson
Attorneys for Appellee

Rubén Terán S.
Douglas
Attorney for Appellant

K E L L Y, Judge.

¶1 After a jury trial, appellant Jonathan Ramil was convicted of second-degree murder, a class one felony, and tampering with physical evidence of a crime, a class six felony. The trial court sentenced him to concurrent, presumptive prison terms totaling seventeen years. Ramil contends the court erred when it denied his motion for judgment of acquittal on the murder count, made at the close of the state's case and renewed after trial.[1] Ariz. R. Crim. P. 20. For the reasons stated below, we affirm.

¶2 A motion for judgment of acquittal should be granted only if "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20; *see also State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (judgment of acquittal appropriate only if there is complete absence of substantial evidence supporting conviction). "Substantial evidence is more than a mere scintilla and 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. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will not disturb a trial court's denial of a motion for judgment of acquittal except for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007). "'If reasonable minds can differ on the inferences to be drawn from the evidence, a trial court has no discretion to enter a judgment of acquittal and must submit

[1]Ramil has not appealed from his conviction for tampering with physical evidence. However, in the final paragraph of his opening brief he asks, without more, that we remand for a new trial "based on the improper instructions given by the trial court to the jury." In light of Ramil's failure to explain this argument or to direct us to the relevant portion of the record, we do not address it. *See* Ariz. R. Crim P. 31.13(c)(vi).

the case to the jury.'" *Id*., *quoting State v. Alvarez*, 210 Ariz. 24, ¶ 10, 107 P.3d 350, 353 (App. 2005), *vacated in part on other grounds*, 213 Ariz. 467, 143 P.3d 668 (App. 2006).

¶3 In determining whether substantial evidence exists, we view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdict. *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005). So viewed, the evidence established that, on June 2, 2008, there was an altercation inside O.'s home arising from an unpaid drug debt between the victim, G., and O. "[T]humping" and hitting noises, accompanied by "moaning and gurgling" sounds could be heard from outside the home. O., who was inside the house with G. and another individual, R., came outside and handed a bat to Ramil, who had remained outside with G.'s girlfriend, and directed Ramil to "bash [G.'s girlfriend's] head in" if she "screamed or moved or [did] anything"; Ramil stood guard as directed while O. went back inside the house. O. then told Ramil and R. they were going to "load[]" G. and "take him out to the place they [had] talked about." O. ordered Ramil to remain at the house to clean the "mess," to wit, "the blood and the carpet." O. and R. then departed with G.'s girlfriend to "dump" G.; Ramil later picked them up when R.'s vehicle ran out of gas. When the group returned to O.'s house, O. divided the money he had removed from G.'s wallet into three piles, one of which he handed to Ramil. O. then directed Ramil to throw G.'s wallet into a nearby fire; although it is unclear if Ramil did so, he did immediately walk toward the fire with the wallet.

¶4 Ramil was charged with first-degree murder based on an accomplice liability theory, and tampering with physical evidence of a crime. A jury found him guilty of the lesser-included offense of second-degree murder and tampering with physical evidence, and this appeal followed. Ramil urges this court to reverse the trial court's denial of his motion for judgment of acquittal, asserting there was insufficient evidence to convict him of second-degree murder based on accomplice liability. *See* A.R.S. §§ 13-1104, 13-301, 13-303. In denying Ramil's post-trial motion for judgment of acquittal, the court noted, "I don't think that I was mistaken to deny the Rule 20 motion [raised at the close of the state's case]. I believed at the time the motion was made and believe now that there was substantial evidence presented to show that Mr. Ramil was more than merely present." The court specifically pointed to the following evidence in denying Ramil's motion:

> And Mr. Ramil's actions[—]essentially as soon as people ran out of the house and gave him a bat to guard over the witness who was trying to call for help or something, trying to find out what was going on[—]that helps to indicate that Mr. Ramil was more than merely present, that he was in on whatever it was they had planned to do, or had been doing up to that point.

¶5 Evidence may be substantial whether circumstantial or direct. *See State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981). It is for the jury as the trier of fact to weigh the evidence, resolve conflicts in the evidence, and assess the credibility of the witnesses. *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005). Moreover, "intent to engage in the criminal venture may be shown by the relationship of

the parties and their conduct before and after the offense." *State v. Tison*, 129 Ariz. 546, 554, 633 P.2d 355, 363 (1981). Based on the facts set forth above, there was substantial evidence to allow the jury to find beyond a reasonable doubt that Ramil intended to aid O. and R. to plan or commit the murder. This is particularly evident in light of the repeated opportunities Ramil had to remove himself from the situation before, during, and after the murder took place. Not only did he fail to do so, but he actively participated in a manner that permitted the jury to infer that he intended to aid in murdering G.

¶6 Therefore, because the trial court did not abuse its discretion in denying Ramil's motion for judgment of acquittal, the convictions and sentences imposed are affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge