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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THE STATE OF ARIZONA, Appellee, v. PAUL PETER GODOY, Appellant.	2 CA-CR 2010-0005 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092070001

Honorable John S. Leonardo, Judge

AFFIRMED

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

¶1 Paul Godoy was convicted of burglary in the second degree of a residential structure. The trial court suspended the imposition of sentence and placed him on probation for 2.5 years. He argues there was insufficient evidence to support the conviction and the court abused its discretion when it allowed the state to present evidence of a previous attempt to break into the same house. For the following reasons, we affirm his conviction and sentence.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the jury's guilty verdict." *State v. Speer*, 221 Ariz. 449, n.1, 212 P.3d 787, 790 n.1 (2009). Sue E. testified that she and her husband, Raymond F., own three houses that are located on individually fenced portions of five acres of land. She and Raymond live in a home on the northern end of the property, and her father lives in a home to the northwest of their home. Sue and Raymond's daughter, Zulema, lived with her own two daughters in the third house on the southern end of the property until she passed away in June 2008. Zulema's house was unoccupied after her death, but her belongings were still stored there.

¶3 Sue and Raymond also own a concrete business, which they started in 2000 for Zulema and Raymond to operate. Upon Zulema's recommendation, Godoy was hired in September 2006. He voluntarily left the company in April 2007 and was rehired in August 2008. At that time, Godoy also helped Sue and Raymond lay gravel at their home to earn extra money. Raymond testified he was always present with Godoy during the gravel job. Sue had no knowledge of Godoy ever working on the southern end of the

property where Zulema's house was located. And she stated that Godoy did not have permission to go in Zulema's house.

¶4 On the first weekend in September 2008, Sue and Raymond traveled with their granddaughters to Disneyland. They informed their employees, including Godoy, that they would be out of town. Because of a burglary attempt about a week before at Zulema's house, Sue asked her sister, Teresa, to reside there while she and Ray were gone. On September 6, Teresa and her husband returned to the house at dusk. Teresa noticed all the cabinet doors were open, even though she had not left the house in that condition. She also noticed a light coming from Zulema's room and she could see that "drawers had been pulled out and . . . clothes thrown about."

¶5 Teresa did not know if anything was missing from the home. She noticed a broken window in one of the bedrooms. Teresa called her sister, who immediately returned home from her trip. When Sue went through the house, she determined that, at the least, jewelry and a pair of collectible tennis shoes were missing.

¶6 Pima County Sheriff's Deputy Trevor Tuminello testified that he responded to Teresa's call on the night of the burglary. When he inspected the outside of the home, he found a broken window and a screen that had been pulled off and left on the ground. He could see fingerprints on the panes of glass in the broken window. A forensic technician "lifted prints" from the window, a wall inside the house next to the window, and a jewelry cleaning device in one of the bedrooms.

¶7 Latent print examiner Kathleen Bright-Birnbaum testified that she became involved in the case when there was a "hit" in the automated fingerprint identification

system, which is a database containing fingerprints from many sources, identifying Godoy as a possible match. After further comparison, she matched all nine of the identifiable prints, which were from the window's exterior, to Godoy.

¶8 At the close of the evidence, Godoy moved for judgment of acquittal, contending the elements of burglary had not been proven. The court denied the motion, stating:

> It is a circumstantial evidence case, obviously, but I think there is sufficient evidence upon which a jury can find guilty or not guilty. They may or may not, but I think there is substantial evidence that as reasonable jurors they could so find . . . .

The jury found Godoy guilty. This appeal followed his sentencing.

Discussion

Insufficient Evidence

¶9 Godoy argues there was insufficient evidence to support his conviction, and, therefore, the trial court erred in denying his motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. We review de novo a trial court's ruling on a Rule 20 motion. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). The trial court must grant a judgment of acquittal if no substantial evidence supports a conviction. Ariz. R. Crim. P. 20(a); *State v. Rodriguez*, 192 Ariz. 58, ¶ 10, 961 P.2d 1006, 1008 (1998). "Substantial evidence is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *Rodriguez*, 192 Ariz. 58, ¶ 10, 961 P.2d at 1008. If reasonable jurors could fairly disagree about whether evidence establishes a fact at issue, the evidence is considered substantial. *Id.*

¶10 Godoy contends his conviction was supported only by the fingerprints and palm prints found on the window of the house and relies on *Rodriguez*, in which our supreme court held "fingerprints alone may support a conviction when 'not found in a place and under circumstances where they could have been reasonably made at a time other than the time of the commission of the offense.'" *Id.* ¶ 11, *quoting State v. Carter*, 118 Ariz. 562, 563, 578 P.2d 991, 992 (1978). He contends because he knew the former occupant and had worked on the property, his case is distinguishable from *Rodriguez* and other Arizona cases in which "there was no indication that the defendant knew the occupants of the house or had any legitimate reason to be on the property." *See, e.g.*, *Carter*, 118 Ariz. at 563, 578 P.2d at 992; *State v. Brady*, 2 Ariz. App. 210, 212-13, 407 P.2d 399, 401-02 (1965). He also claims "he could wander the property on his breaks" and emphasizes that he had known the deceased owner of the house and that the fingerprints were found exclusively on the outside of the house on the window.

¶11 The trial court did not err in denying Godoy's motion for judgment of acquittal. The state presented evidence that Zulema's house was hundreds of yards from the location on the property where Godoy had been working. Godoy's fingerprints were found specifically at the point of entry and, as an employee, Godoy had been informed that the owners of the burglary site would be away. From this, the jury could infer that Godoy's fingerprints were on the window because he had broken it to enter the residence and that his mere acquaintance with the family and his work for them did not itself explain the abundance of his fingerprints at the point of entry. In short, the state presented substantial evidence from which a jury could conclude beyond a reasonable

doubt that the prints were "impressed when the crime was committed." *Rodriguez*, 192 Ariz. 58, ¶ 12, 961 P.2d at 1009; *accord Brady*, 2 Ariz. App. at 212-13, 407 P.2d at 401-02. Rule 20 requires nothing more. The state is not required "to negate every conceivable hypothesis of innocence," even in a case based entirely on circumstantial evidence. *State v. Olivas*, 119 Ariz. 22, 23, 579 P.2d 60, 61 (App. 1978).

Evidence of Prior Break-In Attempt

¶12 Godoy argues the trial court abused its discretion when it allowed the state to present evidence of an attempted burglary of Zulema's house about a week before the charged burglary. We review the trial court's admission of evidence for an abuse of discretion. *State v. Amaya-Ruiz*, 166 Ariz. 152, 167, 800 P.2d 1260, 1275 (1990). Before trial, Godoy moved to preclude "[a]ny mention of or reference to an alleged attempted burglary on September 1, 2008, at the same residence that is the subject of this proceeding," as well as "reference to any damages that may have been sustained by the residence" as a result. In his motion, he contended the evidence was not relevant because it did "not tend to prove or support any of the allegations concerning this offense," citing Rules 401 and 402, Ariz. R. Evid. And, in arguing the motion to the court, he contended the evidence would be confusing to the jury and prejudicial because the jury might infer Godoy had made the prior attempt and therefore had "a plan to get in there."

¶13 The trial court found the evidence had "limited relevance" to the extent it explained why the family "took steps to guard against burglary, including maybe extra security physically and the person who stayed there while they were gone." Thus, the court admitted the evidence for that purpose only and stated, "[I]f there's any implication

that the defendant was involved, since we have no evidence of that, then the Court's going to come down very quickly on that."

¶14 As he did below, Godoy argues on appeal that the evidence was not relevant because "whatever steps were taken to secure the house do not make it more or less probable that [he] broke in to the house on September 6, 2008." Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401. Our standard for the relevance of evidence under Rule 401 "is not particularly high." *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071, 1077 (1988).

¶15 But even assuming evidence about the prior attempted burglary was not relevant to Godoy's guilt or innocence and should therefore have been precluded, any error did not affect the jury's verdict. *See State v. Gunches*, 225 Ariz. 22, ¶ 24, 234 P.3d 590, 594 (2010) ("For an error to be harmless, the State must establish beyond a reasonable doubt that the error did not contribute to or affect the verdict."). Godoy contends the challenged evidence "suggested to the jury the inference that [he] had tried to break in before, and therefore had a plan." But, as the trial court correctly observed, there was nothing about the evidence presented that linked Godoy to the prior attempt. Moreover, the court warned the state to avoid making any suggestion that Godoy had been involved; the state abided by that warning in its limited presentation of the evidence.

¶16 Indeed, the evidence about the prior attempted break-in before Sue and Raymond had left on vacation could have supported inferences in Godoy's favor—that

someone who did not know about the trip had been targeting the house, or, at least, that the house was vulnerable to being burglarized. *Cf. West v. State*, 24 Ariz. 237, 258, 208 P. 412, 419 (1922) (affirming conviction when wrongly admitted evidence "was probably beneficial" to defendant). In sum, any error in the admission of the evidence did not contribute to or affect the verdict and was, therefore, harmless.

Disposition

¶17 For the foregoing reasons, we affirm Godoy's conviction and sentence.

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

CONCURRING:

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

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