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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. ROBERT WILLIAM LEIGHTON, Appellant.	)	2 CA-CR 2010-0120 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092025002

Honorable Charles S. Sabalos, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson
Tucson
Attorneys for Appellee

West, Christoffel & Zickerman, PLLC
By Anne Elsberry
Tucson
Attorneys for Appellant

B R A M M E R, Presiding Judge.

¶1 After a jury trial, appellant Robert Leighton was convicted of first-degree murder, burglary, kidnapping and armed robbery. On appeal he contends his conviction for first-degree murder, which was based on a charge of felony murder predicated on the offenses of armed robbery and kidnapping, was not supported by sufficient evidence. He argues the trial court should have granted his motion for judgment of acquittal, pursuant to Rule 20, Ariz. R. Crim. P., and his motion for new trial pursuant to Rule 24.1, Ariz. R. Crim. P., in which he had challenged the sufficiency of the evidence and claimed the verdicts were against the weight of the evidence. We affirm.

¶2 We will reject a challenge to the sufficiency of the evidence if the conviction is supported by substantial evidence, which 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). And, "we view the evidence in the light most favorable to sustaining the verdict[s] and resolve all reasonable inferences against the defendant." *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984). "To set aside a jury verdict for insufficient evidence it must clearly appear that under no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). We will reverse a conviction based on a claim of insufficient evidence "'only where there is a complete absence of probative facts to support the conviction.'" *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), *quoting State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). Similarly, a Rule 20 motion

should be granted only if there is no substantial evidence establishing the elements of the charged offenses. *Mathers*, 165 Ariz. at 67, 796 P.2d at 869.

¶3 These same principles apply when a trial court is considering a defendant's motion for new trial challenging the weight and sufficiency of the evidence. *See Mincey*, 141 Ariz. at 432, 687 P.2d at 1187 (noting similarity of standards applicable to Rule 20 and Rule 24.1). Thus, we review the court's denial of that motion for an abuse of discretion in the context of these principles. *Id.* (denial of motion for new trial reversed "only when there is an affirmative showing that the trial court abused its discretion and acted arbitrarily." *See also State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (new trial required only when evidence insufficient to establish defendant's guilt beyond reasonable doubt).

¶4 Leighton contends there was insufficient evidence he had committed kidnapping, robbery, or burglary, or that in the course of committing such offenses he had caused the victim's death. Therefore, he argues, the evidence does not support a guilty verdict on the offense of first-degree murder based on felony murder under A.R.S. § 13-1105(A)(2). For the same reasons, he contends the trial court erred when it denied his motion for a judgment of acquittal and his motion for a new trial. Leighton maintains the evidence established the victim had been dead long before he arrived at the scene and that she had been beaten by codefendant Zachary Roesch and Leighton's brother Christopher. He asserts there is no evidence he was at the victim's apartment at the time the murder would have been committed, based on testimony by Zachary, Leighton's former wife, the victim's significant other, and the medical examiner.

¶5 Leighton contends that if he took any property belonging to the victim, the evidence established he would have taken it after she was dead and, at most, he would have committed theft, not robbery. He points out that, unlike robbery, theft is not a predicate offense for first-degree murder based on felony murder. *See* A.R.S. § 13-1105(A)(2). Similarly, he contends there was insufficient evidence that he had committed burglary for purposes of felony murder, because he did not enter the victim's home until after she had been murdered. And, he argues that if there was any evidence he had committed a burglary at all, it was evidence of a second-degree burglary of the victim's apartment, that is, an entry made the day after the murder, not the entry made by Zachary and Christopher during which the victim was killed. He further asserts that, because the victim was deceased when he entered, he could not have committed the predicate felony of kidnapping.

¶6 Based on evidence presented, however, reasonable jurors readily could have found that the victim was alive when Leighton entered her apartment and that he participated in both the burglary and the murder. Evidence suggested that Christopher had given the victim a drug to induce unconsciousness, and that both Christopher and Zachary had struck her in the head when she began to wake up. But, according to Leighton's former wife Lindsey, Leighton left their hotel room that night after he had received a telephone call from Christopher, and the two brothers made three trips to the victim's apartment and back to the hotel that night, retrieving various items, including a computer. Lindsey testified that Christopher had told her they had killed someone, and a few days later Leighton had told her the victim had been alive when he first entered the

apartment and that he had struck her in the head and "was just as guilty" as the others. Zachary also testified the victim was alive when he left the apartment, after he and Christopher had struck her. And, contrary to Leighton's contention, the medical evidence did not establish the victim was already dead when Leighton entered the apartment. As the state points out, the medical examiner testified he could not establish the time of death definitively, only that the victim would have died within ten to fifteen minutes of the fatal blow.

¶7 Based on this record, there was sufficient evidence to support the jury's verdicts. Therefore, the trial court did not abuse its discretion when it denied the motion for a judgment of acquittal or the motion for a new trial. We affirm the convictions and the sentences imposed.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge