

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000401-001 DT

10/26/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
H. Beal
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

CURT ALLEN BOWMAN (001)

RONALD M DEBRIGIDA JR.

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number M-0751-CR-2010-016248.

Defendant-Appellant Curt Allen Bowman (Defendant) was convicted in Scottsdale Municipal Court of assault. Defendant contends evidence was not sufficient to support the verdict. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On May 29, 2010, Defendant was cited for assault, A.R.S. § 13-1203(A)(1) (intentionally, knowingly, or recklessly causing any physical injury to another person). The State subsequently filed a charge of disorderly conduct, A.R.S. § 13-2904(A)(1). At trial, Roxanna Michelle Sheets testified she was living with Defendant and his mother. (R.T. of Feb. 24, 2011, at 4.) On May 28, 2010, she and Defendant got into an argument over text messages he had received on his cell phone. (*Id.* at 6, 8-9.) Once Defendant fell asleep, Ms. Sheets looked through Defendant's cell phone to see from whom he had been receiving the text messages. (*Id.* at 9-10, 31.) At about 3:00 a.m. on May 29, Defendant apparently awoke and came into the room where Ms. Sheets was, and when he saw her looking through his cell phone, he became very upset. (*Id.* at 10.) Defendant grabbed the cell phone and struck Ms. Sheets in the face. (*Id.* at 5, 11, 20.) When Ms. Sheets tried to defend herself, Defendant hit her in the face with his fist. (*Id.* at 12-13, 20, 23.) As a result, she had a black eye for a month. (*Id.* at 12, 16, 21-22.) Ms. Sheets went into the kitchen and grabbed a knife; when Defendant saw she had a knife, he pulled out a 9-millimeter pistol and pointed it at her. (*Id.* at 13-14, 24-25.)

On May 29, 2010, Officer Adam Brunges was called to investigate a family fight. (R.T. of Feb. 24, 2011, at 33.) When he arrived, he spoke to Ms. Sheets and saw she had a bump on the left side of her head and her left eye was beginning to swell shut. (*Id.* at 34, 38-39.)

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On May 29, 2010, Officer Todd Morrow was called to investigate a family fight. (R.T. of Feb. 24, 2011, at 41.) He spoke to Defendant, who said he had a verbal argument with Ms. Sheets. (*Id.* at 43.) Defendant said he put up his arm to block a swing Ms. Sheets took at him. (*Id.* at 43–44, 45, 48.)

After the State rested, Defendant’s attorney made a motion for judgment of acquittal, which the trial court denied. (R.T. of Feb. 24, 2011, at 61–62.) Defendant then testified and said he saw Ms. Sheets looking through his cell phone, so he tried to take it from her. (*Id.* at 65, 70.) As he was leaving the room, he turned and saw Ms. Sheets was swinging a large water jug at him, so he raised his arm to block it. (*Id.* at 66, 70–71.) In this process, his arm hit her head, which is what he said caused her black eye. (*Id.* at 66–67, 70–71.)

After arguments of counsel, the trial court found Defendant guilty of assault and not guilty of disorderly conduct. (R.T. of Feb. 24, 2011, at 77–78.) The trial court then imposed sentence. On March 9, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE EVIDENCE SUPPORT THE GUILTY VERDICT.

Defendant contends the evidence did not support the guilty verdict. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.”

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the finder-of-fact, but whether there is a complete absence of probative facts to support its conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). In the present case, Roxanna Sheets testified Defendant grabbed the cell phone and struck her in the face, and then hit her in the face with his fist, which caused her to have a black eye. (*Id.* at 5, 11, 12–13, 20, 23.) This Court concludes this was sufficient evidence to support the guilty verdict.

Defendant notes his testimony conflicted with that of Ms. Sheets, and that she had been drinking. In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a deci-

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sion is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to “look over the shoulder” of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves “an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge” rather than a “question . . . of law or logic,” it is not appropriate for this Court to “substitute [its] judgment for that of the trial judge.”

III. CONCLUSION.

Based on the foregoing, this Court concludes the evidence was sufficient to support the guilty verdict.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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