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COURT OF APPEALS  
DIVISION TWO

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
	)	2 CA-CR 2008-0166
Appellee,	)	2 CA-CR 2008-0171
	)	2 CA-CR 2008-0309
v.	)	(Consolidated)
	)	DEPARTMENT A
STETSON AUSTIN PAYNE,	)	
	)	
Appellant.	)	<u>MEMORANDUM DECISION</u>
_____	)	Not for Publication
	)	Rule 111, Rules of
	)	the Supreme Court
THE STATE OF ARIZONA,	)	
	)	
Appellee,	)	
	)	
v.	)	
	)	
CHANNTELL NELSON,	)	
	)	
Appellant.	)	
_____	)	
	)	
THE STATE OF ARIZONA,	)	
	)	
Appellee,	)	
	)	
v.	)	
	)	
SUSAN JANE DANIELS,	)	
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause Nos. CR-200800011, CR-200701995, and CR-200800812

Honorable Bradley M. Soos, Judge Pro Tempore  
Honorable Delia R. Neal, Judge Pro Tempore

AFFIRMED IN PART  
VACATED IN PART

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Terry Goddard, Arizona Attorney General  
By Kent E. Cattani, Joseph L. Parkhurst, and  
Kathryn A. Damstra

Tucson  
Attorneys for Appellee

Harriette P. Levitt

Tucson  
Attorney for Appellant

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P E L A N D E R, Judge.

¶1 After separate unrelated jury trials, appellant Stetson Payne was convicted of assault and aggravated assault, and appellant Susan Daniels was convicted of hindering prosecution. The trial court in each case suspended the imposition of sentence and placed appellants on three-year terms of supervised probation; the court also ordered Payne and Daniels to each pay a \$1,000 “prosecution fee,” pursuant to Pinal County Ordinance 91097-PS. On appeal, Payne contends there was insufficient evidence to support his aggravated assault conviction, the court erred by admitting testimony about weapons, and the prosecution fee was illegally imposed. Daniels also challenges the prosecution fee and claims the evidence was insufficient to support her conviction. For reasons stated in a separate opinion issued simultaneously in these three consolidated cases, we vacate the

prosecution fee. But we reject the other arguments Payne and Daniels raise and, therefore, affirm their convictions and probationary terms.

### **Appellant Payne**

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the jury’s verdicts. *State v. Nelson*, 214 Ariz. 196, ¶ 2, 150 P.3d 769, 769 (App. 2007). In December 2007, Pinal County Sheriff’s Deputy Hunt drove Payne home after Payne wrecked his car in a one-vehicle, rollover accident. A short time later, after going to the accident scene and then returning to the same home, Payne’s girlfriend, N., called 911. According to N., she made the call because Payne was depressed, began looking for something with which to kill himself, and attempted to cut his wrists with a knife.

¶3 Deputy Hunt was dispatched to the house based on the report of a possible suicide attempt. When he arrived, the deputy saw Payne standing outside behind N., who was sitting with her hands behind her head. Hunt testified he was unable to tell whether Payne and N. were fighting over an object or if Payne was trying to hurt her. After N. yelled for help, the deputy ran to Payne, grabbed his arm, and put him in a control grip. When Payne tried to pull away, the deputy used a “straight arm drop,” which forced Payne to fall down on his back with the deputy on top of him. Deputy Hunt then stood up and ordered Payne to roll over onto his stomach and stretch his arms out. Instead of complying, Payne grabbed two golf balls in each hand, jumped up and “got into a fighting stance.” Deputy Hunt pulled out his “taser” and used it on Payne. When Payne failed to put his arms out to

his side as ordered, Hunt fired the taser at Payne two more times. Other deputies then arrived at the scene.

¶4 Payne was charged with aggravated assault of Deputy Hunt, a peace officer on duty, and assault of N. A jury found him guilty of both counts. At sentencing, Payne asked the trial court to waive part of the \$1,000 prosecution fee under the Pinal County ordinance. The court refused to do so but did waive attorney fees. Payne timely appealed.

### **I. Sufficiency of the evidence**

¶5 Payne contends there was insufficient evidence to sustain his conviction for aggravated assault of Deputy Hunt. At trial, Payne moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., arguing there was insufficient evidence of an assault because Hunt testified he had taken his taser out and decided to use it before Payne stood up. The trial court denied the motion.

¶6 When considering claims of insufficient evidence, “we view the evidence in the light most favorable to sustaining the verdict and reverse only if no substantial evidence supports the conviction.” *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005); *see also* Ariz. R. Crim. P. 20(a). “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); *see also State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). To the extent Payne argues the trial court erred by denying his motion for judgment of acquittal

under Rule 20, we review that ruling for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007).

¶7 Payne does not dispute he knew Deputy Hunt was a peace officer engaged in the execution of his official duties. Thus, if the evidence was sufficient to support the finding that Payne had assaulted Hunt, Payne is guilty of aggravated assault pursuant to A.R.S. § 13-1204(A)(8)(a). Under A.R.S. § 13-1203(A)(2), a person commits assault when he “[i]ntentionally plac[es] another person in reasonable apprehension of imminent physical injury.”

¶8 Payne contends there was “not a mere scintilla of evidence to support a finding that [he] committed an assault upon a police officer” because, according to Payne, Deputy Hunt testified he had fired his taser as Payne was just attempting to stand up with the golf balls in his hands. Therefore, Payne argues, he “never got into a position where he could have used the golf balls as a weapon,” and the deputy, “who had been a peace officer for less than a year,” simply “overreacted.”

¶9 As the state points out, however, Hunt’s testimony supports the aggravated assault conviction. He stated Payne had grabbed the golf balls and “jumped up pretty quick and got into a fighting stance like he was wanting to fight again.” The deputy testified he was afraid of being injured by Payne or being struck by the golf balls. Hunt’s credibility and the weight to be given to his testimony were questions exclusively for the jury. *See State v. Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d 265, 269 (2007). Thus, there was sufficient evidence from which reasonable jurors could find Payne had intentionally placed Deputy Hunt in

reasonable apprehension of imminent physical injury, thereby committing aggravated assault on a peace officer. *See* §§ 13-1203(A)(2), 13-1204(A)(8)(a).

## **II. Admissibility of gun evidence**

¶10 Next, Payne maintains the trial court abused its discretion by permitting Deputy Hunt to testify he had been aware Payne had firearms at his residence. After the motor vehicle accident in which Payne was involved, Payne contacted N., who drove to the scene and spoke with Payne. While investigating the accident, sheriff’s deputies, including Hunt, found guns in the car Payne had been driving, placed them in N.’s trunk, and sent her home. Because she was concerned about Payne’s depression, N. agreed with the deputies to tell Payne the deputies had taken the weapons rather than put them in her car.

¶11 Before trial, Payne moved to exclude any testimony related to the deputies’ having found guns at the accident scene, arguing the “minor relevance would certainly be outweighed by its prejudicial effect.” The court denied the motion, ruling the evidence was “relevant to the deputy’s state of mind to the use of force that he used [sic] and . . . relevant to the defendant’s actions and . . . to [his] contention when [sic] the deputy used excessive force.” We review a trial court’s ruling on the admissibility of evidence for an abuse of discretion. *State v. Fillmore*, 187 Ariz. 174, 179, 927 P.2d 1303, 1308 (App. 1996); *see also State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 7, 186 P.3d 33, 35 (App. 2008). We find no such abuse here.

¶12 Evidence is relevant if it “ha[s] 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. Irrelevant evidence is generally inadmissible. Ariz. R. Evid. 402. Payne contends the deputy’s knowledge about guns was irrelevant because the evidence at trial established Payne had not been told the guns were in N.’s trunk, firearms were not mentioned in the 911 call, and Deputy Hunt “should have known that [Payne] was not aware of the presence of guns in the trunk of N[.]’s car.”

¶13 The accident, however, occurred more than two hours before Hunt dropped Payne off at his residence, and the deputy had no way of knowing what N. had done with the guns in the interim. Even if the guns were still in her trunk when he later arrived at the residence in response to the 911 call, the deputy saw Payne and N. struggling in the driveway outside the garage, close to her car. Additionally, Hunt’s knowledge and state of mind were relevant because Payne claimed at trial the deputy had used excessive force on him. The trial court did not abuse its discretion in concluding the proffered evidence had some probative value and, therefore, was relevant.

¶14 Payne further maintains that, even if the evidence was relevant, it was unduly prejudicial because the presence of guns suggested to the jury he “was dangerous and needed to be restrained immediately.” Rule 403, Ariz. R. Evid., provides relevant “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” The weighing of probative value against prejudicial effect, however, is uniquely a trial court task. *See Girouard v. Skyline Steel, Inc.*, 215 Ariz. 126, ¶ 10, 158 P.3d 255, 258 (App. 2007). We cannot say the court clearly abused its discretion in concluding any prejudice caused by the evidence did not substantially outweigh its probative value. *See*

Ariz. R. Evid. 403; *see also State v. Salazar*, 181 Ariz. 87, 91, 887 P.2d 617, 621 (App. 1994) (“Trial courts have broad discretion in balancing probative value against prejudice . . .”). Additionally, other than arguing the evidence made him appear dangerous, Payne has not demonstrated how or why the jury verdict would have been different absent the testimony. *See State v. Ayala*, 178 Ariz. 385, 387, 873 P.2d 1307, 1309 (App. 1994) (“The prejudice must be sufficient to create a reasonable doubt about whether the verdict might have been different had the error not been committed.”). We find no error resulting from admission of the evidence in question.

### **Appellant Daniels**

¶15 Again, “[w]e view the evidence in a light most favorable to sustaining the verdict.” *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997); *see also State v. Jensen*, 217 Ariz. 345, ¶ 5, 173 P.3d 1046, 1049 (App. 2008). In January 2008, a gang task force was investigating Daniels’s son, Eric, who was suspected of being involved in graffiti “tagging” in Apache Junction. There were three outstanding warrants for Eric’s arrest, one for a felony and two for misdemeanors. Several law enforcement officers went to Eric’s parents’ house to look for him. Eric’s girlfriend answered the door. While the officers were speaking with her, Daniels drove up in a vehicle.

¶16 One police detective informed Daniels they were at her house to investigate the graffiti and had three warrants for her son’s arrest. She refused the detective’s request to search her house without a warrant but agreed to go inside to see whether Eric was home. Daniels went inside for a couple minutes, came out, and told the officers Eric was not home.

After her husband arrived, Daniels left with Eric’s girlfriend and a baby. While officers were waiting for the search warrant, Eric emerged from the house and was arrested.

¶17 Testifying in her own defense at trial, Daniels stated she did not look for Eric when she went inside and never spoke to detectives after leaving the house. On appeal, she contends there was insufficient evidence to convict her of hindering prosecution because the state “did not establish what [she] was doing inside the house” or whether she actually looked for Eric. And, she argues, because Eric surrendered after she left, she did not “prevent the police from executing their duty.”

¶18 On claims of insufficient evidence, we will not overturn a conviction as long as substantial evidence supports it. *State v. Green*, 111 Ariz. 444, 445, 532 P.2d 506, 507 (1975); *State v. Grainge*, 186 Ariz. 55, 59, 918 P.2d 1073, 1077 (App. 1996). “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); see also *State v. Cox*, 217 Ariz. 353, ¶ 22, 174 P.3d 265, 269 (2007). When determining “whether sufficient evidence supports a criminal conviction, we determine if ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Johnson*, 210 Ariz. 438, ¶ 5, 111 P.3d 1038, 1040 (App. 2005), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

¶19 “A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any felony,

the person renders assistance to the other person.” A.R.S. § 13-2512(A). A person renders assistance by knowingly “[h]arboring or concealing the other person,” or by “[p]reventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of the other person.” A.R.S. § 13-2510(1), (4).

¶20 Contrary to Daniels’s assertion, the state did not have to affirmatively prove what she had done inside the house. Nor does the fact that the officers ultimately apprehended Eric preclude a finding of hindering prosecution. *See State v. Martinez*, 175 Ariz. 114, 116, 854 P.2d 147, 149 (App. 1993) (although police were able to execute search warrant, sufficient evidence existed of hindering prosecution when defendant pushed door shut before police entered). Rather, the state had to prove she knowingly prevented the apprehension of her son by obstructing or deceiving the officers. *See* §§ 13-2510, 13-2512. Substantial evidence existed to support the jury’s verdict here.

¶21 Three law enforcement officers testified Daniels had told them Eric was not home after she had entered the house and remained there for a few minutes. The officers had informed Daniels they had a felony warrant for her son’s arrest. From this evidence, reasonable jurors could have determined Daniels had prevented or hindered detectives from apprehending Eric by lying to them about him not being home. *See* § 13-2510(4). Daniels’s testimony to the contrary merely presented a credibility issue for the jury’s determination, and this court will not reweigh the evidence on appeal. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Additionally, “[e]vidence is not insubstantial simply because

testimony is conflicting or reasonable persons may draw different conclusions from the evidence.” *State v. Toney*, 113 Ariz. 404, 408, 555 P.2d 650, 654 (1976); *see also State v. Garfield*, 208 Ariz. 275, ¶ 9, 92 P.3d 905, 907-08 (App. 2004).

**Disposition**

¶22 Payne’s and Daniels’s convictions and probationary terms are affirmed. For the reasons set forth in our separate opinion, however, the prosecution fees assessed against them are vacated.

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JOHN PELANDER, Judge

CONCURRING:

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JOSEPH W. HOWARD, Chief Judge

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PHILIP G. ESPINOSA, Presiding Judge