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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0751
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
QUEZON GRAY,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-009407-017 DT

The Honorable F. Pendleton Gaines, Deceased

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Angela Kebric, Assistant Attorney General
Attorneys for Appellee

Kenneth S. Countryman, PC Phoenix
by Kenneth S. Countryman
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Quezon Gray ("Gray") was convicted of multiple crimes,
but only challenges his convictions and sentences for conspiracy

and illegally conducting an enterprise, and the denial of his motion for new trial. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Gray was arrested in November 2008 when law enforcement officers, as part of a large-scale investigation, executed a search warrant on a house and found him hiding in the attic.¹ Officers found more than five hundred pounds of marijuana packaged in bundles throughout the house. Gray was subsequently indicted for conspiracy, a class 2 felony; illegally conducting an enterprise, a class 3 felony; possession of marijuana for sale in an amount above the threshold, a class 2 felony; possession of drug paraphernalia, a class 6 felony; misconduct involving weapons, a class 4 felony; and money laundering, a class 3 felony.²

¶3 The trial court dismissed the misconduct involving weapons charge after the State's case-in-chief. The jury found Gray guilty of the remaining charges, and he was subsequently sentenced to five years in prison.³ His motion for a new trial

¹ The two other men who were found and arrested in the home were tried with Gray.

² The money laundering charge was dismissed with prejudice at the start of the trial.

³ He was sentenced to five years for conspiracy; three and one-half years for illegally conducting an enterprise; five years for possession of marijuana for sale over the threshold; one year for possession of drug paraphernalia, and the sentences were ordered to run concurrently. He received 110 days of presentence incarceration credit.

was denied. We have jurisdiction over his appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A), 13-4031, and -4033 (West 2012).

DISCUSSION

I. Conspiracy

¶14 Gray argues that there was insufficient evidence of any agreement between him and another to support the conspiracy conviction. In reviewing his argument, we consider whether there was substantial evidence to support the verdict. *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005) (citation omitted). "Substantial evidence . . . [is] evidence that 'reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.'" *Id.* at 411-12, 103 P.3d at 913-14 (citation omitted). And, "we view the facts in the light most favorable to sustaining the jury verdict and resolve all inferences against [Gray]." *Id.* at 412, 103 P.3d at 914 (citation omitted).

¶15 Conspiracy is committed if a person, "with the intent to promote or aid the commission of an offense, . . . agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the

offense” A.R.S. § 13-1003(A) (West 2012).⁴ The agreement does not have to be a formal written agreement, and “[t]he existence of an unlawful agreement can be inferred from the overt conduct of the parties.” *State v. Avila*, 147 Ariz. 330, 336, 710 P.2d 440, 446 (1985) (citation omitted).

¶16 Moreover, there does not need to be direct evidence of a conspiracy. “Criminal conspiracy need not be, and usually cannot be, proved by direct evidence. . . . The agreement between conspirators may be proven by circumstantial evidence as well.” *State v. Fischer*, 219 Ariz. 408, 420, ¶ 46, 199 P.3d 663, 675 (App. 2008) (citations and internal quotation marks omitted).

¶17 Here, the lead detective characterized the house as a “stash” house and testified that the occupants had been in the process of wrapping bales of marijuana because “one of the first bales of weed that [he] saw when [he] walked into the house still had the cellophane wrapping roll attached to it.”

¶18 Inside the home, police found materials that could have been used to bring the marijuana to the house: a “four-wheeler offroad vehicle,” and several black canvas bags and burlap-type bags “commonly used for transportation of marijuana.” The police also found materials used to weigh

⁴ Absent any material revision after the date of an alleged offense, we cite the current version of an applicable statute.

(scales), pack (air press,⁵ plastic wrap, packing peanuts, and plastic gloves), mask the odor (masking agents), and ship the marijuana (shipping label printer, shipping labels, cardboard boxes, and packing tape). They also located a laptop computer and a ledger that may have been used to track the marijuana shipments. Additionally, police found items belonging to Gray in the house, and his rental car was parked in the driveway. The jurors also heard testimony that Gray was in the house to conduct a drug transaction.

¶9 On this record, there was substantial evidence at trial from which reasonable jurors could find the existence of an agreement between Gray and others that involved drug-related criminal activity. Consequently, we affirm his conviction for conspiracy.

II. Illegally Conducting an Enterprise

¶10 Gray also argues that there is insufficient evidence to sustain his conviction for illegally conducting an enterprise. We disagree.

¶11 "A person commits illegally conducting an enterprise if [the] person is employed by or associated with any enterprise and conducts such enterprise's affairs through racketeering or participates directly or indirectly in the conduct of any

⁵ A Department of Public Safety detective testified that an air press may be used "to compress the marijuana into an airtight or air-dense bale."

enterprise that the person knows is being conducted through racketeering." A.R.S. § 13-2312(B) (West 2012). "Racketeering" was correctly defined in the jury instructions as, "any act, including any preparatory or completed offense, that's chargeable or indictable under the law of the State or country in which the act occurred." The jury was further instructed that "[i]n this case, the racketeering charge is limited to possession of marijuana for sale."

¶12 Here, the evidence linked Gray to a marijuana distribution and sales operation. The evidence was such that "reasonable [jurors] could accept [it] as sufficient to support a guilty verdict beyond a reasonable doubt." *Stroud*, 209 Ariz. at 411-12, ¶ 6, 103 P.3d at 913-14 (quoting *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997)). Accordingly, we affirm Gray's conviction for illegally conducting an enterprise.

III. Motion for New Trial

¶13 Finally, Gray argues that the court erred when it denied his motion for new trial. Specifically, he asserts that the State failed to disclose evidence that would have supported his claim that he had standing to challenge the search warrant - evidence that "Gray had been regularly flying in and out of Arizona prior to" his arrest. He argues that the State

presented the evidence at trial, but prevented him from re-urging his *Franks*⁶ motion.

¶14 We review a denial of a motion for new trial for an abuse of discretion. *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996) (citation omitted); *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984) (citation omitted) (“A denial of a motion for new trial will be reversed only when there is an affirmative showing that the trial court abused its discretion and acted arbitrarily.”).

¶15 Gray asserts that the prosecutor withheld the boarding passes and paperwork in his name that were found in the house. The record, however, reveals that the State disclosed those documents on March 18, 2010, well before Gray’s April 30, 2010 motion to suppress and the subsequent hearing. Based on the record, we cannot conclude that the denial of the motion constituted an abuse of discretion. See *Spears*, 184 Ariz. at 287, 908 P.2d at 1072 (quoting *State v. Rankovich*, 159 Ariz. 116, 121, 765 P.2d 518, 523 (1988)) (“Motions for new trial are disfavored and should be granted with great caution.”).

⁶ *Franks v. Delaware*, 438 U.S. 154 (1978).

CONCLUSION

¶16 Based on the foregoing, we affirm Gray's convictions and sentences.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

PHILIP HALL, Judge

/s/

DIANE M. JOHNSEN, Judge