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



DIVISION ONE
FILED: 08/21/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0047
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MIGUEL MANSANARES) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-119398-001 DT

The Honorable Steven K. Holding, Commissioner

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Theresa M. Armendarz, PLC Manteo, NC
By Theresa M. Armendarez
Attorney for Appellant

G O U L D, Judge

¶1 Miguel Mansanares ("Mansanares") appeals from his

convictions and sentences for one count of resisting arrest and one count of aggravated assault, both class six felonies. Mansanares was sentenced on January 3, 2011, and timely filed a notice of appeal on January 19, 2011. Mansanares' counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after searching the entire record on appeal, she finds no arguable ground for reversal.

¶2 Mansanares was granted leave to file a supplemental brief *in propria persona* on or before April 2, 2012, but did not do so. Defense counsel notes in her opening brief several issues that Mansanares asks this court to address: (1) whether the trial court erred in denying Mansanares' various motions, (2) whether sufficient evidence was presented to support the verdicts, (3) whether Mansanares was denied his right to due process and a fair trial, (4) whether the State's evidence was admissible, (5) whether the State had a valid warrant for Mansanares' arrest, and (6) whether Mansanares was denied effective assistance of counsel.

¶3 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") Sections 12-120.21(A)(1) (2003), 13-4031 (2001), and

13-4033(A) (2010).¹ We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural History

¶4 On March 27, 2008, Deputy Hughes (“Hughes”), while dressed in his deputy sheriff’s uniform, arrived at Mansanares’ residence in a fully-marked sheriff’s patrol car. Hughes was seeking to make contact with Mansanares on an outstanding arrest warrant.

¶5 Hughes knocked on the door of Mansanares’ residence, and then took cover behind a brick post for “officer safety purposes.” When Mansanares opened the door, Hughes observed that Mansanares matched the physical description provided to him by dispatch. Hughes asked Mansanares several times if he was, “Miguel.” Mansanares appeared surprised and did not respond to Hughes’ question. Mansanares then began to display “defiant” behavior and stepped back into the house. At this point Hughes became fearful for his safety, and followed Mansanares into the house to prevent him from fleeing or obtaining a weapon.

¶6 When Hughes entered the house, he advised Mansanares that he was going to arrest him. Hughes tried to restrain Mansanares by grabbing his wrists, and Mansanares responded by

¹ Unless otherwise specified, we cite to the current version of the applicable statutes because no revisions material to this decision have occurred.

pulling his wrists away "in a very swift and aggressive motion," indicating to Hughes that he "wanted to be physical." Hughes then pulled out his Taser and told Mansanares he would Tase him if he did not turn around and place his hands behind his back. At this point, Mansanares took a step toward Hughes. Hughes deployed the Taser but it was not effective, and Mansanares then came at Hughes in a "football tackle." A physical struggle ensued, and during the course of this struggle Hughes felt a tugging at his holster. Eventually, Hughes noticed his gun was missing. Hughes "believed that the defendant actually had [his] firearm" and was "terrified." Hughes then observed the gun on the ground; he let go of Mansanares and retrieved it.

¶17 Hughes testified at trial that he believed Mansanares was trying to seriously hurt him, so he pointed his gun at Mansanares and told him to get on the ground and place his hands behind his back. Mansanares complied and was taken into custody. Deputy Matthews ("Matthews") and Deputy Duperault ("Duperault") arrived shortly after Hughes' call for help on the radio. Matthews testified that Mansanares was agitated and yelling in the backseat of Hughes' car, so Mansanares was transferred to Matthews' car and transported to the station.

¶18 Mansanares was held without bond because he had failed to appear on three occasions in prior criminal cases. In

addition, the charges in this case occurred while Mansanares was on pretrial release in two other criminal cases.

¶9 Mansanares was charged with one count of resisting arrest and one count of aggravated assault, both class six felonies. On October 24, 2008, Mansanares knowingly, intelligently, and voluntarily waived counsel and proceeded *pro se*. After being granted *pro se* status, Mansanares was present and accompanied by advisory counsel at each stage of the trial. During trial, the court conducted a hearing to determine whether the state would be permitted to impeach Mansanares with his prior felony conviction. Ariz. R. Evid. 609. The court determined the State could impeach defendant with a sanitized prior, e.g., the State could impeach Mansanares with his prior felony conviction but could not reference the charge or class of felony.

¶10 At trial, Mansanares contradicted Hughes' testimony. According to Mansanares, Hughes never identified himself as a police officer. When Hughes knocked on the door, Mansanares asked who was there, Hughes did not respond, and when Mansanares opened the door, he saw only Hughes' shadow and a gun. According to Mansanares, Hughes then said, "You know what you did to Anita" and instructed Mansanares to drop his cigarette. Mansanares testified that he was fearful that Hughes was a jealous husband or boyfriend of a woman he had relations with,

so he backed away. Mansanares denied intentionally touching Hughes, and claimed that Hughes shoved him against the wall.

¶11 During the course of Mansanares' testimony, the State impeached Mansanares with his prior felony conviction.

¶12 An eight-person jury convicted Mansanares of all charges on January 15, 2009.

¶13 Sentencing was set for April 29, 2009, but was continued numerous times because Mansanares was involved in competency proceedings in two unrelated criminal cases. Eventually, Mansanares' other cases were dismissed because he was determined to be incompetent and not restorable. However, on November 29, 2010, the court in this case determined that Mansanares was competent during the trial, and sentencing was set for January 3, 2011.

¶14 Mansanares was given a chance to address the court at sentencing. The court found that Mansanares had previously been convicted of one prior dangerous felony. This finding was based on the State's presentation of a sentencing minute entry, a Department of Corrections pen pack, and a fingerprinting expert who matched Mansanares' fingerprints to the fingerprints in the pen pack. The State noted that the name on the prior conviction and date of birth matched Mansanares.

¶15 The court sentenced Mansanares to concurrent presumptive sentences of 1.75 years for each count with credit

for 882 days of presentence incarceration. At the time of sentencing, Mansanares had served more time than his sentence required, and as a result he was sent to the Department of Corrections and immediately released. This appeal followed.

Discussion

¶16 Mansanares raises several issues on appeal. We examine each issue in turn.

1. The Trial Court Did Not Abuse Its Discretion in Denying Mansanares' Motions.

¶17 Mansanares asks us to consider whether the trial court erred in denying several of his motions. As a preliminary matter, "opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised." *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). The failure to argue a claim on appeal sufficiently constitutes abandonment and waiver of that claim. *See id.*; *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995). Because Mansanares' opening brief did not provide significant arguments and simply made a general claim that the trial court erred in denying Mansanares' motions, Mansanares has waived this claim.

¶18 Moreover, the trial court did not abuse its discretion in denying Mansanares' motions. Mansanares filed a motion claiming he was denied his right to a preliminary hearing.

Because the State held a grand jury in Mansanares' case, Mansanares was not entitled to a preliminary hearing; therefore, the trial court did not abuse its discretion. *State v. Bojorquez*, 111 Ariz. 549, 553, 535 P.2d 6, 10 (1975) (stating that either indictment by grand jury or information after preliminary hearing is a constitutionally proper method of bringing accused to trial).

¶19 Mansanares filed several motions to modify his release conditions. The court denied all of these motions on the grounds Mansanares failed to appear on three prior occasions and he was on pretrial release at the time he committed the subject offenses. As a result, the trial court had reasonable grounds to deny the motions and did not abuse its discretion. See *Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021, 1031 (App. 1997).

¶20 Several of Mansanares' motions, including his motions for a change of judge for cause, were denied because he filed them *pro per* while he still had counsel. The trial court did not abuse its discretion in denying these motions because Mansanares was not entitled to file motions on his own behalf while represented by counsel. *State v. Cornell*, 179 Ariz. 314, 325, 878 P.2d 1352, 1363 (1994) ("Arizona does not recognize a constitutional right to hybrid representation.").

¶21 The court did not abuse its discretion in denying the remainder of Mansanares' motions. During trial, Mansanares re-

urged several motions that had been previously denied by the court, including a motion to allege a conspiracy and a motion challenging the validity of his arrest warrants.

¶22 The trial court also did not err in denying Mansanares' motion for new trial. The motion was based on Mansanares' claim that the prosecution coached a witness. "[M]otions for new trial are disfavored and should be granted with great caution." *State v. Hansen*, 156 Ariz. 291, 295, 751 P.2d 951, 955 (1988). Moreover, the trial court has discretion when deciding whether a defendant is entitled to a new trial. *Id.*

2. Sufficient Evidence Supports the Verdicts.

¶23 Mansanares asks us to consider whether sufficient evidence was presented to support the verdicts. We find that substantial evidence exists to support the verdicts in this case. "We review the sufficiency of evidence presented at trial only to determine if substantial evidence exists to support" the verdict. *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005). Additionally, when determining whether the evidence was sufficient to sustain a verdict, evidence must be construed in the "light most favorable to sustaining the verdict." *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998); see also *Gonzales v. City of Phoenix*, 203 Ariz. 152, 153, ¶ 2, 52 P.3d 184, 185 (2002) ("[I]f any substantial

evidence could lead reasonable persons to find the ultimate facts sufficient to support the verdict, we will affirm the judgment.”).

¶24 Resisting arrest is defined by A.R.S. § 13-2508 (2010) as follows:

A. A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by:

1. Using or threatening to use physical force against the peace officer or another; or
2. Using any other means creating a substantial risk of causing physical injury to the peace officer or another.

¶25 Aggravated assault is defined by A.R.S. §§ 13-1203 (2010) and 13-1204 (Supp. 2011), which provide that a defendant commits aggravated assault if he knowingly touches another person with the intent to injure, insult or provoke that person and the defendant knew or had reason to know that the person assaulted was a peace officer performing official duties.

¶26 The jury was presented substantial evidence upon which to convict Mansanares for the crimes of resisting arrest and aggravated assault. Hughes travelled to Mansanares' house to arrest Mansanares for an outstanding arrest warrant. When Hughes arrived at Mansanares' house, he was in a fully-marked

vehicle and was wearing a deputy sheriff's uniform. When Hughes saw the defendant, he instructed Mansanares to put his hands behind his back so that he could handcuff and arrest him. Hughes testified that Mansanares physically resisted him, pulling his wrists away when Hughes attempted to handcuff him, lunged at Hughes after Hughes attempted to subdue him with a Taser, and subsequently wrestled with Hughes. The fact the jury chose to believe Hughes' testimony and not Mansanares' testimony was a determination that was exclusively within the province of the jury. *State v. Just*, 138 Ariz. 534, 545, 675 P.2d 1353, 1364 (App. 1983).

3. Mansanares Received a Fair Trial.

¶27 Mansanares asks us to consider whether he was provided a fair trial. We conclude that he was. Mansanares was present at all critical stages of the proceedings. He knowingly, intelligently, and voluntarily waived his right to counsel and proceeded *pro se*. The trial court determined Mansanares was competent during his trial. *State v. Taylor*, 160 Ariz. 415, 418, 773 P.2d 974, 977 (1989) (trial court's competency determinations are reviewed for abuse of discretion); *State v. Bishop*, 137 Ariz. 5, 7-8, 667 P.2d 1331, 1333-34 (App. 1983) (same). Mansanares was tried by an eight-person jury and the court instructed the jury on burden of proof, presumption of

innocence, reasonable doubt, and the elements of the subject crimes.

¶28 At trial Mansanares objected to Hughes testifying about the events of the alleged incident because Hughes did not read Mansanares his *Miranda* rights before asking if he was "Miguel." However, an officer may request identifying information from a defendant without violating *Miranda*. See *Pennsylvania v. Muniz*, 496 U.S. 582, 600-602 (1990). Therefore, the admission of appellant's responses to Hughes' requests for Mansanares' identifying information did not violate *Miranda*. *Id.*

¶29 Mansanares claims the sentencing and trial on his prior felony convictions were unconstitutional and the Court acted without jurisdiction. The sentencing was constitutional. Mansanares was present, he had a chance to speak, he had access to advisory counsel, he was given accurate pre-sentence incarceration credit, and the State provided sufficient evidence to prove his prior offenses. Mansanares' claim that the court lacked jurisdiction over his case also lacks merit. See Ariz. Const. art. 6, § 14(4) (the superior court has original jurisdiction over felony criminal cases); *State v. Payne*, 223 Ariz. 555, 559, ¶ 7, 225 P.3d 1131, 1135 (App. 2009) (same).

4. The State Provided Admissible Evidence.

¶30 Mansanares claims the State violated the Rules of Criminal Procedure by its late disclosure of evidence. Mansanares also claims that the State altered some of the evidence. "The trial court has considerable discretion in determining the relevance and admissibility of evidence, and we will not disturb its ruling absent a clear abuse of that discretion." *State v. Amaya-Ruiz*, 166 Ariz. 152, 167, 800 P.2d 1260, 1275 (1990).

¶31 Mansanares objected to the State's submission of a recorded interview with Hughes and the 9-1-1 dispatch tapes from the incident on the grounds of late disclosure. However, the court determined that the evidence was admissible because it was newly discovered by the State. Furthermore, during a hearing on a motion to continue made by Mansanares' advisory counsel, Mansanares objected to the motion to continue and told the court he was ready for trial and did not need more time to review the evidence. Mansanares also claimed that the 9-1-1 tapes were altered and the photographs of the crime scene were invalid because the Taser had been removed before the photographs were taken. The court denied the motion, stating Mansanares could address the alleged alteration of the 9-1-1 tapes and photographs during cross-examination of the State's witnesses.

5. The Trial Court Did Not Err in Determining that the State had a Valid Arrest Warrant.

¶32 Mansanares asks us to consider whether his arrest warrant was valid. The court did not commit error by finding the warrant was valid. The court determined that Hughes had a legal basis for arrest. Furthermore, this issue is irrelevant because it is illegal to resist arrest regardless of whether the arrest is lawful. *State v. Sanders*, 118 Ariz. 192, 196, 575 P.2d 822, 826 (App. 1978) (“[T]he traditional common law rule that a person illegally arrested can resist arrest as long as he used such force as is reasonably necessary, short of homicide, is no longer the law in Arizona.”).

6. Mansanares was not Denied Effective Assistance of Counsel.

¶33 Mansanares asks us to consider whether he was denied effective assistance of counsel. Because Mansanares raises this issue for the first time in appeal, he has waived this claim. *State v. Spreitz*, 202 Ariz. 1, 2, ¶ 4, 39 P.3d 525, 526 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, *in a Rule 32 post-conviction relief proceeding*, subsequent claims of ineffective assistance will be deemed waived and precluded.”).

¶34 Furthermore, a “defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to the denial of ‘effective assistance of

counsel.'" *Harding v. Lewis*, 641 F.Supp. 979, 989 (D. Ariz. 1986) (quoting *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975)); *State v. Russell*, 175 Ariz. 529, 535, 858 P.2d 674, 680 n.46 (App. 1993) (same). Mansanares filed several motions requesting the court to remove his defense counsel and allow him to proceed *pro se*. The court informed Mansanares of the consequences of this decision and verified that he was making the decision voluntarily, knowingly, and intelligently.

Conclusion

¶35 In addition to addressing the issues presented by Mansanares, we have read and considered the entire record and have found no meritorious grounds for reversal of Mansanares' convictions or for modification of the sentence imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm.

¶36 After the filing of this decision, counsel's obligations in this appeal have ended. Counsel need do no more than inform Mansanares of the status of the appeal and Mansanares' future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Mansanares has thirty days from

the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.²

/S/
ANDREW W. GOULD, Judge

CONCURRING:

/S/
JOHN C. GEMMILL, Presiding Judge

/S/
PETER B. SWANN, Judge

² Pursuant to Arizona Rule of Criminal Procedure 31.18(b), Mansanares or his counsel has fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.