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



DIVISION ONE
FILED: 12/20/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0894
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
LATON HOLLY TORRENCE,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-112347-002 DT

The Honorable Randall H. Warner, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Judge

¶1 Laton Holly Torrence appeals his convictions of theft, unlawful imprisonment and misconduct involving weapons, and the resulting sentences. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 At sentencing after his convictions, the court found Torrence had one historical prior felony conviction and sentenced him to concurrent terms of six months in jail for theft and one and a half years' imprisonment for unlawful imprisonment, and a consecutive four-year term on the charge of misconduct involving weapons.

¶3 We have jurisdiction of Torrence's timely appeal pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012), 13-4031 (West 2012) and -4033(A) (West 2012).¹

DISCUSSION

¶4 Torrence's only argument on appeal is that insufficient evidence supported his conviction for misconduct involving weapons because the State failed to prove, beyond a reasonable doubt, that he was a prohibited possessor. See A.R.S. §§ 13-3101(A)(7)(b) (West 2012) (definition of "prohibited possessor"), -3102(A)(4) (West 2012) (misconduct involving weapons requires a "prohibited possessor" to knowingly

¹ Absent material revisions after the date of an alleged offense, we cite a statute's current version.

possess a deadly weapon); *State v. Sierra-Cervantes*, 201 Ariz. 459, 462, ¶ 13, 37 P.3d 432, 435 (App. 2001) (burden to prove every element of the offense beyond a reasonable doubt always remains with the State).² We will reverse the conviction only if no substantial evidence supports the verdict. *State v. Henry*, 205 Ariz. 229, 232, ¶ 11, 68 P.3d 455, 458 (App. 2003). Substantial evidence is "more than a mere scintilla of evidence" and is such proof that "reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Stroud*, 209 Ariz. 410, 411-12, ¶ 6, 103 P.3d 912, 913-14 (2005) (quotation omitted).

¶5 Substantial evidence supported the verdict. Under § 13-3101(A)(7)(b), a prohibited possessor is someone "[w]ho has been convicted . . . of a felony . . . whose civil right to possess or carry a gun or firearm has not been restored." On this issue, the following evidence was before the jury: (1) a booking photograph of an individual who appeared to be Torrence,

² Torrence contends the superior court erred in denying his motion for judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20 and his Rule 24.1 motion for a new trial. Because both motions made the same argument, we need not address them separately. See *State v. Mincey*, 141 Ariz. 425, 432-33, 687 P.2d 1180, 1187-88 (1984) (given similar Rule 20 and Rule 24.1 standards, issues of sufficiency and weight of evidence are decided without separate analyses); *State v. Davis*, 226 Ariz. 97, 99, ¶ 7, 244 P.3d 101, 103 (App. 2010) (no error in denying motion for new trial based on argument that verdict was against "the weight of the evidence" when State presented evidence sufficient to support guilty verdict).

(2) a criminal complaint citing the same booking number as the booking photograph and charging an individual with Torrence's name and birthday with a felony, (3) a 2006 minute entry with a case number matching that of the criminal complaint stating a defendant with the same name and birthday as Torrence was convicted of a felony, and (4) an affidavit from the Clerk of the Superior Court stating that the convicted defendant's civil right to possess a weapon had not yet been restored.

¶16 The thumbprint on the minute entry (item three) was unusable. Torrence argues that in the absence of fingerprint evidence, the State failed to prove beyond a reasonable doubt that he was a prohibited possessor because there is no link between the individual in the booking photo who appears to be Torrence and the individual convicted of the 2006 felony.

¶17 Although it is the preferred method, a certified conviction bearing an offender's fingerprint is not the only way to establish a prior conviction. *State v. Robles*, 213 Ariz. 268, 273, ¶ 16, 141 P.3d 748, 753 (App. 2006). Other types of evidence may establish a prior conviction. *See, e.g., State v. Van Adams*, 194 Ariz. 408, 419, ¶ 37, 984 P.2d 16, 27 (1999) (matching name, birthday and Social Security number); *State v. Baca*, 102 Ariz. 83, 87, 425 P.2d 108, 112 (1967) (same name, detailed description and prison photographs); *State v. McCurdy*,

216 Ariz. 567, 573, ¶ 15, 169 P.3d 931, 937 (App. 2007) (identical name, date of birth and signature).

¶18 We are not persuaded by Torrence's argument that, under *State v. Pennye*, 102 Ariz. 207, 427 P.2d 525 (1967), the State's evidence was insufficient to support the verdict. The court in *Pennye* noted that the "only evidence" in that case linking the defendant to an individual convicted of the prior offense was a matching name. *Id.* at 208, 427 P.2d at 526. On that basis, the court held that "the mere identity of a name on an exemplified copy of a prior conviction and the defendant's name[] is not sufficient evidence." *Id.*; see also *State v. Norgard*, 6 Ariz. App. 36, 41-42, 429 P.2d 670, 675-76 (1967) (evidence of an identical name insufficient, by itself, to establish identity; noting, however, that similarity of names may be some evidence of identity).

¶19 Here, the State did not base its proof solely on the fact that Torrence's name matched that on the criminal complaint and conviction. The jury also had evidence of identical dates of birth and saw a booking photo it could compare to Torrence's appearance. Reasonable persons could accept this evidence as sufficient to prove beyond a reasonable doubt that Torrence was the individual convicted of the 2006 felony. *Cf. State v. McGonigle*, 103 Ariz. 267, 272, 440 P.2d 100, 105 (1968) (affirming judgment when evidence of prior convictions contained

photographs for jury comparison and substantially similar names). The superior court, therefore, properly denied Torrence's motions for acquittal and a new trial on the misconduct involving weapons charge.

CONCLUSION

¶10 For the foregoing reasons, we affirm Torrence's convictions and sentences.

/s/

DIANE M. JOHNSEN, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge