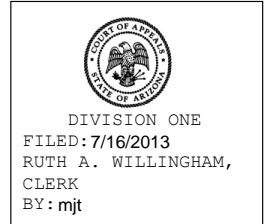


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

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 ONE



STATE OF ARIZONA,)	1 CA-CR 12-0534
)	
)	DEPARTMENT B
Appellee,)	
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
MICHAEL DAVID CHAMBERS,)	Rule 111, Rules of the
)	Arizona Supreme Court)
Appellant.)	
)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. 2011-007992-001

The Honorable Carolyn K. Passamonte, Judge Pro Tempore

AFFIRMED

Thomas C. Horne, Arizona Attorney General	Phoenix
By Joseph T. Mariarz, Section Chief Counsel	
Criminal Appeals Section	
Attorneys for Appellee	

James J. Haas, Maricopa County Public Defender	Phoenix
By Joel M. Glynn, Deputy Public Defender	
Attorneys for Appellant	

K E S S L E R, Judge

¶1 Appellant Michael David Chambers ("Chambers") was convicted of failing to register a change of address as a sex offender, a class 4 felony with one historical prior felony conviction. See Ariz. Rev. Stat. ("A.R.S.") §§ 13-3822(A) (Supp. 2012), -3821 (Supp. 2012), -3824 (Supp. 2012).¹ Counsel for Chambers filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Chambers submitted a supplemental brief *in propria persona*, raising the following issues: (1) the court erred in denying a judgment of acquittal despite a lack of sufficient evidence to support the charge; (2) it was error to use evidence of two different acts to prove a single offense; (3) the court improperly instructed the jury about the applicable sex offender registration laws and did not answer a juror's question; and (4) it was error to deny his post-trial motion for new trial based on jury misconduct. For the reasons that follow, we affirm Chambers' conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 In May 2011, Officer C encountered Chambers at East Lake Park, and Chambers showed him an I.D. card listing a South

¹ We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

17th Street address. Chambers told Officer C that although he received his mail there, he was not residing there as he was currently homeless, and spent a lot of time (including nights) at the park.

¶3 In July 2011, Officer G was investigating a crime at the McKinley men's shelter when he came into contact with Chambers. He ran Chambers' identification information through the police system and realized that Chambers was a registered sex offender. Chambers initially told Officer G that he had been living at the shelter for the past two weeks, then that it had actually been a month, and then that he had been at the shelter on and off for a year. He last remembered registering his address the prior year. TD, the shelter manager, informed Officer G that Chambers had been living there consistently for at least the past month, and before then he was there intermittently for a year.

¶4 In August 2011, Detective W conducted a follow-up investigation regarding Chambers' living situation. She spoke with TD and visited Chambers' nephew's South 17th Street home, the address that Chambers most recently registered in October 2010. The police issued an arrest warrant for Chambers for failing to register his address as a sex offender.

¶5 The jury convicted Chambers. The trial court found proof of one historical prior felony conviction and sentenced

Chambers as a category 2 repetitive offender. See A.R.S. §§ 13-703(B)(2), (I) (Supp. 2012). Chambers received the presumptive 4.5 years' incarceration sentence. A.R.S. § 13-703(I). He timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and -4033(A)(1) (2010).

DISCUSSION

¶6 In an *Anders* appeal, this Court must review the entire record for fundamental error. *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quoting *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984)). To obtain a reversal, the defendant must also demonstrate that the error caused prejudice. *Id.* at ¶ 20. On review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against the defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

I. SUFFICIENCY OF THE EVIDENCE

¶7 Chambers argues that the trial court erred when it denied his Rule 20 motion for judgment of acquittal, pursuant to

Arizona Rule of Criminal Procedure 20, based on insufficient evidence to support a conviction. We review the evidence presented at trial "only to determine if substantial evidence exists to support the jury verdict." *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005). Substantial evidence has been described as "more than a mere scintilla and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997) (internal quotation marks omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶8 To obtain a conviction, the State must prove that the defendant: (1) is a convicted sex offender who must register with the county sheriff, A.R.S. § 13-3821(A); and (2) failed to register with the county sheriff in writing within 72 hours, excluding weekends and holidays, of his new address, residence, or new name. A.R.S. § 13-3822(A). A residence is a person's dwelling place, whether permanent or temporary. A.R.S. § 13-3822(D)(3). An address is "the location at which the person receives mail." A.R.S. § 13-3822(D)(1).

¶9 At trial, Chambers stipulated to his 1990 felony

conviction for attempted sexual conduct with a minor, an element of the instant offense. It is undisputed that Chambers is subject to the sex offender registration law and is required to register his address pursuant to A.R.S. § 13-3821(A).

¶10 There is sufficient evidence to show that Chambers left his registered address for more than 72 hours and never notified the county sheriff. In May 2011, Chambers told Officer C that he was not living at South 17th Street. Officer G testified that in July 2011, Chambers told him that he had been staying at the McKinley men's shelter for at least two weeks. TD, the shelter manager, testified that Chambers had been living there consistently for at least a month. Chambers never registered this residence. Chambers' nephew has been living at the South 17th Street address for the last five years and testified that during the time in question, Chambers would leave the house for weeks at a time.

¶11 The testimony supports a jury finding that from the date when Chambers last registered his South 17th Street address (October 2010) to the time that the arrest warrant was issued (August 2011), Chambers was residing at locations other than his registered address for more than 72 hours without notifying the county sheriff.

II. USING EVIDENCE OF TWO DIFFERENT ACTS TO PROVE A SINGLE OFFENSE

¶12 Chambers argues that the indictment was duplicitous because “[t]he State used two separate factual acts to prove that [Chambers] was guilty of the single criminal count with [which] he was charged.” The indictment was not duplicitous; the State only indicted Chambers for failing to register his address within 72 hours of moving. The State only used the testimony from the two officers to show that Chambers was not living at his registered address for more than 72 hours, and not to bring two separate charges against him.

III. JURY INSTRUCTIONS

¶13 Chambers argues that “the trial [court] erred when it improperly instructed the jury about the elements of the law that applied to [Chambers’] case.” He argues the court erred when it did not provide the jury with the statutory definitions of “address” and “residence.” The court also did not inform the jury that the 72 hour period excluded weekends and holidays. Chambers argues that without these definitions, the jury could not determine whether he violated the statute.

¶14 The trial court instructed the jury: “The crime of failure to notify a change of address requires proof that . . . [Chambers] failed to inform the sheriff of Maricopa County in

writing of a change of his status within 72 hours of his change of address.”

¶15 The court did not need to define “address” and “residence” for the jury to correctly understand the statute and what constitutes a violation. The jury instruction did not repeat the statute verbatim, but closing arguments clarified any possible confusion. See *State v. Bruggeman*, 161 Ariz. 508, 510, 779 P.2d 823, 825 (App. 1989) (“Closing arguments of counsel may be taken into account when assessing the adequacy of jury instructions.”); see also *State v. Rodriguez*, 114 Ariz. 331, 334, 560 P.2d 1238, 1241 (1977) (considering jury instructions, closing arguments, and specific case facts to determine if jury instructions were misleading). The State clarified that if the jury found that Chambers was living somewhere other than his registered address, he was in violation of the statute:

The evidence is clear that he moved and that he failed to tell the sheriff’s office that he moved within 72 hours. It’s required by law. He violated the law and he’s guilty of the offense charged.

Chambers’ counsel also said:

He clearly had to have been living more than 72 hours straight. . . . The state has to prove that 72 hour period.

¶16 Chambers argues that the trial court failed to answer a juror’s question that was crucial to the jury’s deliberations.

The court did not answer this question: "Does [the] law require [Chambers] to notify the sheriff[']s office if he is gone from his residence to work for an extended time more than 72 hours?" We find no prejudicial error. There is no exception in the statute for leaving a residence to go to work and, even if it is an implied exception, Chambers did not leave his South 17th Street residence simply to go to work.

IV. DENYING A POST-TRIAL MOTION FOR A NEW TRIAL BASED ON JURY MISCONDUCT

¶17 Chambers argues that because a juror came forward after the verdict and said that she voted for guilt despite believing Chambers was not guilty, she violated her oath. Chambers also argues that he should have been granted an evidentiary hearing to determine the influence of certain jurors' cellphone calls during the jury's deliberations.

¶18 The trial court determined that an evidentiary hearing was unnecessary. It ruled that "[t]he allegation of coercion or intimidation and the allegation of improper use of cell phones both delve into the deliberations of jurors [and are] outside of the scope of the Court's scrutiny under [Arizona Rule of Criminal Procedure] 24.1(c)(3)." The court determined that the juror's "post-verdict discussion of the basis for her guilty verdict constitutes an impermissible inquiry into the jury's deliberations," and the juror's "vague description of two jurors

using their cell phones lacks any specific information to show that jurors had violated the Court's instruction."

¶19 The court specifically instructed the jury not to use their cellphones to discuss or research this case. The juror did not provide any evidence that the two jurors violated the instruction. Absent specific evidence otherwise, the court assumed the jurors followed this instruction and Chambers "has failed to provide any evidence to support his claim that he did not receive a fair and impartial trial."

¶20 The trial court correctly denied Chambers' request for a new trial and evidentiary hearing about alleged coercion. "No testimony or affidavit shall be received which requires inquiry into the subjective motives or mental processes which led a juror to assent or dissent from the verdict." Ariz. R. Crim. P. 24.1(d). A juror's affidavit expressing that he or she felt coerced into finding a defendant guilty would require such inquiry. Therefore, denying a motion for a new trial based on such allegations is not fundamental error. See *State v. Spears*, 184 Ariz. 277, 288, 908 P.2d 1062, 1073 (1996) (finding no fundamental error when a juror's affidavit would require an inquiry prohibited by Rule 24.1(d)). A defendant is not entitled to a new trial based on jury misconduct when a juror is allegedly pressured by other jurors during deliberation to convict a defendant, but states that the verdict was hers during

polling. *State v. Silvas*, 91 Ariz. 386, 393, 372 P.2d 718, 723 (1962). In Arizona, "the verdict of the jury in a criminal case may not be impeached by the affidavit of a juror who has, in open court, solemnly agreed to the verdict." *State v. Pollock*, 57 Ariz. 415, 421, 114 P.2d 249, 251 (1941).

CONCLUSION

¶21 After careful review of the record, we find no meritorious grounds for reversal of Chambers' conviction or modification of the sentence imposed. The evidence supports the verdict, the sentence imposed was within the sentencing limits, Chambers was represented at all stages of the proceedings below, and Chambers was present and given the opportunity to address the court at sentencing. Accordingly, we affirm Chambers' conviction and sentence.

¶22 Upon the filing of this decision, counsel shall inform Chambers of the status of the appeal and his options. Defense counsel has no further obligations, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Chambers shall have

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

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
PATRICIA K. NORRIS, Presiding Judge

/s/
ANDREW W. GOULD, Judge