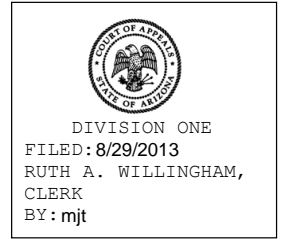


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0656
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEF BORIS DAWOOD,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-030533-001

The Honorable Hugh E. Hegyi, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Charles R. Krull, Deputy Public Defender
Attorneys for Appellant

Stef Boris Dawood San Luis
Appellant

D O W N I E, Judge

¶1 Stef Boris Dawood timely appeals his convictions for two counts of armed robbery in violation of Arizona Revised Statutes ("A.R.S.") sections 13-1902 and -1904. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Dawood filed a supplemental brief *in propria persona*. On appeal, we view the evidence "in the light most favorable to sustaining the conviction." *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶2 D.B. worked the night shift at a convenience store in Mesa, along with her daughter, S.H. Around 7:30 p.m., a man entered the store wearing a white "hoodie" with the hood pulled over his head, blue jeans, and a green bandana covering most of his face. D.B. heard a "clicking sound" and looked up to see the man pointing a gun at her. The man demanded the money in the register. D.B. put the money on the counter. The man grabbed \$160 in bills and stuck them in the hoodie's front pocket. He then turned to S.H., pointed the gun at her, and told her to open her register. S.H. responded that the register was broken and that she did not have a key to open it.

¶13 The man turned the gun back to D.B. and demanded "Newport cigarettes." D.B. set four packs on the counter. The man put the cigarettes in the hoodie pocket and left the store. Outside, he turned right toward newspaper stands in front of the store.

¶14 D.B. called 9-1-1 and described the man as Hispanic, with dark hair, in his 20s, approximately 5'9" to 5'10" tall, and weighing approximately 150 pounds. Officers responded to the scene. En route, Officer Kirkpatrick saw two men fitting the description near the store; one wore a white hoodie. The officer stopped the men, but determined they were likely not involved in the robbery and continued to the convenience store.

¶15 At the store, D.B. and S.H. described the suspect as a Hispanic male in his 20s who was approximately 5'8" tall, weighing about 150 pounds, with brown eyes and short black hair. D.B. described the gun as a silver semi-automatic .32 or .38 with a black grip. Officers found an unopened box of Newport cigarettes a few yards from the front entrance of the store and a newspaper stand that was knocked over "as though somebody had ran by it and knocked it over in the process." A crime scene specialist collected two fingerprints from the cigarette box, one of which was matched to Dawood.

¶16 Dawood was indicted on two counts of armed robbery, both class 2 dangerous felonies. A jury trial ensued. At the

conclusion of the State's case-in-chief, Dawood moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). The motion was denied.

¶7 Dawood testified he did not remember anything that happened in November 2011 because it was "too long" ago, but he denied committing the robbery. He testified that he smoked Newport cigarettes, but preferred "Newport 100[s]" over the Newport brand sold at the convenience store. He further testified that his fingerprint could have ended up on the cigarette box because the store gave him the wrong type of Newport cigarettes and he gave them back.

¶8 The jury found Dawood guilty of both counts. It found two aggravators for sentencing purposes: that the offense was committed for pecuniary gain and that it caused physical, emotional, or financial harm to the victims. Dawood was sentenced to a presumptive, concurrent term of 10.5 years on each count, with 263 days' pre-sentence incarceration credit.

DISCUSSION

¶9 We have read and considered the briefs submitted by Dawood and his counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present

at all critical phases of the proceedings and represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶10 In his supplemental brief, Dawood contends the trial court erred by allowing two witnesses to give expert opinion testimony and by denying his Rule 20 motion.

I. Expert Witness

¶11 Dawood suggests the State was required to ask the court to "qualify" Kevin Biggs and Maralena Schreel, latent print examiners for the Mesa Police Department, as expert witnesses. We disagree.

¶12 A witness may qualify as an expert by "knowledge, skill, experience, training, or education." Ariz. R. Evid. 702. The State made pretrial disclosures of Biggs and Schreel as expert witnesses, and both testified at trial regarding their experience, training, and knowledge without objection.¹ Dawood could have challenged these individuals' expertise before or during trial, but failed to do so. Defense counsel was permitted to cross-examine both Biggs and Schreel. To the extent Dawood challenges the reliability or credibility of the

¹ The disclosure statement lists Mesa Police Department "Fingerprint Analyst, Kevin Griggs #0908" as the State's expert witness. The joint pretrial statement includes "Kevin Biggs" of the Mesa Police Department as a witness.

officers' testimony, "it is the jury's function to weigh the evidence as a whole, to resolve any inconsistencies therein, and then to determine whether or not a reasonable doubt exists." *State v. Money*, 110 Ariz. 18, 25, 514 P.2d 1014, 1021 (1973).

II. Rule 20 Motion

¶13 Dawood also generally asserts that the State failed to present "substantial evidence" of his guilt. After reviewing the evidence presented "in the light most favorable to the jury, including any reasonable inferences from the testimony," the trial court found sufficient evidence to send the case to the jury. Dawood claims the trial court's statement reflects that it applied an incorrect standard to his Rule 20 motion. We conclude otherwise.

¶14 The Arizona Supreme Court has articulated the standards that trial courts should apply in ruling on motions under Rule 20(a) or (b), stating:

On all such motions, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." "Substantial evidence," Rule 20's lynchpin phrase, "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. West, 226 Ariz. 559, 562, ¶ 16, 250 P.3d 1188, 1191 (2011) (internal citation and footnote omitted). If reasonable

minds can differ on inferences to be drawn from evidence, the trial court must submit the case to the jury. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶15 The State presented substantial evidence of Dawood's guilt. See *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) ("Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction."). Section 13-1902(A) provides that a person commits robbery if:

[I]n the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.

Armed robbery occurs when a person uses or threatens to use a deadly weapon while committing a robbery. A.R.S. § 13-1904(A)(2).

¶16 The man who robbed the store pointed a gun and demanded money and cigarettes, which the victims provided. D.B. and S.H. testified that the man did not wear gloves. Dawood himself admitted that he preferred Newport cigarettes. An unopened box of Newport cigarettes was found a short distance from the store, in the direction where the robber ran. Dawood's fingerprint was found on the cigarette box. D.B. testified she

was "scared and shaking" when the man pointed the gun at her, and S.H. testified she was "scared" during the robbery.

¶17 Based on the evidence presented, reasonable jurors could conclude that Dawood was the person who robbed the convenience store at gunpoint, that he did so for pecuniary gain, and that the incident caused harm to the victims.

CONCLUSION

¶18 We affirm Dawood's convictions and sentences. Counsel's obligations pertaining to Dawood's representation in this appeal have ended. Counsel need do nothing more than inform Dawood of the status of the appeal and his 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). On the court's own motion, Dawood shall have 30 days from the date of this decision to proceed, if he desires,

with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge