NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ANTHONY J. HERNANDEZ, *Appellant*.

No. 1 CA-CR 13-0022

FILED 11-26-2013

Appeal from the Superior Court in Maricopa County
No. CR2011-154410-001
The Honorable Cynthia Bailey, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz

Counsel for Appellee

Droban & Company, PC, Anthem
By Kerrie M. Droban

Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Andrew W. Gould delivered the decision of the Court, in which Judge Donn Kessler and Judge Michael J. Brown joined.

G O U L D, Judge:

¶1 Anthony J. Hernandez ("Defendant") appeals from his convictions and sentences for three counts of trafficking in stolen goods, all class 3 felonies. Defendant's 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 a search of the entire appellate record, no arguable ground exists for reversal. Defendant has filed a supplemental brief *in propria persona* raising various issues that we address below.

¶2 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Finding no reversible error, we affirm.

Facts and Procedural History[1]

¶3 On October 12, 2011, Cox Communications received an alarm indicating that the power to its back-up batteries had been cut at a certain location. The back-up batteries are specialized gel cell batteries used by Cox to keep its systems powered in case of a power outage; they are crucial to the continued operation of internet, telephone, and video service systems. Cox uses two specific brands of commercial grade batteries to back up its systems. The batteries are worth about $500 to $600 retail.

¶4 Shortly after being notified of the alarm, Robert Jackson, Cox's criminal investigator, received a call from Carrillo's Recycle and Auto Parts ("Carrillo's"). Jackson was familiar with Carrillo's because the

---

[1] We view the evidence in the light most favorable to sustaining the convictions and resulting sentences. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

salvage yard had received Cox's stolen property in the past. Jackson went to Carrillo's and identified three gel cell batteries Carrillo's had just purchased as the stolen property of Cox. An employee at the salvage yard gave Jackson the receipt for the transaction and showed Jackson surveillance video footage of the sale. The receipt listed Defendant's name, address, and driver's license number; and the video showed Defendant removing the batteries from his vehicle and selling them to the employee.

¶5 On October 15, Cox's alarm was activated again. Jackson first went to the battery location and noted that the batteries had been removed and there was evidence of theft; a short time later, Jackson received a call from Carrillo's indicating that Defendant had come by to sell similar gel cell batteries. Carrillo's again provided Jackson with the receipt from the transaction showing Defendant's identifying information. An employee had written down the license plate number of the car Defendant was driving when he sold the batteries; Jackson traced the registration to Defendant.

¶6 On October 20, another set of Cox's back-up batteries were stolen. One of these batteries was equipped with a GPS tracking unit. GPS revealed that the battery traveled first to Defendant's house, then to Carrillo's. When Jackson went to Carrillo's he was given the receipt showing Defendant's name, address, and license plate number; and surveillance video showing Defendant unloading the batteries and selling them.

¶7 Police arrested Defendant on October 20. Defendant told police that he sold the batteries to Carrillo's and that he had an idea that they were stolen. Defendant was charged with three counts of trafficking in stolen property, all class three felonies. After a jury trial, he was convicted on all three counts and sentenced to concurrent presumptive sentences of 11.25 years for each count. Defendant timely appealed.

Discussion

¶8 In his supplemental brief, Defendant challenges the sufficiency of the evidence. He contends the State failed to prove that he removed the batteries from their installations, and he argues that the actual stolen batteries should have been presented at trial. However, Defendant was charged with recklessly trafficking in stolen goods, not theft. The State was only required to present evidence that Defendant sold or otherwise disposed of stolen property. Arizona Revised Statutes

("A.R.S.") §§ 13-2301(B)(3), -2307(A)[2]. Whether or not Defendant personally removed the batteries is irrelevant. Defendant's own testimony that he sold the batteries and that he had an idea the batteries were stolen is sufficient to support his conviction.

¶9 Defendant next takes issue with testimony regarding the cost of the batteries. He is concerned that he was charged with a class 3 felony rather than a class 6 felony because of the cost of the batteries. Again, Defendant was not charged with theft. Recklessly trafficking in stolen property is a class 3 felony regardless of the value of the property. A.R.S. § 13-2307(A), (C).

¶10 Defendant also challenges the racial composition of the jury. Defendant mentions, without elaboration, *Batson v. Kentucky*, 476 U.S. 79 (1986), as the legal basis for his challenge.[3] We note that at the conclusion of jury selection, Defendant's counsel passed the panel for cause and stated that there were no *Batson* issues. However, Defendant does not argue that the trial court improperly granted or denied a *Batson* challenge; rather, Defendant broadly asserts that all prospective non-white jurors were eliminated during jury selection and he was left with an all-white jury.

¶11 Given the record before us, we are unable to find any reversible error based on *Batson*. The record does not reveal: (1) the racial composition of the prospective jury panel; (2) whether the State struck any non-white jurors, and if so, how many; and/or (3) whether the State struck any non-white juror(s) with a discriminatory motive. In his brief, Defendant has not indicated which strikes were improperly motivated.

---

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

[3] Under *Batson:* "(1) the party challenging the strikes must make a prima facie showing of discrimination; (2) the striking party must provide a [non-discriminatory] reason for the strike; and (3) if a [non-discriminatory] explanation is provided, the trial court must determine whether the challenger has carried its burden of proving purposeful . . . discrimination." *State v. Garza*, 216 Ariz. 56, 65, ¶ 30, 163 P.3d 1006, 1015 (2007) (quoting *State v. Roque*, 213 Ariz. 193, 203, ¶ 13, 141 P.3d 368, 378 (2006)).

Moreover, because there was no objection by Defendant, the State had no opportunity to provide race-neutral explanations for its strikes.

¶12 Finally, Defendant claims that one of the State's witnesses committed perjury when he testified that Cox's batteries had a GPS unit that allowed Cox to track and recover the batteries. Defendant argues that a GPS unit inside a battery would not produce a signal that could be followed.

¶13 To establish fundamental error, it must be shown that the prosecution knew or should have known the testimony was actually false. *Hayes v. Ayers*, 632 F.3d 500, 520 (9th Cir. 2011). Here, there has not even been a showing that the testimony was false. The witness's testimony regarding the use of GPS units in the batteries for tracking purposes was not contradicted by any other testimony. Defendant had a full opportunity to cross-examine the witness and present other evidence. On this record, there is no evidence that the prosecutor knowingly used false evidence and no fundamental error.

¶14 In addition to reading and considering both counsel's brief and Defendant's supplemental brief, we have carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶15 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant 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). Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

Ruth A. Willingham · Clerk of the Court
FILED: mjt