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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



DIVISION ONE  
FILED: 10/24/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: GH

STATE OF ARIZONA, ) 1 CA-CR 13-0368  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
TERI ANN BENOIT-MICALI, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Mohave County

Cause No. S8015CR201200342

The Honorable Steven F. Conn, Judge

**AFFIRMED**

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

Ronald S. Gilleo, Mohave County Legal Defender's Office Kingman  
By Diane S. McCoy, Deputy Legal Defender  
Attorneys for Appellant

Teri Ann Benoit-Micali Bullhead City  
Appellant

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W I N T H R O P, Presiding Judge

¶1 Teri Ann Benoit-Micali ("Appellant") appeals her conviction and placement on probation for theft in the amount of \$4000 or more, a class three felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1802(A)(5) (West 2013).<sup>1</sup> Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for reversible error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). In addition, this court has allowed Appellant to file a supplemental brief *in propria persona*, and she has done so, raising issues that we address.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. sections 12-120.21(A)(1), 13-4031, and 13-4033(A). Finding no reversible error, we affirm.

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<sup>1</sup> We cite the current Westlaw version of the applicable statutes because no revisions material to this decision have since occurred.

## I. FACTS AND PROCEDURAL HISTORY<sup>2</sup>

¶3 On December 28, 2011, law enforcement officers executed a search warrant on Appellant's home, confiscating numerous pieces of stolen property that belonged to victims S.T. and C.S. On March 15, 2012, a Mohave County grand jury issued an indictment, charging Appellant and David Paul Guarino with one count of theft in the amount of \$4000 or more, a class three felony.<sup>3</sup>

¶4 Appellant's two-day trial began in April 2013. At trial, the State presented evidence that officers from the Bullhead City Police Department helped S.T. and C.S. recover numerous stolen items from Appellant's home. One notable item was an 800-pound gun safe that had been broken into and recently painted white after it was stolen. Additional distinct and valuable items recovered included several deep-sea fishing rods, a Honda motorcycle, a green "knock-off Honda" gas-powered mini-bike, a green bike, audio equipment, a telescope set used for astrophotography, and several scrimshaw artifacts. The victim provided testimony that the telescope set was valued at over

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<sup>2</sup> We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

<sup>3</sup> Guarino was tried separately and found guilty in Mohave County Cause No. CR-2012-00341.

\$12,000 and the scrimshaw artifacts were valued at over \$6800. The victims also recovered a distinctive military coin given to C.S. by her father; the coin was unique because it commemorated C.S.'s father's service on a submarine. Some of the items, such as the gun safe and motorcycles, were found in the garage, while other items, such as the scrimshaw and military coin, were found under Appellant's bed. Also found under Appellant's bed was a box of beads labeled with victim S.T.'s shipping address.

¶15 Appellant's defense included testimony that, although most of the items did not belong to her, they were provided to her through Guarino's friend and she did not suspect that they were stolen. Appellant described for the jury how some of Guarino's friends would occasionally leave their personal property in the garage, and she would typically clean up after them. She claimed she had no knowledge that this time the items stored in the garage (and later under her bed) were stolen. Appellant also produced receipts for some of the audio equipment to which she claimed ownership. The State, on rebuttal, offered the testimony of a business owner, from whose business Appellant claimed she purchased audio equipment, to refute that Appellant's receipt was original. The business owner stated that his business was not in operation on the date of the receipt, that his business is run out of a storage unit and not

a mall as Appellant had maintained during her testimony, and that the letterhead on his receipts looked nothing like that of the receipt produced by Appellant.

¶6 The jury found Appellant guilty as charged. The trial court suspended sentencing and placed Appellant on probation for five years. As a condition of probation, the court ordered Appellant to serve 150 days in the Mohave County Jail. The court also set the matter for a restitution hearing on July 11, 2013. Appellant filed a timely notice of appeal.

## II. ANALYSIS

### A. Grand Jury Testimony

¶7 Appellant seeks to challenge the grand jury's finding of probable cause. Specifically, she maintains the State failed to present evidence to the grand jury in a fair and impartial manner because the State's witness gave misleading testimony.

¶8 Challenges to a grand jury's finding of probable cause are not reviewable on appeal and must be brought by motion followed by special action, except in cases of perjured, material testimony. See *State v. Moody*, 208 Ariz. 424, 439-40, ¶ 31, 94 P.3d 1119, 1134-35 (2004). As relevant here, a witness commits perjury by making "[a] false sworn statement in regard to a material issue, believing it to be false." A.R.S. § 13-2702(A)(1).

¶9 Appellant does not claim that perjury occurred during the grand jury testimony. Accordingly, we find no error, and Appellant's challenge to the grand jury proceedings is not further reviewable.

**B. Sufficiency of the Evidence**

¶10 Appellant next argues that insufficient evidence supports her convictions. Appellant maintains that she owned some of the property alleged to be stolen.

¶11 "On motion of a defendant or on its own initiative, the court shall enter a judgment of acquittal . . . if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "We review a trial court's denial of a motion for judgment of acquittal for an abuse of discretion and will reverse only if no substantial evidence supports the conviction." *State v. Guadagni*, 218 Ariz. 1, 3, ¶ 8, 178 P.3d 473, 475 (App. 2008).

¶12 In this case, substantial evidence supports Appellant's conviction. Appellant and Guarino were charged with one count of theft in the amount of \$4000 or more in violation of A.R.S. § 13-1802(A)(5). Under § 13-1802(A)(5), the State needed to prove three elements: (1) Appellant controlled property of another, (2) Appellant did so knowingly and without lawful authority, and (3) Appellant knew or had reason to know

the property was stolen. Arizona Revised Statutes section 13-1802(G) states "[t]heft of property or services with a value of four thousand dollars or more but less than twenty-five thousand dollars is a class 3 felony." A.R.S. § 13-1802(G).

¶13 The testimony elicited at trial indicates that Appellant had been in control of the property immediately before her arrest. By moving some of the items into her master bedroom from the garage and cleaning up the garage and rearranging some items, Appellant controlled that property knowingly. Other testimony and evidence, including Appellant's reluctance to help the police officers and the victims identify the items recently obtained from her friend, leads to the inference that she knew or had reason to know that the property was stolen. In any event, it was for the jury to determine the credibility of the witnesses, including Appellant. Because substantial direct and circumstantial evidence supports the verdict, the trial court did not abuse its discretion, much less commit fundamental error, in denying Appellant's motion for judgment of acquittal.

**C. State's Disclosure**

¶14 Appellant argues that the State did not disclose before trial (1) the identity of the rebuttal witness and (2) its intent to use the military coin as evidence.

**1. Disclosure of Rebuttal Witness**

¶15 Pursuant to Arizona Rule of Criminal Procedure 15.1(h),

Upon receipt of the notice of defenses required from the defendant under Rule 15.2(b) the state shall disclose the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses together with their relevant written or recorded statements.

Ariz. R. Crim. P. 15.1(h). Because Appellant did not raise an objection to the testimony of the audio equipment business owner before the trial court, we review only for fundamental error. See *State v. Henderson*, 210 Ariz. 561, 567-68, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005). On the second day of trial, the State called the owner of an audio equipment store to dispute the validity of receipts that Appellant in her defense claimed came from purchases made at his store. The business owner testified that the receipts were not authentic. The record on appeal contains no disclosure forms, from either the State or Appellant, identifying witnesses, evidence, or defenses. Thus, on this record, the trial court did not commit fundamental error in permitting the business owner to testify. See *State v. Scott*, 187 Ariz. 474, 476, 930 P.2d 551, 553 (1996).

¶16 Even if the State did not disclose the identity and statements of the business owner prior to trial, "it is obviously unreasonable to require the State to list in advance



of trial and prior to the presentation of the defendant's case the names of all potential rebuttal witnesses, since the prosecution can rarely anticipate what course the defense will pursue." *State v. Sullivan*, 130 Ariz. 213, 216-17, 635 P.2d 501, 504-05 (1981) (citation omitted). By producing the false receipts in her defense, Appellant opened the door to the State's rebuttal, including the business owner's testimony. Furthermore, if the State failed to disclose the identity and recorded statements of the witness, Appellant could have pursued a remedy at the trial court level pursuant to Rule 15.7. See Ariz. R. Crim. P. 15.7(a)(1) (providing sanctions that would preclude or limit the calling of a witness). Thus, on this record we conclude that the testimony was properly admitted.

## **2. Disclosure of Military Coin**

¶17 Appellant argues the trial court erroneously denied her motion to suppress evidence of the military coin because the State failed to timely disclose its existence. "In reviewing a motion to suppress, we review only the facts presented to the superior court at the suppression hearing. We view those facts in the light most favorable to sustaining the superior court's decision." *State v. Mendoza-Ruiz*, 225 Ariz. 473, 474, ¶ 2, 240 P.3d 1235, 1236 (App. 2010) (citation and quotations omitted). There was no violation with the testimony and photographic

evidence regarding the military coin because the substance of the evidence was timely disclosed to Appellant both in the photographs disclosed by the State before trial and at Guarino's trial the week before. See *State v. Bracy*, 145 Ariz. 520, 530, 703 P.2d 464, 474 (1985) (finding no violation where evidence was not disclosed by state but revealed previously in co-defendant's trial). Therefore, there was no abuse of discretion in admitting evidence regarding the stolen military coin recovered from Appellant's bedroom.

#### **D. Other Issues**

¶18 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentencing proceedings followed the statutory requirements. Appellant was represented by counsel at critical stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with her constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶19 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform

Appellant of the status of the appeal and of her future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if she desires, with a *pro per* motion for reconsideration or petition for review.

**III. CONCLUSION**

¶20 Appellant's conviction and placement on probation are affirmed.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
MARGARET H. DOWNIE, Judge

\_\_\_\_\_/S/\_\_\_\_\_  
JON W. THOMPSON, Judge