IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

WADE EUGENE BRADFORD, *Appellant*.

No. 1 CA-CR 16-0134
FILED 5-23-2017

Appeal from the Superior Court in Maricopa County
No. CR2012-010181-001
The Honorable M. Scott McCoy, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By William Scott Simon
Counsel for Appellee

The Poster Law Firm PLLC, Phoenix
By Rick D. Poster
Counsel for Appellant

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent C. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Appellant, Wade Eugene Bradford (Bradford), appeals his convictions on one count of first-degree murder, a class one felony, and one count of kidnapping, a class two felony and the related sentences. We affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Bradford made monthly payments on a large storage unit from June 13, 2006 to April 22, 2010. After he stopped making monthly payments, the storage facility's personnel entered the unit and discovered a barrel emitting an "unusual strong odor." Investigators confirmed a body in the barrel. Medical examiners later determined that the body was E.P. and that she had died from "blunt-force trauma of the torso, possible obstructive asphyxia."

¶3 E.P. had begun a relationship with Bradford after immigrating to the United States in 2005. She gained employment at a care facility in 2006. There she expressed that she feared Bradford and that she was planning to terminate the relationship. She was recommended for an in-home care position and was scheduled to start that position on June 13, 2006. However, she never returned to the facility after leaving with Bradford in his SUV on June 11.

¶4 On December 4, 2012, the state indicted Bradford for E.P.'s murder and kidnapping. Prior to trial, Bradford elected to represent himself. In a colloquy regarding the self-representation, the court admonished Bradford about the responsibilities incumbent on him as a self-represented defendant and how incarceration may impact his ability to, for example, conduct proper investigation. The trial court also authorized the appointment of an investigator to assist Bradford. Thereafter, on different occasions Bradford expressed discontent with his ability to communicate with and get assistance from investigators, including a private investigator he had retained. By March 2015, Bradford had two court appointed

investigators—he voiced a preference for one investigator to be his "primary" and one for "additional resources to get things done" (i.e. "backup support").

¶5 At trial, during the third day of jury *voir dire*, outside the presence of other members of the jury pool, Juror 6 reported that he had overheard a conversation outside the courtroom. Juror 6 claimed that during that conversation an individual remarked "this isn't the first time," which Juror 6 interpreted as meaning Bradford had been involved in another murder. The court questioned Juror 6, but he could not identify the individual who had made the statement or whether any of the people involved or who had heard the statement were prospective or dismissed jurors, or were at all involved in the case. The court excused Juror 6 and undertook additional investigation in the matter. Bradford moved for a mistrial or a new jury panel. The court denied these requests.

¶6 Bradford maintained that he did not know how E.P. had died, although at trial he admitted that he had placed E.P. in the barrel and that he had kept her body hidden in the storage unit. He claimed he found E.P.'s body, but did not report it to the police out of fear they would investigate him for child support arrearages. Bradford had previously told law enforcement that he last saw E.P. on June 12, 2006, when he dropped her off at an intersection in Mesa.

¶7 The jury convicted Bradford on both charged counts. The trial court sentenced him to natural life imprisonment for the murder conviction and to a concurrent 18-years' prison term for the kidnapping. Bradford timely appealed to this court. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2016), 13-4031 (2010), and -4033(A) (2010).[1]

DISCUSSION

¶8 On appeal of his convictions and sentences, Bradford first argues that he was deprived of his rights to due process and a fair trial because he received "inadequate assistance" from his investigators. We review Bradford's claim for fundamental error because he did not raise the issue in the trial court. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). We find no such error.

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[1] Absent changes material to this decision, we cite a statute's current version.

¶9 A finding of fundamental error "is limited to those rare cases that involve 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. Valverde*, 220 Ariz. 582, 585, ¶ 12, 208 P.3d 233, 236 (2009) (internal quotations and citation omitted). Bradford bears the burden of proving both that the error was fundamental and that the error caused him prejudice. *See id.*

¶10 The relevant section of the Arizona Revised Statutes provides where a defendant is

> charged with a felony offense the court may on its own initiative and shall on application of the defendant and a showing that the defendant is financially unable to pay for such services appoint investigators and expert witnesses *as are reasonably necessary* to adequately present a defense at trial and at any subsequent proceeding.

A.R.S. § 13-4013 (2010) (emphasis added).

¶11 Regarding Bradford's request to represent himself and before authorizing the appointment of an investigator, during a colloquy the court informed Bradford:

> One thing I wanted to add, and I touched on some of this, but just what you'll be responsible for, Mr. Bradford, if you represent yourself. If you represent yourself, you're going to be solely responsible for your case, and that includes—and I say "includes." Doesn't mean this is the only stuff, but this is a lot of it. Among other things, it means asserting your legal defenses, finding a way to have witnesses interviewed, investigating the facts, investigating the law, filing and arguing motions. You'll be required to examine and cross-examine witnesses yourself, subject to the rules of evidence. You're going to have to give an opening statement, [and a] final argument. *And, by the way, it's going to be really hard to do all of that when you're in custody. Particularly the investigation part can be very cumbersome.*

(Emphasis added.)

¶12 Three months later—August 2013—Bradford first began expressing difficulties communicating with and contacting his first court

appointed investigator. In September 2013, he complained of not being able to contact the investigator due to jail phone restrictions and that "[the investigator] had not followed up on things I've asked him to do." Toward the end of the month, he notified the court that he had privately retained a new investigator.

¶13 In December 2013, Bradford requested the court appoint him a new investigator because the investigator he had retained failed to contact him. The court subsequently granted this request and on April 9, 2014, C.F. was appointed as Bradford's investigator. In January 2015 while expressing his satisfaction with C.F.,[2] Bradford requested a second investigator because C.F. was "very busy" with other cases, and Bradford believed he needed the support of a second investigator.

¶14 On March 13, 2015, the court granted C.F.'s request for a second investigator. At the subsequent March 20 status conference, Bradford voiced frustration that the second investigator had not been appointed. He reiterated his difficulties managing the investigation because he was incarcerated. The second investigator was assigned on March 27, 2015.

¶15 In his opening brief on appeal, Bradford indicates that he needed investigators to help him identify and interview numerous potential defense witnesses and to obtain other information he believed necessary to prepare his defenses and case for trial. He asserts that "reasonably adequate services from a private investigator . . . would likely include locating potential defense witnesses, interviewing witnesses of any kind, providing either summary reports of or tapes or transcripts of recorded interviews of the witnesses interviewed, and minimal professional guidance." In his reply brief he claims that the "ineffectiveness from the appointed investigator was failing to competently identify, locate, and interview witnesses, failing to find and secure potential evidence, and failing to follow . . . reasonable directives."

¶16 Nothing in the applicable statute, *supra* ¶ 10, supports a claim, like Bradford's, conflating the grant of an investigator with the constitutional right to "effective assistance" of counsel. Although Bradford was entitled (under A.R.S. § 13-4013) to investigators "as reasonably

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[2] Bradford expressed he finally got an investigator "who's actually doing work for me." He stated, "Thank God I have [C.F.]. He's been helping me." He reported that C.F. had been visiting him at least once a week.

necessary" he has not shown how the absence of additional or different assistance from an investigator negatively affected the verdicts. For example, he does not establish that his desired level of investigation would have likely discovered new information or witnesses that would have provided relevant testimony that could have led to a different verdict. In other words, Bradford fails to even surmise an argument to show prejudice. *See State v. Sharp*, 193 Ariz. 414, 422, ¶ 26, 973 P.2d 1171, 1179 (1999) ("Prejudice will not be presumed, but must appear affirmatively from the record."); *State v. Rigsby*, 160 Ariz. 178, 182, 772 P.2d 1, 5 (1989) ("[A] defendant must demonstrate how the lack of an investigator prejudiced him."); *State v. Tison*, 129 Ariz. 526, 535, 633 P.2d 335, 344 (1981) (holding that absent an objective indication of prejudice, an appellant is not entitled to a presumption of its existence). Bradford's claim of "inadequate assistance" of investigators is thus insufficient to warrant relief under fundamental error review.

¶17 Bradford next argues the trial court erred by failing to strike the entire jury pool after the report from Juror 6, noted *supra* ¶ 5. We find no error because we conclude any conceivable prejudice to the remaining jury pool was cured by the trial court's jury instructions.

¶18 Whether to strike a jury panel is "within the sound discretion of the trial court, and its actions will not be disturbed absent a clear and prejudicial abuse of that discretion." *State v. Lujan*, 184 Ariz. 556, 560, 911 P.2d 562, 566 (App. 1995) (internal quotation and citation omitted). An individual who challenges a jury panel has the burden of showing that the panel selection was the result of a "material departure from the requirements of law." *State v. Greenawalt*, 128 Ariz. 150, 167, 624 P.2d 828, 845 (1981) (quoting Ariz. R. Crim. P. 18.4(a)). As previously stated, we will not presume the existence of juror prejudice absent objective indications. *Tison*, 129 Ariz. at 535, 633 P.2d at 344. Instead, we will affirm the trial court, "unless the record affirmatively shows that . . . a fair and impartial jury was not secured." *State v. Arnett*, 119 Ariz. 38, 50, 579 P.2d 542, 554 (1978).

¶19 After excusing Juror 6, the trial court engaged the jury panel in a colloquy--questioning the entire panel as to whether anyone had heard or read anything about the case. No juror indicated they had heard or read anything regarding the matter.

¶20 Later during *voir dire* the court addressed the jury a second time regarding the matter; again no juror indicated hearing, reading any information, or using "Google" to find out information about the case.

Nonetheless, Bradford renewed his motion to strike the jury panel. The court denied this motion. The court addressed the jury a third time stating:

> Folks . . . I am going to instruct the jury in this case that you are to decide this case based solely on the witness testimony presented here in this courtroom, the exhibits, and stipulations. In short, the evidence presented in this courtroom. And only based on the evidence presented in this courtroom. Is there anyone here who will have any difficulty following that instruction? No numbers have gone up.

The jury was similarly instructed regarding the evidence and exhibits during preliminary jury instructions and during the final jury instructions.

¶21 We generally presume jurors follow a trial court's jury instructions. *See State v. Dann*, 220 Ariz. 351, 366, ¶ 75, 207 P.3d 604, 619 (2009) (citation omitted). Nothing in the record before us undermines the applicability of the presumption in this case. The trial court took great care to ensure the jury remained fair and impartial in assessing only the evidence presented at trial. Accordingly, we find the trial court did not abuse its discretion by not striking the entire jury panel at Bradford's request.

CONCLUSION

¶22 For the foregoing reasons, we affirm Bradford's convictions and related sentences.

AMY M. WOOD • Clerk of the Court
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