

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ANDY RODRIGUEZ, *Appellant*.

No. 1 CA-CR 17-0560
FILED 7-31-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-105708-001
The Honorable Susanna C. Pineda, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Jason Lewis
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Mark E. Dwyer
Counsel for Appellant

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Kenton D. Jones joined.

T H O M P S O N Judge:

¶1 Andy Rodriguez appeals his convictions and sentences for resisting arrest. He argues the trial court precluded him from challenging the selection of jurors for cause. He also claims the court erred by failing to ask the jurors if they had any questions for one witness. Lastly, he argues the State improperly impeached him with three of his prior felony convictions when the court ordered the State could only impeach him with two convictions. For the following reasons, we affirm.

FACTS¹ AND PROCEDURAL HISTORY

¶2 A Circle K manager saw Rodriguez shoplifting and called the police. An officer attempted to detain Rodriguez, but he fled. Multiple officers eventually caught up to him. When the officers attempted to arrest him, Rodriguez resisted with physical force.

¶3 The jury found Rodriguez guilty of resisting arrest. The trial court sentenced him to three years in prison.

¶4 Rodriguez timely appealed his convictions and sentences. 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) (2018), 13-4031 (2018), and -4033(A)(1) (2018).

DISCUSSION

¶5 Rodriguez failed to raise any of his arguments at trial, so we review for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19 (2005). To establish fundamental error, the defendant must show the error goes to “the foundation of the case,” stripped him of a right essential to his

¹ We view the facts in the light most favorable to sustaining the verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

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defense, and was “of such magnitude that the defendant could not have received a fair trial.” *Id.*

I. The trial court did not preclude Rodriguez from challenging jurors for cause.

¶6 After questioning all prospective jurors during jury selection, the trial court did not explicitly ask Rodriguez if he had “passed the panel.” He thus argues the trial court prevented him from challenging jurors for cause and denied him his right to an impartial jury. We disagree.

¶7 The trial court must dismiss a juror for cause when “there is a reasonable ground to believe that the juror . . . cannot render a fair and impartial verdict.” Ariz. R. Crim. P. 18.4(b). The court must put challenges for cause on the record and hear them outside the presence of the prospective jurors. Ariz. R. Crim. P. 18.5(f).

¶8 Here, the record shows the trial court complied with the rules and enabled Rodriguez to challenge the prospective jurors for cause. The court questioned all prospective jurors and asked each party if they had challenges for cause. Rodriguez’s counsel told the court that he had no challenges to add to the State’s challenges for cause. The court then questioned two jurors in private. Rodriguez had the opportunity to challenge each of those remaining jurors for cause, but did not do so. The court did not err.

II. The trial court was not required to ask if the jurors had any questions during trial.

¶9 The court did not ask the jurors if they had questions for the State’s first witness. Rodriguez argues this violated Arizona Rule of Criminal Procedure 18.6(e), which requires the court to instruct jurors that “they are permitted to submit to the court written questions directed to witnesses or to the court . . .”

¶10 Prior to hearing testimony, the court instructed the jury as follows, “[i]f you have a question about the case for a witness or for me, write it down but do not sign it . . . [if you have a question], I will ask you to hand the question to the bailiff.” The court’s instruction communicated that the jury had the ability to submit written questions for the witnesses or the court, complying with the plain text of the rule. The rule does not require the court to ask the jurors if they have questions for witnesses during trial, though courts may choose to do so. We find no error.

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III. The court did not commit reversible error by allowing the State to impeach Rodriguez with three prior felony convictions.

¶11 Prior to Rodriguez's testimony, the court ruled the State could only impeach him with two prior felonies. While cross-examining Rodriguez, the State impeached him with three felonies. Rodriguez argues the prosecutor committed misconduct constituting reversible error.

¶12 We need not address whether error occurred, because, even if it did, any such error was harmless. Prior to the State's cross-examination, Rodriguez testified to the nature of his three prior felony convictions. Thus, because the jurors were already aware of the nature and number of Rodriguez's felony convictions, the State's actions did not affect the fairness of the trial.

CONCLUSION

¶13 We affirm Rodriguez's conviction and sentence.



AMY M. WOOD • Clerk of the Court
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