DIVISION ONE
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PHILIP G. URRY, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 08-1010
	)	
Appellee,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
	)	Rule 111, Rules of the
ROGER BRIAN STANISLAW,	)	Arizona Supreme Court)
	)	
Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Navajo County

Cause No. S-0900-CR-0020070838

The Honorable Robert B. Van Wyck, Judge Pro Tempore

AFFIRMED

Terry Goddard, Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Katia Mehu, Assistant Attorney General
Attorneys for Appellee

Taylor Law Office, P.C. — Snowflake
by D. Shawn Taylor
Attorneys for Appellant

S W A N N, Judge

¶1 Roger Brian Stanislaw appeals his conviction and sentence on one count of misconduct involving weapons, a

violation of A.R.S. § 13-3102(A)(4) (2010).[1] For the reasons that follow, we find no error and affirm.

Factual[2] and Procedural History

¶2 A grand jury indicted Stanislaw on five counts of misconduct involving weapons after police executing a search warrant on his residence discovered two CO_2 .22 caliber pellet guns, four hunting knives, a machete, and a crossbow. On the State's motion, the court dismissed the charges involving the CO_2 guns before trial. At trial, Stanislaw stipulated that he was a convicted felon and that he had not had his right to possess a firearm restored. He also stipulated that he had written a letter to a justice of the peace dated July 6, 2007, in which he sought return of the items at issue on the ground that he needed them for the defense of his home.

¶3 Stanislaw testified that his civil rights had been restored before this incident, except for his right to possess a firearm. He also testified that he had purchased the crossbow in 2002, primarily to defend against coyotes in his yard, but he had not used it since 2002 because of a shoulder injury. He

[1] We cite to the current version of the statute when no changes material to this decision have since occurred.

[2] "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against appellant." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997) (citation omitted).

further testified that he used the knives in hunting and used the machete to cut trees on his property. His attorney argued that her client did not knowingly commit the offense, the items did not constitute deadly weapons under the law, and the legislature did not intend to prohibit possession of them.

¶4 The jury acquitted Stanislaw of the charges involving the machete and the hunting knives. The jury convicted him of one count of misconduct involving weapons for possession of the crossbow. The court suspended sentence and imposed a two-year term of probation. Stanislaw timely appealed.

DISCUSSION

I*. PRECLUSION OF EVIDENCE*

¶5 Stanislaw argues first that the trial court abused its discretion in precluding the introduction of evidence that all of his civil rights except his right to possess a firearm had been restored in 2001 pursuant to A.R.S. § 13-905. Stanislaw argues that the evidence was relevant to show that he had made a mistake of fact in believing that he could possess weapons other than firearms, and thus, he did not "knowingly" commit the charged offenses. "The trial court has considerable discretion in determining the relevance and admissibility of evidence, and we will not disturb its ruling absent a clear abuse of that discretion." *State v. Amaya-Ruiz*, 166 Ariz. 152, 167, 800 P.2d 1260, 1275 (1990).

¶6 The court precluded any evidence or argument at trial relating to Stanislaw's claimed misunderstanding of the law. It reasoned that "[t]he element of 'knowing' in this case pertains only to whether or not the Defendant knowingly possessed the items that the statute defines as deadly weapons. . . . In this matter, the Defendant apparently misunderstood the law. However sympathetic that misinterpretation may be, it is not a defense of the charge."

¶7 We find no abuse of discretion in the court's refusal to admit records documenting the restoration of all of his civil rights except the right to possess a firearm. Stanislaw was charged with violating A.R.S. § 13-3102(A)(4), which provides that "[a] person commits misconduct involving weapons by knowingly . . . [p]ossessing a deadly weapon or prohibited weapon if such person is a prohibited possessor." "Prohibited possessor" is defined in part as a person convicted of a felony whose civil right to possess a firearm has not been restored. A.R.S. 13-3101(A)(7)(b). Deadly weapon is defined as "anything that is designed for lethal use . . . includ[ing] a firearm." A.R.S. 13-3101(A)(1). To convict Stanislaw of the charged offense, the State was required to prove that he knowingly possessed anything designed for lethal use, and that he was a convicted felon whose right to possess a firearm had not been restored.

¶8 The State was not required to prove that Stanislaw knew that he was a prohibited possessor, or that he knew that a prohibited possessor could not possess deadly weapons. *See State v. Harmon*, 25 Ariz. App. 137, 139, 541 P.2d 600, 602 (1975) (holding that State was not required to prove that a defendant who possessed a weapon knew that he was acting illegally); *State v. Tyler*, 149 Ariz. 312, 316, 718 P.2d 214, 218 (App. 1986) (holding that State was not required to prove defendant possessed weapon with criminal intent; it need prove only knowing possession). Ignorance or a mistaken belief as to a matter of fact relieves a person of criminal liability only if "[i]t negates the culpable mental state required for commission of the offense." A.R.S. § 13-204(A)(1). "Ignorance or mistake as to a matter of law does not relieve a person of criminal responsibility." A.R.S. § 13-204(B). *See Harmon*, 25 Ariz. App. at 139, 541 P.2d at 602 (holding that defendant's claim that he thought his full status as citizen had been restored was a mistake of law, and accordingly, not a cognizable defense to the crime of misconduct involving weapons); *State v. Olvera*, 191 Ariz. 75, 77, 952 P.3d 313, 315 (App. 1998)(same). The court did not abuse its discretion in precluding evidence at trial.

II. *DENIAL OF THE MOTION TO DISMISS FOR VAGUENESS*

¶9 Stanislaw next argues that the trial court abused its discretion in denying his motion to dismiss the charges of

misconduct involving weapons on the ground that A.R.S. § 13-3101(A)(4) conflicts with A.R.S. § 13-905(C), rendering both unconstitutionally vague on their face and as applied to him. In support of his motion to dismiss on grounds of vagueness, Stanislaw argued that another judge restored all of his rights except the right to possess a firearm pursuant to A.R.S. § 13-905(C), and that he had no notice or warning that he was prohibited under A.R.S. § 13-3102(A)(4) from possessing deadly weapons. The court denied the motion, holding that "A.R.S. [§]§ 13-3101 and 13-3102 apply to this case. These statutes are not unconstitutionally vague on their face or as applied to the defendant."

¶10 We review *de novo* whether a statute is constitutional. *State v. Mutschler,* 204 Ariz. 520, 522, ¶ 4, 65 P.3d 469, 471 (App. 2003). A party challenging a statute's constitutionality must overcome a "strong presumption" that the statute is constitutional, and where possible, we will interpret a statute in such a way as to give it a constitutional construction. *State v. Kaiser,* 204 Ariz. 514, 517, ¶ 8, 65 P.3d 463, 466 (App. 2003). A person challenging the statute bears the burden of establishing its invalidity. *Id.*

¶11 A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what conduct is prohibited, or if it allows for arbitrary and

discriminatory enforcement. *In re Dayvid S.*, 199 Ariz. 169, 172, ¶ 11, 15 P.3d 771, 774 (App. 2000). "[T]he requirement of a 'fair and definite warning' does not necessitate 'perfect notice or absolute precision' of language." *Kaiser,* 204 Ariz. at 517, ¶ 9, 65 P.3d at 466 (quoting *State v. Singer*, 190 Ariz. 48, 50, 945 P.2d 359, 361 (App. 1997)).

¶12 Stanislaw's claim that the statutes are unconstitutionally vague is without merit. The language contained in A.R.S. §§ 13-905(C), 13-3201(A)(4), and 13-3101(A)(7)(b) is unambiguous. Moreover, A.R.S. § 13-912, which provides for automatic restoration of civil rights for first time offenders, expressly states that "this section does not apply to a person's right to possess weapons as defined in § 13-3101 unless the person applies to a court pursuant to section 13-905 or 13-906." We conclude that a person of ordinary intelligence would understand the prohibited conduct as identified in the instant statutes, and the language is sufficiently clear to avoid any real potential for arbitrary or discriminatory enforcement.

¶13 The gravamen of Stanislaw's complaint is that A.R.S. § 13-905(C) does not expressly notify a convicted felon, whose right to possess a firearm has not been restored, of the broader prohibition against possession of deadly weapons in A.R.S. § 13-

3102(A)(4), not that either statute is unclear. We do not find the statutes unconstitutionally vague on this ground.

III. *FAILURE TO USE CERTIFIED COURT REPORTER*

¶14 Stanislaw next argues that the court fundamentally erred and denied him a fair trial when it failed to use a state-certified court reporter, and it abused its discretion in denying his motion for new trial on this ground. Stanislaw argues that "the entire transcript is suspect" because of the absence of certification. He specifically cites his recollection that one of the jurors said "no" when polled on the jury verdict, contrary to the transcript, although no objection was lodged at the time. The trial judge, however, personally certified the transcript on appeal after extensive review and an evidentiary hearing as "substantially accurate and reliable as to all material aspects of this case" and specifically found "the record is accurate as to the polling of the jury."

¶15 This issue first arose while this matter was pending on appeal. Immediately after completion of the record on appeal, Stanislaw notified this court that he had discovered that Sue Baquet, the court reporter who prepared the transcripts for his two-day trial, was not then certified to act as a court reporter in Arizona courts. We remanded the matter "for the purpose of permitting the trial court to certify the transcripts prepared and submitted by court reporter Sue Baquet in this

matter," and directed the superior court to "rule on and certify the transcripts in furtherance of this appeal" and "transmit a certified copy of its written findings and/or any corrections" to the clerk of this court.

¶16 On remand, Stanislaw filed a Motion to Vacate Judgment/Motion for New Trial in the trial court, arguing that the failure to provide a certified transcript prepared by a certified court reporter as dictated by Ariz. R. Crim. P. 31.8 required that the court vacate the judgment pursuant to Rule 24.2(a)(1)(2) and (3), and grant Stanislaw a new trial pursuant to Rule 24.1.[3] Stanislaw contended that although the transcript submitted by Baquet showed that all jurors responded "yes" to the court's polling after the verdict was announced, Stanislaw "distinctly recalls one of the jurors indicating that the juror did not support the guilty verdict as announced." He simultaneously filed a Rule 31.8(h) Motion for Correction or Modification of the Record, arguing that the court should correct this error and "vacate judgment as the verdict was not unanimous." Stanislaw also identified three additional problems with the transcript: the absence of transcripts of two sidebar discussions, and an omission of specific statute number in transcription of another sidebar.

[3] Stanislaw asked this court to stay his appeal to allow the trial court to hear his Motion to Vacate Judgment/Motion for New Trial. We deny the motion to stay as moot.

¶17 The court found that the three sidebars were not germane to the issues, stated that it had not heard a juror say "no" during polling on the verdict, and found it "inconceivable" that the clerk would not have "expressed a concern" if this had happened, or that defense counsel would not have immediately objected. The court further advised Stanislaw's counsel that it was not sure that it had jurisdiction over the Motion to Vacate Judgment/Motion for New Trial. The court subsequently ordered additional review of the transcripts by the parties and by Baquet.

¶18 At the start of an evidentiary hearing on this matter, both the prosecutor and the court advised that each had reviewed the trial transcript and believed it to be accurate. Stanislaw's trial counsel testified that she recalled Stanislaw telling her during polling that one of the jurors had said "no," although she did not herself hear the negative response, and she did not lodge an objection.[4] Baquet testified that she had not had an opportunity to review her transcript, but would stand by its accuracy, and specifically its accuracy with respect to the polling of the jurors. She testified that she had been a court reporter for twenty-five years, and though her certification had

[4] In an affidavit submitted after the hearing, she specifically identified only one additional ostensible error in the transcript, involving the judge's recollection on the second day of trial that he had struck certain testimony the previous day, a recollection not supported by the previous day's transcript.

lapsed through oversight in 2004, she passed the test to renew her certification but was denied certification in January 2009 for past infractions that had nothing to do with accuracy or timeliness. The court's clerk testified that she remembered that when the jury returned with a verdict in this case, "Each juror answered affirmatively. 'Yes.'"

¶19 The court found that "the trial transcript in this case is substantially accurate and reliable as to all material aspects of this case. In so finding, the Court specifically finds that the record is accurate as to the polling of the jury. This finding is based on all of the facts and circumstances, and, in particular, the testimony of the clerk." The court further found that the absence of a transcript of the sidebars was "inconsequential," because the issues raised at the sidebars were already well briefed and had been ruled upon on the record. Accordingly, the court found that Stanislaw suffered no prejudice from the absence of a record of what was specifically said during the sidebars, and denied Stanislaw's Motion to Vacate Judgment/Motion for New Trial.

¶20 Because Stanislaw failed to raise the lack of certification issue below, we review his claim of denial of a fair trial for fundamental error only. *See State v. Henderson,* 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). Stanislaw accordingly bears the burden of establishing that the trial

court erred, that the error was fundamental, and that the error caused him prejudice. *Id.* at 568, ¶ 22, 115 P.3d at 608.

¶21 We will not overrule a trial court's certification of a record challenged on grounds of error or incompleteness if the record is of "sufficient completeness for adequate consideration of the errors assigned." *State v. Schackart*, 175 Ariz. 494, 499, 858 P.2d 639, 644 (1993) (quoting *State v. Moore*, 108 Ariz. 532, 534, 502 P.2d 1351, 1353 (1972) (holding that record of trial reconstructed and certified by the court after original court reporter "become unwilling or unable to transcribe his notes" was adequate even though parts were "garbled," but record of sentencing was inadequate to support death sentence); *see* Ariz. R. Crim. P. 31.8(h) ("If any controversy arises as to whether the record discloses what actually occurred in the trial court, the difference shall be submitted to and settled by the trial court."). Nor will we reverse a conviction on the basis of an inadequate record unless appellant makes a showing of "a credible and unmet allegation of reversible error." *State v. Masters*, 108 Ariz. 189, 192, 494 P.2d 1319, 1323 (1972).

¶22 Stanislaw has failed to meet his burden to show error, much less fundamental error. This is not a case like those on which Stanislaw relies, where relevant portions of the record were missing, forcing the reviewing court to rely on summary

findings of the trial court that were prepared months after the trial, or where there is no record whatsoever.

¶23 Not only was a verbatim transcript of the entire trial prepared by an experienced court reporter, albeit one whose state certification had lapsed, but after reviewing the transcript himself and conducting an evidentiary hearing, the trial judge certified that the transcript was accurate and reliable in all respects. The only portion of the record not transcribed were bench conferences that by all accounts simply reiterated the court's on-the-record ruling in the form of admonishments to counsel. The failure to transcribe these bench conferences was not fundamental error in these circumstances. *See State v. Paxton*, 186 Ariz. 580, 589, 925 P.2d 721, 730 (App. 1996) (holding that failure to record bench conferences was not fundamental, prejudicial error). We cannot say that the court erred in certifying the record on appeal and conclude that the record was adequate. Accordingly, we decline to find fundamental error simply on the basis of the absence of certification of the court reporter.

¶24 We further conclude that the trial court had no jurisdiction to hear Stanislaw's Motion to Vacate Judgment/Motion for New Trial. This court re-vested jurisdiction in the trial court only "for the purpose of permitting the trial court to certify the transcripts prepared

and submitted by court reporter Sue Baquet in this matter." This limited jurisdiction did not allow the court to hear or rule on the Motion to Vacate Judgment/Motion for New Trial.[5]

IV. *ACCEPTANCE OF STIPULATION ABSENT VALID WAIVER*

¶25 Stanislaw finally argues that the court fundamentally erred in accepting his stipulation that he had a prior felony conviction and had not had the right to possess a firearm restored in the absence of a Rule 17-type[6] colloquy ensuring the he had voluntarily and intelligently entered into the stipulation. Because he failed to raise this issue at trial, we review for fundamental error only. *See Henderson,* 210 Ariz. at 567, ¶ 19, 115 P.3d at 607.

¶26 We find no error in the court's acceptance of the stipulation absent a colloquy ensuring that his waiver of rights was voluntary, intelligent, and knowing. Our supreme court recently vacated the portion of this court's opinion in *State v. Allen*, 220 Ariz. 430, 207 P.3d 638 (App. 2008), on which

[5] Moreover, Stanislaw filed the Motion to Vacate Judgment/Motion for New Trial more than five months after the jury verdict, and nearly four months after entry of judgment and sentence, exceeding the allowable time limit under the governing rules, Ariz. R. Crim. P. 24.2(a) and 24.1(b), thereby depriving him of the availability of these measures of relief. Stanislaw's failure to file the motion for new trial within the time limit deprived the court of jurisdiction to rule on it. *State v. Hill,* 85 Ariz. 49, 53-54, 330 P.2d 1088, 1090 (1958).

[6] Rule 17 of the Ariz. R. Crim. P. governs acceptance of pleas of guilty and no contest.

Stanislaw relies. *See State v. Allen,* 223 Ariz. 125, 126, 129, ¶¶ 1, 22, 220 P.3d 245, 246, 249 (2009). Our supreme court held that due process does not require a full Rule 17 colloquy in the absence of a guilty plea, and specifically does not require it when the defendant stipulates to facts comprising elements of the offense. *See id.* at 128-29, ¶¶ 18-20, 220 P.3d at 248-49. Like the appellant in *Allen*, Stanislaw stipulated only to certain facts comprising one of the elements of the offense, and disputed the facts comprising another key element -- that the weapons he possessed were deadly weapons. Pursuant to *Allen,* we find no error. *See id.*

CONCLUSION

¶27 For the foregoing reasons, we affirm Stanislaw's conviction and sentence.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
MARGARET H. DOWNIE, Presiding Judge

/s/
_____
DONN KESSLER, Judge