

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 08/24/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0240
) 1 CA-CR 09-0241
Appellee,) (Consolidated)
)
v.) DEPARTMENT C
)
FREDERICK WILLIAM COVELL,) Maricopa County
) Superior Court
Appellant.) No. CR2003-019318-001 DT
) CR2007-166226-001 DT
)
) **DECISION ORDER**
)
)

The court, Presiding Judge Donn Kessler and Judges Daniel A. Barker and Sheldon H. Weisberg participating, has considered Appellant's appeal of his convictions and sentences under Arizona Revised Statutes ("A.R.S.") section 13-3102(A)(4) (Supp. 2007) for two counts of misconduct involving weapons, class four felonies. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Appellant's only issue on appeal is that insufficient evidence supports his convictions and sentences for misconduct involving weapons. Both counts require proof that Appellant was a prohibited possessor. A.R.S. §§ 13-3102(A)(4), 13-3101(A)(6)(b)

(Supp. 2007). Appellant contends and Appellee concedes that no evidence was submitted to the jury regarding Appellant's status as a prohibited possessor. Although Appellant did not object to the submission of the case to the jury or move for a judgment of acquittal at trial on this ground, we review for fundamental error. *State v. Stroud*, 209 Ariz. 410, 412 n.2, ¶ 6, 103 P.3d 912, 914 n.2 (2005). "It is, however, 'fundamental error to convict a person for a crime when the evidence does not support a conviction.'" *Id.* (quoting *State v. Roberts*, 138 Ariz. 230, 232, 673 P.2d 974, 976 (App. 1983)). The superior court committed fundamental error because no evidence supports the jury's finding that Appellant was a prohibited possessor. Accordingly, we reverse Appellant's convictions and sentences for two counts of misconduct involving weapons, as reflected in counts two and three of the charges. The conviction and sentence as to count four are not affected by this ruling.

/s/

DANIEL A. BARKER, Judge