DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 09-0267
	)	
Appellee,	)	DEPARTMENT C
	)	
	)	**MEMORANDUM DECISION**
v.	)	
	)	(Not for Publication –
	)	Rule 111, Rules of the
PATRICK LAYTON ROBINSON,	)	Arizona Supreme Court)
	)	
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-158785-001 DT

The Honorable Christopher T. Whitten, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James Haas, Maricopa County Public Defender — Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Patrick Layton Robinson appeals his convictions and sentences for possession of marijuana for sale, possession of marijuana, and possession of drug paraphernalia. Counsel for Robinson filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that after searching the record on appeal, she was unable to find any arguable grounds for reversal. Robinson was granted the opportunity to file a supplemental brief *in propria persona*. Although he did file a supplemental brief, it was not timely.[1] Through counsel, however, Robinson has raised several issues.

¶2 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Robinson. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

BACKGROUND

¶3 Robinson was charged by indictment of Count 1, possession of marijuana for sale ("Count 1"), a class 2 felony,

[1] An order was issued on March 8, 2010 granting Robinson the opportunity to file a supplemental brief on or before April 19, 2010. His supplemental brief was filed on June 10, 2010; therefore, we do not consider it.

in violation of Arizona Revised Statutes ("A.R.S.") section 13-3405(A)(2),(B)(6) (2010); possession of marijuana ("Count 2"), a class 6 felony, in violation of A.R.S. § 13-3405(A)(1),(B)(1) (2010); and possession of drug paraphernalia ("Count 3"), a class 6 felony, in violation of A.R.S. § 13-3415(A) (2010).

¶4 The following evidence was presented at trial. In September 2008, Officer J.G. observed a Honda Ridgeline truck "suspiciously" dump some trash into a commercial bin behind a business. He followed the vehicle to an address on Toronto Way in Tolleson, Arizona. As the vehicle stopped, J.G. wrote down the license plate number. He then returned to the trash bin. When he jumped into the bin he could "smell the odor of marijuana" and found several "hefty" style trash bags, empty cellophane wrap boxes, empty dryer-sheet boxes, and grease containers. Some of the empty boxes had the name "Patrick Robinson" written on them. Based on his training and experience, he believed these items were generally associated with drug trafficking. J.G. also discovered that Robinson was the registered owner of the Honda Ridgeline truck, with an address on Echo Lane in Peoria, Arizona. The next morning, he requested a surveillance team be assigned to watch Robinson.

¶5 Two days later, J.G. obtained a search warrant for the Toronto Way house. When he entered the house, J.G. noticed the odor of marijuana. He also observed that the house was sparsely

furnished, with few personal items inside. In the kitchen, police found a digital scale, several cellophane-wrap containers, boxes of "hefty" style trash bags, a small baggie of marijuana, and some industrial cellophane spools. They also found a utility bill for the Toronto Way home addressed to Robinson. In the master bedroom closet, they found nine bales of marijuana. In the meantime, other police officers located Robinson driving his vehicle, conducted a traffic stop and took him into custody.

¶6 Later that day, a search warrant was executed on the Echo Lane home. Police observed that the home appeared to be lived in. There were personal belongings throughout the home, including children's toys. Police also found a baggie containing 5.6 grams of marijuana underneath one of the cushions of the sofa. Additionally, they found several money order receipts, wire transfer receipts, and utility receipts addressed to Robinson and another individual.

¶7 A jury found Robinson guilty of all three counts. The trial court sentenced him to the presumptive term of five years imprisonment on Count 1, with a concurrent one-year term of imprisonment for both Counts 2 and 3. He was also given 201 days of presentence incarceration credit. Robinson timely appealed.

DISCUSSION

¶8 Through counsel, Robinson raises five issues, which we address in turn. He first challenges the sufficiency of the State's evidence and asserts his actual innocence.[2] In determining whether sufficient evidence exists to support a conviction, we view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdict. *State v. Haight-Gyuro*, 218 Ariz. 356, 357, ¶ 2, 186 P.3d 33, 34 (App. 2008). We will affirm if there is substantial evidence to support the verdict. *Guerra*, 161 Ariz. at 293, 778 P.2d at 1189. The substantial evidence required to warrant a conviction may be either circumstantial or direct. *State v. Mosley*, 119 Ariz. 393, 402, 581 P.2d 238, 247 (1978).

¶9 The crime of possession of marijuana for sale, pursuant to A.R.S. § 13-3405, requires proof that Robinson knowingly possessed marijuana, the substance was in fact marijuana, and the possession was for the purpose of sale. Here, the State introduced sufficient evidence to prove Robinson knowingly possessed marijuana for sale. At trial, Officer J.G.

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[2] To the extent that Robinson requests that we review the record for fundamental error with respect to actual innocence, we construe it as a challenge to the sufficiency of the evidence and address the two issues together. If, however, Robinson intended to challenge his conviction based on actual innocence as contemplated in Arizona Rule of Criminal Procedure 32.1(h), he must do so in a petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.2(b).

testified that upon entering the Toronto Way home, he could smell the odor of marijuana. There was testimony that Robinson was seen entering the Toronto Way home using a key, and there were invoices for the home's utility services in his name. Further, the parties stipulated that the substance found in the master bedroom was marijuana, and testimony at trial revealed it had a weight of approximately one-hundred eighty pounds, an amount not typical for personal use.

¶10 The crime of possession of marijuana, pursuant to A.R.S. § 13-3405, requires proof that Robinson knowingly possessed marijuana, and the substance was in fact marijuana. At trial, Officer J.G. testified to seeing Robinson enter and leave the Echo Lane home. The State also presented evidence establishing that Robinson registered his vehicle using the Echo Lane address and there were several utility invoices for the Echo Lane address in Robinson's name. Additionally, the parties stipulated that the substance found in the baggie under the sofa cushion at the Echo Lane home was a usable amount of marijuana.

¶11 The crime of possession of drug paraphernalia, pursuant to A.R.S. § 13-3415, requires proof that Robinson used, or possessed with the intent to use, drug paraphernalia to pack, repack, store, contain, or conceal marijuana. The State presented evidence that industrial cellophane, grease, dryer sheets, trash bags, and cellophane wrap were found at the

Toronto Way address. Officer J.G. testified that drug traffickers are known to package their marijuana in cellophane wrap and use grease and dryer sheets to conceal the odor of the marijuana. Based on the evidence presented at trial, we find that substantial evidence supports the jury's verdicts.

¶12 Robinson next argues that he was not provided with a copy of the search warrant relied upon to find and collect the evidence offered at trial. The record does not support his contention. The State's disclosure expressly lists the search warrant and indicates it was available to Robinson in accordance with Rule 15.1(b). We therefore find no error on this basis.

¶13 Robinson further argues that the judge erred in denying his motion for a mistrial after the prosecutor introduced evidence that had previously been ordered excluded. A declaration of mistrial is "the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted." *State v. Dann,* 205 Ariz. 557, 570, ¶ 43, 74 P.3d 231, 244 (2003) (citation omitted). In determining whether to grant a mistrial, a judge should consider: (1) whether the testimony called the jurors' attention to matters that they would not be justified in considering in reaching a verdict; and (2) the probability under the circumstances that the testimony influenced the jurors. *State v. Bailey,* 160 Ariz. 277, 279, 772

P.2d 1130, 1132 (1989). We review a trial court's denial of a motion for mistrial for abuse of discretion. *State v. Jones,* 197 Ariz. 290, 304, ¶ 32, 4 P.3d 345, 359 (2000). "The trial judge's discretion is broad . . . because he is in the best position to determine whether the evidence will actually affect the outcome of the trial." *Id.* (citations omitted).

¶14 Here, prior to jury selection, the court heard oral motions *in limine*. Defense counsel argued that upon Robinson's arrest, Robinson said "I already know what happened this morning. I already called my lawyer." Counsel argued that the second part of the statement was an invocation of his client's right to counsel and that "any statements made by [Robinson] once he was taken into custody at that point should not be used against him." He also argued that when combined with the first part of the statement, the combined statement tended to show some indicia of potential guilt on Robinson's part and thus was unfairly prejudicial. The trial judge initially ruled that the first statement was admissible but the second statement was to be excluded. The judge later amended his ruling to allow the entire statement to be used when he learned that immediately following the second statement—"I have already called my lawyer"—Robinson said "What's this all about?" The court explained his modified ruling as follows:

> Before trial in a motion in limine . . . there were two statements that I knew about from the defendant. One was the defendant's saying 'I know what happened this morning,' and the other was 'I already called my lawyer.' Those were the only two I was aware of before trial. There was a third one that I heard about during defendant's opening statement [] which followed 'I have already called my lawyer.'
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> . . .
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> During opening statements defense counsel first brought up that third one, and since then has implied that the third one casts some doubt on what the defendant meant when he said 'what's this all about?' [The third statement.]
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> . . .
>
> Therefore, once that first statement was called into question or what it meant was called into question, the probative value of the second statement went way up in my opinion, and at that point its probative value was no longer substantially outweighed by the danger of unfair prejudice or . . . improper use by the jury.
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> . . .
>
> That's why I admitted it. I offered counsel during our bench conference the opportunity to have some limiting instruction given. None has been suggested.

Notwithstanding the trial judge's explanation, defense counsel reiterated his objection.

¶15 Even assuming the trial court erred in admitting the entire statement, we find the error to be harmless. Error is harmless if we can say, "beyond a reasonable doubt, that the

error did not contribute to or affect the verdict." *State v. Anthony*, 218 Ariz. 439, 446, ¶ 39, 189 P.3d 366, 373 (2008) (quoting *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993)). "The inquiry . . . is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error." *Id*. "The State has the burden of convincing us that any error was harmless." *Id*. We can determine that an error is harmless "when the evidence against a defendant is so overwhelming that any reasonable jury could only have reached on conclusion." *Id*. at ¶ 41.

¶16 Here, Robinson was observed dumping trash into a commercial bin, where police soon after discovered several large trash bags containing cellophane wrap boxes, dry-sheet boxes, and grease containers; all of which had the "odor of marijuana" and some of which had Robinson's name on them. Police testified that these items were generally associated with drug trafficking. Immediately after discarding the trash, Robinson was followed to a house on Toronto Way where police later discovered nine bales of marijuana, a digital scale, several cellophane wrap containers, boxes of trash bags, and a utility bill for the property bearing Robinson's name. In addition, the vehicle Robinson was driving was registered to him at an address

on Echo Lane where police later found a baggie containing 5.6 grams of marijuana, several money order receipts, wire transfer receipts, and utility receipts. Based on the overwhelming evidence presented against Robinson at trial, we find that the admission of the defendant's statement about his lawyer did not contribute to or affect the jury's verdict.[3]

CONCLUSION

¶17 We have read and considered counsel's brief, and we have reviewed the entire record for fundamental error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. As far as the record reveals, Robinson was represented by counsel at all stages of the proceedings, Robinson was given the opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Accordingly, we affirm Robinson's convictions and the corresponding sentences.

¶18 Upon the filing of this decision, counsel shall inform Robinson of the status of the appeal and his options. Defense

[3] Additionally, at no time after the statement was introduced did the prosecutor refer to it again; nor was the general information about Robinson's pre-arrest contact with his attorney included in any of the prosecutor's arguments to the jury. *See State v. Palenkas*, 188 Ariz. 201, 213, 933 P.2d 1269, 1281 (1996) (declining to find harmless error based in part on prosecution's repeated references and comments to defendant's invocation of right to counsel).

counsel has no further obligations, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Robinson has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/
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MICHAEL J. BROWN, Judge

CONCURRING:

/s/
_____
PATRICK IRVINE, Presiding Judge

/s/
_____
DONN KESSLER, Judge