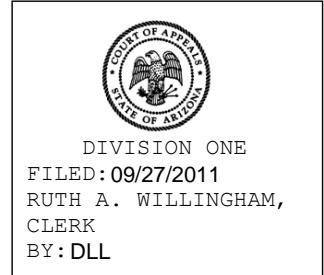


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0990
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
CHESTER HOOVER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-174497-001 DT

The Honorable Randall H. Warner, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General By Kent E. Cattani, Chief Counsel Criminal Appeals/Capital Litigation Section Attorneys for Appellee	Phoenix
James J. Haas, Maricopa County Public Defender By Louise Stark, Deputy Public Defender Attorney for Appellant	Phoenix
Chester Hoover, Appellant	Tucson

D O W N I E, Judge

¶1 Chester Hoover timely appeals his conviction for misconduct involving weapons in violation of Arizona Revised Statutes ("A.R.S.") sections 13-3101 and -3102. Defense counsel has searched the record, found no arguable question of law, and asks that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant filed a supplemental brief *in propria persona*. On appeal, 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).

FACTS AND PROCEDURAL HISTORY

¶2 Detectives Hill and Lantz were on patrol around 11:00 p.m. in November of 2009 when they saw a vehicle with a broken tail light make an improper left turn. After stopping the vehicle, Detective Hill spoke to Hoover, the driver. Hoover was "very irate" and immediately said he had done nothing wrong and that detectives were "harassing him." He denied having any weapons and was uncooperative when asked for his license, registration, and proof of insurance. Detective Hill asked multiple times for the documents, but Hoover continued yelling that he had done nothing wrong and accusing the detectives of harassment. Detective Hill arrested Hoover for failure to

provide identification. While being handcuffed, Hoover stated his identification was in his backpack in the trunk. Hoover told the detective "where [the backpack] was and how to get to it" from inside the vehicle because the trunk was wired shut. Detective Hill ran the Arizona identification card found in the backpack's front pocket and learned that Hoover's driver's license was suspended. Detective Hill called a tow truck to impound the vehicle.

¶13 Hoover was upset when informed of the suspended license violation. He insisted he had a driver's license in his backpack. Detective Hill opened the backpack in front of Hoover and discovered an unloaded handgun. Hoover said it belonged to his wife. Detective Hill retrieved a camera from the patrol car and photographed the backpack and vehicle. He heard Hoover tell another detective that the gun belonged to his wife and that Hoover had put it in the backpack. Hoover then yelled to get Detective Hill's attention and repeated these same statements. Hoover said the bullets "were in the side pocket." Detective Hill inventoried the contents of the backpack and vehicle and impounded the gun, magazine, and bullets. He issued *Miranda*¹ warnings that Hoover acknowledged understanding. When asked

¹ *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

about the gun, Hoover repeated that it was his wife's, that he had placed it in his backpack, and that he had "messed up."

¶14 Hoover was indicted on one count of misconduct involving weapons, a class 4 felony, for knowingly possessing a handgun while being a prohibited possessor. Defense counsel requested a competency screening pursuant to Arizona Rule of Criminal Procedure ("Rule") 11. The parties stipulated that the court could determine Hoover's competency based on reports from three evaluating experts. One evaluator opined that Hoover was competent but "[m]alingerin"; another deemed his competency medication dependent; a third determined he was not competent, but restorable within statutory timeframes. The court found Hoover competent, subject to his "current medication regimen."

¶15 A jury trial ensued. Hoover stipulated that he was a convicted felon, that his right to possess a firearm had not been restored, and that he was a prohibited possessor on the day of the traffic stop. Detectives Lantz and Hill testified. Hoover's wife testified she owned the gun, that she put it in Hoover's backpack because she needed the lockbox where it was typically kept for another purpose, and that Hoover took the backpack without knowing the gun was inside. Hoover did not testify. The jury found him guilty as charged.

¶16 Hoover stipulated to one prior conviction and the State proved another, making him a class 2 repetitive offender.

The trial court sentenced Hoover to a mitigated term of three years' imprisonment, with 34 days of pre-sentence incarceration credit.

DISCUSSION

¶17 We have read and considered the briefs submitted by Hoover and his counsel and have reviewed the entire record. *State v. Leon*, 104 Ariz. 297, 300, 451 P.2d 878, 881 (1969). We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Hoover was present at all critical phases of the proceedings and represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶18 In his supplemental brief, Hoover raises numerous issues that lack clarity, support, or context, such as a contention it was improper for the trial judge to leave "his seat and another judge" to sit at the bench "[d]uring deliberation." The record does demonstrate that a substitute judge was available to take any verdict that might come between 3:30 and 4:30 p.m. on a Friday, when the trial judge was unavailable. However, Hoover agreed to the substitution in lieu of continuing trial through the weekend to the next business

day. *Cf. State v. Schrock*, 149 Ariz. 433, 439-40, 719 P.2d 1049, 1055-56 (1986) (allowing a judge challenged pursuant to Rule 10.2 to take verdict because "receipt of the jury's verdict was merely a ministerial duty" that does "not really involve judicial participation").

¶9 There is likewise no support for Hoover's contention he should have been "getting [mental health] help[,] not prison." The court granted his request for competency evaluations and ruled appropriately based on the submitted reports. Hoover's assertions that the prosecutor told the jury he was "crazy," that the State and defense counsel "pass[ed] a piece of paper" during trial, and that the prosecutor pointed at Hoover and jumped up and down during trial are not supported by the record, and Hoover does not provide record citations. We will specifically address issues identified with some measure of clarity, and we have reviewed the entire record for fundamental error.

I. Warrantless Search

¶10 Unreasonable searches and seizures are prohibited by the United States and Arizona constitutions. See U.S. Const. amends. IV, XIV; Ariz. Const. art. 2, § 8. Warrantless searches are per se unreasonable unless a "specifically established and well-delineated" exception applies. *Katz v. United States*, 389 U.S. 347, 357 (1967); *State v. Dean*, 206 Ariz. 158, 161, ¶ 8, 76

P.3d 429, 432 (2003). An exception exists "where a person having authority to consent to a warrantless search, does so." *State v. Lucero*, 143 Ariz. 108, 109, 692 P.2d 287, 288 (1984). But even evidence obtained illegally may be admissible if the prosecution establishes by a preponderance of the evidence "that the illegally seized items or information would have inevitably been seized by lawful means." *State v. Rojers*, 216 Ariz. 555, 559, ¶ 18, 169 P.3d 651, 655 (App. 2007) (citation omitted).

¶11 In a motion to dismiss, Hoover admitted giving detectives "the right to get his ID" out of his backpack. At a pretrial evidentiary hearing, Detective Hill testified it was standard procedure to tow a vehicle on a suspended license violation and to conduct an inventory search before towing. Detective Hill further testified that when he informed Hoover he would be arrested for driving on a suspended license and that the vehicle would be inventoried and towed, Hoover became irate and screamed that his license was "in his backpack." The detective testified he opened the backpack to search for the driver's license to "calm [Hoover] down" and because he had to inventory the vehicle contents anyway before it was towed.

¶12 The record supports the conclusion that the warrantless search "was proper as reasonably done at the direction, request and consent of the defendant and also as part of an inventory search for a 30 day impoundment of the vehicle."

To the extent Hoover suggests a different interpretation of the evidence, or believes witnesses lied and the judge and jury were "dupe[d]," it is not our role to re-weigh evidence. See *State v. Money*, 110 Ariz. 18, 25, 514 P.2d 1014, 1021 (1973).

II. *Miranda* Warnings

¶13 Hoover also contends his statements at the scene were obtained in violation of *Miranda* because he was "interrogated fo[r] 40 minutes by Officer [sic] Hill [before] being Mirandize[d]." "*Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). "[A]n uncoerced pre-*Miranda* warning statement made in custodial interrogation does not disable a person from later waiving his rights and confessing after he has been given the requisite *Miranda* warnings." *State v. Zamora*, 220 Ariz. 63, 69, ¶ 15, 202 P.3d 528, 534 (App. 2009). But if the pre-*Miranda* statements were coerced or involuntary, then post-*Miranda* statements may not be admissible. *Id.* Questions seeking basic biographical information are "normally attendant to arrest and custody" and do not constitute interrogation for purposes of *Miranda*. *Innis*, 446 U.S. at 301; *State v. Landrum*, 112 Ariz. 555, 559, 544 P.2d 664, 668 (1976) (*Miranda* does not apply to detective's "clearly neutral, nonaccusatory" questions "in furtherance of proper preliminary investigation").

¶14 In a pretrial motion, Hoover asked that his pre-*Miranda* statements be excluded and contended his post-*Miranda* confession was tainted by the pre-*Miranda* statements. At the ensuing evidentiary hearing, Detective Hill testified that the "three offenses happened relatively quickly," and that he arrested Hoover for the first violation at 11:10 p.m. and for the suspended license and weapons violations "within a few minutes." He admitted that *Miranda* warnings were not issued until 11:50 p.m., and that before they were, he directly asked Hoover

[q]uestions about his license, registration, and insurance. Asked him several times for his ID. Asked him where his driver's license was. . . . asked him if he had ever been arrested before. And . . . asked him if he had ever had his civil rights restored.

¶15 Hoover admitted he had spent time in prison and that his civil rights had not been restored. Detective Hill then began to process the scene and heard Hoover make unsolicited statements about the handgun to another detective. Immediately thereafter, Hoover yelled to get Detective Hill's attention and, without prompting, repeated those statements. After receiving *Miranda* warnings, Hoover made similar statements. The trial court granted Hoover's motion to suppress statements made about his criminal record and civil rights, but denied the motion as

to the "unsolicited comments" made while Detective Hill processed the scene.

¶16 It is clear that Hoover was in custody when Detective Hill questioned him about his criminal history and restoration of rights. The trial court thus properly excluded his pre-*Miranda* responses to those questions. However, Hoover's statements that the weapon and vehicle were his wife's, that he put the gun in the backpack earlier that day, that he "messed up," and that the bullets were in the side pocket were not elicited through questioning by the detectives. Interrogation, though, also encompasses "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police . . . *should have known* were reasonably likely to elicit an incriminating response." *State v. Finehout*, 136 Ariz. 226, 230, 665 P.2d 570, 574 (1983) (quoting *Innis*, 446 U.S. at 301-02). "The focus in ascertaining whether particular police conduct amounts to interrogation, then, is not on the form of words used, but the intent of the police detectives and the perceptions of the suspect." *Id.* (citation omitted).

¶17 The record establishes that detectives posed no questions to Hoover after asking about his criminal history and status as a prohibited possessor. Instead, Hoover became irate about being arrested as a prohibited possessor and spontaneously stated that the gun was his wife's. He continued to "yell[]

out" to detectives, stating that the gun belonged to his wife and that he had put it in the backpack. Hoover's own motion for dismissal corroborates Detective Hill's testimony that the statements were not prompted by detectives.

¶18 After receiving *Miranda* warnings, Hoover repeated his earlier statements. The court found the post-*Miranda* statements were not tainted because Hoover had not been "coerced" to make the "spontaneous" statements. To determine if detectives deliberately conducted a two-step interrogation and purposefully withheld *Miranda* warnings until defendant confessed, the court considers "whether objective evidence and any available subjective evidence . . . support an inference that the two-step interrogation procedure was used to undermine the *Miranda* warning." *Zamora*, 220 Ariz. at 69-70, ¶ 16, 202 P.3d at 534-35 (alteration in original) (citation omitted).

¶19 Nothing in the record suggests Hoover was coerced into making his spontaneous statements. Except for the two questions discussed above, no questions were posed by detectives at the scene. Detective Hill testified he made no threats, coercive statements, promises, or misleading statements to Hoover. The record is also devoid of any evidence that Detective Hill deliberately delayed issuing *Miranda* warnings. Instead, it establishes that events progressed rapidly, that Hoover was irate and yelling, and that Detective Hill initially sought

identification to establish Hoover's identity and went into the backpack only to "appease" Hoover when he continued to insist his license was inside.

III. Ineffective Assistance of Counsel

¶20 To the extent Hoover asserts error because counsel was ineffective, those claims are not appropriate for direct appeal. See *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002) ("Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of their merit.").

CONCLUSION

¶21 We affirm Hoover's conviction and sentence. Counsel's obligations pertaining to Hoover's representation in this appeal have ended. Counsel need do nothing more than inform Hoover of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Hoover shall have 30

days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

JON W. THOMPSON, Judge