

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



DIVISION ONE
FILED: 02/02/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 10-0820
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
VOSE DONALD SHATTUCK,) Rule 28, Arizona Rules
) of Civil Appellate
Appellee.) Procedure)
)

Appeal from the Superior Court in Yavapai County

Cause No. V1300CR200980574

The Honorable Warren R. Darrow, Judge Pro Tempore

AFFIRMED

Sheila Sullivan Polk, Yavapai County Attorney Prescott
By Christopher O. Anderson, Deputy County Attorney
Attorneys for Appellant

Boyle, Pecharich, Cline, Whittington & Stallings Prescott
By John Napper
Attorneys for Appellee

O R O Z C O, Judge

¶1 The State of Arizona appeals the judgment of acquittal entered by the trial court after a jury found Vose Donald Shattuck guilty of misconduct involving weapons. The State

argues the trial court could not enter a judgment of acquittal *sua sponte* after the jury returned its verdict. The State further argues the trial court erred when it held a defendant cannot be a "prohibited possessor" based on a prior felony conviction in another state unless the conviction was for an offense that would be a felony under Arizona law, regardless of whether the offense is a "felony" under the law of the other state. For the reasons stated below, we affirm the judgment of acquittal.

JURISDICTION

¶2 Shattuck first argues we have no jurisdiction because the State's opening brief "fails to articulate or even mention which subsection of A.R.S. [Arizona Revised Statutes] § 13-4032 applies" in order to allow the State to appeal. See Ariz. R. Crim. P. 31.13.c.1.iii (an appellant must show the basis of appellate jurisdiction). We disagree. The opening brief states:

The Arizona Court of Appeals has jurisdiction to hear this Appeal pursuant to A.R.S. § 13-4032.7 which provides an appeal may be taken by the State from a judgment of acquittal on one or more offenses charged in an indictment, information or complaint or count of an indictment, information or complaint that is entered after a verdict of guilty on the offense or offenses.

¶3 Shattuck next argues we have no jurisdiction over this appeal because no provision of A.R.S. § 13-4032 permits the

State to appeal a judgment of acquittal entered pursuant to Arizona Rule of Criminal Procedure 20.a. See Ariz. R. Crim. P. 20.a (on motion or on its own initiative, the court shall enter a judgment of acquittal after either side rests if there is no substantial evidence to warrant a conviction). Shattuck argues A.R.S. § 13-4032.7, which provides that the State may appeal a judgment of acquittal entered *after* a verdict of guilt, applies only to judgments of acquittal entered pursuant to Rule 20.b, not Rule 20.a. Rule 20.b permits a defendant to renew a motion for judgment of acquittal *after* a guilty verdict. See Ariz. R. Crim. P. 20.b. Shattuck argues that because the trial court entered the judgment of acquittal pursuant to Rule 20.a rather than Rule 20.b, we have no jurisdiction.

¶4 We need not parse Shattuck's theory regarding why a judgment of acquittal entered eighty-eight days after the verdict does not qualify procedurally as an appealable judgment of acquittal entered after the verdict pursuant to A.R.S. § 13-4032.7. It is enough to note that A.R.S. § 13-4032.7 allows the State to appeal a judgment of acquittal entered after a verdict of guilt on that offense. A.R.S. § 13-4032.7. Nothing in the language of this subsection limits its application based on the manner in which the judgment of acquittal was sought or entered. All that is required to establish our jurisdiction over the State's appeal is that the judgment of acquittal at issue was

entered after the verdict was returned. Therefore, we have jurisdiction over this appeal pursuant to A.R.S. § 13-4032.7 (2010).

STATUS AS A PROHIBITED POSSESSOR

¶15 The State charged Shattuck with misconduct involving weapons after law enforcement officers found him in possession of a handgun.¹ As charged in this case, a person commits misconduct involving weapons if the person knowingly possesses a deadly weapon or prohibited weapon while that person is a prohibited possessor. A.R.S. § 13-3102.A.4 (2011).² A "prohibited possessor" is a person who has been convicted of a felony within or without this state and whose civil right to possess or carry a gun has not been restored. A.R.S. § 13-3101.A.7.b (2011). The State argued Shattuck was a prohibited possessor based on a prior conviction for "DWI-Felony" in the state of New York.

¶16 The State argues the trial court erred when it held that to find Shattuck was a "prohibited possessor" in Arizona based on the New York conviction, the New York offense must also be a felony under Arizona law. The State also argues the trial

¹ The court granted the State's motion to dismiss a second count for disorderly conduct prior to trial.

² We cite the current version of the applicable statute when no revisions material to this decision have since occurred.

court could not enter a judgment of acquittal *sua sponte* after the jury returned its verdict.

Background

¶7 The parties disagree on the procedural posture of this issue. Therefore, some detail as to how and when the issue of Shattuck's status as a "prohibited possessor" arose, and how the court addressed it, is warranted. Shattuck moved for judgment of acquittal pursuant to Rule 20.a after the State rested. Shattuck argued there was insufficient evidence he possessed the gun, that the gun was a deadly weapon or that he was the same person identified in the records of the New York conviction. Shattuck did not directly argue the New York offense must be a felony under Arizona law to convict him as a prohibited possessor.

¶8 The trial court held there was "clearly substantial" evidence to find Shattuck possessed the gun and that the gun was a deadly weapon. During the discussion of whether there was sufficient evidence to find Shattuck was the same person convicted in New York, however, the trial court noted *sua sponte* that the question of whether the New York offense was actually a felony was a matter for the court, not the jury. Neither party responded to the court's observation and the remainder of the discussion addressed the sufficiency of the evidence to prove

Shattuck was the same person who had been convicted in the New York case.

¶9 At the conclusion of the argument, the trial court found there was substantial evidence to let the jury decide whether Shattuck was the same person convicted in New York and the court denied the Rule 20 motion. Shattuck then rested without presenting any evidence and the jury found him guilty as charged. Immediately after the court set the sentencing date, the court noted that the prior conviction from New York had not been "proved," and that based on the documents it had been provided so far, it "did not see any resemblance of that offense in New York to an Arizona prior."

¶10 At a subsequent hearing, held over two months after the verdict, the trial court addressed what it called "aspects of the trial that have not been completed." The court addressed whether Shattuck could be a prohibited possessor under Arizona law based on the prior New York conviction. The court reaffirmed its belief this was a legal matter to be decided by the court and counsel agreed. The court noted if the New York conviction did not provide a legal basis on which to find Shattuck was a prohibited possessor, it would grant a request for a judgment of acquittal and dismiss the charge. Shattuck again moved for a judgment of acquittal. Due to the complexity of the issue, the court did not immediately rule on the motion.

Instead, the court said it wanted more time to consider a memo submitted by the State and gave Shattuck until the end of the week to submit a memo. The court expressed concern with the delay in ruling on a motion pursuant to Rule 20, but noted the rule also permitted the court to act *sua sponte*. See Ariz. R. Crim. P. 20.a (a court's decision on a Rule 20 motion "shall be made with all possible speed"). At the conclusion of the hearing, the trial court noted, "We've had the trial, essentially, today on the legal matters."

¶11 Approximately three weeks later, the trial court made its ruling on the issue of Shattuck's status as a "prohibited possessor" based on the New York conviction. In its explanation regarding the overall delay in deciding the issue, the court stated,

[W]hat's been going on in this court for a while has been litigating my portion of the trial, which I consider to be determining legal issues relating to felonies, prior felony, the predicate felony for prohibited possessor [sic]. This court has an obligation not to commit fundamental error. Regardless of whether or not the defense brings a motion, if I believe something would constitute fundamental error, I can't proceed.

The court further explained,

But I don't see how this court or any court could proceed when there would apparently be fundamental error regardless of whether or not there has been a focused motion submitted by a defendant. So I believe it's

incumbent on this court to grant a judgment of acquittal on its own motion.

The court also believed there was no need for Shattuck to renew his Rule 20 motion on this issue because the court was only just then making its decision. See Ariz. R. Crim. P. 20.b (post-verdict renewal may be made within ten days of the verdict). The trial court eventually held, and the State ultimately agreed, that the New York offense, even though identified as a "felony" under New York law, would not constitute a felony under Arizona law and entered a judgment of acquittal pursuant to Rule 20. The State does not contest on appeal that the New York offense would not be a felony under Arizona law.

Discussion

¶12 The State argues the trial court had no authority to enter a judgment of acquittal *sua sponte* after the verdict. Rule 20.a provides that a court may enter a judgment of acquittal on its own initiative after either side rests. Ariz. R. Crim. P. 20.a. Whether Shattuck raised the issue of his status as a "prohibited possessor" based on the New York conviction as part of his initial Rule 20 motion is irrelevant. Regardless of whether and when Shattuck raised the issue, as explained above, the trial court raised the issue *sua sponte* after the State rested, as expressly permitted by Rule 20.a. It was on this timely raised issue that the trial court ultimately

entered a judgment of acquittal. While Rule 20 contemplates a judgment of acquittal "shall be made with all possible speed," the purpose of this requirement is to prevent forcing a defendant to present the defense case when the State's case is insufficient. *State v. Tucker*, 26 Ariz. App. 376, 378, 548 P.2d 1188, 1190 (1976). The delay in ruling here did not affect how or when Shattuck chose to present his case; he rested immediately and did not object to any delay. Therefore, no error arose from the court's delay, and the trial court could enter a judgment of acquittal after the verdict under these circumstances.

¶13 Further, the trial court did not err when it held that to find Shattuck was an Arizona "prohibited possessor" based on the prior New York conviction, the New York offense must also be a felony under Arizona law, regardless of whether the offense is considered a "felony" under New York law. Interpretation of a statute is a question of law, which we review de novo. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). When interpreting a statute, we look to the plain language of the statute as the best indicator of the drafter's intent. *Id.* We give the words and phrases of the statute their commonly accepted meaning unless the drafters provide special definitions. *State v. Barr*, 183 Ariz. 434, 438, 904 P.2d 1258, 1262 (App. 1995). Again, a "prohibited possessor" is a person

who has been convicted of a "felony" within or without this state and whose civil right to possess or carry a gun has not been restored. A.R.S. § 13-3101.A.7.b. Our legislature has defined "felony" to mean "an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of *this state*." A.R.S. § 13-105.18 (2011) (emphasis added). There is nothing in A.R.S. §§ 13-105.18, 13-3101.A.7.b or 13-3102.A.4 to indicate the legislature intended to use a different definition of "felony" to identify a "prohibited possessor" for purposes of misconduct involving weapons, and we will neither ignore the legislature's definition nor rewrite the law to provide a different definition. Therefore, for a person to be a "prohibited possessor" for purposes of A.R.S. §§ 13-3101.A.7.b and 13-3102.A.4. based on a foreign conviction, the foreign conviction must be for an offense which, if committed in Arizona, would be a felony under Arizona law.

¶14 The State ultimately agreed below and does not contest on appeal that Shattuck's prior New York conviction was for an offense that would be a misdemeanor if committed in Arizona. In Arizona, a defendant convicted of a misdemeanor may not be sentenced to a term of imprisonment in the custody of the state department of corrections. See A.R.S. § 13-105.25 (2011) ("misdemeanor" defined). Therefore, as a matter of law, the New

York offense would not be a "felony" if committed in Arizona, and Shattuck could not be a "prohibited possessor" based on his prior New York conviction.

Conclusion

¶15 Because we find no error, we affirm the judgment of acquittal.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Presiding Judge

/S/

LAWRENCE F. WINTHROP, Judge