

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: 04/03/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0177  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
SHERMEANA LAYLONIE JACKSON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-123808-002SE

The Honorable Pamela H. Svoda, Judge *Pro Tempore*

**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 Tennie B. Martin, Deputy Public Defender  
Attorneys for Appellant

Phoenix

**B R O W N**, Judge

¶1 Shermeana Jackson appeals her conviction and sentence for one count of possession or use of marijuana, a class 1 misdemeanor. Counsel for Jackson 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. Jackson was granted the opportunity to file a supplemental brief *in propria persona*. She has not done so, but has raised issues for review through counsel.

¶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 Jackson. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 Jackson was charged by direct complaint with one count of possession of marijuana, a class 6 felony, pursuant to Arizona Revised Statutes ("A.R.S.") section 13-3405 (Supp. 2011).<sup>1</sup> Prior to trial, the State moved to amend the complaint to classify the charge as a class 1 misdemeanor and proceed with a bench trial. The following evidence was introduced at trial.

¶4 In January 2010, Jackson was at an apartment in Tempe. She was in the living room when the police arrived on an

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<sup>1</sup> Absent material revision after the date of the alleged offense, we cite the statute's current version.

unrelated matter. When the police were checking the identification of the people in the apartment, they discovered Jackson had an outstanding warrant and placed her under arrest. In a search incident to the arrest, a usable amount of marijuana was found in the pocket of the jacket she was wearing. Jackson testified at trial that she was only borrowing the jacket and did not know there was marijuana in the pocket.

¶15 The court found Jackson guilty as charged. Prior to sentencing, Jackson filed a motion for new trial, alleging the State impeached her testimony on cross-examination with a document that had not been previously disclosed. The court denied the motion and sentenced Jackson to one year of unsupervised probation. This timely appeal followed.

¶16 Through counsel, Jackson asks us to review the record regarding the denial of her motion for new trial, prosecutorial misconduct for failure to disclose the document used to impeach her, actual innocence,<sup>2</sup> and sufficiency of the evidence. We address these issues in turn.

¶17 "Motions for new trial are disfavored and should be granted with great caution." *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996) (internal quotations and

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<sup>2</sup> We do not address Jackson's claim of "actual innocence," as it is more appropriately raised in a Rule 32 petition for post-conviction relief. See Ariz. R. Crim. P. 32.1(h).

citation omitted). We "will not disturb a trial court's denial of a motion for new trial absent an abuse of discretion." *Id.*

¶18 During cross-examination, the State attempted to discredit Jackson's testimony that the jacket did not belong to her by referring to Jackson's booking report. The report listed several personal items, including a pocket knife, condoms, lip balm, keys, and \$58 cash. Jackson admitted she was not carrying a purse that night, and the State questioned her on how she could have carried all of these items in only the pockets of her sweatpants, impliedly suggesting she used the pockets of the jacket to carry at least some of her personal items. Jackson's counsel did not object to the admission of the booking report or to any part of the examination. However, in her motion for new trial, Jackson asserted that the State failed to include the booking report in its pretrial disclosures. Jackson claimed that having the booking report earlier may have affected her trial strategy. During argument on the motion, counsel for Jackson admitted that when the exhibit was handed to him at the beginning of trial, he did not review each page and therefore was not aware that the booking report was included. The prosecutor stated that he believed the booking report had been disclosed but had no way of affirmatively proving it.

¶19 In denying the motion, the trial court reasoned that while Jackson did not receive a copy of the report, it did not

appear the State purposely withheld it. Further, the court properly considered that Jackson's counsel had received the document prior to Jackson's testimony, there was no objection made to the document, and the State did not use the document in its case-in-chief. Additionally, the court unequivocally stated that after hearing all of the other evidence against Jackson, the lack of evidence relating to the booking report would not have changed the verdict. Under these circumstances, we conclude that the trial court did not abuse its discretion in denying the motion for new trial.

¶10 Jackson claims that the prosecutor committed misconduct by failing to disclose the booking report prior to using it at trial to impeach Jackson's testimony. Because Jackson did not raise this issue at trial, she has waived it absent fundamental error. See *State v. Hughes*, 193 Ariz. 72, 85, ¶ 58, 969 P.2d 1184, 1197 (1998).

¶11 Prosecutorial misconduct is defined as conduct that "is not merely the result of legal error, negligence, mistake, or insignificant impropriety, but, taken as a whole, amounts to intentional conduct which the prosecutor knows to be improper and prejudicial." *Pool v. Superior Court*, 139 Ariz. 98, 108, 677 P.2d 261, 271 (1984). In Jackson's motion for new trial, her counsel stated that he "does not believe that the State intended to withhold evidence in this matter." Our review of

the record likewise reveals no intentional misconduct by the prosecutor. Accordingly, we find no error, fundamental or otherwise.

¶12 Finally, Jackson asserts there was insufficient evidence to convict her of possession of marijuana. We review claims challenging the sufficiency of the evidence de novo. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). However, we defer to the trial court's determination on the credibility of witnesses. *State v. Hughes*, 13 Ariz. App. 391, 392-93, 477 P.2d 265, 266-67 (1970). We will affirm a conviction "where the trial court's ruling is based on substantial evidence" in the record. *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993).

¶13 Jackson was charged under A.R.S. § 13-3405, which provides that a person "shall not knowingly . . . [p]ossess or use marijuana." The police officers testified that Jackson was in an apartment with a heavy presence of marijuana, she appeared to be "high or intoxicated," and they found marijuana in her jacket pocket. While Jackson testified that the jacket she was wearing was not hers, the court found her testimony was not credible, explaining in part that Jackson's testimony as to the timeline of events did not make sense. Therefore, we find there was substantial evidence presented to support the trial court's verdict.

¶14 We have searched the entire record for reversible error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Jackson was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Accordingly, we affirm Jackson's conviction and sentence.

¶15 Upon the filing of this decision, counsel shall inform Jackson of the status of the appeal and her options. Defense 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). Jackson shall have thirty days from the date of this decision to proceed, if she so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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PETER B. SWANN, Presiding Judge

/s/

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JON W. THOMPSON, Judge