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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: 04/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0629
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
TYRONE WILSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Coconino County

Cause No. S0300CR201000928

The Honorable Mark R. Moran, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

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By H. Allen Gerhardt, Jr.
Attorneys for Appellant

D O W N I E, Judge

¶1 Tyrone Wilson appeals from his convictions and sentences based on an alleged defect in the jury selection process.¹ For the following reasons, we affirm.

DISCUSSION

¶2 Immediately before jury selection began in Wilson's trial, a discussion occurred among defense counsel ("Mr. Harvey"), the court, and the prosecutor ("Mr. Mosher") regarding a member of the jury panel who had been summoned but excused by the court ("Potential Juror"):

MR. HARVEY: . . . I was informed the Court excused [Potential Juror], and I'd like to put on the record that the defense was not consulted about that. As far as the defense knows, [Potential Juror] is not incompetent to sit as a juror, and so we object and would argue it's a fundamental error and ask for a short continuance and new jury panel.

THE COURT: Okay. Mr. Mosher.

MR. MOSHER: If I may supplement the record as to [Potential Juror]. And this is not something that the Court is aware of but it's something I intended to bring up had [Potential Juror] been here I would have . . . asked that [Potential Juror] be excused because he . . . represent[ed] somebody in a position adversarial to me within the last few months.

THE COURT: All right. Thank you, Mr. Mosher.

¹ Because the facts relating to the convictions and sentences are not relevant to the one issue Wilson raises on appeal, we do not discuss them.

Court can put on the record its reason for excusing [Potential Juror]. [He] is related to my court reporter. If [he] is seated on the panel, I need to have a new court reporter. At this point in time, this late in the process, I don't even know if I could secure a court reporter for the next two weeks, which this trial is scheduled for. I did not find out about this issue or that he was on the panel until yesterday. To me it didn't make any sense to bring him in here and then send him back home because it would be a direct conflict with him serving on a jury that my court reporter is also performing her duties on. So that's the reason why I excused him, not because he was a lawyer. I don't know if we have other lawyers. We have nurses on the panel, et cetera. Other lawyers have been seated on panels and so forth. So that was the Court's reasoning.

¶13 The trial court denied defense counsel's request for a new jury panel. After his conviction and sentence, Wilson timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and 13-4033(A)(1).

DISCUSSION

¶14 Wilson asserts violations of his state and federal constitutional rights to an impartial jury and due process because the court unilaterally excused the Potential Juror for no "legitimate reason." We review constitutional challenges *de novo*. *State v. Gay*, 214 Ariz. 214, 217, ¶ 4, 150 P.3d 787, 790 (App. 2007) (citation omitted). We also review *de novo* the interpretation of statutes and the rules of criminal procedure.

State v. Tillmon, 222 Ariz. 452, 454, ¶ 8, 216 P.3d 1198, 1200 (App. 2009) (citation omitted); *State v. Barnett*, 209 Ariz. 352, 354, ¶ 7, 101 P.3d 646, 648 (App. 2004) (citation omitted).

¶5 The Arizona Rules of Criminal Procedure require potential jurors to be sworn and “then” examined by the court to establish their qualifications to serve. Ariz. R. Crim. P. (“Rule”) 18.5(a)-(c). Here, the court excused the Potential Juror the day before trial began, without notice to or input from the parties. The State appears to concede that the Potential Juror did not fall within one of the categories for automatic dismissal set forth in A.R.S. § 21-211.

¶6 We agree with Wilson that the court erred in dismissing the juror as it did. Because Wilson raised a timely objection, we consider whether the trial court’s error was harmless. See *State v. Soliz*, 223 Ariz. 116, 119, ¶ 10, 219 P.3d 1045, 1048 (2009) (citation omitted) (“Harmless error review applies when the defendant objects to the alleged error at trial.”). “Error, be it constitutional or otherwise, 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) (citations omitted). “The State has the burden of convincing us that any error was harmless.” *Id.*

¶17 As the State correctly notes, our appellate courts have long held that a defendant is not entitled to any particular juror or particular composition of jurors. See, e.g., *State v. Doerr*, 193 Ariz. 56, 65, ¶ 40, 969 P.2d 1168, 1177 (1998) (citations omitted) (“The Sixth Amendment guarantees a fair and impartial jury, but not one having a specific makeup.”); *State v. Arnett*, 119 Ariz. 38, 50, 579 P.2d 542, 554 (1978) (defendant in a criminal case “is not entitled to be tried by any particular jury”); *Kinsey v. State*, 49 Ariz. 201, 209-10, 65 P.2d 1141, 1145 (1937) (“The exclusion of a juror by the court, even though erroneous, is of itself never a ground for reversal, for the defendant is not entitled to have his case tried by any particular juror, but merely by twelve who are properly qualified and impartial.”).

¶18 Wilson does not contend the jurors who ultimately presided over his trial were not properly qualified or that they were anything but impartial. We also disagree with Wilson’s assertion that the court dismissed the Potential Juror for no “legitimate reason.” The trial judge explained that the juror was related to the court reporter assigned to the two-week trial. *Cf.* Ariz. Rev. Stat. § 21-202(B)(2) (a potential juror may be excused from service if “the judge” determines service “would substantially and materially affect the public interest or welfare in an adverse manner”).

¶9 "No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done." Ariz. Const. art. 6, § 27. Under the circumstances presented here, where Wilson received a fair trial before an impartial jury, the court's procedural error does not mandate reversal. *State v. Griswold*, 105 Ariz. 1, 3, 457 P.2d 331, 333 (1969) ("We do not view every procedural error as automatically giving rise to such prejudice that a reversal is required.").

CONCLUSION

¶10 Wilson's convictions and sentences are affirmed.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PATRICIA K. NORRIS, Presiding Judge

/s/
MICHAEL J. BROWN, Judge