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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JESUS HUMBERTO SOTO, Appellant.	2 CA-CR 2008-0406 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20040081

Honorable Howard Fell, Judge Pro Tempore
Honorable Paul E. Tang, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
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Tucson
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B R A M M E R, Presiding Judge.

¶1 Jesus Humberto Soto appeals his convictions and sentences for possession of cocaine for sale, possession of cocaine base for sale, possession of marijuana, and possession of drug paraphernalia. He argues the trial court erred in denying his requests for new counsel and his motion for a judgment of acquittal. We affirm.

Factual and Procedural Background

¶2 On appeal, we view the facts in the light most favorable to sustaining the jury's verdicts. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). Tucson Police Officer Vazquez stopped Soto's vehicle, in which two additional people were riding. Vazquez approached the vehicle with Officer Arndt, and both detected the smell of marijuana coming from the vehicle. Arndt arrested Soto and searched him, finding approximately $1,225 in cash in his pocket, mostly in twenty-dollar bills. In searching the vehicle, Arndt found two plastic baggies with "chunks of crack cocaine and some with cocaine" underneath the console behind the "pull-out" stereo. Vazquez also found two plastic baggies of marijuana in the vehicle's center console.

¶3 The state charged Soto with possession of cocaine for sale, possession of cocaine base for sale, possession of marijuana, and possession of drug paraphernalia. Soto rejected a plea offer from the state, was tried in absentia, and a jury found him guilty of all counts. The trial court sentenced him to concurrent prison terms ranging from 3.75 years to thirteen years. This appeal followed.

Discussion

Motions for Substitute Counsel

¶4 Soto argues the trial court erred in denying his requests for substitute counsel.[1] He contends a change in counsel was required because there had been a complete breakdown in communication and trust between himself and his attorney. We review the denial of a request for substitute counsel for a clear abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 8, 154 P.3d 1046, 1050 (App. 2007). An abuse of discretion exists when the court's decision is incorrect legally or unsupported by the record. *State v. Peralta*, 221 Ariz. 359, ¶ 3, 212 P.3d 51, 53 (App. 2009).

¶5 The Sixth Amendment to the United States Constitution entitles a criminal defendant to competent representation, but not to "counsel of choice" or "a meaningful relationship" with counsel. *State v. Cromwell*, 211 Ariz. 181, ¶ 28, 119 P.3d 448, 453 (2005). In deciding whether to grant a motion for substitute counsel, a trial court must consider the following factors:

> whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

[1]The motions were couched as motions to withdraw as attorney of record but were made on behalf of Soto, supported by Soto's desire to "fire" his attorney, and treated by the trial court as requests for new counsel. Therefore, we treat them as motions for substitute counsel.

State v. Moody, 192 Ariz. 505, ¶ 11, 968 P.2d 578, 580 (1998), *quoting State v. LaGrand*, 152 Ariz. 483, 486, 733 P.2d 1066, 1070 (1987).

¶6 A defendant's loss of trust in counsel alone does not require the trial court to appoint new counsel. *Paris-Sheldon*, 214 Ariz. 500, ¶ 14, 154 P.3d at 1051. But where there is a "'complete breakdown in communication or an irreconcilable conflict between a defendant and his appointed counsel, that defendant's Sixth Amendment right to counsel has been violated.'" *Id.* ¶ 12, *quoting State v. Torres*, 208 Ariz. 340, ¶ 6, 93 P.3d 1056, 1058 (2004). To demonstrate a total breakdown in communication, "'a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.'" *Id.*, *quoting United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002). The defendant has the burden of demonstrating an irreconcilable conflict or breakdown in communication. *Torres*, 208 Ariz. 340, ¶ 8, 93 P.3d at 1059.

¶7 Stephanie Meade was appointed as Soto's counsel at his arraignment. She later filed two separate motions to withdraw as attorney of record, asserting her attorney-client relationship with Soto was "fractured to the extent that effective representation ha[d] been compromised." The trial court held hearings on each motion. At the first hearing, counsel appearing for Soto asserted there were problems with Soto's confidence in Meade, and there was no communication between him and Meade and no "participation in preparation of the defense." Soto stated Meade did not "try hard enough to get [him] a better plea," and he "want[ed] to try to get a better plea with [his] new

lawyer." Soto conceded Meade had gone over the plea offer with him. The court denied the motion to withdraw.

¶8 At the second hearing, Meade stated Soto had not participated in his defense and was "very unhappy with the whole plea situation." She further stated Soto had informed her that he had exculpatory evidence but had not provided her with any information, including witness and financial information she needed. She also alleged Soto had "voiced a negative opinion on [her] ability." Meade contended she could not be ready for trial when scheduled because she still needed to discuss Soto's defense with him. Soto stated he had attempted to telephone Meade but never got an answer. He also stated he wanted to "fire her" because she wanted to withdraw from representing him after he had rejected the plea offer. The trial court again denied the motion.

¶9 Soto argues the trial court erred in determining his request for substitute counsel "was based on less than an irreconcilable conflict." He contends "the court was presented with a loss of trust, as well as confidence, based upon [Meade]'s and Soto's claims that they were no longer communicating with one another." Soto notes the record does not indicate whether the court weighed the factors required by *Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d at 580. However, the court is not required to make specific findings supporting its decision to deny a motion for substitute counsel, *Paris-Sheldon*, 214 Ariz. 500, ¶ 11, 154 P.3d at 1051, and we presume the court made all findings necessary to support its ruling and will affirm "if any reasonable construction of evidence justifies the decision," *Peralta*, 221 Ariz. 359, ¶ 9, 212 P.3d at 53-54.

¶10 Here, the trial court did not abuse its discretion in denying Soto's request for substitute counsel. Soto did not allege facts sufficient to meet his burden of establishing an irreconcilable conflict. *See Cromwell*, 211 Ariz. 181, ¶ 30, 119 P.3d at 454 ("defendant must allege facts sufficient to support a belief that an irreconcilable conflict exists"). Soto wanted a different attorney "to try to get a better plea," but Soto was not entitled to "counsel of choice." *See id.* ¶ 28. We cannot characterize Soto's desire for a better plea offer as a "genuine irreconcilable difference" with Meade. *See Peralta*, 221 Ariz. 359, ¶ 5, 212 P.3d at 53; *see also Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d at 580 (whether irreconcilable conflict exists between counsel and defendant one factor for court to consider). Moreover, nothing in the record suggests a different attorney would have been able to obtain for Soto a plea offer that would have satisfied him. *See Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d at 580 (whether same conflict would confront different counsel one factor for court to consider).

¶11 Soto further alleges the communication breakdown occurred after he had rejected the plea offer. Soto's reason for wanting to "fire" Meade was that she had filed a motion to withdraw after he had rejected the plea offer, but the record indicates it was Soto who wanted Meade to withdraw because he hoped to obtain a more favorable plea offer with another attorney. Consequently, "[n]o real conflict between [Soto] and counsel is discernible from the record; it simply appears that [Soto] would have been happier with other counsel." *See LaGrand*, 152 Ariz. at 487, 733 P.2d at 1070.

¶12 Soto's testimony does not suggest he was unable to communicate with Meade at all. Although Soto stated he had attempted to telephone her but "never g[o]t an answer," the record indicates Meade both was willing to communicate with Soto and desired to do so. Meade was unable to articulate any particular conflict preventing communication, but stated only: "I don't know if [Soto]'s not taking this seriously or he's just too busy, or if there is a personal conflict." Soto's only response continued to be that he wanted to "fire" her because "she wanted to withdraw" after he had rejected the plea offer. Therefore, Soto did not "'put forth evidence of a severe and pervasive conflict with [Meade] or evidence that he had such minimal contact with [her] that meaningful communication was not possible.'" *See Paris-Sheldon*, 214 Ariz. 500, ¶ 12, 154 P.3d at 1051, *quoting Lott*, 310 F.3d at 1249. And, the "evidence must show more than mere animosity causing loss of trust or confidence." *Peralta*, 221 Ariz. 359, ¶ 5, 212 P.3d at 53. At most, the lack of communication between Soto and Meade was a result of "mere animosity" because Soto "want[ed] her to go." Because we do not find an irreconcilable conflict, we need not address the other *Moody* factors. Accordingly, the trial court did not abuse its discretion in denying Meade's motions to withdraw.

Motion for Acquittal

¶13 Soto contends the trial court erred by denying his motion for a judgment of acquittal as to his convictions for unlawful possession of a narcotic drug for sale,[2] made pursuant to Rule 20, Ariz. R. Crim P. That rule provides "the court shall enter a

[2]Soto does not argue the court erred in denying his motion as to the other charges.

judgment of acquittal . . . after the evidence on either side is closed, if there is no substantial evidence to warrant a conviction." We review a trial court's decision on a Rule 20 motion de novo, viewing the evidence in the light most favorable to upholding the verdict. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). The relevant inquiry is "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* ¶ 16, *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). We will reverse a trial court's denial of a Rule 20 motion "[w]here there is a complete absence of probative facts to support a conviction." *Mathers*, 165 Ariz. at 66, 796 P.2d at 868. However, if reasonable minds could differ "'on inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal.'" *West*, 226 Ariz. 559, ¶ 18, 250 P.3d at 1192, *quoting State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997). In reviewing the evidence, we make no distinction between circumstantial and direct evidence. *See State ex rel. O'Neill v. Brown*, 182 Ariz. 525, 527, 898 P.2d 474, 476 (1995).

¶14 The state indicted Soto pursuant to A.R.S. § 13-3408, which provides one "shall not knowingly . . . [p]ossess a narcotic drug for sale." Soto argues the state did not present sufficient evidence to support his conviction because it did not present evidence he knew either cocaine or cocaine base was present in the vehicle. *See State v. Salinas*, 181 Ariz. 104, 106, 887 P.2d 985, 987 (1994) (elements of possession of narcotic for sale include "knowledge that the substance is present").

¶15 Vazquez testified the vehicle's occupants were "kind of moving around" as he followed them, "[e]ach bending over, reaching." He testified this was atypical behavior that "raise[d] red flags" in his mind. *See State v. Harris*, 9 Ariz. App. 288, 290, 451 P.2d 646, 648 (App. 1969) (movements toward drugs in vehicle some evidence of possession). Soto was driving the vehicle, titled to his mother, in which officers had found "baggies" of cocaine "stuffed underneath" the front console, presumably within his reach. The arresting officer also found $1,225 in Soto's pocket, including fifty-three twenty-dollar bills. Another officer testified that crack cocaine typically is sold in twenty-dollar increments, and that a seller possibly would carry a large amount of cash. *See State v. Pereida*, 170 Ariz. 450, 453, 825 P.2d 975, 978 (App. 1992) (evidence of possession of large amounts of currency relevant to knowledge of drugs in vehicle). Although Soto relies on *State v. Heberly*, 120 Ariz. 541, 587 P.2d 260 (App. 1978), we find that case distinguishable. There, the court determined no evidence connected defendants to the "use, control, or ownership" of an ice chest containing drugs found in the plane's luggage area. *Id.* at 545, 587 P.2d at 264. Also found in the ice chest was the pilot's log book, clearly linking the ice chest to someone other than the defendant-passengers. *Id.* In this case, Soto not only had considerably better access to the drugs, but also had control over the vehicle in which they were found. And there was no clear indication the drugs belonged to someone else. A reasonable juror could infer from the totality of this evidence that, beyond a reasonable doubt, Soto knew the cocaine was present in the vehicle. Accordingly, the trial court did not abuse its discretion by denying

Soto's motion for a judgment of acquittal. *See West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191.

Disposition

¶16 For the reasons stated, we affirm Soto's convictions and sentences.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge