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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 1/24/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0043
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ISRAEL CHRISTIAN LEGLIU,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-009026-002 DT

The Honorable Janet E. Barton, Judge

AFFIRMED

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

Richard D. Gierloff, Attorney at Law Phoenix
Attorney for Appellant

K E S S L E R, Judge

¶1 Israel Christian Legliu ("Legliu") filed this appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following his conviction of first degree murder, a class 1 dangerous

felony under Arizona Revised Statutes ("A.R.S.") section 13-1105(A)(1) (2010),¹ and conspiracy to commit first degree murder, a class 1 dangerous felony under A.R.S. § 13-1003(A) (2010).

¶2 Finding no arguable issues to raise, Legliu's counsel requested that this Court search the record for fundamental error. Legliu was given the opportunity to, but did not submit a *pro per* supplemental brief. For the reasons that follow, we affirm Legliu's convictions and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶3 The victim ("Paul") had sold marijuana for Raymond Bianco in the past. In March 2006, Bianco approached Paul at his place of employment in a mall and accused Paul of still owing him money. On one occasion, Elvira Gallego, a security guard, overheard Bianco threatening Paul. Bianco later told Gallego he was going to kill Paul or his family if he didn't get his money.

¶4 Gallego next took Bianco to a friend's party, where he paid special attention to Legliu, a fourteen year old who was playing with a gun. Legliu later told his cousin, Fabian Cordova, that Bianco threatened him to agree to kill someone. A few days later, Legliu explained to Cordova how two girls were going to pick up a person, drop him off at a park, and "he was

¹ We cite the current version of the applicable statute when no revisions material to this decision have since occurred.

just going to get killed."

¶15 Later that month, Paul left work with Gallego and V.N., a former co-worker who Paul knew from high school. The three stopped at Elwood Park where Paul left the vehicle. Also present at the park were Legliu, Cordova, and Legliu's friend, Sylvester Carpio. Paul became uncomfortable with the other people at the park and asked to leave.

¶16 Gallego then drove Paul and V.N. to a second park. Following instructions from Legliu, the three boys also drove to the second park and parked next to a church. Legliu told Cordova, "[w]hen [you] hear shots, take off." Legliu and Carpio then got out of the car, took something out of the trunk, and ran around the church.

¶17 At the second park, Paul got out of the car. When he made his way back to the car, two or three males approached and began shooting. Both Gallego and V.N. testified that Legliu was one of the attackers. When the shooting began, Gallego drove off. Paul was shot three times and died from wounds to his back and neck.

¶18 V.N. was dropped off at her mother's house. Gallego then went with Bianco to her friend's house to meet Legliu. When they arrived, Gallego saw Bianco hand Legliu a gun and some money. Gallego then drove Legliu, Carpio, and Cordova home. Gallego testified that during that drive, Legliu bragged about

shooting Paul in the back of the head.

¶19 After the shots were fired, residents in the neighborhood called the police, and officers responded to process the scene. Detectives went to the mall where Paul worked and found his car. They also collected video surveillance footage which showed Paul leaving the mall with Gallego. Gallego met with police and entered into a "free-talk agreement." Gallego eventually identified Legliu, Carpio, Cordova, and Bianco as being involved in the shooting.

¶10 Legliu was brought into custody,² read his juvenile *Miranda*³ warnings, and interviewed. Although he denied any involvement in the beginning, he eventually confessed, providing information about Bianco and the shooting. Legliu stated that (1) Bianco approached him with a job to kill Paul for payment; (2) Bianco said if Legliu did not do it he would find someone else to handle both Paul and Legliu; (3) Legliu got the weapons (a .380 and a 12 gauge) from Bianco and the car from Gallego; (4) Cordova was the driver; (5) Gallego and V.N. set Paul up at the park; and (6) when Gallego and V.N. left and Paul started walking, they ran out and started shooting at him. Legliu expressed concern that he would be seen as a snitch, and he eventually stopped answering questions.

² Legliu was interviewed for this case while in custody at the Maricopa County Juvenile Center for other charges.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶11 Legliu, Carpio, and Bianco were charged with first degree murder and conspiracy to commit first degree murder. Severance was granted for Bianco and a separate trial was held. Legliu and Carpio were tried together.⁴

¶12 After a twelve-day trial, in November 2010, a jury convicted Legliu of first degree murder and conspiracy to commit first degree murder. He was sentenced to concurrent sentences of life without the possibility of release for twenty-five years, and was awarded 1724 days of presentence incarceration credit. All codefendants were ordered to pay restitution and were jointly and severally liable for \$2546.02.⁵

¶13 Legliu timely appealed. See Ariz. R. Crim. P. 31.3. We have jurisdiction pursuant to Article 6, Section 9, of the

⁴ A hearing was held to review Legliu's statements to Detective M. and redact any reference to Carpio. See *State v. Herrera*, 174 Ariz. 387, 395, 850 P.2d 100, 108 (1993) ("[T]he confrontation clause is not violated by the admission of a non-testifying codefendant's confession if the trial court gives a proper limiting instruction, the redacted confession eliminates the defendant's name and any reference to his existence, and the prosecutor does not 'undo the effect of the limiting instruction by urging the jury to use' the non-testifying codefendant's confession against the defendant." (citing *Richardson v. Marsh*, 481 U.S. 200, 208-09 (1987))).

⁵ The codefendants included: (1) Bianco, who was found guilty by jury trial of first degree murder and conspiracy to commit first degree murder; (2) Carpio, who was found guilty by jury trial of first degree murder and conspiracy to commit first degree murder; (3) Cordova, who pled guilty to second degree murder; and (4) Gallego, who pled guilty to facilitation of first degree murder.

Arizona Constitution, as well as A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and -4033(A)(1) (2010).

STANDARD OF REVIEW

¶14 In an *Anders* appeal, this Court must review the entire record for fundamental error. *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quoting *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984)). To obtain a reversal, the defendant must also demonstrate that the error caused prejudice. *Id.* at ¶ 20.

DISCUSSION

¶15 After careful review of the record, we find no grounds for reversal of Legliu's conviction. The record reflects Legliu had a fair trial and all proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Legliu

was represented at all critical stages of trial,⁶ was given the opportunity to speak at sentencing, and the sentence imposed was within the range for Legliu's offenses.

¶16 In reviewing the sufficiency of evidence at trial, "[w]e construe the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶17 There is evidence in the record to support the jury's conviction of Legliu for the crime of first degree murder. A person commits first degree murder if "[i]ntending or knowing that the person's conduct will cause death, the person causes the death of another person . . . with premeditation." A.R.S. § 13-1105(A)(1). "[I]ntent to kill is presumed from the use of a

⁶ Counsel waived Legliu's presence for the hearing regarding redactions to transcripts, the hearing regarding jury instructions, day ten of trial, day eleven of trial, and any jury questions asked during deliberations. Legliu was present for all other parts of the trial, including the verdict. Following the verdict, a hearing was held to discuss potential juror misconduct. Counsel's presence was waived for that hearing, but Legliu was still transported.

deadly weapon." *State v. Anthony*, 104 Ariz. 133, 136, 449 P.2d 598, 601 (1969).

¶18 Here, there is evidence that Legliu was an active participant in Paul's murder. First, the jury heard Legliu's interview with Detective M. in which he confessed, providing information about Bianco and the shooting.⁷ Legliu stated that (1) Bianco approached him with a job to kill Paul for payment; (2) Legliu got the weapons from Bianco; (3) Gallego and V.N. set Paul up at the park; and (4) when Gallego and V.N. left and Paul started walking, they ran out and started shooting at him. Cordova also testified at trial, stating that (1) Bianco threatened to kill Legliu unless he agreed to kill somebody; (2) Legliu explained to Cordova that a person was going to be set up

⁷ Legliu moved to suppress the statements the police obtained, stating they were in violation of the Fifth Amendment of the United States Constitution. Counsel argued that "[b]ecause at the time of the interrogation [Legliu's] cognitive abilities were barely at the level of a nine-year-old, he was neither capable of understanding the *Miranda* advisement, or of an age level to knowingly consent to any waiver of his rights." After a four-day evidentiary hearing, the trial court denied Legliu's motion to suppress and granted in part the State's motion to preclude the diminished capacity defense and witness testimony. We find no error as to either holding. As to the diminished capacity defense, the court precluded Legliu from introducing evidence as to diminished capacity. That ruling was not erroneous. See *Clark v. Arizona*, 548 U.S. 735, 770-79 (2006) (holding Arizona's rule excluding evidence of mental illness and diminished capacity due to mental illness on the issue of *mens rea* did not violate due process); *State v. Mott*, 187 Ariz. 536, 541, 931 P.2d 1046, 1051 (1997) ("Because the legislature has not provided for a diminished capacity defense, we have since consistently refused to allow psychiatric testimony to negate specific intent.").

to be killed and Cordova was to be the driver; (3) at the second park, Legliu told Cordova "[w]hen [you] hear shots, take off"; (4) Cordova heard three to four shots from more than one type of gun; and (5) when Legliu and Carpio got back into the car, Carpio was holding a shotgun (although Cordova could not see if Legliu had anything with him). In addition, Gallego and V.N. also testified that Legliu was one of the attackers, and Gallego further stated that Legliu bragged about shooting Paul in the back of the head on their way home. Furthermore, during the interview, Legliu stated that he had the .380. The medical examiner testified that Paul died of gunshot wounds to his back and neck, and the bullets recovered from Paul's body were consistent with a smaller caliber gun.⁸

¶19 There is also evidence in the record to support the jury's conviction of Legliu for the crime of conspiracy to commit first degree murder. Conspiracy is defined as follows:

A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offence, except that an overt act shall not be required if the object of the conspiracy was to commit any felony upon the person of another

⁸ Gallegos testified that she saw Legliu with the shotgun. Even if Legliu was carrying the shotgun, the result would be the same under accomplice liability. See A.R.S. § 13-301 (2010).

A.R.S. § 13-1003(A) (2010).⁹

¶120 Here, there was evidence presented that Bianco threatened Legliu to kill Paul, Legliu asked Cordova to go with him and be the driver, Legliu obtained the weapons from Bianco and the car from Gallego, and Legliu was in contact with either Gallego or V.N. for instructions on where to find Paul.¹⁰

¶121 In comparing the evidence in the record to the elements listed in the statutes, we find there was sufficient evidence to support the jury's convictions of Legliu on both counts.

CONCLUSION

¶122 For the foregoing reasons, we affirm Legliu's conviction and sentence. Upon the filing of this decision, defense counsel shall inform Legliu of the status of his appeal and his future appellate 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-

⁹ Because first degree murder is a class 1 felony, the State was not required to prove an overt act. See A.R.S. §§ 13-1105(D), -1003(A)(1); *Evanchyk v. Stewart*, 202 Ariz. 476, 481, ¶ 17, 47 P.3d 1114, 1119 (2002) ("To prove conspiracy to commit first-degree murder, the state is not required to prove that the defendant or his coconspirator committed any over act to accomplish the conspiracy."). The element of an overt act, however, was included in the jury instructions.

¹⁰ Phone records were used to show communications between Legliu, Gallego, V.N., and Bianco.

85, 684 P.2d 154, 156-57 (1984). Upon the Court's own motion, Legliu shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
MARGARET H. DOWNIE, Presiding Judge

/s/
PETER B. SWANN, Judge