DIVISION ONE
FILED: 08/07/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 11-0374
	)	
Appellee,	)	DEPARTMENT E
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
TREVOR JOHN RICHTER,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-126395-001 DT

The Honorable Lisa M. Roberts, Judge Pro Tempore

AFFIRMED

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

James J. Haas, Maricopa County Public Defender — Phoenix
by Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

Trevor John Richter — Florence
Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878

(1969). Counsel for Defendant Trevor John Richter has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant has also filed a supplemental brief.

FACTS[1]

¶2 Defendant was charged with possession or use of marijuana, a class 6 felony, and shoplifting, a class 1 misdemeanor, after a Walmart loss prevention officer saw him grab children's playing cards from a store display, remove the packaging, and conceal them in his pocket. Another store officer called the police, and then observed Defendant hide a jar of nuts in his backpack and leave the store without paying for the items. Police officers stopped Defendant shortly after he left the store. They searched him, and found marijuana and the children's playing cards in his pockets.

¶3 The case was tried to a jury and Defendant was convicted of both charges. At sentencing, he admitted to having four prior felony convictions.[2] The court found that the prior

[1] We review the facts "in the light most favorable to sustaining the conviction[s] and [resolve] all reasonable inferences . . . against the defendant." *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (citation omitted).

[2] Defendant knowingly, intelligently, and voluntarily stipulated to the following prior felony convictions: possession of marijuana, a class 6 felony; theft of a means of transportation, a class 3 felony; solicitation to possess narcotic drugs, a

convictions were aggravating factors but considered Defendant's unaddressed mental health issues and strong family support system to be mitigating factors. As a result, Defendant was sentenced to the presumptive term of 3.75 years in prison for count 1, with credit for thirty-five days of presentence incarceration. The court ordered a terminal disposition as to count 2.

¶4 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012), 13-4031, and -4033(A)(1) (West 2012).

DISCUSSION

¶5 In his supplemental brief, Defendant raises the following issues: (1) the court's failure to notify him of his right to appeal; (2) insufficiency of the evidence; and (3) prosecutorial misconduct.[3]

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class 6 felony; and taking the identity of another, a class 4 felony.

[3] Defendant also argues that even if we do not find fundamental error, we should find that the collective prejudice produced by multiple harmless errors warrants reversal. He cites *Ceja v. Stewart* and other cases addressing ineffective assistance of counsel claims for the proposition that multiple harmless errors, taken together, may demonstrate the requisite prejudice to warrant habeas relief. 97 F.3d 1246, 1254 (9th Cir. 1996) (citing *Mak v. Blodgett*, 970 F.2d 614, 622 (9th Cir. 1992)). Because the cited principle appears exclusively within the context of Rule 32, Ariz. R. Crim. P., post-conviction relief proceedings, it does not inform our analysis here. Accordingly,

I. Notification of Right to Appeal

¶6 Defendant first argues that the trial court fundamentally erred when it failed to notify him of his right to appeal. The record, however, reveals that the court did apprise Defendant of his appellate rights. He received a "Notice of Rights of Review After Conviction and Procedure,"[4] and the court advised him of his right to appeal the verdict at sentencing. When asked whether he understood the right, Defendant answered, "Yes, I do." We find no error.

II. Sufficiency of the Evidence

¶7 Defendant next argues that there was insufficient evidence to convict him of possession of marijuana because there were inconsistencies between the police report and the officers' testimony at trial.[5] Evidence is sufficient if it would have

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there is no authority for us to review this case for cumulative error, and we will not.

[4] Defendant signed the notice to confirm that he had received a copy on May 9, 2011; the signed notice was filed with the court the same day.

[5] Defendant also quotes *Mullaney v. Wilbur* and asserts that the "requirement of proof beyond a reasonable doubt is not limited 'to those facts which, if not proved, would wholly exonerate' the accused." 421 U.S. 684, 697-98 (1975). In *Mullaney*, the Court affirmed the rejection of a Maine law that required a defendant to prove, by a preponderance of the evidence, that an unlawful murder was committed "in the heat of passion" to reduce the charge to manslaughter. *Id.* at 703. The Court reasoned that "the Due Process Clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case." *Id.* Consequently, *Mullaney* does not support Defendant's argument.

enabled a rational trier of fact to find guilt beyond a reasonable doubt. *State v. Rienhardt*, 190 Ariz. 579, 588, 951 P.2d 454, 463 (1997) (citation omitted). We review the evidence in the light most favorable to upholding the conviction and will not disturb the jury's verdict unless no probative evidence supports it. *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983) (citation omitted).

¶8 To prove the drug possession charge, the State was required to show that Defendant had knowingly possessed marijuana. A.R.S. § 13-3405(A)(1) (West 2012).[6] At trial, the arresting officer testified that Defendant admitted he had marijuana in his pocket after he was detained. And, the State presented evidence that the substance found in his pocket subsequently tested positive for marijuana. Even though Defendant argues that inconsistent descriptions of the type of paper the marijuana was found in undermines the jury's verdict, such discrepancies do not make the evidence insufficient. *See State v. Donahoe*, 118 Ariz. 37, 42, 574 P.2d 830, 835 (App. 1977) (citation omitted) ("Evidence is not insufficient simply because testimony is conflicting."); *see also Hopper v. Indus. Comm'n*, 27 Ariz. App. 732, 734, 558 P.2d 927, 929 (1976) (citation omitted) (when conflicting information is presented at

[6] We cite the current version of an applicable statute if no changes material to this decision have occurred since the date of the offense.

trial, credibility of witnesses and weight to assign to evidence are factual questions for jury). As a result, we find no error.

III. Prosecutorial Misconduct

¶9 Defendant also contends that the State offered false evidence at trial. He correctly asserts that a prosecutor may not knowingly solicit false testimony, nor allow it to go uncorrected, to obtain a conviction. *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (citations omitted). Indeed, engaging in such behavior is grounds for reversal. *See id.* at 272. Here, however, Defendant confuses false evidence with conflicting evidence; his argument centers on the difference between information in the police report, which was not admitted into evidence, and the officers' testimony. Consequently, *Napue* is inapposite.

¶10 According to the police report, the marijuana in Defendant's pocket was wrapped in "toilet paper." An officer, however, testified that it had been wrapped in a "piece of paper [that appeared] to be a receipt." The jury ultimately determined that Defendant had knowingly possessed the marijuana found in his pocket, and we find no reason to reconsider the jury's determination. *See Hutcherson v. City of Phoenix*, 192 Ariz. 51, 56, 961 P.2d 449, 454 (1998) (citation omitted) ("Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn

different inferences or conclusions or because judges feel that other results are more reasonable.").

¶11 Alternatively, Defendant argues for the first time on appeal that the inconsistent descriptions of the wrapping paper indicate that the State offered tampered evidence. We disagree. The seized marijuana was properly admitted after the State established a foundation through testimony and demonstrated a continuous chain of custody.[7] *See State v. Ritchey*, 107 Ariz. 552, 556-57, 490 P.2d 558, 562-63 (1971) (citations omitted). Moreover, Defendant had the opportunity to cross-examine the witnesses and argue any discrepancies to the jury. On this record, we find no basis to reverse the verdict. *See Bohmfalk v. Vaughan*, 89 Ariz. 33, 37-38, 357 P.2d 617, 620 (1960) (citations omitted) (reiterating the "steadfast rule that [appellate courts] will not disturb the finding and judgment of the trial court based upon conflicting evidence").[8]

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[7] Defendant nevertheless argues that the marijuana exhibit constituted unreliable evidence and should have been excluded by the court, even in the absence of an objection. Because we find that the evidence was admitted in accordance with the Arizona Rules of Evidence, we find no error, fundamental or otherwise.

[8] To the extent Defendant argues that the State solicited hearsay statements by allowing one officer to use another officer's police report while testifying, we find the argument meritless. The record reveals that the officer did not read from the report or use it to refresh his recollection, and the report was not admitted into evidence. Furthermore, Defendant had a full opportunity to cross-examine both officers and argue any deficiencies in their testimonies.

¶12 We have reviewed the issues raised in the supplemental brief, have read and considered counsel's brief, and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. The record, as presented, reveals that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, that Defendant was represented by counsel at all stages of the proceedings, and that the sentence imposed was within the statutory limits.

CONCLUSION

¶13 Accordingly, we affirm Defendant's conviction and sentence. After this decision is filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel must only inform Defendant of the status of the appeal and Defendant's future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Defendant may, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/s/
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
PHILIP HALL, Judge

/s/
DIANE M. JOHNSEN, Judge