

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: 8/6/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0899  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
DONALD EARL CHILDERS, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2010-103742-001

The Honorable Robert L. Gottsfield, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Joseph T. Maziarz, Acting Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Janelle A. McEachern Chandler  
Attorney for Appellant

Donald Earl Childers Buckeye  
In *Propria Persona*, Appellant

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G E M M I L L, Judge

¶1 Donald Earl Childers appeals from his convictions and sentences for 2 counts of aggravated robbery. Childers' counsel

filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Childers filed a *pro se* supplemental brief challenging the grand jury proceedings and the evidence admitted at trial. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001). J.W. and L.C. delivered and installed home theater equipment for an electronics company. On January 20, 2010, J.W. and L.C. delivered a television to apartment 121 in an apartment complex on 15th Avenue and Glendale. When they arrived, the apartment was filled with people; among them were Childers, Paul Grajales, and Anthony Jackson. After bringing the television to the apartment, J.W. and L.C. requested payment before installing it. Childers -- all the while pacing around the apartment, walking in and out the front door and talking on the phone -- responded that his girlfriend was bringing the money shortly; J.W. and L.C. could not begin installation until

they received payment so they waited. All of a sudden, Childers and Grajales came up behind J.W. and L.C., forced the men to the ground and threw clothing over their heads. Grajales tied the deliverymen's hands while Childers rifled through their pockets and took their cell phones and wallets. Then everyone left the apartment leaving the deliverymen tied up on the floor.

¶13 About a minute after everyone left, Jackson came back inside the apartment. He untied J.W. and L.C. and told them he had called the police. The police arrived at the apartment, took a description of Grajales and Childers from the victims, and set up a perimeter to locate the suspects. Childers had been wearing a black jacket, yellow shirt and black do-rag in the apartment. Officer Laufer responded to the call looking for a black male wearing a yellow shirt, a black jacket and a do-rag and found Childers -- in a black jacket but not wearing a shirt or a do-rag -- in the custody of security guards at a rest home on 16th Avenue and Glendale. Officer Laufer found a yellow shirt, a black do-rag, a wallet, and a pair of gloves buried beneath unused paper towels in the trash can of a nearby bathroom. Childers later admitted to leaving those items in the bathroom.

¶14 Childers was arrested and charged with two counts of

kidnapping and two counts of aggravated robbery.<sup>1</sup> At the trial, Grajales testified that he and Childers designed a plan to have electronics delivered, to tie up the deliverymen, and to take the delivery truck to sell the electronics. Both the victims testified that Childers was in the apartment when they arrived to deliver the television; that he and Grajales worked together to put them on the ground, tie them up, and rifle through their pockets; and that he and Grajales were not in the apartment when Jackson untied them. Childers testified that he had never planned to actually rob J.W. and L.C.; rather, he was attempting to set up Grajales and a couple of other men in retaliation for their mistreatment of his ex-girlfriend. The jury acquitted Childers of the two kidnapping charges and convicted him of the two aggravated robbery charges.

¶15 Following the verdicts, Childers stipulated to the aggravating factors of two prior felony convictions and the presence of an accomplice. The court found that the mitigators outweighed the aggravators and sentenced Childers to slightly mitigated concurrent sentences of 10.5 years for each count. Childers timely appealed and we have jurisdiction pursuant to

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<sup>1</sup> Grajales was also arrested and charged; he pleaded guilty to two counts of kidnapping and two counts of aggravated robbery. At Childers' trial, Grajales testified for the State. His plea agreement did not require that he testify, but he was given immunity from further prosecution that might arise from his testimony.

the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and 13-4033 (2010).<sup>2</sup>

#### DISCUSSION

¶16 In his supplemental brief, Childers challenges the grand jury proceedings. He argues that the grand jury was presented with inaccurate information about Jackson's involvement in the crime. Specifically, Childers states that Officer Ivey testified before the grand jury that Jackson was not involved in the crime; however, during opening statements, the prosecutor stated that Childers, Grajales, and Jackson had planned the robbery together. Childers' challenge is not properly brought at this time. *Ariz. R. Crim. P. 12.9; State v. Superior Court (Coker)*, 186 Ariz. 143, 145, 920 P.2d 23, 25 (App. 1996). He cannot now challenge the grand jury proceedings by appeal from his conviction. *See State v. Gortarez*, 141 Ariz. 254, 258, 686 P.2d 1224, 1228 (1984) (stating the only exception to special action challenge of grand jury proceedings is when the proceedings are tainted with information the State knew was based on perjured, material testimony); *United States v. Basurto*, 497 F.2d 781, 785-86 (9th Cir. 1974). Childers does not provide evidence that the State was aware of any perjured

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<sup>2</sup> We cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

testimony; furthermore, testimony regarding Jackson, an individual who was not charged and did not testify at the trial, was not material to Childers' indictment.

¶7 Childers next argues the prosecutor introduced false evidence when he elicited testimony that a black jacket belonged to Childers. Childers is correct that the State may not obtain a conviction with knowingly false information. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). However, Childers has not shown that this evidence is false, or even conflicting. Multiple witnesses testified that Childers was wearing a black jacket when he was in the apartment and when he was arrested at the rest home.

¶8 Having considered the briefs and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports the convictions and the sentences imposed fall within the range permitted by law. As far as the record reveals, Childers was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶9 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Childers

of the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Childers has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

**CONCLUSION**

¶10 Childers' convictions and sentences are affirmed.

/s/

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JOHN C. GEMMILL, Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Presiding Judge

/s/

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MICHAEL J. BROWN, Judge