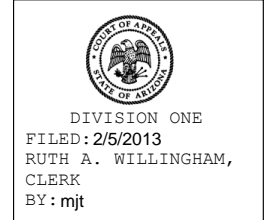


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0906  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
RAYSHALL THOMPSON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR 2010-158172-001

The Honorable Steven P. Lynch, Judge *Pro Tempore*

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Kent E. Catani, Chief Counsel  
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Barbara A. Bailey, Assistant Attorney General  
Attorneys for Appellee

DeBrigida Law Offices, PLLC Glendale  
By Ronald M. DeBrigida, Jr.  
Attorneys for Appellant

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**J O H N S E N**, Judge

¶1 Rayshall Thompson appeals from his convictions of possession of dangerous drugs, a Class 4 felony; possession of drug paraphernalia, a Class 6 felony; and resisting arrest, a Class 6 felony. For reasons that follow, we affirm.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 A uniformed police officer saw Thompson walking along the street at about midnight and noticed that, when Thompson saw the marked patrol car slow, he looked down and then began to run. The officer stopped the car and chased Thompson on foot down an alley, telling Thompson he was a police officer and to stop. Just before the officer caught up with Thompson, he saw Thompson throw a "baggie of some substance" over a fence. The officer attempted to detain and handcuff Thompson while he was on the ground, but Thompson lay with his arms and hands beneath him, then stood up and continued running down the alley, dragging the officer in the process. Eventually, the officer overpowered Thompson and took him into custody. Another officer found a small plastic bag containing a white substance near where the first officer saw Thompson toss a small plastic bag. The substance was determined to be 6.6 grams of crack cocaine.

¶3 Thompson timely appealed his convictions. 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) (West 2013), 13-4031 (West 2013) and -4033(A)(1) (West 2013).<sup>1</sup>

## DISCUSSION

### A. Sufficiency of Evidence.

¶14 Thompson argues the superior court erred in denying his motion for judgment of acquittal and his motion for new trial because the evidence was insufficient to support his convictions. We review claims of insufficient evidence *de novo*. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993).

¶15 A judgment of acquittal is appropriate "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). "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).

¶16 The officer who arrested Thompson testified at trial to the events described above. Thompson argues the officer's testimony was not credible and therefore the elements of the

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<sup>1</sup> Absent material revisions after the date of an alleged offense, we cite a statute's current version.

charged offenses were not established. "No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974). In reviewing the sufficiency of the evidence, we do not reweigh the evidence to decide if we would reach the same conclusion as the jury, but instead view the evidence in the light most favorable to upholding the verdict, resolving all reasonable inferences against the defendant. *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

¶7 The evidence at trial was more than sufficient to permit the jury to find that all three charged offenses were proved beyond a reasonable doubt. First, the evidence clearly established that Thompson possessed a narcotic drug, cocaine. See A.R.S. §§ 13-3408(A)(1) (West 2013) (knowing possession of a narcotic drug), -3401(5),(20)(z) (West 2013) (defining cocaine as a narcotic drug). To prove possession of drug paraphernalia, the State was required to show Thompson used or possessed with the intent to use, "drug paraphernalia to . . . pack, repack, store, [or] contain . . . a drug." A.R.S. § 13-3415(A) (West 2013). The small plastic bag was discovered near where Thompson threw it, and it was being used to "store" or "contain" the cocaine. Finally, the charge of resisting arrest required proof

pursuant to A.R.S. § 13-2508(A)(1) (West 2013) that Thompson intentionally prevented or attempted to prevent a peace officer "from effecting an arrest by . . . [u]sing or threatening to use physical force against the peace officer." The State presented evidence that Thompson lay on his arms and hands to prevent the officer from handcuffing him and used "physical force" by dragging the officer with him as he tried to run away down the alley. Thus, the court did not err in denying Thompson's motions for judgment of acquittal or for new trial based on sufficiency of the evidence.

**B. Motion for Mistrial.**

¶18 Thompson also contends the superior court erred by denying his motion for mistrial based on his argument that the State improperly presented testimony that he possessed the cocaine for sale rather than personal use. The court has broad discretion in ruling on a motion for mistrial, and its ruling will be reversed only if it is "palpably improper and clearly injurious." *State v. Walton*, 159 Ariz. 571, 581, 769 P.2d 1017, 1027 (1989).

¶19 Thompson moved for a mistrial after a police officer testified that the six grams of cocaine in the small plastic bag was "a pretty good size amount" and was "more than a useable amount . . . as far as personal use." Thompson argued this testimony violated a pretrial ruling precluding the State from

presenting testimony that he possessed the cocaine with intent to sell. The court denied Thompson's motion, ruling that the testimony in question did not require a mistrial. The following trial day, Thompson renewed his motion for mistrial, which the court again denied.

¶10 Declaring a mistrial is "the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted." *State v. Dann*, 205 Ariz. 557, 570, ¶ 43, 74 P.3d 231, 244 (2003) (quotation omitted). The trial judge is in the best position to determine whether a particular incident calls for a mistrial because the trial judge is aware of the atmosphere of the trial, the circumstances surrounding the incident and the possible effect on the trial. *State v. Williams*, 209 Ariz. 228, 239, ¶ 47, 99 P.3d 43, 54 (App. 2004).

¶11 Here, the officer's testimony merely emphasized the large amount of cocaine in the bag found near the arrest site and was relevant to rebut Thompson's argument that someone else had dropped the bag. Given that the incident occurred in a neighborhood of high drug use, the fact that the cocaine in the bag was a large amount made it unlikely that it would have remained on the ground for a long period of time, supporting a finding that Thompson had tossed the bag aside just before he was arrested.

¶12 The court stated it was willing to grant a motion to strike and direct the jury to disregard the testimony to reinforce that "the amount of drugs is not relevant in determining whether or not [Thompson] possessed it." Thompson, however, declined that option. Under these circumstances, the court reasonably could conclude the testimony regarding the amount of cocaine was not improper and did not deprive Thompson of a fair trial. Accordingly, the court did not abuse its discretion in denying the motion for mistrial.

**C. Alleged Prosecutorial Misconduct.**

¶13 Finally, citing the same testimony elicited by the prosecutor on which he based his motion for mistrial, Thompson argues his convictions should be reversed due to prosecutorial misconduct. "To prevail on a claim of prosecutorial misconduct, a defendant must demonstrate that the prosecutor's misconduct 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *State v. Hughes*, 193 Ariz. 72, 79, ¶ 26, 969 P.2d 1184, 1191 (1998) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)).

¶14 Our conclusion that the superior court did not abuse its discretion in denying Thompson's motion for mistrial likewise disposes of his argument that the prosecutor's questioning denied him due process.

**CONCLUSION**

¶15 For the foregoing reasons, we affirm Thompson's convictions and sentences.

/s/

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DIANE M. JOHNSEN, Judge

CONCURRING:

/s/

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SAMUEL A. THUMMA, Presiding Judge

/s/

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MICHAEL J. BROWN, Judge