

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JAMES MICHAEL O'GRADY, *Appellant*.

No. 1 CA-CR 15-0352
FILED 6-2-2016

Appeal from the Superior Court in Maricopa County
No. CR2014-128527-001 DT
The Honorable Sam J. Myers, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Lawrence Blieden
Counsel for Appellant

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Patricia A. Orozco and Judge Jon W. Thompson joined.

S W A N N, Judge:

¶1 James Michael O'Grady ("Defendant") appeals his conviction for unlawful discharge of a firearm. He contends that the trial court fundamentally erred when it did not conduct a voluntariness hearing concerning his statements to a law enforcement officer after his arrest. He further contends that the trial court abused its discretion by refusing to allow cross-examination of a witness concerning the witness's outstanding warrants for his arrest. Because the record contains no evidence suggesting Defendant's statements were coerced, and because questions about the witness's warrants were properly excluded, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On June 12, 2014, Defendant and his girlfriend were riding their bicycles to a local pharmacy. A driver pulled out of an apartment complex, honked, and swerved because a truck nearly struck the driver's vehicle. Defendant raised his middle finger at the driver. The driver then got out to explain that he had honked at the truck, not at Defendant. Defendant claimed that as the driver approached, he had a small bat and that he reached behind his back as though he were reaching for a weapon. Defendant removed a handgun from his holster and fired a shot into the ground.

¶3 The driver and another witness to the incident called the police, who found Defendant in the pharmacy parking lot. An officer ordered Defendant to the ground, handcuffed him, and removed his gun. Defendant told the officers that he had discharged his gun into the ground. An officer located a casing in the street where the driver said it would be, and the casing was later determined to have come from Defendant's gun. Defendant was charged with aggravated assault with a weapon and unlawful discharge of a firearm.

¶4 The other witness who had called the police initially refused to be interviewed about the incident because he was concerned that he would be arrested on outstanding warrants for speeding tickets, but he

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agreed to testify after a private conversation with an officer. Defendant intended to question that witness at trial about the warrants and the conversation with the officer, suggesting that some negotiation regarding the speeding tickets took place to induce the witness to testify. The state filed a motion in limine to prevent Defendant from pursuing that line of questioning. The court allowed the parties to question the witness outside the presence of the jury to assess whether the witness received any benefit in exchange for his testimony. The court concluded that the witness's conversation with the officer did not influence the content of his testimony and therefore precluded questions about the warrants because they had "no probative value" and carried "a slight danger of prejudice."

¶5 The jury acquitted Defendant of the aggravated assault charge, but found him guilty of unlawful discharge of a firearm. Defendant appeals.

DISCUSSION

I. THE COURT DID NOT ERR BY NOT CONDUCTING A VOLUNTARINESS HEARING.

¶6 Defendant asserts that the trial court fundamentally erred when it did not *sua sponte* conduct a voluntariness hearing on his statements to law enforcement officers. Fundamental error requires Defendant to show both that the court erred in a manner that "goes to the foundation of his case, takes away a right that is essential to his defense, and is of such magnitude that he could not have received a fair trial," and that the error prejudiced him. *State v. Henderson*, 210 Ariz. 561, 568, ¶¶ 24, 26 (2005).

¶7 The court is required to determine if a confession was voluntary unless the confession was given without interrogation *or* in the absence of arrest or detention. A.R.S. § 13-3988(A), (C). Defendant was certainly under arrest when he made his statement. But Defendant testified that the officers had not interviewed him at all: "I'm the one that offered the information. I told them what was going on." Further, the defense counsel at trial did not question the voluntariness of Defendant's statements or request a hearing. And the court gave the jury an instruction on voluntariness of Defendant's statements; the jury had the opportunity to consider whether it felt his statements had been coerced. Nothing in the record here hints that Defendant's statements to the officers were coerced, and the court's decision not to conduct a *sua sponte* hearing was not error, much less fundamental error.

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II. THE COURT DID NOT ERR IN PROHIBITING DEFENDANT FROM INTRODUCING EVIDENCE OF A WITNESS'S WARRANTS FOR UNPAID SPEEDING TICKETS.

¶8 Defendant contends that the trial court abused its discretion by prohibiting questions to the witness about warrants for unpaid speeding tickets. He asserts that the witness's conversation with the police concerning his outstanding warrants may have influenced the witness's testimony, and that Defendant should have been able to question him on his motive for testifying. We review the trial court's rulings on admissibility of evidence for an abuse of discretion. *State v. Rutledge*, 205 Ariz. 7, 10, ¶ 15 (2003). While "a cross-examiner should be given great latitude in his questions which seek to impeach an adverse witness," *State v. Torres*, 97 Ariz. 364, 366 (1965), cross-examination is not unlimited, and questioning must still comply with the rules of evidence.

¶9 According to the witness, he did not initially want to be interviewed because he was afraid he would be arrested, but after speaking with the police, he agreed to testify. The witness stated that he thought his warrants would be "a big issue," but the officer explained that they were "not too much . . . of an issue." He testified that the police officer did not make him any promises to get him to testify, only that the officer would "try to get this resolved." The witness further stated that he had an upcoming court date for the tickets, indicating that he was still responsible for them. After questioning the witness, the court concluded that "while the warrant may have affected his willingness to talk, it did not affect the content of what he said," thus it had no probative value and a slight danger of unfair prejudice. *See* Ariz. R. Evid. 403. The trial court's discretion in the application of Rule 403 is broad, and on this record we find no abuse of discretion.

CONCLUSION

¶10 For the foregoing reasons, we affirm Defendant's conviction for unlawful discharge of a firearm.



Ruth A. Willingham · Clerk of the Court
FILED : AA