

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

ERICK DEAN SILVER, *Appellant*.

No. 1 CA-CR 16-0086
FILED 7-19-2016

Appeal from the Superior Court in Maricopa County
No. CR2014-001977-001
The Honorable Bradley H. Astrowsky, Judge

AFFIRMED

COUNSEL

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

Maricopa County Legal Defender's Office, Phoenix
By Cynthia D. Beck
Counsel for Appellant

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MEMORANDUM DECISION

Judge Maurice Portley delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Chief Judge Michael J. Brown joined.

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 Erick Dean Silver has advised us that the entire record has been searched, and counsel has been unable to discover any arguable questions of law. As a result, counsel has filed an opening brief requesting us to conduct an *Anders* review of the record. Silver was given the opportunity to file a supplemental brief but did not file one.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 Police officers were gathering near Silver's apartment to serve search warrants on his car and apartment. Detectives Pearce and Edgerton, who were in a car, saw Silver leave his apartment with a woman and a dog, carrying something under his arm. Silver placed the items in the back seat of his car with the dog, and the woman, who was carrying a purse, black backpack and other items, did the same. Silver drove off, but other officers stopped his car.

¶3 Silver was detained, his car was driven back to the apartment, and searched. The black bag, which had been on the driver's side floorboard and moved to the backseat, was searched, and a Glock .40 caliber handgun with ammunition was discovered.

¶4 Silver was later indicted for misconduct involving weapons, a class 4 felony, and other charges.² Before trial, Silver entered into a

¹ We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).

² Silver was also indicted for possession of narcotic drugs and possession of dangerous drugs, but those charges were severed, and Silver only went to trial on the weapons charge.

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stipulation with the State that he was a prohibited possessor of firearms. The case went to trial and the jury found him guilty of the weapons charge. Silver stipulated that he was on probation at the time of his offense.

¶5 At sentencing, Silver admitted to having two historical prior felony convictions, and was sentenced to ten years in prison, and given 592 days of presentence incarceration credit.

¶6 Silver filed an appeal. 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), 13-4031, and 4033(A)(1).³

DISCUSSION

I.

¶7 We have read and considered the opening brief. We have searched the entire record for reversible error. The record reveals Silver had a lawyer during all stages of the proceedings. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, as evidenced by the resolution of his motions in limine, and his successful motion to suppress/preclude untimely disclosed photographs.

¶8 An eight-person jury was selected and we find no improprieties in the selection or empaneling. The jury, as the finder of fact, had to resolve whether Silver was in possession of the firearm, as evidenced by facts, including two of his fingerprints found on the gun and the .40 caliber ammunition found in his apartment, or whether the gun could have belonged to the woman in the car, or someone else. *See State v. Piatt*, 132 Ariz. 145, 150-51, 644 P.2d 881, 886-87 (1981) (stating the jury has the discretion to determine the credibility of witnesses and to evaluate the weight and sufficiency of the evidence) (citations omitted).

¶9 At the end of the case, the jury was instructed by the trial court using the appropriate instructions from the Revised Arizona Jury Instructions, including the defense of mere presence. We review de novo whether instructions to the jury properly state the law, *State v. Glassel*, 211 Ariz. 33, 53, ¶ 74, 116 P.3d 1193, 1213 (2005) (citation omitted), but find no error warranting a new trial.

³ We cite the current version of the applicable statutes absent changes material to this decision.

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¶10 Although Silver had unsuccessfully requested special jury instructions touching on direct and circumstantial evidence, the State's burden of proof, reasonable doubt, and the definition of possession, the court did not abuse its discretion by refusing to give the proposed special instructions, *State ex rel. Thomas v. Granville*, 211 Ariz. 468, 471, ¶ 8, 123 P.3d 662, 665 (2005) (citation omitted), given that the final instructions correctly stated the law and covered all relevant areas. And we presume jurors followed the court's instructions. See *State v. Newell*, 212 Ariz. 389, 403, ¶ 68, 132 P.3d 833, 847 (2006).

¶11 Finally, Silver's sentence was within the statutory limits. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we find no reversible trial error.

II.

¶12 After this decision is filed, counsel's obligation to represent Silver in this appeal has ended. Counsel must only inform Silver of the status of the appeal and his future options, unless she identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Silver may, if desired, file a motion for reconsideration or petition for review pursuant to Arizona Rules of Criminal Procedure 31.18 and 31.19.

CONCLUSION

¶13 We affirm the conviction and sentence.



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