

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DREW IAN MULL, *Appellant*.

No. 1 CA-CR 17-0374
FILED 5-8-2018

Appeal from the Superior Court in Maricopa County
No. CR2014-122164-001
The Honorable Alfred M. Fenzel, Judge (Retired)

AFFIRMED

COUNSEL

Law Offices of Stephen L. Duncan, P.L.C., Scottsdale
By Stephen L. Duncan
Counsel for Appellant

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

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MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Kenton D. Jones joined.

M O R S E, Judge:

¶1 Drew Ian Mull appeals his conviction and sentence for one count of robbery, a class four felony. After searching the entire record, Mull's defense counsel identified no arguable question of law that is not frivolous. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asks this court to search the record for fundamental error. Mull was also allowed to file a supplemental brief in propria persona but did not do so. Finding no reversible error, we affirm.

FACTS¹ AND PROCEDURAL HISTORY

¶2 On May 9, 2014, E.M. was sitting on a bench at a mall when a man ran up to her and grabbed her cell phone from her hands. She chased the man to the parking lot, and the man jumped into the bed of a white pickup truck and the driver sped away.

¶3 Two off-duty police officers working a security detail witnessed the chase and followed the truck in their security car. Though the officers briefly lost sight of the truck, they soon found it parked in front of a nearby shopping center. Mull was standing outside of the truck on the passenger side, and the officers recognized him as the man being chased at the mall. Mull was breathing heavily and acting nervous. Mull claimed not to know anything about a stolen cell phone and stated E.M. was his ex-friend. The officers recovered a cell phone from the passenger side of the truck.

¶4 E.M. was brought to the scene and asked if she could identify Mull. Mull shouted "I'm sorry" when he saw E.M. Mull also told the

¹ "We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant." *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015) (citation omitted).

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officers that he "screwed up" and "made a big mistake." Officers returned the cell phone to E.M., and she was able to unlock it, proving it was hers.

¶5 Mull waived his right to a preliminary hearing, pled not guilty to the charge, and rejected two plea agreements tendered by the State. The court granted Mull's motions to suppress in-court and out-of-court identification and ruled that the victim's identification of Mull at the scene would not be admissible because the identification procedure used by police was unduly suggestive. However, Mull's apology to the victim and statements to the police were ruled admissible.

¶6 During jury selection, Mull challenged the State's decision to strike three jurors who had Hispanic-sounding last names. *Batson v. Kentucky*, 476 U.S. 79 (1986). The State gave valid non-race related reasons for the strikes, and the superior court denied the challenge. During deliberations, the jury submitted a question asking what to do if they could not reach a unanimous verdict. Mull moved for a mistrial, but the superior court denied the motion. The jury deliberated into the next day, then found Mull guilty as charged. Mull was sentenced to a presumptive 2.5 years imprisonment with 519 days' credit for time served.

DISCUSSION

¶7 Our review reveals no fundamental error. *See Leon*, 104 Ariz. at 300 ("An exhaustive search of the record has failed to produce any prejudicial error."). The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record reveals that Mull was represented by counsel at all critical stages and was either present, or his presence was waived by counsel, at all critical stages of the proceedings. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages); *State v. Bohn*, 116 Ariz. at 500, 503 (1977) (right to be present at critical stages).

¶8 The jury was properly comprised of eight jurors and two alternates, and the record shows no evidence of juror misconduct. *See Ariz. Rev. Stat. ("A.R.S.") § 21-102(B); Ariz. R. Crim. P. 18.1(a)*. The trial court properly rejected Mull's motion for a directed verdict of acquittal, *see Ariz. R. Crim. P. 20(a)(1)*, and instructed the jury on the elements of the charged offense, the State's burden of proof, the necessity of a unanimous verdict, and the presumption of innocence.

¶9 The court received a presentence report. At sentencing, Mull was given an opportunity to speak, and the court explained the basis for

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imposing the sentence. *See* Ariz. R. Crim. P. 26.9, 26.10. Additionally, the sentence imposed was within the statutory limits. *See* A.R.S. § 13-702(D).

CONCLUSION

¶10 Mull's conviction and sentence are affirmed. Defense counsel's obligations pertaining to Mull's representation in this appeal have ended. Defense counsel need do no more than inform Mull of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate to submit to our supreme court for further review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶11 Mull has thirty days from the date of this decision to proceed, if he wishes, with an *in propria persona* motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA