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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

WYTE YOUNG, JR., *Appellant*.

No. 1 CA-CR 17-0413
FILED 11-29-2018

Appeal from the Superior Court in Navajo County
No. S0900CR201500189
The Honorable Donna J. Grimsley, Judge

AFFIRMED

COUNSEL

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By Jason Lewis
Counsel for Appellee

Coronado Law Firm PLLC, Lakeside
By Eduardo H. Coronado
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

PERKINS, Judge:

¶1 Wyte Young Jr. appeals his convictions and sentences for attempted first-degree murder, three counts of aggravated assault, and misconduct involving weapons. He argues the trial court erred by: (1) denying his motion to remand, (2) denying his motion to suppress evidence arising from a purportedly illegal arrest, (3) failing to hold Arizona Revised Statutes (“A.R.S.”) section 13-4430 unconstitutional, and (4) denying his motion for new trial. For the following reasons, we affirm Young’s convictions and resulting sentences.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 We view the facts in the light most favorable to sustaining the verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013). Young and J.G. were involved in a fight at a bar. After the fight, J.G., K.G., L.R., and C.D. gathered outside of J.G. and K.G.’s home. Young drove to J.G.’s home and fired multiple gunshots at the group.

¶3 A jury found Young guilty of the crimes stated above, and the court sentenced him to life in prison. He timely appealed his convictions and sentences.

DISCUSSION

I. The trial court did not err by denying the motion to remand.

¶4 At the time the trial court denied Young’s motion, the rules required such motions to be filed within 25 days of the filing of the grand jury transcripts. Ariz. R. Crim. P. 12.9(b) (2016). This deadline is mandatory absent a timely request for extension. *State v. Merolle*, 227 Ariz. 51, 54, ¶ 15 (App. 2011). The trial court has no authority to grant an untimely motion to remand. *Id.*

¶5 On appeal, Young argues the time for filing a Rule 12.9 challenge should have been tolled because he was initially represented by

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attorneys who could not file substantive motions due to conflicts of interest. The trial court appointed conflict-free counsel for Young four days before the expiration of the 25-day deadline. Despite this, Young failed to file a timely challenge or to request an extension during that four-day period. Instead, Young moved to remand more than 300 days after the filing of the grand jury transcripts and the trial court properly denied the motion on timeliness grounds.

II. The trial court did not err by denying the motion to suppress an illegal arrest and resulting incriminating statements.

¶6 At the time of the offense Young was on community supervision. Due to reports that Young had committed a felony while on community supervision, Young’s parole officer issued and executed an arrest warrant. Young moved to suppress incriminating statements he made after his arrest, arguing the warrant for his arrest lacked judicial authority. The trial court denied Young’s motion to suppress.

¶7 Considering only the evidence presented to the trial court at the suppression hearing, we review for abuse of discretion. *State v. Spears*, 184 Ariz. 277, 284 (1996). We view the facts in the light most favorable to upholding the trial court’s ruling. *State v. Gonzalez*, 235 Ariz. 212, 213, ¶ 2 (App. 2014).

¶8 To support his argument on appeal, Young cites the Fourth Amendment of the U.S. Constitution and article II, § 8 of the Arizona Constitution. “[T]he right to privacy under article II, § 8 has not been expanded beyond that provided by the Fourth Amendment, except in cases involving unlawful, warrantless home entries.” *State v. Peltz*, 242 Ariz. 23, 30, ¶ 24 n.3 (App. 2017). This case involves an arrest warrant, not a warrantless home entry. Therefore, we review Young’s claim under the Fourth Amendment.

¶9 The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. While reasonable searches generally require warrants, a warrant is not required before making every arrest. See *State v. Ahumada*, 225 Ariz. 544, 546, ¶ 6 (App. 2010); *United States v. Watson*, 423 U.S. 411, 416–17 (1976). Officers may arrest a suspect without a warrant when there is probable cause to believe the suspect has committed a felony. A.R.S. § 13-3883(A)(1); *Watson*, 423 U.S. at 423–24.

¶10 Young was arrested pursuant to a warrant issued under A.R.S. § 31-415. Section 31-415, in relevant part, permits certain personnel with the department of corrections to issue a warrant when “reasonable

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cause” exists to believe an individual subject to community supervision has violated the terms of their supervision. It is not clear from the record whether the warrant for Young’s arrest was issued in compliance with § 31-415, as the warrant was not issued by “the parole clerk of the department of corrections or the director of the department of corrections” A.R.S. § 31-415 (describing who can issue warrants to retake individuals on community supervision). On appeal, Young’s counsel did not cite to § 31-415 or challenge the State’s compliance with § 31-415’s requirements, potentially waiving the argument.

¶11 In any event, we need not address Young’s parole status or the State’s compliance with § 31-415 because the Fourth Amendment and Arizona law otherwise permits Young’s arrest without judicial authorization. Two victims reported Young had been shooting at them. A third victim showed officers a wound he had suffered from the gunshots. Based on this evidence, officers had probable cause to believe Young committed multiple felonies, including attempted murder and aggravated assault. *See* A.R.S. §§ 13-1105(A)(1); 13-1001; 13-1203; 13-1204. Thus, officers were authorized to arrest Young without a warrant under § 13-3883. Because Young offers no other legal reason to suppress his incriminating statements, the trial court did not err in denying his motion.

III. The trial court did not err by denying the motion to deem A.R.S. § 13-4430 unconstitutional.

¶12 Section 13-4430 prevents disclosure of communications between a victim and the victim’s advocate without the victim’s written consent. The statute mandates disclosure if the court finds that the communication contains exculpatory evidence. A.R.S. § 13-4430(D). To obtain this evidence, the defendant may move for disclosure of privileged information. *Id.* The court may then hold an *in camera* hearing upon finding there is reasonable cause to believe the communication is exculpatory. *Id.* Young argues this statute is unconstitutional because it: (1) protects communications between the victim’s advocate and victim at the expense of the defendant’s due process rights; (2) permits non-attorneys to engage in the unauthorized practice of law; (3) denies effective cross-examination; (4) conflicts with the disclosure requirements of the Arizona Rules of Criminal Procedure; (5) impermissibly authorizes a unique confidential privilege between the victim and advocate unlike other privileged relationships; and (6) places an impossible burden of proof on the defendant.

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¶13 We review the constitutionality of a statute *de novo*. *State v. Meeds*, 244 Ariz. 454, ___, ¶ 21 (App. 2018). We presume the statute is constitutional; the party challenging its validity bears the burden of establishing the legislation is unconstitutional. *State ex rel. Thomas v. Klein*, 214 Ariz. 205, 207, ¶ 5 (App. 2007).

¶14 First, Young generally claims the statute reduces or eliminates his rights to due process and a fair trial, but fails to specify how the statute curbs his constitutional rights. We find no constitutional defect in the statute. The statute enables a defendant to receive exculpatory evidence in the victim's communications, complying with due process. A.R.S. § 13-4430 (D).

¶15 Second, Young claims the statute allows the victim's advocate, a non-attorney, to discern perjured testimony and exculpatory evidence, which he argues constitutes the unauthorized practice of law. Under § 13-4430(C) "[t]he communication [between the victim and the victim's advocate] is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory evidence."

¶16 The statute does not permit a victim's advocate to practice law. The Arizona Supreme Court Rules define the practice of law, in relevant part, as "preparing or expressing legal opinions." Ariz. R. Sup. Ct. 31(a)(2)(A)(2). Applying this definition to the statute, the advocate's role is to identify exculpatory evidence and clear cases of perjured testimony. For close questions that do require legal analysis, the statute enables a judge to identify exculpatory evidence in an *in camera* hearing. A.R.S. § 13-4430(D).

¶17 Third, Young argues the statute violates the Sixth Amendment's Confrontation Clause because it prevents defense access to victim's communications that may not be exculpatory but are relevant for purposes of impeachment. The Confrontation Clause guarantees a defendant the opportunity for adequate cross-examination. *State v. King*, 180 Ariz. 268, 275-76 (1994). However, that is a trial right; it does not provide defendants a right to pretrial discovery. *State v. Connor*, 215 Ariz. 553, 562, ¶ 28 (App. 2007). Further, a defendant's right to confrontation is typically satisfied "if defense counsel receives wide latitude at trial to question witnesses." *State v. Forde*, 233 Ariz. 543, 557-58, ¶ 37 (2014) (internal citation and quotations omitted). Young does not argue his cross-examination during trial was limited. Thus, the statute did not violate his right to confrontation.

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¶18 Fourth, Young argues A.R.S. § 13-4430 conflicts with the Arizona Rules of Criminal Procedure. These Rules require the State to disclose its relevant witness statements and exculpatory information to the defense and do not conflict with § 13-4430. Ariz. R. Crim. P. 15.1 (b)(1); 15.1 (b)(8) (2015). The rules mandating disclosure specifically exclude discovery requests made by the defendant to the victim. Ariz. R. Crim. P. 15.1(b); Ariz. R. Crim. P. 39(b)(11) (2015). Additionally, Rule 15.1 only applies to statements in the State's possession. Communications between the victim and victim's advocate may not be in the State's possession because the State can only access those communications with the victim's consent. A.R.S. § 13-4430(A).

¶19 Fifth, Young argues the privileged relationship between a victim and advocate is unlike other privileged relationships. The statute preserves the confidentiality of communications between victim and advocate even when a third party is present. A.R.S. § 13-4430(A). Because the statute contradicts "traditional notions of privilege," Young claims it is unconstitutional.

¶20 The Arizona Constitution bestows the Legislature with legislative authority. Ariz. Const. art. 4, pt. 1 § 1(1). The Legislature generally may create or modify statutory privileges. *See Martin v. Reinstein*, 195 Ariz. 293, 320, ¶ 96 ("[b]ecause [the physician-patient privilege] is a statutory privilege, the legislature is generally free to limit it . . ."). The creation of a new statutory privilege unlike other privileges does not, by itself, make a statute unconstitutional.

¶21 Finally, Young argues it is impossible to show the presence of exculpatory evidence without first reviewing the evidence, rendering § 13-4430 unconstitutional. As previously noted, the court may hold an *in camera* hearing if there is reasonable cause to believe the communications contain exculpatory evidence. A.R.S. § 13-4430(D).

¶22 Indeed, here, Young showed the requisite reasonable cause for an *in camera* examination of communications between one victim and her advocate using prior testimony of the victim and another witness. Thus, Young has demonstrated it is not impossible to meet § 13-4430's standards. The court properly denied Young's motion to deem A.R.S. § 13-4430 unconstitutional.

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IV. The trial court did not err in denying Young's motion for a new trial.

¶23 A motion for new trial must be filed within 10 days of the verdict. Ariz. R. Crim. P. 24.1(b) (2017). When a defendant files a motion for new trial more than 10 days after the court announces the verdict, the trial court should deny the motion without reaching the merits. *See State v. Fitzgerald*, 232 Ariz. 208, 213, ¶ 22 (2013); *see also* Ariz. R. Crim. P. 24.1(b) (2018). Here, the verdict was returned on March 8, 2017. The deadline for a motion for new trial was March 20, *see* Ariz. R. Crim. P. 1.3(a), but Young filed his motion on March 23. The court properly denied the motion.

CONCLUSION

¶24 We affirm Young's convictions and resulting sentences.



AMY M. WOOD • Clerk of the Court
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