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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MIGUEL MARTINEZ, JR., *Appellant*.

No. 1 CA-CR 17-0641
FILED 11-27-2018

Appeal from the Superior Court in Maricopa County
No. CR 2015-139127-001
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Nicholas Chapman-Hushek
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Edward F. McGee
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Paul J. McMurdie and Judge Kent E. Cattani joined.

C A M P B E L L, Judge:

¶1 Miguel Martinez Jr. appeals his conviction and sentence for aggravated robbery. He argues he was denied his constitutional right to a fair trial as well as the protection of Rule 608 of the Arizona Rules of Evidence when the superior court allowed a police officer to testify while wearing a bullet-proof vest, firearm, and “police”-emblazoned clothing during trial. For the following reasons, we disagree and affirm.

BACKGROUND¹

¶2 One afternoon in Phoenix, a man was parking his car at his apartment complex when Martinez and an accomplice parked behind him in a pickup truck. When the man got out of his car, Martinez and the accomplice approached, started punching and pushing the man, took his smartphone, and fled. Martinez was later arrested by Officer Lewis and charged with aggravated robbery.

¶3 During trial, Martinez objected to Officer Lewis wearing a bullet-proof vest and firearm while appearing as a witness on behalf of the State. He argued that Officer Lewis appearing with the vest and firearm was unfairly prejudicial and created an environment detrimental to his defense. The court overruled the objection, explaining, “My position is that I do not require officers to check their firearms . . . particularly when it’s only one officer. . . . I’m not going to require that he check his weapon or change his clothing. But I think it’s a good issue to have somebody talk about down the road.” The prosecutor then confirmed that he had asked Officer Lewis to come to court dressed exactly as he was on the day he arrested Martinez.

¶4 The jury ultimately found Martinez guilty as charged. Following an aggravation phase, the jury found the State had proven the

¹ We view the evidence in the light most favorable to sustaining the jury’s verdict. *State v. Miles*, 211 Ariz. 475, 476, ¶ 2 (App. 2005).

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aggravating circumstances of the receipt of pecuniary value, the presence of an accomplice, and physical, emotional, or financial harm to the victim, but found the State had not proven the aggravating circumstance of the threatened infliction of serious injury.

DISCUSSION

¶5 On appeal, Martinez argues the superior court abused its discretion by allowing Officer Lewis to appear in his police attire, including his bullet-proof vest and firearm. He contends that this outfit enhanced Officer Lewis's credibility as a witness—placing the prestige of the government behind him and violating Rule 608 of the Arizona Rules of Evidence—and improperly signaled to the jury that Martinez was dangerous. We disagree.

¶6 We review for an abuse of discretion the trial court's decision to allow Officer Lewis to testify while wearing his bullet-proof vest and firearm. *Cf. State v. Sucharew*, 205 Ariz. 16, 21, ¶ 6 (App. 2003) ("The trial court has full discretion in the conduct of the trial, and that discretion will not be overturned on appeal absent a clear showing of an abuse of discretion."); *State v. Garza*, 216 Ariz. 56, 66, ¶ 37 (2007) ("We review evidentiary rulings for an abuse of discretion.").

¶7 "Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial." *Holbrook v. Flynn*, 475 U.S. 560, 567, 571 (1986) (holding that a prisoner was not denied his right to a fair trial when customary courtroom security was supplemented by four uniformed state troopers) (citation omitted); *see also Patterson v. Colorado*, 205 U.S. 454, 462 (1907) ("[C]onclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence . . ."). When a courtroom arrangement is challenged as inherently prejudicial, however, the relevant question is whether "an unacceptable risk is presented of impermissible factors coming into play." *Holbrook*, 475 U.S. at 566-67 (citation omitted).

¶8 Impermissible prosecutorial vouching occurs "where the prosecutor places the prestige of the government behind its witness." *State v. Vincent*, 159 Ariz. 418, 423 (1989) (noting that a prosecutor stating "the State wouldn't have put [a witness] on the witness stand if [it] didn't believe

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every word out of his mouth” constituted impermissible vouching). Here, however, Martinez’s assertion that Officer Lewis’s vest and gun afforded him enhanced credibility and placed the prestige of the government behind him is speculative. Officer Lewis testified in his capacity as a police officer about his involvement in Martinez’s case; in other words, the fact that Officer Lewis was a police officer was not hidden from the jury or left to be inferred from his clothing and equipment alone. Nor was the jury left to wonder why Officer Lewis was appearing with his bullet-proof vest and firearm: During trial, he testified that he was “dressed just like this” on the day he arrested Martinez and was wearing “the exact same vest [he] was wearing that day.” Furthermore, the court instructed the jury: “The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.” We presume that jurors follow the trial court’s instructions, *State v. Newell*, 212 Ariz. 389, 403, ¶ 68 (2006), and detect no other impermissible factors that increased Officer Lewis’s credibility or placed the prestige of the government behind him.

¶9 Similarly, Martinez’s argument that Officer Lewis’s vest and gun bolstered his credibility in violation of Rule 608 of the Arizona Rules of Evidence is without merit. Pursuant to Rule 608(b), “extrinsic evidence is not admissible to prove specific instances of a witness’s conduct in order to attack or support the witness’s character for truthfulness.” Again, Officer Lewis’s status as a police officer and the fact that he wore the same bullet-proof vest and firearm when he arrested the defendant were made clear to the jury and proved no specific instance of conduct inherently supporting his credibility.

¶10 Finally, Martinez’s argument that Officer Lewis’s vest and gun “telegraphed to the jury that [Martinez] was so dangerous that all others attending court proceedings in connection with his case needed armed protection from him” is again speculation. Nothing in the record indicates either that Officer Lewis consistently stationed himself within close enough proximity to Martinez to appear as if he were providing extra courtroom security, or that Martinez was a particularly dangerous defendant. Further, the jury’s finding that the State had not proven the aggravating circumstance of “threatened infliction of serious injury” suggests that the jury did not unduly infer a heightened level of dangerousness of Martinez. Cf. *State v. Herrera*, 232 Ariz. 536, 548, ¶ 32 (App. 2013) (“[T]he fact that the jury did not find [the defendant] guilty of all charges suggests it had not been so affected by the evidence of other acts

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that the guilty verdicts it rendered were the result of emotion, sympathy or horror.") (citation omitted).

¶11 We detect no unacceptable risk that Officer Lewis's vest and gun inherently prejudiced Martinez by making him seem more dangerous or by boosting Officer Lewis's credibility. Therefore, we cannot say the trial court abused its discretion.

CONCLUSION

¶12 For the foregoing reasons, we affirm.



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