

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

ANTHONY MICHAEL COLELLA, JR.,  
*Appellant.*

Nos. 1 CA-CR 19-0673  
1 CA-CR 19-0674  
1 CA-CR 19-0675  
(Consolidated)  
FILED 12-1-2020

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Appeal from the Superior Court in Mohave County  
S8015CR201800797, S8015CR201801180, S8015CR201801921  
The Honorable Derek C. Carlisle, Judge

**AFFIRMED**

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COUNSEL

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

Janelle A. McEachern, Chandler  
*Counsel for Appellant*

**MEMORANDUM DECISION**

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge D. Steven Williams and Judge David D. Weinzweig joined.

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**T H U M M A**, Judge:

¶1 Defendant Anthony Michael Colella, Jr., appeals his convictions and resulting prison sentences for eight counts of misconduct involving weapons, all Class 4 felonies. Because he has shown no error, his convictions and sentences are affirmed.

**FACTS AND PROCEDURAL HISTORY**

¶2 In October 2018, Colella pled guilty to three felonies and was placed on three years of supervised probation for each conviction. Three weeks after his probation began, a probation officer's search of Colella's truck revealed a homemade firearm suppressor concealed under the center console. A search warrant for Colella's house was obtained and executed later that day. That search revealed seven handguns and long guns (including an assault rifle), two more homemade suppressors, more than 100 rounds of ammunition, a bullet-proof vest and various other gun-related items. As a prohibited possessor, Colella was indicted on ten counts of misconduct involving weapons, all Class 4 felonies.

¶3 At trial, one of the officers who searched Colella's house testified about his involvement in the search. At the end of his testimony, the following exchange took place:

[Prosecutor] Okay. So you basically searched the house and found the items of evidence and that concluded your role?

[Officer] Well I packaged items of evidence as well.

Q. Okay. But you didn't do any further investigation?

A. I believe we attempted to interview Mr. Colella. However, he declined.

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Colella objected outside the presence of the jury, the court sustained the objection and the court then instructed the jury to “disregard the witness’ last statement.” After the jury left for the day, Colella moved for a mistrial, arguing the officer had irreversibly prejudiced the proceedings by commenting on his right to remain silent. The court denied Colella’s motion, noting that a mistrial is the most extreme remedy available and the disputed statement had been struck from the record. The court also instructed the prosecution not to reference the statement in argument or elicit similar evidence from other witnesses.

¶4 At the close of the evidence, the jury found Colella guilty on eight of nine remaining charges.<sup>1</sup> His probation was revoked and he was sentenced to consecutive, mitigated terms of incarceration for those convictions as the result of his October 2018 plea, totaling 2.5 years in custody. Given his historical prior felony convictions, he was sentenced as a Category 3 repetitive offender to presumptive, 10-year prison terms for all eight of the misconduct involving weapons convictions. These 10-year prison terms were imposed consecutively to his November 2018 convictions and were imposed both concurrently and consecutively to each other. In all, Colella was sentenced to serve 32.5 years in custody and was given appropriate presentence incarceration credit.

¶5 This court has jurisdiction over Colella’s timely appeal pursuant to Article 6, Section 9 of the Arizona Constitution and Ariz. Rev. Stat. (A.R.S.) §§ 12-120.21(A)(1), 13-4031 and 13-4033(A) (2020).<sup>2</sup>

### DISCUSSION

¶6 Colella argues the court erred in denying his motion for mistrial because “it would be impossible for the jury not to have inferred guilt” based on the officer’s testimony that Colella refused a police interview.

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<sup>1</sup> The court granted Colella’s Rule 20 motion for judgment of acquittal on Count 5 before presenting the case to the jury.

<sup>2</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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¶7 Because the superior court is in the best position to determine the effect of a witness's remarks on the jury, this court reviews the denial of a motion for mistrial for an abuse of discretion. *State v. Koch*, 138 Ariz. 99, 101 (1983). A court must grant a mistrial only when the improper testimony is so prejudicial that it is likely to lead the jurors to convict a defendant that they otherwise would have acquitted. *See State v. Prince*, 204 Ariz. 156, 160 ¶ 20 (2003); *State v. Celaya*, 135 Ariz. 248, 256 (1983). Otherwise, especially when the strength of the evidence substantially outweighs the potential prejudice of the inadmissible statement, *State v. Hoskins*, 199 Ariz. 127, 143 ¶ 58 (2000); *State v. White*, 160 Ariz. 24, 34 (1989), the proper remedy is to strike the improper testimony and instruct the jury to disregard it, *State v. Herrera*, 203 Ariz. 131, 135 ¶ 8 (App. 2002); *State v. Jones*, 197 Ariz. 290, 305 ¶ 34 (2000).

¶8 Colella has not shown the superior court erred in denying his motion for mistrial. The jury should not have heard that Colella declined a police interview, but the improper remark was brief and essentially unsolicited. The court immediately sustained Colella's objection, struck the testimony and instructed the jury to disregard it. *See, e.g., Greer v. Miller*, 483 U.S. 756, 764 n.5 (1987) ("[T]he proper and immediate action by the trial court . . . indicates that [the defendant's] silence was not used against him . . ."). Jurors are presumed to follow the court's instructions, *see State v. Dann*, 205 Ariz. 557, 571 ¶ 48 (2003), and Colella does not suggest they failed to do so here. Moreover, given the trial evidence, there is no reasonable probability the verdict would have been different had the improper statement not been made. Given the court's prompt and effective corrective measures, and the substantial evidence of guilt, Colella has not shown the court abused its discretion in denying his motion for mistrial.

CONCLUSION

¶9 Colella's convictions and resulting sentences are affirmed.



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