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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0409
)
Appellee,) DEPARTMENT B
)
v.) MEMORANDUM DECISION
)
ADOLPH VALDEZ PERALES, JR.,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-124640-001 DT

The Honorable John R. Ditsworth, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Louise Stark, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Adolph Valdez Perales, Jr. ("Perales") appeals from his conviction and sentence for one count of aggravated assault, a class 3 dangerous felony; one count of discharging a firearm within city limits, a class 6 dangerous felony; one count of misconduct with weapons, a class 4 felony; and one count of disorderly conduct, a class 6 dangerous felony. Perales was sentenced on May 27, 2009 and timely filed a notice of appeal on May 28, 2009. Perales' counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after searching the entire record on appeal, she finds no arguable ground for reversal. Perales was granted leave to file a supplemental brief *in propria persona* on or before March 8, 2010, and did not do so. He did raise four issues on appeal through his counsel.

¶2 We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A)(1) (2010). We are required to search the record for reversible error. *Leon*, 104 Ariz. at 299, 451 P.2d at 880. Because we find no such error, we affirm.

Facts and Procedural Background

¶3 On April 19, 2008, A.M. allowed M.L. to take his truck for a test drive. While on that test drive, M.L. almost got

into an accident with a gold Acura at the corner of Tonto Street and 40th Avenue. A.M. witnessed this near accident from just five meters away from the intersection. A.M. then approached the truck and was "maybe three or two meters" from M.L. Shortly after the near accident, an argument ensued between M.L. and the driver of the Acura, who M.L. and A.M. later identified as Perales. Perales got out of the Acura while continuing to argue with M.L. Although M.L. denied getting out of the truck, A.M. testified that M.L. and Perales were out of their respective vehicles and arguing to such an extent A.M. believed that a physical fight would result. Ultimately, Perales reached back into his car, grabbed a gun, pointed in the direction of M.L. for five seconds, and pulled the trigger. Luckily, the shot missed M.L. and instead hit the side of the truck. Not surprisingly, this resulted in M.L. fearing for his life and A.M. worrying about the safety of M.L.

¶4 A.M. and M.L. were not the only witnesses to this chain of events. E.M. was driving through the intersection when the two men were arguing. Through her rearview mirror, she witnessed the man from what she described as a "beige" car point a gun in the direction of the truck and shoot twice. Soon after, she called 911 to report the incident. Meanwhile, M.O. was cleaning a unit within his apartment complex that was located near the intersection. After hearing "hard braking,"

M.O. looked towards the intersection and saw a small sports car and white truck. M.O. also saw two men arguing and the driver of the sports car grab a gun and shoot. M.O. then rushed to his truck, called 911 to report the incident, and followed the sports car until it eventually pulled into a driveway. At this point, M.O. watched as a police officer stopped the vehicle. Later, after Perales was in custody, M.O. identified Perales as the shooter and driver of the small sports car.

¶15 Officer J.C. stopped this beige/gold car as it turned into a driveway because the car matched the description from an emergency traffic call. As Perales was getting out of the vehicle, Officer J.C. commanded Perales to get down. After detaining Perales, the Officer feared that a family member in the house may exit and "grab a gun, if there was one" in the vehicle. Officer J.C. first looked into the vehicle from the passenger side and then from the driver side, where the door was ajar. From the driver side he could see two handguns between the center consol and the driver's seat. He did not immediately remove the guns.

¶16 Eventually, Officer J.I. took Perales to the South Mountain precinct. Before interviewing Perales, Officer J.I. testified that he read Perales his Miranda rights. Officer J.I. further testified that during this interview, Perales admitted shooting his Sky handgun at the scene.

¶7 At the conclusion of the trial, a twelve-member jury convicted Perales on all four counts. At sentencing, the judge failed to explicitly offer Perales an opportunity to speak, but Perales' counsel did not object nor request such an opportunity. Moreover, when the trial judge asked defense counsel if there was "anything further," defense counsel replied, "No, your Honor."

Discussion

¶8 Perales through his counsel raises four issues. They are without merit.

1. Perjury by a Male Witness - A.M.

¶9 The jury was able to evaluate the testimony of A.M. and all other testifying witnesses. Accordingly, there was no fundamental error.

2. Prosecutorial Misconduct

¶10 Prosecutorial misconduct "is not merely the result of legal error, negligence, mistake, or insignificant impropriety, but, taken as a whole, amounts to intentional conduct which the prosecutor knows to be improper and prejudicial, and which he pursues for any improper purpose with indifference to a significant resulting danger of mistrial." *State v. Aguilar*, 217 Ariz. 235, 238-39, ¶ 11, 172 P.3d 423, 426-27 (App. 2007) (quoting *Pool v. Superior Court*, 139 Ariz. 98, 108-09, 677 P.2d 261, 271-72 (1984)). There is nothing in the record to support

a finding of prosecutorial misconduct. Accordingly, there is no fundamental error.

3. *Illegal Search and Seizure of the Car*

¶11 "Under the 'automobile exception' to the Fourth Amendment warrant requirement, law enforcement officers can search a vehicle lawfully in their custody if probable cause exists to believe that the vehicle contains contraband, even in the absence of exigent circumstances." *State v. Reyna*, 205 Ariz. 374, 374, ¶ 1, 71 P.3d 366, 366 (App. 2003). Here, the car matched the description from the emergency traffic call and Officer J.C. could see two handguns from outside the car. Accordingly, Officer J.C. had probable cause and thus, there was no fundamental error.

4. *Coercion*

¶12 Perales does not suggest what he means by coercion. If he is referring to his admission during the police interview, we see no basis to assert it was coerced. Nevertheless, even if there had been coercion (and we discern none), there was no prejudice because there was substantial evidence to convict Perales without the admission. There were four witnesses that testified that Perales shot a handgun in the direction of M.L.; two guns were found on Perales; and gun residue was found on Perales' left hand. See *State v. Henderson*, 210 Ariz. 561, 567,

¶¶ 19-20, 115 P.3d 601, 607 (2005) (holding defendant must establish both fundamental error and prejudice).

Disposition

¶13 In addition to addressing the foregoing issues raised by Perales, we have reviewed the record and have found no meritorious grounds for reversal of Perales' conviction or for modification of the sentence imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Perales was present at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Accordingly, we affirm.

¶14 After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform Perales of the status of the appeal and his future options, unless counsel's review reveals 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). Perales has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

PETER B. SWANN, Judge