

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

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,)	No. 1 CA-CR 09-0618
)	
Appellee,)	DEPARTMENT D
)	MEMORANDUM DECISION
v.)	
)	(Not for Publication -
RAMON DARNELL STEWART,)	Rule 111, Rules of the
)	Arizona Supreme Court)
Appellant.)	
)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. 2008-115465-001 SE

The Honorable Connie Contes, Judge

CONVICTION AND SENTENCE AFFIRMED

Terry Goddard, 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 Peg Green, Deputy Public Defender	
Attorneys for Appellant	

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969), following Ramon Darnell Stewart's conviction on April 2, 2009 of one count of second-degree murder. Stewart's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Stewart was given the opportunity to file a supplemental brief but did not do so. Stewart requested his counsel raise three issues, which we address below. Counsel asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Stewart's convictions and sentences.

FACTUAL AND PROCEDURAL HISTORY

¶12 J.L. was shot and killed in Mesa one night in July 2006.¹ While he was driving, someone waived at him from the median to pull over, and he did. J.L.'s fiancé was following J.L. in her car until he pulled off the road. After J.L. pulled over to talk to the man, he called his fiancé and spoke to her briefly. When he did not arrive home, J.L.'s fiancé attempted to call him three times but received no answer. She decided to return to where he had pulled off the road. There she found J.L. lying unresponsive in front of his car.

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Stewart. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶13 A pizza delivery driver who was driving by the location at which J.L. had pulled over testified he heard two "bangs" and saw "the victim fall to the ground." The police found no evidence that J.L. had any weapons with him at the time or that anyone had been in his car with him. The last outgoing call from J.L.'s cell phone was to 9-1-1.

¶14 Police received an anonymous tip that Stewart was involved in the shooting. They found a phone number in J.L.'s cell phone under the name "Ramon"; the number was identical to Stewart's phone number except the last two numbers were transposed. A police detective testified Stewart lived less than one mile from the crime scene. Police interviewed Stewart for the first time in August 2006, and he admitted knowing J.L. In April 2007, police interviewed Stewart's friend Norberto R., who, in exchange for the police dropping drug charges against him, provided information regarding the murder weapon and discussions he had with Stewart about the shooting.

¶15 Police interviewed Stewart again in March 2008. A detective testified that the interview began with police reading a *Miranda*² warning to Stewart. The detective testified Stewart said he could not admit killing J.L. because if he did, he would not be able to avoid punishment. A video of the interview was

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

played for the jury. In addition, the booking officer at the jail testified that as he was processing Stewart into detention, Stewart spontaneously confessed to the shooting.

¶16 Norberto R. testified Stewart had told him about the murder and "indirectly" told him he was the shooter. He further testified he had returned the murder weapon to Stewart about two weeks prior to the shooting and that Stewart asked him questions about whether "they would find prints on the gun if he had wiped it down a certain way." Stewart testified and admitted being present at the shooting. He also testified he felt "a little responsible" because he "could have prevented the whole situation."

¶17 Stewart was convicted of one count of second-degree murder, and the jury found that it was a dangerous offense. He was sentenced to the maximum allowable term of 22 years' imprisonment. Stewart timely appealed. 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 -4033 (2010).

DISCUSSION

A. Issues Raised by Stewart.

¶18 Stewart requested his attorney raise the following issues: (1) he did not have a jury of his peers because there

were no African-Americans on the jury; (2) he never told the police he committed the crime, there is no witness to the crime, and he told the police someone else committed the crime (we take these arguments together as a contention that the verdict was not supported by the evidence); and (3) the court should have allowed evidence of J.L.'s blood alcohol level. We address each issue in turn.

1. Jury of peers.

¶9 A criminal defendant has the right to a "public trial by an impartial jury of the county in which the offense is alleged to have been committed." Ariz. Const. art. 2, § 24. The State may not intentionally preclude members of the defendant's race from being on a jury. *Batson v. Kentucky*, 476 U.S. 79, 85 (1986).

¶10 Stewart did not object to the composition of the jury at trial, so we review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). The constitution does not guarantee a jury of any specific composition. *State v. Doerr*, 193 Ariz. 56, 65, ¶ 40, 969 P.2d 1168, 1177 (1998). "Mere observation that a particular group is underrepresented on a particular panel does not support a constitutional challenge." *State v. Lee*, 114 Ariz. 101, 103, 559 P.2d 657, 659 (1976).

¶11 Stewart does not argue the venire panel was not a fair cross-section of the community, nor does he argue the State intentionally precluded African-Americans from the jury panel. Our review of the record discloses no evidence of the race of any member of the venire panel or the jury. Therefore, we find no error.

2. Sufficiency of the evidence.

¶12 There was sufficient circumstantial evidence for the jury to convict Stewart. "Arizona law makes no distinction between circumstantial and direct evidence." *State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993).

¶13 Although Stewart did not directly admit that he shot J.L., he stated during his interview with the police that there was only one other person with him at the time of the shooting, and that person did not shoot J.L. He testified that he felt "a little responsible for the whole thing because I actually witnessed it." Further, Norberto R. testified that the gun belonged to Stewart, and Stewart admitted handing the gun to the other person present at the shooting after the shooting occurred. Stewart "indirectly" told Norberto that he had committed the murder and admitted to the booking officer that he had committed the crime. This evidence, with other evidence

recounted above, constituted sufficient evidence for the jury to convict Stewart.

3. Evidence of J.L.'s blood-alcohol level.

¶14 The court denied Stewart's request to offer evidence of J.L.'s blood-alcohol level because it concluded the evidence was not relevant and might mislead the jury. "We review trial court decisions admitting or excluding evidence for abuse of discretion." *State v. Hampton*, 213 Ariz. 167, 178, ¶ 45, 140 P.3d 950, 961 (2006).

¶15 All relevant evidence is admissible so long as it is not specifically excluded by statute, rule or constitution. Ariz. R. Evid. 402. "Evidence which is not relevant is not admissible." *Id.* Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401.

¶16 Neither on appeal nor in the superior court has Stewart explained how J.L.'s blood-alcohol level might be relevant to whether Stewart shot J.L. Therefore, we conclude that the superior court did not err by refusing to admit this evidence.

B. Fundamental Error Review.

¶17 The record reflects Stewart received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings. Pursuant to Arizona Rule of Evidence 609, the court held a hearing on Stewart's prior convictions and sanitized his prior felony conviction.

¶18 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members with 2 alternates. The court properly instructed the jury on the elements of the charge, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing and imposed a legal sentence on the charges arising out of the crimes of which Stewart was convicted.

CONCLUSION

¶19 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶20 After the filing of this decision, defense counsel's obligations pertaining to Stewart's representation in this

appeal have ended. Defense counsel need do no more than inform Stewart of the outcome of this appeal and his future options, unless, upon review, counsel finds "an issue appropriate for submission" to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Stewart has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Stewart has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/
PATRICIA A. OROZCO, Presiding Judge

/s/
JON W. THOMPSON, Judge