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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 06/30/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

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

STATE OF ARIZONA,

Appellee,

v.

CHRISTOPHER LEE WILLIAMS,

Appellant.

1 CA-CR 09-0768

DEPARTMENT D

MEMORANDUM DECISION

(Not for Publication -
Rule 111, Rules of the
Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-153127-001 SE

The Honorable Kristin Hoffman, Judge

AFFIRMED AS MODIFIED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Sarah E. Heckathorne, Assistant Attorney General
Attorneys for Appellee

Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Presiding Judge

¶1 Christopher Williams appeals his sentences and convictions for aggravated assault and misconduct involving

weapons. For the reasons that follow, we affirm the judgment of the trial court as modified.

FACTS AND PROCEDURAL HISTORY

¶2 "On appeal, we view the facts in the light most favorable to upholding the verdict and resolve all inferences against the defendant." *State v. Klokic*, 219 Ariz. 241, 242 n.1, ¶ 2, 196 P.3d 844, 845 n.1 (App. 2008). On August 16, 2008, M was working as a bouncer at a nightclub. A fight broke out, security guards attempted to break the fight up and M got into an altercation with three men. M hit one man and was hit with a chair by another. After the fighting stopped and people exited the club, M went out to the parking lot to "make sure everything [was] fine outside." M saw one of the men who was involved in the fight open the trunk of a car and then M heard a gunshot. M ran back into the club to the kitchen. Believing the men left, M stepped out of the kitchen only to be confronted by Williams holding a gun. Williams told M that he was "about to kill [him]." M said he thought he was "about to die" and that he saw the "death light." M "just froze up" thinking "what are my chances of getting shot?" M eventually dove to the ground and heard two shots fired. After M got up, he observed Williams "just walking out [of] the club, just nonchalantly."

¶3 During his interview with police, Williams admitted shooting a gun in the club. Williams explained shooting at M by

saying that he "felt that [M] had no right putting his hands on [him], you know." Williams claimed that one of the club-goers, Terrence "threw [him] the gun" once they were outside the club. Williams also claimed that prior to throwing him the gun, Terrence shot toward the building.

¶4 At trial, Detective M, who conducted Williams' initial interview, testified that Williams identified an individual he claimed was Terrence out of a photo line-up. Williams urged that he acted under duress when he went back into the club and shot at M. He claimed that Terrence told him he needed to shoot M or Terrence would shoot Williams himself. In order to identify the person who fired the shot outside of the club, Detective M also showed this lineup to J.O., A.F. and H.G., witnesses to the incident. None of the witnesses identified Terrence out of the photo line-up as the outside shooter.

¶5 The State indicted Williams for attempted first degree murder, a class 2 dangerous felony and charged aggravated assault, a class 3 dangerous felony in the alternative. Williams was also indicted for misconduct involving weapons, a class 4 felony. The State alleged aggravating factors and two prior felony convictions. After a jury trial, Williams was found guilty of aggravated assault and misconduct involving weapons. Williams was given a presumptive ten-year sentence for misconduct involving weapons and a slightly aggravated fifteen-

year sentence for aggravated assault. The court ordered the sentences to run concurrently and gave Williams 400 days of presentence incarceration credit. Williams timely appealed.

DISCUSSION

¶16 Williams argues that a portion of Detective M's testimony was inadmissible hearsay that violated his confrontation rights. Specifically, Williams argues that Detective M's testimony regarding the "information obtained from the witnesses concerning [Terrence] violated the Confrontation Clause." The State agrees that the trial court improperly admitted hearsay evidence, however, it contends that this error was harmless in light of the overwhelming evidence of Williams' guilt.

¶17 We need not resolve whether this testimony was erroneously admitted hearsay or violated Williams' confrontation rights because "Confrontation Clause and hearsay rule violations are subject to harmless error analysis." *State v. Bocharski*, 218 Ariz. 476, 486, ¶ 38, 189 P.3d 403, 413 (2008). "Error, be it constitutional or otherwise, is harmless if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict." *State v. Anthony*, 218 Ariz. 439, 446, ¶ 39, 189 P.3d 366, 373 (2008), quoting *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993). "The inquiry . . . is not whether, in a trial that occurred without the error, a guilty

verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.'" *Anthony*, 218 Ariz. at 446, ¶ 39, 189 P.3d at 373 (citation omitted).

¶18 We must determine whether the State has demonstrated that the guilty verdict against Williams was "surely unattributable" to Detective M's testimony that three witnesses, J.O., A.F. and H.G., did not identify Terrence out of a photo line-up as the outside shooter. *See id.* The jury found Williams guilty of aggravated assault and misconduct involving weapons. A person commits aggravated assault by "[i]ntentionally placing another person in reasonable apprehension of imminent physical injury" and "uses a deadly weapon or dangerous instrument." Ariz. Rev. Stat. ("A.R.S.") § 13-1203(A)(2) (2010), -1204(A)(2) (Supp. 2010).¹ To be guilty of a misconduct of weapons charge, a person must knowingly possess "a deadly weapon or prohibited weapon [when] such a person is a prohibited possessor." A.R.S. § 13-3102(A)(4) (Supp. 2010).

¶19 Williams' parole officer testified Williams was on parole at the time of the incident. One of the conditions of his parole was that he was not to possess a firearm. By admitting to shooting a gun in the bar, Williams admitted to possessing a

¹ Unless otherwise specified, we cite to the current versions of the applicable statutes when no revisions material to this decision have since occurred.

firearm. We can say beyond a reasonable doubt that the three witnesses' non-identification of Terrence as the outside shooter did not contribute to the guilty verdict for misconduct involving weapons. Williams' own admission and the testimony of his parole officer would have led the jurors to determine Williams was guilty of misconduct involving weapons.

¶10 In his interview with Detective M, Williams admitted he re-entered the bar because he "felt that the bouncer had no right putting his hands on [him]." Further, Williams, a prohibited possessor, admitted to firing a gun, a dangerous instrument, while in the bar. See A.R.S. § 13-3101(A)(1) & (A)(4) (2010). M testified that when Williams pointed the gun at him, M "just froze up" because he said he thought he was "about to die" and that he saw the "death light." Again, Williams' own admissions in addition to M's testimony satisfied the statutory requirements of aggravated assault. We can say beyond a reasonable doubt that Detective M's testimony regarding the three witnesses' non-identification of Terrence did not affect or contribute to Williams' guilty verdict for aggravated assault.

Sentencing order correction

¶11 Our review of the record indicates that at sentencing, the judge stated that Williams had been found guilty of aggravated assault and the jury found the offense to be

dangerous. The sentencing order, however, incorrectly states that Williams' conviction for aggravated assault is non-dangerous. Therefore, we modify the sentencing order dated September 28, 2009 to reflect that Williams' conviction for aggravated assault, a class three felony, is a dangerous offense.

CONCLUSION

¶12 The record before us establishes beyond a reasonable doubt that Detective M's statements did not affect the verdict. Consequently, we have no basis for disturbing the conviction. See *State v. Green*, 200 Ariz. 496, 501, ¶ 21, 29 P.3d 271, 276 (2001) (court will not reverse conviction on appeal "if an error is clearly harmless"), quoting *State v. Doerr*, 193 Ariz. 56, 64, ¶ 33, 969 P.2d 1168, 1176 (1998). For the foregoing reasons, we affirm the judgment of the trial court as modified.

/s/
PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/
JOHN C. GEMMILL, Judge

/s/
PHILIP HALL, Judge