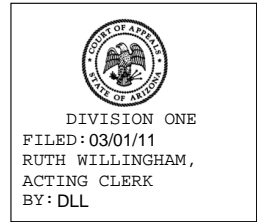


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0266
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication
JOHN REAVES,) - Rule 111, Rules of
) the Arizona Supreme
Appellant.) Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR-2008-147289-001 DT

The Honorable Steven P. Lynch, Commissioner

AFFIRMED

Thomas C. Horne, 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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

John Reaves
In Propria Persona Tempe

H A L L, Judge

¶1 Defendant appeals from his conviction and the sentence imposed. For the reasons set forth below, we affirm.

¶12 Defendant's appellate 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 that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. The brief also advised that defendant asked the court to consider issues on appeal. This court granted defendant an opportunity to file a supplemental brief, which he did. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). He raises two issues: (1) unconstitutional racial composition of the jury; and (2) prosecutorial misconduct.

¶13 We review for fundamental error, which is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quotation omitted). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Alvarado*, 219 Ariz. 540, 541, ¶ 2, 200 P.3d 1037, 1038 (App. 2008). Finding no reversible error, we affirm.

¶14 Defendant was indicted for one count of criminal trespass in the first degree, a class six felony.

¶15 The following evidence was presented at trial. On July 26, 2008, M.B. and her friends were at M.B.'s apartment

celebrating her 21st birthday. At approximately midnight, M.B. and her friends left the apartment, locking the doors behind them.

¶16 Approximately three-and-a-half hours later, M.B. and her friends returned to the apartment and found the garage door open. Initially, M.B. assumed that her roommate was home and had left the garage door open for them.

¶17 M.B. entered the apartment and found defendant in the kitchen. She "asked him who he was and why he was standing in my kitchen." Defendant responded that he "came because I heard you were having a party, and the door was locked, but I know security so I came in the back." When M.B. "asked him to leave," defendant "opened the refrigerator to take his bag with his beers out, and he finally left through the door" and "stood outside the front door, banging his head against the wall."

¶18 M.B. noticed that defendant had "cleaned up" the kitchen. The cups were stacked, bottles were taken out of the wine rack and different bottles put in, the glasses were moved in a circle and "it was very meticulously laid out." M.B. also found a note on her bed. The note listed her best friend's name and driver license number, her brother's godmother's name, and another friend's name and driver license number. The note referred to them as "lucky ladies" and stated: "Hope you all are doing great. I knocked on your door to say hello; knowing a

thing or two about security, I thought I might try your back. Luckily I'm honest. I'm an honest guy. Just to let you guys know, I got your back, not the laptop and other stuff."

¶9 M.B. reported the incident to the police and Officer R.C. of the Tempe Police Department responded to the call. The officer observed defendant standing outside the residence with Officer N.W. The officers placed defendant under arrest.

¶10 Defendant testified that, on the evening of July 26, 2008, he had been at the apartment complex pool with an old acquaintance and three other females. He stated that he was invited to a party at M.B.'s apartment and he left the pool area and went to his father's apartment to get two beers to bring to the party. Defendant testified that he knocked on M.B.'s door and "it was open." He went inside and said "[h]ello, is anyone home?" Defendant searched the apartment, along with the outside patio and found no one home. He remained inside the apartment and decided to clean up.

¶11 After a three-day trial, the jury found defendant guilty of one count of criminal trespass in the first degree. The trial court sentenced defendant to three years probation.

¶12 Defendant timely appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

¶13 Defendant asserts that he was not tried by a jury of his peers because the jury was "stacked" with white jurors. Defendant does not claim that any prospective minority jurors were improperly dismissed; rather, he argues that the jury selection process is unfair and did not include a sufficient number of minorities in the "jury selection pool."

¶14 "[T]o establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." *Duren v. Missouri*, 439 U.S. 357, 363-64 (1979). In *Duren*, the United States Supreme Court applied this test and concluded that the defendant proved through statistical evidence that Missouri's statute permitting women to opt-out of jury service resulted in the systematic exclusion of women from jury panels. *Id.* at 364-66.

¶15 Unlike *Duren*, however, defendant here has made "no prima facie showing of an infringement of his constitutional right to a jury drawn from a fair cross section of the community." *Id.* at 368. Indeed, although defendant claims the "court system . . . stack[s]" white jurors, he has provided no

evidence that the representation of minorities in venires drawn from Maricopa County is not fair and reasonable to the number of such persons in the community or identified any manner in which minorities are systematically excluded. Moreover, defendant has not attempted to demonstrate that the actual jurors who served on the panel were unfair or impartial, other than a general claim of implicit "latent" racial prejudice, and our review of the record does not reflect any impropriety in the jury selection process or evidence that the impaneled jurors were not fair and impartial. *State v. Morris*, 215 Ariz. 324, 334-35, ¶ 43, 160 P.3d 203, 213-14 (2007) (explaining a verdict is reversed for errors in selecting the jury only if the defendant can "show actual prejudice, i.e., that the jurors who actually served were not fair and impartial"). Therefore, defendant's claim is without merit.

¶16 Defendant next contends that the State engaged in prosecutorial misconduct. First, he claims that the prosecutor has vengefully "stalked and pursued" him in three separate cases. Defendant has failed to identify any evidence in the record that would support such a claim, and our review of the record reveals none. Second, defendant argues that the prosecutor engaged in prosecutorial misconduct during its closing argument by presenting a "coded . . . emotional appeal to an entrenched racial bias."

¶17 To prevail on a claim of prosecutorial misconduct, a defendant must demonstrate that the prosecutor's misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process," *State v. Hughes*, 193 Ariz. 72, 79, ¶ 26, 969 P.2d 1184, 1191 (1998) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)), and was "so pronounced and persistent that it permeate[d] the entire atmosphere of the trial." *State v. Rosas-Hernandez*, 202 Ariz. 212, 218-19, ¶ 23, 42 P.3d 1177, 1183-84 (App. 2002) (quoting *State v. Lee*, 189 Ariz. 608, 616, 944 P.2d 1222, 1230 (1997)). Prosecutorial misconduct constitutes reversible error only if (1) misconduct exists and (2) "a reasonable likelihood exists that the misconduct could have affected the jury's verdict, thereby denying defendant a fair trial." *State v. Anderson*, 210 Ariz. 327, 340, ¶ 45, 111 P.3d 369, 382 (2005) (citation omitted).

¶18 Defendant claims that the prosecutor's references to the feminine nature of the victim's apartment played to the jurors' fears of a "black man . . . in a condo of two white girls." Our review of the record reveals, however, that the prosecutor's comments relating to the feminine décor of the victim's apartment was in direct response to defendant's trial testimony that he mistakenly believed that he was in a male friend's apartment. We discern no inappropriate, racial

comments and defendant's claim of prosecutorial misconduct is without merit.

¶119 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offense for which he was convicted.

¶120 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant 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. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant 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.

CONCLUSION

¶21 For the foregoing reasons, we affirm defendant's conviction and sentence.

_____/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
LAWRENCE F. WINTHROP, Judge