

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



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FILED: 11/29/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

STATE OF ARIZONA, ) 1 CA-CR 10-0116  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) MEMORANDUM DECISION  
)  
EDWARD JOSEPH LAWTON, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2008-133101-001DT

The Honorable Warren J. Granville, Judge

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender Phoenix  
By Cory Engle, Deputy Public Defender  
Attorneys for Appellant

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H A L L, Judge

¶1 Defendant Edward Joseph Lawton appeals his convictions  
and sentences for second-degree murder and misconduct involving

weapons. He contends the trial court should have granted defense counsel's motion to withdraw from representation due to a conflict of interest that arose in conjunction with counsel's investigation into this case. In a related argument, Defendant asserts the trial court erred in ordering disclosure of evidence gained during the investigation. For the reasons that follow, we find no reversible error and therefore affirm.

#### **BACKGROUND**

¶2 In the evening of May 8, 2008, Defendant and his girlfriend, D., were standing in front of a convenience store when the victim and two other young men pulled into the parking lot to buy beer. After the victim entered the store, Defendant approached the passenger side of the vehicle and "for no reason"<sup>1</sup> angrily confronted R.N. who remained in the vehicle with the driver, J.S. Defendant returned to where D. was standing and then accosted the victim as he returned to the vehicle. When the victim was in the backseat, Defendant ran to the vehicle and lethally shot him in the head through an open window.<sup>2</sup> Defendant and D. separately fled on foot. The State subsequently charged

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<sup>1</sup> The record indicates Defendant did not know the men in the truck.

<sup>2</sup> We view the evidence in the light most favorable to sustaining the convictions and resolve all reasonable inferences against Defendant. *State v. Manzanedo*, 210 Ariz. 292, 293, ¶ 3, 110 P.3d 1026, 1027 (App. 2005).

Defendant with first-degree murder and two counts of misconduct involving weapons.<sup>3</sup>

¶13 Before trial, the State learned that potential trial witnesses believed Defendant's attorney and investigator were police officers when they interviewed the witnesses. The prosecutor questioned the defense investigator off the record in an attempt to learn more information about the interviews at issue, and defense counsel "invoked his 5th as well as [the investigator's] . . . ."

¶14 Concerned whether the trial could proceed with current defense counsel, the court asked the prosecutor the morning of trial whether she intended to charge defense counsel with impersonating a police officer, a class six felony.<sup>4</sup> See Arizona Revised Statutes (A.R.S.) section 13-2411. Although the prosecutor responded, "Based on what we know at this time, we are not going to prosecute [defense counsel] or [the investigator] for those crimes[,]" she could not unequivocally respond in the negative to the court's inquiry. Defense counsel

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<sup>3</sup> The superior court severed for a separate trial the misconduct charge that related to Defendant allegedly possessing a shotgun on May 28, 2008.

<sup>4</sup> The court referred to the offense as a class four felony. Although unlawfully impersonating a police officer is a class four felony under certain circumstances, it appears that the offense would be a class six felony if it were committed in the manner as purported in this case. See Ariz. Rev. Stat. § 13-2411(C) (2010).

noted he would have a conflict of interest with Defendant based on the possibility of being criminally charged in connection with this case, and he orally moved to withdraw.<sup>5</sup> Defendant, through counsel appointed specifically for the conflict of interest issue (Conflict Counsel), informed the court that he wanted to proceed to trial with appointed trial counsel. Conflict Counsel also informed the court that he had listened to the recordings of the defense interviews with the potential witnesses and determined there was nothing to support an allegation of impersonating a police officer.<sup>6</sup> The court continued trial to the following day, at which time defense counsel's motion to withdraw would be addressed. Over objection, the court ordered defense counsel to disclose the tape of his interview with R.N., apparently so the prosecutor

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<sup>5</sup> The court framed the conflict as follows:

Suppose witness said something exculpatory to [defense counsel] and/or [the investigator] that was not tape recorded. By disclosing the unrecorded statement, [defense counsel] and/or [the investigator] open themselves up to the circumstances outside of the recording. Thus, they have a Hobson's choice of withholding exculpatory information [sic] for their personal penal interest, or disclosing exculpatory information, to the detriment of their personal penal interest.

<sup>6</sup> According to the recordings, defense counsel and his investigator specifically informed the witnesses that they were "with the Public Defender's Office" and not police officers.

could categorically determine whether to commence criminal proceedings against defense counsel and the investigator.

¶15 At the following day's hearing, the State asserted that it would not prosecute defense counsel or Defendant's investigator in connection with the witness interviews. Based on this assertion and defense counsel's avowal that he would use his best efforts to represent Defendant, the court denied the motion to withdraw. Trial eventually commenced.

¶16 The jury could not agree on disposition of the first-degree murder charge, but it found Defendant guilty of the lesser-included offense of second-degree murder, a class one felony. The jury also found Defendant guilty of the misconduct offense, a class four felony. After finding Defendant had four historical priors, the court sentenced him to consecutive terms of twenty-two years and ten years respectively for the murder and misconduct convictions. Defendant appealed. We have jurisdiction pursuant to Article 6, section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010) and -4033(A)(1) (2010).

#### **DISCUSSION**

¶17 Defendant contends the trial court abused its discretion in denying counsel's motion to withdraw and in

ordering disclosure of R.N.'s recorded defense interview.<sup>7</sup> See *State v. Sustaita*, 183 Ariz. 240, 241, 902 P.2d 1344, 1345 (App. 1995) (decisions on motions to withdraw reviewed for abuse of discretion); *Osborne v. Superior Court In & For Pinal County*, 157 Ariz. 2, 3-4, 754 P.2d 331, 332-33 (App. 1988) (disclosure order reviewed for abuse of discretion). We disagree.

¶18 A criminal defendant has a constitutional right under the Sixth Amendment to representation by "an attorney with undivided loyalty." *Maricopa County Pub. Defender's Office v. Superior Court In & For County of Maricopa*, 187 Ariz. 162, 165, 927 P.2d 822, 825 (App. 1996). To prevail on a conflict of interest Sixth Amendment claim, a defendant must establish that "an actual conflict of interest adversely affected his lawyer's performance." *State v. Jenkins*, 148 Ariz. 463, 465, 715 P.2d 716, 718 (1986) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 346 (1980)).

¶19 Here, the trial court correctly determined that any conflict of interest dissipated when the State avowed it would not charge counsel with impersonating a police officer. Because no actual conflict existed thereafter, the court did not abuse its discretion in denying counsel's motion to withdraw.

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<sup>7</sup> Although Defendant's brief also refers to a purported error in ordering disclosure of statements made by L.P. to defense counsel, Defendant's argument focuses only on R.N.'s statements.

¶10 With respect to the trial court's order requiring Defendant to disclose the recorded interview of R.N., Defendant claims the court erred because the tape was confidential and intended to be used by Defendant, if at all, solely for impeachment purposes at trial. See Ariz. R. Evid. 613(a) (requiring, on request, disclosure to opposing counsel of a prior statement by witness at the time the witness is being examined regarding the statement); *Osborne*, 157 Ariz. at 3-4, 754 P.2d at 332-33 (granting special action relief to a criminal defendant whom trial court ordered to disclose a witness's prior statements, which were to be used for impeachment purposes).

¶11 We need not determine whether the trial court erred by ordering disclosure of the recorded interview because, in any event, we are unable to discern any resulting prejudice. Defendant asserts that the disclosed statements constituted "important evidence used to convict him." He specifically refers to R.N.'s statement "that *the shooter* was Hispanic but had light eyes, an unusual combination which matched [Defendant's] description," and Defendant claims this was a "detail [that] only came from the defense contact with [R.N]."  
Defendant, however, improperly fails to cite portions of the record that support these assertions. See Ariz. R. Crim. P. 31.13 ("The appellant's brief shall include . . . [a]n argument which shall contain the contentions of the appellant with

respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes *and parts of the record relied on.*") (emphasis added).

¶12 Moreover, even absent R.N.'s description of Defendant at trial, the remaining evidence of Defendant's guilt was overwhelming. D.'s testimony, in conjunction with a transcript of a telephone call Defendant made to her while he was in jail awaiting trial and after police interviewed D., indicates that Defendant asked her to return to the police and tell them that she had lied when she stated she believed Defendant shot the victim. And J.S., the driver of the vehicle in which the victim was shot, identified Defendant at trial as "the shooter." Regarding the misconduct charge, D. also testified that she had observed Defendant within the three days prior to the shooting with a handgun in his pocket.<sup>8</sup> In light of this and other circumstantial trial evidence overwhelmingly establishing Defendant's guilt, any error resulting from the order requiring disclosure of R.N.'s description of Defendant was harmless beyond a reasonable doubt. *See State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993) (noting error is harmless if this court can say, beyond a reasonable doubt, that it would not have affected the verdict).

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<sup>8</sup> Defendant does not challenge the sufficiency of evidence regarding this possession of the gun or the fact that he was a prohibited possessor.



**CONCLUSION**

¶13 Defendant's convictions and sentences are affirmed.

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PHILIP HALL, Judge

CONCURRING:

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\_ / s / \_\_\_\_\_  
MICHAEL J. BROWN, Presiding Judge

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\_ / s / \_\_\_\_\_  
ANN A. SCOTT TIMMER, Judge