

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 11/01/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,

Appellee,

v.

ROBERT CHARLES WAID,

Appellant.

1 CA-CR 10-0945

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(Not for Publication -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. CR2010-005496-001DT

The Honorable Sally Schneider Duncan, Judge

AFFIRMED

Thomas C. Horne, Attorney General
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Division
Attorneys for Appellee Phoenix

Maricopa County Public Defender
By Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant Phoenix

I R V I N E, Presiding Judge

¶1 This appeal is 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). Counsel for Robert Charles Waid ("Waid"), asks this Court to search the record for fundamental error. Waid was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm Waid's convictions and sentences for two counts of surreptitious recording or viewing, class 5 felonies, and one count of voyeurism, a class 5 felony.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Waid. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). On October 10, 2009, one of Waid's daughters, K.W., discovered a video of her nine-year old twin sisters showering together on Waid's video camera. The video shows Waid setting up the camera in a closet across from the shower in his apartment. The video then shows the two girls showering for approximately twenty minutes before Waid is seen turning off the camera. Both daughters testified that they did not know they were being videotaped.

¶3 After discovering the video, K.W. showed it to her mother, C.W., who decided to leave the video camera with a family friend for temporary safe keeping. Two days later, C.W. told police about the video and informed them that they could pick up Waid's video camera at her friend's house, which they

did. C.W. also told police that she had been living at Waid's apartment for the past month even though they were divorced.

¶4 When police arrived at Waid's apartment, C.W. consented to the warrantless search of Waid's apartment. Police seized a computer tower and several cameras. Police later discovered that the computer tower contained a video depicting C.W. taking a shower in Waid's apartment. C.W. testified that she also did not know she was being videotaped.

¶5 The State charged Waid with three counts of voyeurism, class 5 felonies. At the close of evidence, the trial court properly instructed the jury on the elements of the offenses. Waid was convicted on one count of voyeurism, as it related to his ex-wife C.W. The jury convicted Waid on the lesser-included offenses of surreptitious recording or viewing, class 5 felonies, as it related to his twin daughters. The trial court conducted the sentencing hearing in compliance with Waid's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. Waid received a mitigated sentence of nine months in prison for the voyeurism charge and three years of probation for the two counts of surreptitious recording or viewing.

DISCUSSION

¶6 We review Waid's convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812

P.2d 626, 628 (1991). Waid, through counsel, argues that the trial court erred when it denied his motion to suppress the video camera and computer tower. An order denying a motion to suppress evidence will not be overturned absent an abuse of discretion. *State v. Chavez*, 208 Ariz. 606, 607, ¶ 2, 96 P.3d 1093, 1094 (App. 2004).

¶7 The trial court denied Waid's motion to suppress the video camera because it found that there was no government action. After K.W. took the camera from Waid and watched the video of her sisters showering, she gave the video camera to her mother, who then gave it to a family friend. Later, police seized the video camera from the friend. Given these facts, we find no error. *See id.* at ¶ 14 (holding that "the Fourth Amendment's prohibition against unconstitutional searches and seizures applies only to government agents; it does not limit the actions of private citizens").

¶8 The trial court denied Waid's motion to suppress the computer tower because it found that C.W. had apparent authority to consent to the search of Waid's apartment. Specifically, the trial court found that C.W. had apparent authority to consent to the search of the common rooms in Waid's apartment because C.W. told police that she shared joint custody of all three children, she had been living at Waid's apartment for the last month, she has unrestricted access to both of the computers in the

apartment, and the computer tower was located in a common area. Additionally, C.W. was the only adult present in the home when police arrived, and one of Waid's daughters was using the computer in the common room.

¶9 We again find no error. See *State v. Lucero*, 143 Ariz. 108, 110, 692 P.2d 287, 289 (1984) (holding that consent to a search may be given by one who shares with the absent party a "common authority over, general access to, or mutual use of the place or object sought to be inspected under circumstances that make it reasonable to believe that the third person has the right to permit the inspection in his own right and that the absent target has assumed the risk that the third person may grant this permission to others").

¶10 Counsel for Waid has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶11 All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Waid was represented by counsel at all stages of the proceedings. The court conducted appropriate pretrial hearings. The jury correctly consisted of eight jurors. The State presented sufficient evidence to allow a jury to convict

Waid as charged. The jury instructions correctly stated the burden of proof, presumption of innocence, and the elements of the charges. The jury returned unanimous guilty verdicts on all three counts. At sentencing, both Waid and his counsel had an opportunity to speak. Waid's sentences were within the statutory permissible ranges. We decline to order briefing, and we affirm Waid's convictions and sentences.

¶12 Upon the filing of this decision, defense counsel shall inform Waid of the status of his appeal and of his future options. Defense counsel has no further obligations 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). Waid shall have 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

We affirm.

_____/s/_____
PATRICK IRVINE, Presiding Judge

CONCURRING:

_____/s/_____
JOHN C. GEMMILL, Judge

_____/s/_____
PHILIP HALL, Judge