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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



DIVISION ONE
FILED: 11/03/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 10-1017
)
Appellee,) DEPARTMENT A
)
v.) MEMORANDUM DECISION
)
TIMOTHY RAY WOODS,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-124145-002 DT

The Honorable Randall H. Warner, Judge

AFFIRMED

Thomas C. Horne, Arizona 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 Kathryn L. Petroff, Deputy Public Defender
Attorney for Appellant

B A R K E R, Judge

¶1 Timothy Ray Woods appeals his conviction for one count of armed robbery, a class 2 felony. He was sentenced on December 17, 2010, and filed his timely notice of appeal on December 17, 2010. 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 12-4033(A) (2010). Woods' 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 this court that after searching the entire record on appeal, he finds no arguable ground for reversal. Counsel did advise, however, that Woods asked him to raise several issues. *Anders* requires us to search the record for reversible error. Because we find no such error, we affirm.

Facts and Procedural History

¶2 On October 12, 2010, Woods was riding a bus in Phoenix when a fifteen year-old boy boarded. The fifteen year-old boy, the victim, sat in the rear of the bus in a seat that happened to be next to Woods.

¶3 Woods asked the victim if he knew "where he could get some weed." The victim replied that he did and opened his backpack to show Woods that he had some marijuana inside. The backpack also contained several CDs, an Ipod, a shirt, a non-functioning cell phone, and hair clippers. Woods then asked the

victim where he lived. When the victim replied that he lived in South Phoenix, Woods got upset, told the victim that he did not like him, and lifted his shirt to expose a gun in a black holster. Woods then demanded the victim's possessions "before I blow your brains out."

¶14 Woods grabbed the victim's backpack, and the two struggled for a moment. The victim let go of the backpack, and Woods took it and placed it on the seat behind him. Woods then took the victim's wallet from his pants pocket and told him "Get the f___ off the bus or I am going to blow your brains out." The victim "ran off the bus."

¶15 Once off the bus, the victim called 911 using a cell phone he had in his pocket. He told the operator that he had just been robbed by a man on a bus. He described Woods (who was still on the bus) as having braids and being dressed in a brown shirt and jeans. He told the operator that Woods had a gun. The victim also told the operator that his pack contained marijuana. He also admitted that he had smoked some marijuana earlier that day.

¶16 After making the 911 call, the victim waited for a police officer to arrive. An officer arrived and took the victim to the scene of a one-on-one identification, where he identified Woods as the robber. He identified his backpack, recovered by officers, noting that it now contained the black

gun Woods had displayed to him on the bus. The victim told the police officers that the gun belonged to Woods and identified the marijuana in his pack, as well as the remainder of the contents, as his own. His wallet was never recovered.

¶17 At trial, the victim testified that he had been granted immunity in the case to the extent that none of his trial testimony regarding the marijuana could be used against him. He identified the holster and gun in court as those which Woods had displayed on the bus. He also stated that the 911 recording of his call was authentic, translating some unintelligible phrases for the jury.

¶18 The State showed the jury a videotape of the interior of the bus during the time in question. The videotape was identified as accurate by the victim. He pointed out where he and Woods were sitting on the bus. The tape confirmed key aspects of the victim's testimony. Namely, it depicted the person he identified as Woods speaking to him and looking into his open backpack at approximately 6:52 P.M. The victim said that the video display at 6:55 showed the time at which Woods demanded his pack, displaying the holstered gun. At 6:55:08, the video showed the victim running through the bus to the exit. At 7:02, the video showed Woods sitting on the bus, still in possession of the pack.

¶9 On cross-examination, the victim maintained that he never intended to sell the marijuana in his pack to Woods. He could not recall precisely how he came to lose his wallet, but presumed Woods took it during the scuffle. On redirect, the victim testified that he felt "scared as hell" when he saw the gun on the bus.

¶10 Officer H. testified, explaining that he had been the one to respond to the 911 call and that the victim had identified Woods shortly after he made the call.

¶11 Officer A. testified that he pursued the person matching the victim's 911 description as he exited the bus with a pack. He said that Woods then discarded the pack and broke into a run. He stated that Woods was quickly apprehended and held for identification.

¶12 After deliberating, the jury found Woods guilty as charged. The State then alleged aggravating factors of pecuniary gain and physical, emotional, or financial harm, which were subsequently found proven by the jury. At sentencing, the court took evidence and found that the State had proven that Woods had one prior felony. Woods was then sentenced to the presumptive term of incarceration.

Discussion

¶13 Woods asked his counsel to raise ten issues which we address in turn.

1. *Jury Question Regarding Marijuana*

¶14 Woods claims he was prejudiced by the State's question during voir dire to the jury regarding whether anyone had a strong opinion about the use of marijuana. "The purpose of jury voir dire examination is to unveil a juror's prejudices so that the parties can exercise intelligently their peremptory challenges and challenges for cause." *State v. Verive*, 128 Ariz. 570, 576, 627 P.2d 721, 727 (App. 1981). Moreover, the scope of voir dire is generally a matter within the discretion of the trial court and is subject to review only for abuse of discretion. *State v. Smith*, 215 Ariz. 221, 230 ¶ 37, 159 P.3d 531, 540 (2007).

¶15 There was no such abuse here, given that these types of questions are commonly asked by trial courts in cases that involve marijuana. *See, e.g., State v. Harshbarger*, 294 S.E.2d 254, 257 (W. Va. 1982) (explaining "it was proper for the trial judge to inquire into the jurors' ability to apply the law which makes the delivery of marihuana a crime"); *State v. Pontier*, 518 P.2d 969, 972 (Idaho 1974) (approving of the trial court's decision to allow "appellant's counsel wide latitude in its inquiry into possible bias or prejudice of prospective jurors regarding marijuana").

2. Comments Regarding "Unseen" Events

¶16 Woods also claims he was prejudiced by the State's closing comments about "unseen" events that the State believed were occurring during the video (i.e., that Woods was taking the victim's wallet and that he was brandishing a gun). The State's closing argument was very short and mentioned no such events. As such, there was no error.

3. Sufficiency of the Evidence

¶17 Woods challenges the sufficiency of the evidence that he was in possession of a gun prior to or during his contact with the victim. However, the victim testified that Woods possessed the gun. He explained that when Woods lifted up his shirt "I [the victim] saw the gun" that was "in a black holster" on Woods's person. This supports the jury's verdict. We do not reweigh the evidence on appeal; it was up to the jury to weigh the testimony of the State's witnesses. *See State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

¶18 Woods also challenges the sufficiency of the evidence that he had ever been in possession of the victim's wallet. However, the victim testified that Woods took his wallet from his back pocket. For the same reasons as mentioned above, we cannot reweigh this evidence on appeal; the victim's testimony was sufficient to establish that Woods (at least momentarily) had possession of the wallet.

4. Lack of Fingerprint Evidence

¶19 Woods points to the fact that the State produced no fingerprint evidence. The State has no obligation to offer any particular type of evidence to support a defendant's guilt. See *State v. Rhodes*, 112 Ariz. 500, 504, 543 P.2d 1129, 1133 (1975) (explaining that the fact that the "fingerprint people did not attempt to take fingerprints from certain areas or items" constituted no error).

5. Credibility of Victim

¶20 Another issue raised by Woods is whether the victim could have been a credible witness given "that he denied that the marijuana admitted into evidence at trial was his." However, this court may not evaluate the credibility of witnesses on appeal; that determination is left to the jury. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004) (explaining that it is the jury's responsibility to weigh the evidence and evaluate the credibility of witnesses).

6. Grand Jury Proceedings

¶21 Woods argues that his grand jury proceedings were flawed; however, the "sole procedural vehicle for challenging grand jury proceedings is by a rule 12.9(a)" motion filed pursuant to the Arizona Rules of Criminal Procedure. *State v. Young*, 149 Ariz. 580, 585-86, 720 P.2d 965, 970-71 (App. 1986). No such motion was filed here.

7. Questions Asked by the Jury

¶122 Woods argues that he was prejudiced by the trial court's failure to answer two jury questions regarding the street value of the marijuana admitted into evidence. However, both questions were irrelevant to the elements of armed robbery, the crime for which Woods was being charged. Accordingly, it was within the trial court's discretion not to answer these questions. See *Des Jardins v. State*, 551 P.2d 181, 190 (Alaska 1976) (holding that judge did not abuse his discretion in refusing to answer jury questions).

8. Fingerprints on the Gun

¶123 Woods asserts prejudice by the failure of police to introduce evidence regarding whether there were any fingerprints on the gun. As described above, the State has no duty to offer any particular type of evidence, and there is no evidence that any exculpatory material was withheld.

9. Disclosure of the Fact that the Victim Was a Minor

¶124 Woods alleges that he was prejudiced by the "late disclosure" of the fact that the victim was a minor; however, the age of the victim was legally irrelevant in this particular case. The fact that the victim happened to be under eighteen was not an element of the crime of armed robbery nor the basis for any aggravator used by the trial court (for pecuniary gain and inflicting physical, emotional, or financial harm to

victim). Moreover, as the video of the bus makes clear, the victim's youth was apparent by his appearance; while Woods may not have known exactly how old he was, it was clear that he was relatively young from the moment the two met on the bus. As such, the late disclosure of the victim's precise age, even assuming it occurred, would not be error.

10. Videotape of the Bus

¶125 Woods argues that he was prejudiced by the fact the State failed to show Woods the videotape of the bus until after he had rejected the plea offer. Woods does not argue that the bus videotape was not timely disclosed; he merely (apparently) regrets that he did not get to see it before rejecting the plea offer.

¶126 However, the State has no obligation to ensure that a defendant has viewed all evidence prior to accepting or rejecting a plea offer. Arizona Rule of Criminal Procedure 15.6, which imposes a continuing duty on each party to disclose "whenever new or different information subject to disclosure is discovered," contemplates that evidence may be discovered (and disclosed) in stages and that not all evidence is necessarily known at the outset of the case. Accordingly, there can be no requirement that a defendant has viewed all the evidence that could potentially be used against him prior to accepting or rejecting a plea offer. Thus, the fact that Woods did not view

the bus videotape prior to rejecting the State's plea offer did not constitute error.

Conclusion

¶27 We have reviewed and considered the remainder of the record for fundamental error and find none. Accordingly, Woods' conviction and sentence are affirmed. After the filing of this decision, counsel's obligations pertaining to this appeal have ended, subject to the following. Counsel need do no more than inform Woods of the status of the appeal and Woods' future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Woods 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.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Presiding Judge

/s/

PATRICK IRVINE, Judge