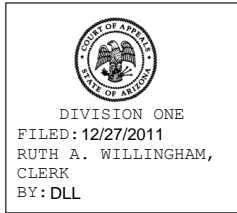


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 11-0082
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MICHAEL EDWARD COLLINS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-137630-001 DT

The Honorable Daniel G. Martin, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
And Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Spencer D. Heffel, Deputy Public Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Michael Edward Collins appeals from his convictions and sentences for one count of aggravated assault and one count of disorderly conduct. For the following reasons, we affirm.

BACKGROUND

¶2 In July 2010, the State indicted Collins on two counts of aggravated assault, both class 3 dangerous felonies, under Arizona Revised Statutes section 13-1204 (Supp. 2011) for threatening K.C. and V.R. with a knife while riding on a light rail train in Phoenix.

¶3 At the initial pretrial conference, Collins submitted a "waiver of counsel" and informed the court that he wished to proceed pro per. As recorded in its minute entry, the trial court advised Collins "of the responsibilities of counsel such as asserting legal defenses, interviewing witnesses, doing investigation, doing legal research, filing and arguing motions, [and] examining and cross[-]examining witnesses[.]" The court further advised Collins that he would be "held to the same standard as an attorney regarding the presentation of the case. This standard includes knowledge of courtroom procedure, applicable state law, Arizona Rules of Evidence, and Arizona Rules of Criminal Procedure." Collins "acknowledge[d] understanding his waiver of right to counsel." The court accepted Collins's waiver, finding that he "knowingly,

intelligently, and voluntarily desire[d] to waive the right to representation by an attorney and to represent himself."

¶14 On the second day of trial, the court addressed the State's pending motion to impeach Collins with his prior felonies in accordance with Arizona Rule of Evidence 609. After the court addressed the State's motion, Collins asked the court: "While we're on this, your Honor, would that be the same way with [the State's] witness[]? Because he got felonies too. I think it's a robbery, since we [sic] on it." The court asked Collins whether he had submitted a motion on the subject and Collins replied that he had not. The court then denied Collins's oral request stating "there's nothing before the Court that requests permission to address the . . . 609 issue." During trial, Collins attempted to question V.R., one of the victims, about V.R.'s criminal record, but the court sustained the State's objections.

¶15 Following a six-day trial, the jury convicted Collins on Count 1 (aggravated assault of K.C.), and on the lesser included charge of disorderly conduct on Count 2 (for conduct directed toward V.R.). The jury found both counts to be dangerous offenses and found three aggravating circumstances. The trial court found that Collins had three historical prior felony convictions and sentenced him to concurrent slightly

aggravated terms of imprisonment of twelve years on Count 1 and four years on Count 2. Collins timely appealed.

DISCUSSION

¶16 Collins argues that "the trial court's denial of [his] request to use V.R.'s prior felony conviction for impeachment denied him his confrontation rights under the Sixth Amendment to the U.S. Constitution and Article 2, § 24 of the Arizona Constitution." Collins further argues that his "failure to file a timely request . . . should not preclude his claim on appeal."

¶17 Arizona Rule of Criminal Procedure 16.1(b) provides that "[a]ll motions shall be made no later than 20 days prior to trial, or at such other time as the court may direct." Rule 16.1(c) further states that "[a]ny motion . . . not timely raised under Rule 16.1(b) shall be precluded, unless the basis therefor was not then known, and by the exercise of reasonable diligence could not then have been known, and the party raises it promptly upon learning of it." The purpose of the preclusion sanction in Rule 16.1(c) is "to insure orderly pretrial procedure in the interests of expeditious judicial administration." *State v. Vincent*, 147 Ariz. 6, 8, 708 P.2d 97, 99 (App. 1985). Preclusion under Rule 16.1(c) "is a judicial remedy designed to protect judicial interests[,]" and its invocation "rests in the discretion of the trial court subject to review only for abuse." *Id.* at 8-9, 708 P.2d at 99-100.

¶18 We conclude that the trial court did not abuse its discretion in declining Collins's request for permission to impeach V.R. with a prior felony conviction. First, Collins's request was not raised until trial and therefore it was untimely under Rule 16.1(b). Further, Collins does not argue that the basis of his request was not known to him in sufficient time to make a timely request. In fact, the record suggests the contrary, as Collins stated at the November 22, 2010, pretrial conference that the State had mailed him a letter indicating "one of the victims was a felon" during discovery.

¶19 Even if the timeliness of the request were not an issue here, Collins failed to offer any "evidence that the witness [had] been convicted of a crime." See Ariz. R. Evid. 609. In his request to impeach V.R. at trial, Collins simply stated that "[V.R.] got felonies too[;] I think it's a robbery." A defendant claiming denial of the right to confront a witness through cross-examination must make an adequate offer of proof to preserve the issue for consideration on appeal. See Ariz. R. Evid. 103(a)(2) (providing that when a trial court excludes evidence, the "substance of the evidence" must be "made known to the court"); *State v. Adams*, 155 Ariz. 117, 121-22, 745 P.2d 175, 179-80 (App. 1987) (finding that defense counsel failed to provide support for proposed cross-examination questions; counsel "simply raised the inference of theft and presented no

evidence to support it"). Moreover, even if we assume the trial court was aware that V.R. had a prior conviction, given that the State allegedly knew of it, Collins made no arguments relating to probative value, prejudicial effect, or the other considerations encompassed in Rule 609 to support his request to use the conviction to impeach V.R. Therefore, lacking a timely request and offer of proof showing impeachment would have been proper, the trial court did not abuse its discretion in refusing to permit Collins to impeach V.R. with an alleged felony conviction.

CONCLUSION

¶10 Based on the foregoing, we affirm Collins's convictions and sentences.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Judge

/s/

PHILIP HALL, Judge