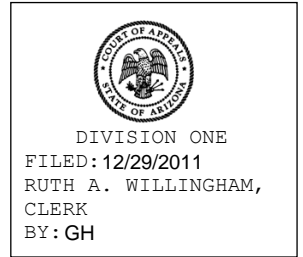


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 11-0102
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
DAVID ALEXANDER ALVIDREZ,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-006436-001 DT

The Honorable Karen L. O'Connor, 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 Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 David Alexander Alvidrez timely appeals from his convictions and sentences for conspiracy to commit burglary in the first degree, burglary in the first degree, and three counts

of felony murder in the first degree. After searching the record on appeal and finding no arguable question of law that was not frivolous, Alvidrez's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Alvidrez to file a supplemental brief *in propria persona*, but Alvidrez did not to do so. Instead, through counsel, Alvidrez argues his statements to police were involuntary and should not have been admitted at trial, and the evidence failed to support the jury's verdicts. We disagree with both arguments and, after reviewing the entire record and finding no fundamental error, affirm Alvidrez's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On April 15, 2008, Alvidrez, then 18 years old, drove Robert Hernandez and Daniel Bueno to a house in Peoria, then drove away. Hernandez and Bueno then broke into the house through a side door. When the house's occupants, two women and two men, arrived later, Hernandez and Bueno bound their hands and feet, placed them face down on the floor, and shot them in

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Alvidrez. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

the head with handguns. One of the male victims was also strangled and stabbed six times.

¶13 Despite being shot in the head, one of the female victims survived and went to a neighbor's home for help after Hernandez and Bueno left. The neighbor called the police, who, during the course of their investigation, spoke to a second neighbor who identified the car Hernandez and Bueno had arrived in as a dark car with tinted windows. Police detectives also reviewed security camera footage from two homes in the area and eventually identified the car as a Cadillac Seville belonging to Alvidrez. The police arrested Alvidrez and interrogated him. During the interrogation, Alvidrez admitted he had dropped Hernandez and Bueno off at the house with the knowledge they were going to "jack" the people at the house, that is, rob them, and with the expectation of reaping some benefit from the crime. Alvidrez later testified he was afraid of Hernandez and knew he was a violent person, but he "wanted [Hernandez] to like [him]."

¶14 A grand jury indicted Alvidrez on one count of conspiracy to commit burglary in the first degree, one count of burglary in the first degree, and three counts of felony murder in the first degree. Before trial, the superior court held a voluntariness hearing at Alvidrez's request and, after hearing oral argument, found Alvidrez's statements to police during the interrogation were not coerced. At trial, a recording of

Alvidrez's statements to the police was admitted and played for the jury. The jury found him guilty of all counts, and the superior court sentenced him to the presumptive terms of five and ten-and-a-half years for the conspiracy and burglary counts, respectively, and three life terms with the possibility of parole after 25 years for the felony murder counts. The superior court ordered all of Alvidrez's sentences to run concurrently and gave him 941 days of presentence incarceration credit.

DISCUSSION

I. Voluntariness of Statements to Police

¶15 To have been properly admitted at trial, Alvidrez's statements to the police must have been "voluntary, not obtained by coercion or improper inducement." *State v. Ellison*, 213 Ariz. 116, 127, ¶ 30, 140 P.3d 889, 910 (2006) (citing *Haynes v. Washington*, 373 U.S. 503, 513-14, 83 S. Ct. 1336, 1343, 10 L. Ed. 2d 513 (1963)). A statement obtained through direct or implied promises "of benefits or leniency . . . even if only slight in value, are impermissibly coercive." *Id.* (quoting *State v. Lopez*, 174 Ariz. 131, 138, 847 P.2d 1078, 1085 (1992)).

¶16 Throughout the interview, two police detectives repeatedly urged Alvidrez to tell the truth, and suggested that being honest would benefit him, but did not "make an express or implied promise . . . [that Alvidrez relied] on . . . in

confessing." *State v. Ross*, 180 Ariz. 598, 603, 886 P.2d 1354, 1359 (1994). "Advice to tell the truth, unaccompanied by either a threat or promise, does not make a confession involuntary." *Id.*

¶17 As Alvidrez emphasized at the voluntariness hearing, at one point in the interview, he asked to talk to his girlfriend, who the police were interviewing in a different room, and suggested that if he was allowed to do so he would "tell [them he] was driving the car." The detectives responded they were not going to promise or entice him, and would let him talk to her but not to get him to admit he was driving the car. Later, Alvidrez asked if he would have to "do time" if he admitted to driving the car. The detectives responded they had no control over that, but if he admitted to driving the car "nobody's going to slap cuffs on you or nothing like that because, you know what, then we can go from there and talk to you about a couple of other things." These exchanges do not rise to the level of direct or implied promises. We hold Alvidrez's statements to the police were made voluntarily and were therefore properly admitted at trial.

II. Sufficiency of the Evidence

¶18 We “review the sufficiency of the evidence by determining whether substantial evidence supports the jury’s finding, ‘viewing the facts in the light most favorable to sustaining the jury verdict.’” *State v. Kuhs*, 223 Ariz. 376, 382, ¶ 24, 224 P.3d 192, 198 (2010) (internal citation omitted). Substantial evidence “is proof that ‘reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *Id.* (internal citation omitted).

¶19 Here, to find Alvidrez guilty of all counts charged, the jury essentially had to find Alvidrez conspired with and acted as an accomplice to Hernandez and Bueno. As discussed above, Alvidrez’s statements and testimony make it clear he willingly drove Hernandez and Bueno to the house with the knowledge they were going to rob the victims and with the expectation he would share in the proceeds. This evidence alone is more than enough to support a conclusion of Alvidrez’s guilt, and we accordingly hold the evidence presented at trial was sufficient to support the jury’s verdicts.

III. Anders Review

¶10 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Alvidrez received a fair trial. He was represented by

counsel at all stages of the proceedings and was present at all critical stages.

¶11 The jury was properly comprised of 12 members and the court properly instructed the jury on the elements of the charges, Alvidrez's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Alvidrez was given an opportunity to speak at sentencing, and his sentences were within the range of acceptable sentences for his offenses.

CONCLUSION

¶12 We decline to order briefing and affirm Alvidrez's convictions and sentences.

¶13 After the filing of this decision, defense counsel's obligations pertaining to Alvidrez's representation in this appeal have ended. Defense counsel need do no more than inform Alvidrez of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶14 Alvidrez has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Alvidrez 30

days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Presiding Judge

/s/
PHILIP HALL, Judge