IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CURTIS ANTHONY PATTERSON,
Appellant.

No. 2 CA-CR 2014-0441
Filed August 31, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20141314002
The Honorable Javier Chon-Lopez, Judge

AFFIRMED IN PART AS MODIFIED;
VACATED IN PART AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

E C K E R S T R O M, Chief Judge:

¶1 Following a jury trial, appellant Curtis Patterson was convicted of illegally conducting an enterprise and two counts of robbery. The trial court imposed enhanced, concurrent ten-year terms of imprisonment. On appeal, he argues his convictions are not supported by sufficient evidence and his sentences are illegal. For the reasons that follow, we affirm his conviction and sentence for illegally conducting an enterprise but modify his convictions for robbery and remand for resentencing on those two counts.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the verdicts, drawing all reasonable inferences against Patterson. *See State v. Williams*, 233 Ariz. 271, ¶ 2, 311 P.3d 1084, 1085 (App. 2013). On successive days beginning November 20, 2013, two separate victims in midtown Tucson were robbed at their residences after returning from a shopping trip. The first victim was a seventy-seven-year-old man, the second a sixty-six-year-old woman. In both instances, Patterson's brother Maurice, the codefendant in this case, punched the victims and took their money. Patterson then drove Maurice away in a white Ford F150 pickup truck that Patterson had borrowed from his girlfriend S.J.

¶3 Surveillance videos showed Patterson in the stores with the victims shortly before the robberies occurred. The videos also showed the white pickup truck following the victims out of the shopping centers. Patterson later admitted to another girlfriend, C.M., that he had seen the first victim with "a lot of money," he had followed the victim home, and his brother had taken the money from the victim, with Patterson serving as the driver.

¶4 In his motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., Patterson suggested that no evidence connected him to the crimes because C.M. had recanted her statements to police and claimed she could not remember them. He also emphasized that some witnesses to the robberies had made statements describing the pickup truck driver as a young Caucasian or Hispanic man, whereas Patterson was middle-aged and African-American. After the trial court denied the motion, the jury convicted him as noted above, and this appeal followed the entry of judgment and sentence.

Sufficiency of the Evidence

¶5 As he did below, Patterson argues the state presented insufficient evidence to support any of the convictions because no evidence identified him as a perpetrator or an accomplice. We review the sufficiency of the evidence de novo, *State v. Pena*, 235 Ariz. 277, ¶ 5, 331 P.3d 412, 414 (2014), and will affirm if the conviction is supported by "substantial evidence." *State v. Ellison*, 213 Ariz. 116, ¶ 65, 140 P.3d 899, 916-17 (2006). Evidence is substantial if reasonable people could accept it as proving, beyond a reasonable doubt, all the elements of a crime and the defendant's responsibility for it. *See State v. Bearup*, 221 Ariz. 163, ¶ 16, 211 P.3d 684, 688 (2009); *State v. Cox*, 217 Ariz. 353, ¶ 22, 174 P.3d 265, 269 (2007). Because it is the jury's role to determine the credibility of witnesses, weigh the evidence, and resolve any conflicts therein, *Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d at 269; *State v. Gay*, 108 Ariz. 515, 517, 502 P.2d 1334, 1336 (1972), we will reverse for insufficient evidence "only where there is a complete absence of probative facts to support a conviction." *State v. Fernane*, 185 Ariz. 222, 224, 914 P.2d 1314, 1316 (App. 1995). The substantial evidence necessary to support a conviction may be either direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005). "In reviewing the sufficiency of evidence, we view the facts in the light most favorable to upholding the jury's verdict and resolve all reasonable inferences against the defendant." *State v. George*, 206 Ariz. 436, ¶ 3, 79 P.3d 1050, 1054 (App. 2003).

¶6 Although Patterson maintains the evidence here was inadequate to identify him in connection with the offenses, he

acknowledges facts that, when taken together, provide substantial evidence to support his convictions. Patterson admits the evidence showed he was in the stores with the victims shortly before they were robbed. He also admits he had driven a pickup truck of the same color and make as the getaway vehicle described by witnesses and observed in the surveillance videos. He further acknowledges that the statements of his girlfriend C.M. "link[ed him] to the offenses." Patterson's admissions to her established that he had actively participated in the robbery scheme with his brother, which eyewitness and video evidence corroborated, at least circumstantially. Despite C.M.'s disavowal of her statements to police, such impeachment evidence may constitute substantial evidence. *State v. Allen*, 117 Ariz. 168, 170, 571 P.2d 665, 667 (1977). The state therefore presented sufficient evidence of identification and participation to support Patterson's convictions. *See* A.R.S. §§ 13-301, 13-303, 13-1902, 13-2301(D)(2), (4)(b)(ii), 13-2312(B).[1]

¶7 On appeal, Patterson again points to conflicting evidence that tended to cast doubt on his identification as a participant in the crimes. As the trial court correctly noted, however, these discrepancies affected the weight of the evidence rather than its sufficiency. If reasonable people may fairly disagree about whether the evidence establishes a fact at issue, such evidence is substantial and the resulting conviction must be upheld. *State v. Rodriguez*, 192 Ariz. 58, ¶ 10, 961 P.2d 1006, 1008 (1998). "We do not reweigh the evidence on appeal." *Williams*, 233 Ariz. 271, ¶ 8, 311 P.3d at 1087.

Sentences

Robbery: Counts Two and Three

¶8 Patterson next maintains the trial court illegally sentenced him for aggravated robbery pursuant to the original indictment, which is a class three felony offense, A.R.S. § 13-1903,

[1]We cite the version of § 13-2301 in effect in 2013, at the time of Patterson's offense of illegally conducting an enterprise. *See* 2005 Ariz. Sess. Laws, ch. 308, § 2.

rather than simple robbery pursuant to the amended indictment and the jury's verdicts, a class four felony. A.R.S. § 13-1902. The state concedes the error and joins Patterson's request that he be resentenced on these counts. *See State v. McPherson*, 228 Ariz. 557, ¶ 4, 269 P.3d 1181, 1183 (App. 2012) ("[A]n illegal sentence constitutes fundamental, prejudicial error."). We therefore grant the requested relief on counts two and three and vacate these illegal sentences.

Enhancement

¶9 Last, Patterson argues all his sentences were "improperly enhanced" with a historical prior felony conviction due to procedural irregularities regarding its proof. Absent exceptions not applicable here, Arizona law allows enhancement based on a defendant's prior conviction only after "a hearing in which the state 'offer[s] in evidence a certified copy of the conviction . . . and establish[es] the defendant as the person to whom the document refers.'" *State v. Morales*, 215 Ariz. 59, ¶ 6, 157 P.3d 479, 481 (2007), *quoting State v. Lee*, 114 Ariz. 101, 105, 559 P.2d 657, 661 (1976) (alterations in *Morales*); *accord State v. Hauss*, 140 Ariz. 230, 231, 681 P.2d 382, 383 (1984); *see* A.R.S. § 13-703(N);[2] Ariz. R. Crim. P. 19.1(b)(2). On the record before us, we find no reversible error concerning the enhancements.

¶10 The indictment here properly notified Patterson that the state would seek enhanced sentences based on his prior felony convictions. The state subsequently filed special allegations identifying several such convictions. After the jury found Patterson guilty of the present offenses, the trial court held the first hearing on his prior convictions—a "priors trial"—on October 20, 2014. That trial was rescheduled, as was his sentencing hearing, when the court granted his codefendant's motion to continue, with no objection from Patterson.

[2]We cite the version of § 13-703 in effect at the time of Patterson's offenses. *See* 2013 Ariz. Sess. Laws, ch. 55, § 3.

¶11 At the priors trial held November 3, 2014, the state provided certified copies of documents showing Patterson had several prior convictions from New York. The state attempted to prove he was the person identified in those records by offering an exhibit that was not a certified document, but merely a printout from the New York Department of Corrections (NYDC) website. The trial court sustained Patterson's objection to this document for lack of certification and authentication. Over his objection, the court then said it would allow the state the opportunity to prove the prior convictions by submitting an appropriate certified document at the sentencing hearing already scheduled to occur two weeks later, on November 17.

¶12 The record indicates the sentencing hearing was continued until December 1, 2014, but does not reveal the reason or any objection by Patterson. At sentencing, the state introduced a certified NYDC document with a photograph and other information identifying Patterson as the same person referred to in the records of conviction. The trial court thus found Patterson had one historical prior felony conviction from New York and sentenced him as a category two repetitive offender pursuant to § 13-703(I).

¶13 On appeal, Patterson first maintains the state violated its disclosure obligations under Rule 15, Ariz. R. Crim. P., by failing to obtain and timely disclose the certified document admitted at the sentencing hearing. As he acknowledges, he did not raise an objection below based on a disclosure violation, nor did he request any sanctions pursuant to Rule 15.7. He therefore has the burden of showing the alleged disclosure violation constituted fundamental error and resulted in prejudice. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005).

¶14 Patterson has not argued, much less established, that he suffered prejudice here. The accuracy of the allegedly undisclosed document is not in dispute, and Patterson had notice of its contents for approximately one month before he was sentenced. The lack of any prejudice therefore precludes appellate relief. *Cf. State v. Grijalva*, 137 Ariz. 10, 16, 667 P.2d 1336, 1342 (App. 1983) (rejecting late-disclosure argument when defendant "was not prejudiced because of the timing" but was allegedly "prejudiced only because

this proof [of prior convictions] enabled the court to enhance his punishment").

¶15 Patterson further asserts the trial court abused its discretion by "grant[ing] the state additional time . . . to prove [his] prior convictions." Because he has failed to develop this argument or provide any legal authorities supporting it, as required by Rule 31.13(c)(1)(vi), Ariz. R. Crim. P., we find the contention waived on appeal. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995). But even without waiver, we would find any error to be harmless. *See Henderson*, 210 Ariz. 561, ¶ 18, 115 P.3d at 607 (error harmless if it did not affect sentence).

¶16 We have recognized that trial courts have some discretion to continue trials on prior convictions. *See, e.g.*, *State v. Cons*, 208 Ariz. 409, ¶¶ 2, 6, 94 P.3d 609, 610-11, 612 (App. 2004). Furthermore, the record before us does not show that Patterson's defense to enhancement was impaired or that any delay in sentencing resulted from what was, in effect, a continuance of his priors trial. The court continued the trial in November until the date previously scheduled for sentencing, later that same month. The record does not reveal why the sentencing hearing subsequently was postponed until December. As the appellant, it was Patterson's burden to ensure the record on appeal contains all items necessary to consider the issues raised, and we will not speculate about the content of any missing items. *See State v. Rivera*, 168 Ariz. 102, 103, 811 P.2d 354, 355 (App. 1990). Accordingly, because the record demonstrates that the court neither caused prejudice to Patterson's defense nor delayed the disposition of the case in order to allow the state time to present additional evidence, we have no basis to disturb the challenged ruling. *Cf. State v. Vaughan*, 124 Ariz. 163, 164, 602 P.2d 831, 832 (App. 1979) ("[t]hat [defendant] was subjected to enhanced punishment by delay that allowed the state to obtain material on his prior convictions is not the prejudice required" for speedy trial violation).[3]

[3] Although not reversible error here, we discourage the practice of granting the state additional time when it fails to demonstrate due diligence in securing proper documentation of a

Disposition

¶17 For the foregoing reasons, we affirm the conviction and sentence on count one, illegally conducting an enterprise. We modify Patterson's convictions on counts two and three to reflect that he was found guilty of robbery pursuant to § 13-1902, a class four felony, and we remand for resentencing on those counts within the proper range set forth in § 13-703(I).

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prior conviction. Such failure is excused only when diligent attempts to procure necessary documentation were unsuccessful for reasons beyond the state's control. *Hauss*, 140 Ariz. at 231, 681 P.2d at 383. And a motion for a continuance is properly denied when a party has had ample time to acquire necessary documentation for a presentencing hearing. *State v. Barr*, 217 Ariz. 445, ¶ 10, 175 P.3d 694, 697 (App. 2008). Here, the state offered no legitimate reason for its failure to obtain a certified NYDC document for the scheduled priors trial, other than its erroneous beliefs the document was "plain on its face," the prosecutor could authenticate it by avowal, and the court could take judicial notice of it. Our supreme court has implied the state does not get "two bites of the apple by trying twice to prove defendants' prior convictions," noting it is entitled only to "*a* trial in which it . . . ha[s] *one* chance to prove the prior convictions." *State ex rel. Neely v. Sherrill*, 168 Ariz. 469, 473-74, 815 P.2d 396, 400-01 (1991).