IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MAURICE PATTERSON III,
Appellant.

No. 2 CA-CR 2015-0021
Filed September 15, 2015

Appeal from the Superior Court in Pima County
No. CR20141314001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED IN PART; VACATED IN PART AND REMANDED

COUNSEL

Robert A. Kerry, Tucson
Counsel for Appellant

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 After a jury trial, Maurice Patterson III was convicted of two counts of robbery and one count of illegally conducting an enterprise. The trial court sentenced Patterson to concurrent prison terms of thirteen years for each offense.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting he has reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, he has provided "a detailed factual and procedural history of the case with citations to the record" and asks this court to search the record for fundamental error. Patterson has filed a supplemental brief arguing that the evidence identifying him was insufficient to support the jury's finding of guilt, that an interpreter at trial was not "place[d] . . . under oath" as required, and that his "conviction must be overturned due to the cumulative effect of 'harmless' errors."

¶3 Viewing the evidence in the light most favorable to sustaining the verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports the jury's verdicts here, as well as its finding of aggravating factors. On consecutive days in November 2013, Patterson and his brother attacked two individuals over the age of sixty-five after following them home from a store, taking their cash and other valuables. *See* A.R.S. §§ 13-701(D)(6), (13), 13-1902(A), 13-2301(D)(4), 13-2312(B).[1]

[1]We cite the current versions of the criminal statutes referred to throughout this decision, which have not changed in material part since Patterson committed his offenses.

¶4 Patterson complains that his second robbery conviction is improper because no witness identified him as the perpetrator.[2] But he ignores evidence that he had been identified on a store surveillance recording which showed him leaving a store shortly before the victim and waiting in a truck until the victim emerged and left, that the recording showed him wearing clothing consistent with the witnesses' descriptions of the assailant, and that the truck showed on the recording was similar to the one the assailant entered after robbing the victim. The evidence was sufficient for the jury to have concluded Patterson robbed the second victim. Any inconsistencies or weaknesses in witness testimony were for the jury to weigh. *See State v. Fimbres*, 222 Ariz. 293, ¶ 21, 213 P.3d 1020, 1027 (App. 2009).

¶5 Patterson also argues the interpreter for the second victim was not "placed . . . under oath" as required by Rule 604, Ariz. R. Evid. That rule states, "[A]n interpreter must be qualified and must give an oath or affirmation to make a true translation." We find no indication in the record that the interpreter gave an "oath or affirmation" in open court before translating the second victim's testimony. But, even if we assume this constitutes error, Patterson must "show that he was somehow denied a fair trial by the interpreter's deficiencies." *State v. Mendoza*, 181 Ariz. 472, 475, 891 P.2d 939, 942 (App. 1995). He has made no effort to do so and we thus need not address this argument further.

¶6 We also reject Patterson's claim of cumulative "'harmless' errors." Arizona does not recognize the cumulative error doctrine because "'something that is not prejudicial error in and of itself does not become such error when coupled with something else that is not prejudicial error.'" *State v. Hughes*, 193 Ariz. 72, ¶ 25, 969 P.2d 1184, 1190-91 (1998), *quoting State v. Roscoe*, 184 Ariz. 484, 497, 910 P.2d 635, 648 (1996). Although Patterson lists

[2]Although Patterson broadly asserts that "none of the victims were able to identify" him, he confines his argument to the second robbery. In any event, the evidence presented is sufficient to support all Patterson's convictions.

several purported errors, he does not establish that any error occurred, much less that prejudice resulted.

¶7 Sufficient evidence also supported the trial court's finding that Patterson should be sentenced as a category-two repetitive offender based on his previous conviction of armed robbery. A.R.S. §§ 13-105(22), 13-703(B), 13-1904(B). His prison term for illegally conducting an enterprise was within the statutory limits and was imposed properly. §§ 13-703(I), 13-2312(D). However, the trial court sentenced him for two convictions of aggravated robbery, a class three felony offense. A.R.S. § 13-1903(B). Although Patterson originally was charged with two counts of aggravated robbery, the indictment was later amended to charge him with counts of simple robbery, a class four felony. § 13-1902(B). Thus, his sentences for those convictions must be vacated. *See State v. McPherson*, 228 Ariz. 557, ¶ 4, 269 P.3d 1181, 1183 (App. 2012) ("[A]n illegal sentence constitutes fundamental, prejudicial error.").

¶8 Pursuant to our obligation under *Anders*, we have searched the record for fundamental error and have found none save the sentencing error discussed above. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). Accordingly, we affirm Patterson's convictions and his sentence for illegally conducting an enterprise. We vacate the sentences imposed for robbery and remand the case for resentencing on those counts.