IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAMES DWIGHT ROBINSON,
Appellant.

No. 2 CA-CR 2016-0341
Filed January 4, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20131358001
The Honorable Christopher C. Browning, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Nicole Countryman, Phoenix
Counsel for Appellant

MEMORANDUM DECISION

Judge Eppich authored the decision of the Court, in which Presiding Judge Vásquez and Judge Espinosa concurred.

E P P I C H, Judge:

¶1 James Robinson appeals from his convictions for first-degree murder and two counts of child abuse. He argues his post-arrest statements admitted at trial were the product of a constitutionally prohibited, two-stage interrogation and should have been suppressed. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We review the evidence presented at the suppression hearing "in the light most favorable to sustaining the court's ruling, deferring to the court's determination of facts and witness credibility but reviewing de novo its legal conclusions." *State v. Waller*, 235 Ariz. 479, ¶ 5 (App. 2014) (citation omitted). Law enforcement responded to the front office of an apartment complex after Robinson's codefendant, Judy Minley, called 9-1-1 to report her child, J.D., was unresponsive. When officers arrived, paramedics were attending to four-year-old J.D. while Robinson and Minley stood together nearby. An officer separated the two and took Robinson to an adjacent room.

¶3 Robinson told the officer he put J.D. in the bathtub, left briefly, and returned to find him unresponsive. The officer advised Robinson of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and asked him a few more questions about J.D. being in the bathtub. Robinson was transported to the police station for questioning after further investigation revealed J.D. had suffered extensive physical trauma, which Robinson had not explained.

¶4 A few hours later, a detective questioned Robinson at the station. Prior to doing so, he asked Robinson whether he understood the rights he had been advised of earlier. Robinson told him that he did, and then admitted "disciplining" J.D. the day before, by striking him with a sandal on various parts of his body for over an hour. J.D. died as a result of Robinson's abuse.

¶5 Prior to trial, Robinson filed a motion to suppress his confession at the police station. He argued the waiver of his right to remain silent was not knowing, intelligent, or voluntary, due to the delay between being advised of his rights and his subsequent questioning.[1] At the suppression hearing, he argued that his first statements, made at the apartment complex, should also be suppressed.[2] The trial court concluded that the statements were not obtained unconstitutionally, and allowed the state to introduce them at trial.

¶6 After a jury trial, Robinson was found guilty as noted above. Pursuant to a sentencing agreement, he was sentenced to a natural life term of imprisonment as to the murder, and two seventeen-year prison terms, consecutive to one another and the life sentence, for the child abuse convictions. This appeal followed. We have jurisdiction pursuant to Ariz. Const. art. VI, § 9, A.R.S. §§ 12-120.21(A)(1), 13-4031, 13-4033 and Ariz. R. Crim. P. 31.2.

Motion to Suppress

¶7 For the first time on appeal, Robinson challenges what he describes as a "two-stage interrogation technique of a police officer first questioning [Robinson] after advising him of his rights, and then three hours later at the police station by a detective without reading him his *Miranda* warnings" as improper, citing *Missouri v. Seibert*, 542 U.S. 600 (2004), and *State v. Zamora*, 220 Ariz. 63 (App. 2009) (applying *Seibert*). Robinson has waived his ability to raise this issue by failing to raise it below, *State v. Hamilton*, 177 Ariz. 403, 408 (App. 1993) (objection on one ground does not preserve issue on another), and failing to argue fundamental error on appeal, *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008) (failure to argue fundamental error results in waiver). However, even if the issue were not waived, we would find no error.

¶8 Prior to initiating custodial interrogation, law enforcement must first advise an individual of his or her constitutional rights as

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[1] Robinson also challenged the statements under the Fourth Amendment, but he does not raise this argument on appeal.

[2] On appeal, Robinson does not challenge the trial court's decision to admit statements he made at the apartment complex. Accordingly, we need not decide whether the circumstances there were "custodial" in nature, requiring *Miranda* warnings. *See Miranda*, 384 U.S. at 444 (warning required for custodial interrogation).

articulated in *Miranda*, 384 U.S. at 444. A "two-stage" interrogation occurs where law enforcement does not begin a custodial interrogation with a *Miranda* warning, but instead, waits until after a suspect has confessed, then begins a new interrogation with a *Miranda* warning, and asks the suspect to repeat the confession. *Seibert*, 542 U.S. 600, 604, 609. Two-stage interrogations are constitutionally prohibited, as they do not "effectively comply with *Miranda's* constitutional requirement." *Id.* at 604.

¶9 Robinson does not argue law enforcement failed to advise him of his rights prior to subjecting him to custodial interrogation. And he does not contend they waited until part-way through a custodial interrogation to advise him of his rights. Accordingly, we conclude the challenged statements, made post-warning at the police station, were not the result of a two-stage interrogation, and Robinson's reliance on *Seibert* and *Zamora* is misplaced.

¶10 We also reject Robinson's claim that the three-hour delay between *Miranda* warnings at the apartment complex and questioning at the station, standing alone, rendered the warnings ineffective, particularly in light of the detective having confirmed with Robinson that he had received the warnings earlier and understood them. *See State v. Gilreath*, 107 Ariz. 318, 319 (1971) (repeated warnings not required for interrogations occurring approximately twelve and thirty-six hours after initial advisement absent circumstances suggesting accused may not be fully aware of rights).

Disposition

¶11 For the foregoing reasons, we affirm Robinson's convictions and sentences.