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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. PEDRO GONZALEZ-VALDIVIA, Appellant.	2 CA-CR 2008-0211 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20074240

Honorable Stephen C. Villarreal, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By John F. Palumbo
Tucson
Attorneys for Appellant

B R A M M E R, Judge.

¶1 A jury found Pedro Gonzalez-Valdivia guilty of transporting more than two pounds of marijuana for sale. The trial court denied his motion for a new trial and sentenced Gonzalez-Valdivia to a substantially mitigated term of three year's imprisonment. He appealed. 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), avowing he has reviewed

the record in its entirety but found no "meritorious legal issues to raise on appeal." As an "arguable issue under *Anders*," he asserts that the trial court abused its discretion and committed structural error by denying Gonzalez-Valdivia's motion for a new trial.

¶2 We view the evidence in the light most favorable to upholding the conviction. *See State v. Cox*, 214 Ariz. 518, ¶ 2, 155 P.3d 357, 358 (App. 2007). After a Tohono O'Odham police officer stopped his vehicle for traffic violations, Gonzalez-Valdivia and his passenger fled on foot. The officer apprehended Gonzalez-Valdivia after a brief foot chase and found 377 pounds of marijuana in the car. Although Gonzalez-Valdivia testified at trial he had only agreed to drive the car in exchange for passage into the United States and had not known it contained marijuana, another Tohono O'Odham police officer testified that Gonzalez-Valdivia had admitted knowing about the marijuana in an untaped statement taken following his arrest and the administration of *Miranda* warnings. *See Miranda v. Arizona*, 384 U.S. 436 (1966).

¶3 Following the jury's guilty verdict, Gonzalez-Valdivia filed a motion for new trial based on asserted jury misconduct. "We review a trial court's denial of a motion for a new trial for an abuse of discretion." *State v. Ruggiero*, 211 Ariz. 262, ¶ 6, 120 P.3d 690, 692 (App. 2005). The trial court did not abuse its discretion by denying the motion in this case. Although Rule 24.1(c)(5) provides that a trial court may grant a motion for a new trial if for "any . . . reason not due to the defendant's own fault the defendant [did] not receive[] a fair and impartial trial," subsection (c)(3) of the rule limits the grounds for a new trial based on juror misconduct. A new trial based on juror misconduct is warranted only if one or more jurors:

> (i) Receiv[ed] evidence not properly admitted during trial . . .;
>
> (ii) Decid[ed] the verdict by lot;
>
> (iii) Perjur[ed] himself or herself or willfully fail[ed] to respond fully to a direct question posed during the voir dire examination;
>
> (iv) Receiv[ed] a bribe or pledg[ed] his or her vote in any other way;
>
> (v) Bec[ame] intoxicated during the course of the deliberations; or
>
> (vi) Convers[ed] before the verdict with any interested party about the outcome of the case.

Ariz. R. Crim. P. Rule 24.1(c)(3). "[I]t is improper to 'inquire[] into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.'" *State v. Swoopes*, 216 Ariz. 390, n.12, 166 P.3d 945, 958 n.12 (App. 2007), *quoting* Ariz. R. Crim. P. 24.1(d) (second alteration in *Swoopes*). A "juror's out of court statement is not admissible to contradict the verdict" unless it is relevant to one of these six grounds. *State v. Cruz*, 218 Ariz. 149, ¶ 33, 181 P.3d 196, 206 (2008); *see also State v. Dickens*, 187 Ariz. 1, 15, 926 P.2d 468, 482 (1996).

¶4 In support of his motion, Gonzalez-Valdivia submitted the affidavit of the jury foreperson, who averred she "felt" the other jurors "had their mind[s] made up" about the case and had "refused to engage in deliberations." She expressed her "feel[ing] that the other jurors refused to deliberate because of the fact that Mr. Gonzalez-Valdivia is in this country without authority." And, she stated she believed Gonzalez-Valdivia was innocent, and she had "only voted to convict [him] after [she] was overwhelmed by the others who refused to deliberate."

¶5 Under the authority described above, the trial court correctly found that the motion and affidavit improperly "delve[d] into the mental processes and motives of the jury" and that the "[a]ffidavit [did] not raise an appropriate basis to bring in additional jurors and query them concerning the deliberations that did, or did not, take place in reaching their verdict." Gonzalez-Valdivia argued the affidavit was admissible to show jurors had "perjured themselves when they answered in voir dire that they would not consider Mr. Gonzalez-Valdivia's status [as an illegal immigrant] and then during deliberations did use his status against him," but the affidavit contained only speculation regarding the jurors's reasons for allegedly refusing to deliberate, and no information as to why the jury foreperson believed the other jurors had been biased. Therefore, even if arguably admissible on this issue, the affidavit was insufficient to warrant a new trial or, as the trial court stated, further inquiry of the other jurors. *See, e.g., State v. Spears*, 184 Ariz. 277, 288, 908 P.2d 1062, 1073 (1996) (vague allegation in foreperson's affidavit insufficient basis for new trial).

¶6 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and have found no error warranting reversal. Therefore, we affirm Gonzalez-Valdivia's conviction and sentence.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge