

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-356

Judge:

Complainant:

ORDER

April 12, 2023

The Complainant alleged a superior court judge made improper legal rulings in a criminal case.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Colleen E. Concannon, Delia R. Neal, and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on April 12, 2023.

1 Before THE PRESIDING DISCIPLINARY JUDGE
2 (THE Attorney Discipline PROBABLE Cause Committee;
3 CHIEF BAR COUNSEL)
4

5 IN THE MATTER OF A NON- MOTION R. 54(±)
6 MEMBER OF THE STATE BAR OF
7 ARIZONA

8
9 Court
10 v
11 in THE STATE OF ARIZONA Hon.

12
13 Judicial violation by County, Hon.
14 Case No.: Appeal from THE
15 Court in County, filed

16
17 1) Violation of Ariz. CJC R. 2.3.(B) by allowing bias, prejudice
18 admission of evidence proscribed by Rule 403.

19
20 2) By virtue of the code outlined in Ariz. CJC R. 2.3.,
21 Hon. is in violation of Ariz. CJC
22 R. 1.1 Compliance with the Law.

23
24 3) Violation of USCS Const. Amend. 14, EQUAL PROTECTION
25 OF LAW

IN THE

2022-356

Appellee,

v.

Appellant.

Filed

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NOT FOR PUBLICATION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 _____ County
No. _____
The Honorable _____ Judge

AFFIRMED

COUNSEL

Counsel for Appellee

Counsel for Appellant

EXHIBIT A

MEMORANDUM DECISION

Chief Judge _____ authored the decision of the Court, in which Judge _____ concurred and _____ specially concurred.

Chief Judge:

¶1 After a jury trial _____ was convicted of _____ counts of aggravated assault and _____ counts of disorderly conduct. The trial court sentenced him to concurrent prison terms, the longest of which is _____. On appeal, _____ argues the court erred by failing to sua sponte order a competency examination, failing to "_____ " the jury panel and venire included African Americans, and admitting irrelevant and unfairly prejudicial evidence. He contends the court also committed reversible error by allowing inaccurate statements from witnesses about _____ legal right to possess his car, permitting the state to comment on his decision to remain silent, not modifying the verdict forms to include a specific finding for his justification defense, and not making a record of bench conferences. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences in the light most favorable to affirming _____ convictions. See *State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999). In late _____ planned to move from _____ to _____ and contracted with _____ company for the delivery of his car to _____ in the beginning of _____. When _____ and his employee, _____ arrived at _____ new residence with the car, _____ met them outside. _____ told _____ that during the trip his car had leaked on another car and had damaged it. _____ told him, "I _____ prepared to unload the car, which had to be jump-started. Meanwhile, _____ noticed a minor scratch on the driver's door and said, "_____ "

¶3 _____ explained to _____ that he should make a claim for damage through the company's insurance and that he could not just take the car without having _____ then told _____ to get the keys from inside the car. _____ retrieved _____ When _____ pushed him off, _____ cut his elbow on the car. _____

[REDACTED] pulled out another key, got into the car, and drove it into his driveway.

¶4 [REDACTED] called [REDACTED] to report that [REDACTED] was refusing to pay for the delivery, that the situation was getting " [REDACTED] and that [REDACTED] had " [REDACTED] attempted to get into the car to load it onto the trailer, but [REDACTED] stopped him, saying " [REDACTED] and that it was " [REDACTED] responded, " [REDACTED]

¶5 [REDACTED] then went to his SUV and pulled out a .22-caliber rifle. [REDACTED] was " [REDACTED] him, and [REDACTED] replied, " [REDACTED] asked if [REDACTED] tried to move [REDACTED] away from the car, grabbed [REDACTED] phone, and threw it. [REDACTED] hen called [REDACTED] to report that [REDACTED] and [REDACTED] were on his property and were refusing to leave. While on the phone with [REDACTED] he fired four " [REDACTED] into the air and pointed the gun at [REDACTED] and The dispatcher who answered [REDACTED] call told him to get off the property, and he and [REDACTED] retreated onto the road. Police arrived and laid the gun on the driveway, where they recovered it.

¶6 A grand jury indicted [REDACTED] and a jury found him guilty on each count. The trial court sentenced him as described above. [REDACTED] timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Sua Sponte Competency Examination

¶7 [REDACTED] claims the trial court committed reversible error by failing to sua sponte halt the trial and order a competency examination. We review the court's decision whether to order such an examination for an abuse of discretion. *See State v. Kemp*, 185 Ariz. 52, 67 (1996).

¶8 At sentencing, defense counsel informed the trial court that [REDACTED] family had raised " [REDACTED] but should be considered as a mitigating factor at sentencing. The court responded that it was " [REDACTED] by [REDACTED] decisions during the altercation with [REDACTED] and and noted concerns about " [REDACTED] based on " [REDACTED]

" [REDACTED] But it concluded [REDACTED] was competent.

¶9 Although [REDACTED] contends the trial court's statements at sentencing show that it had concerns about his competency, the record does

not support his argument that he was incompetent to stand trial. Contrary to his earlier comments, counsel assured the trial court he

" The court likewise was able to observe and interact with during the four-day trial. Although the court expressed concerns about " it agreed that was competent. The court noted that he was "

" Indeed, "

" *State v. Kayer*, 194 Ariz. 423, ¶ 38 (1999). The record supports the court's conclusion, and we find no abuse of discretion.

Panel and Venire

¶10 argues that the trial court " Because did not raise this issue at trial, he has forfeited review for all but fundamental, prejudicial error. See *State v. Escalante*, 245 Ariz. 135, ¶¶ 12, 21 (2018); *State v. Stokley*, 182 Ariz. 505, 514 (1995) (reviewing argument that death-qualified jury was not drawn from fair cross-section of community under fundamental error).¹ Further, on appeal, does not argue the alleged error was fundamental. It is therefore waived. See *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008).

¶11 Moreover, even assuming the argument were not waived, has not met his burden of establishing error. See *Escalante*, 245 Ariz. 135, ¶ 21. "Although a 'defendant in a criminal case is entitled to a fair and impartial jury for the trial of his case, . . . he is not entitled to be tried by any particular jury.'" *State v. Morris*, 215 Ariz. 324, ¶ 40 (2007) (alteration in *Morris*) (quoting *State v. Atwood*, 171 Ariz. 576, 624 (1992)). Because

¹ asserts this error is structural and is therefore "not subject to fundamental error analysis or harmless error analysis." We disagree. Our court has stated that improperly excusing prospective jurors, potentially preventing a fair cross-section of the community, would only be reversible if the defendant "could also show actual prejudice." *State v. Morris*, 215 Ariz. 324, ¶¶ 41, 43 (2007).

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PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

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REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**