

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-028

Judge:

Complainant:

ORDER

May 31, 2024

The Complainant alleged improper legal rulings by a municipal court judge pro tem hearing 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 Regina L. Nassen and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 31, 2024.

CONFIDENTIAL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2024-028

COMPLAINT AGAINST A JUDGE

Name: Judge's Name:

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Succinctly, as stated in the attached Appeal, the Court clearly excluded evidence that showed the 'victim's' past practices of lying to law enforcement and other gross, repetitive criminal behavior. No justification was ever stated, it was just simply 'No.' The Court also negated the testimony of my wife and I as 'not credible', when we have both been not only flawlessly law abiding citizens our Entire Lives, but were also sworn police officers. We've testified hundreds, if not thousands, of times in court, and our credibility has never, ever been completely demolished before. It has never been questioned or found lacking in the past. It's simply absurd.

The court also allowed the Prosecutor to blatantly misstate facts in the case, including declaring the 'witness' to be a 'victim' of disorderly conduct, even after the 'witness' testified in court proceedings that she was not bothered by the incident at all. In fact, when discussing the fact that I used the word ' ', she admitted that I was referring to online reviews about her horrible job performances in the past.

The Court wrote basically that they agreed completely with my appeal, but that their concerns over the clear misconduct did not meet their standards for intervention, which is also absurd. They basically said, "Yes, you're right, but we aren't going to do anything about it." How is this possible? My wife and I have close to years of police experience, we've heard of injustice, but have never actually seen it ourselves until now. This entire case is preposterous. None of the statements of the 'witness' or 'victim' describe the event in the same way. The injuries documented on the 'victim's' face clearly could not be caused with a single strike, which is not what occurred. I did not strike the 'victim' with my fist, as he stated in court, and is a complete lie. I did head butt him just slightly, deliberately slightly, because I was wearing my motorcycle helmet. When we left the RV park immediately following the incident, the 'victim' followed us out to the street on his bicycle, and was very clearly not bleeding or injured in any way.

I deeply appreciate your attention to this matter. I was years old, and this was my first time in handcuffs. It has been a very traumatic experience, but the arrest was childs play compared to my experience in court.

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**IN THE COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF**

HONORABLE _____, JUDGE

DATE:

APPEAL RULING – AFFIRMANCE & REMAND
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In re the Matter of:

STATE OF ARIZONA,

Plaintiff/Appellee,

v.

Defendant/Appellant.

No.

This is a criminal appeal from the _____ Court. Defendant/Appellant (hereinafter “Defendant”) was convicted after a bench trial on _____ of: Disorderly Conduct, a violation of §§ A.R.S. 13-2904(A)1, a class one misdemeanor; and Assault, a violation of A.R.S. §§ 13-1203(A), a class one misdemeanor. Both parties were represented by counsel. The Defendant was sentenced on _____ and filed a timely Notice of Appeal.

This Court has jurisdiction pursuant to Article VI, Section 16 of the Arizona Constitution and A.R.S. §§ 12-124(A), 22-371. The Court has reviewed and considered both appellate briefs. The Court has also reviewed the entire transmitted court file, including listening to a digital recording of the lower court proceedings. For the reasons stated below, the trial court’s judgment and sentence are affirmed.

GENERAL APPELLATE CONSIDERATIONS

In all criminal prosecutions, the state has the burden of proof beyond a reasonable doubt. *State v. Rhome*, 235 Ariz. 459, 460, ¶ 4 (App. 2014). An appellate court reviews a sufficiency of the evidence claim for an abuse of discretion. *State v. Gunches*, 225

Ariz. 22, 25, ¶ 14 (2010). In doing so, the appellate court “reviews the record to determine whether substantial evidence supports the [trial court]’s finding, viewing the facts in the light most favorable to sustaining the ... verdict.” *Id.* (quoting *State v. Roque*, 213 Ariz. 193, 218 ¶ 93 (2006)). Substantial evidence is defined as proof that a reasonable person could accept as both adequate and sufficient to support a conclusion that the defendant is guilty beyond a reasonable doubt. *Id.* Accordingly, this Court will not reweigh the evidence on appeal and will only overturn the trial court’s factual findings in the absence of substantial evidence. *State v. Rodriguez*, 205 Ariz. 392, 397, ¶ 18 (App. 2003).

The testimony of a single witness, if believed by the trial court, is sufficient proof to sustain the judgment. *State v. Montano*, 121 Ariz. 147, 149, 589 P.2d 21 (App. 1978) (“one witness, if relevant and credible, is sufficient to support a conviction”). This Court will give due respect to the factfinder’s superior ability to observe the witnesses while they testify, make credibility determinations, and assign the proper weight to give their testimony and any other evidence. *State v. Cox*, 217 Ariz. 353, 357, ¶ 27 (2007) (“No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the [finder of fact].”) (citing *State v. Lehr*, 201 Ariz. 509, 517, ¶ 24 (2002); *State v. Clemons*, 110 Ariz. 555, 556-57 (1974)).

ISSUE ON APPEAL

Defendant has filed an appellate memorandum raising the following three issues: 1) the trial court abused its discretion when it denied the defense motion in limine to introduce the victim’s extensive criminal history and disallowing any testimony related to the victim’s history of lying to law enforcement; 2) the State engaged in prosecutorial error by misstating the law, misstating the facts, and conflating their arguments to include a witness, _____, as a victim; and 3) sufficient evidence does not exist that would support a guilty verdict beyond a reasonable doubt.

DISCUSSION

Issue #1 – The trial court abused its discretion when it denied the defense motion in limine to introduce the victim’s extensive criminal history and disallowing any testimony related to the victim’s history of lying to law enforcement.

Appellant argues the trial correct erred when it did not permit Defendant to introduce the victim’s criminal history and testimony regarding the same as such would be admissible under Rule 609(a) of the Arizona Rules of Evidence. Appellee argues the

trial court was right to preclude the same because, all such convictions were older than _____ years (actually they were more than _____ years old) and the Appellant did not provide specific facts and circumstances to show that the probative value of the convictions substantially outweighed their prejudicial effect, as required by Rule 609(b). Prior to the trial court ruling, it considered the State's argument regarding the questionable accuracy of Appellant's enumeration of the victim's convictions and the fact that no specifics were given regarding the facts and circumstances of the convictions which would allow the court to properly weigh whether or not their probative value substantially outweighed what was clearly their prejudicial effect. Given that record, this Court cannot find that the trial court erred when it precluded their admission.

Furthermore, the trial court saw the motion in limine, including the alleged convictions, and heard the witness testify that he had lied to law enforcement previously. Despite that knowledge, the trial court still found the victim's testimony credible and did not find the Defendant's or his wife's testimony credible. The trial court was freely able to assess the credibility of the Defendant's testimony independent of that of the victim given the corroborating evidence, including Defendant's own recorded statements.

Issue #2 – The State engaged in prosecutorial error by misstating the law, misstating the facts, and conflating their arguments to include a witness, _____, as a victim.

Appellant argues that the State engaged in prosecutorial error by stating that the crime of disorderly conduct does not require a victim, misstated some facts, and conflated arguments to include _____ as a victim. Appellee argues that the same is not accurate and there was no prosecutorial error.

The Court finds the parties are both correct regarding the issue of whether or not disorderly conduct requires a victim. Appellant rightly claims disorderly conduct requires a victim – a neighborhood, family, or person; while Appellee stated that disorderly conduct does not *require* an individual victim unless it is by domestic violence. To the extent that non-domestic violence disorderly conduct can include a neighborhood in which no victim is related to the defendant, both positions are correct.

The Court finds the prosecutor did not misstate any fundamental facts, but even if she did in her opening or closing statements, such statements are not evidence and the trier of fact in a bench trial is more than capable of distinguishing between that which was supported by evidence and that which was not. Further, even if the prosecutor wrongly suggested that _____ was a victim of disorderly conduct, the Court finds Appellant has not shown that such error was fundamental as the evidence and testimony

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COMPLAINT ON ITS WEBSITE.**

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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.**