

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAMES TOMMY GOODSON, JR.,
Appellant.

No. 2 CA-CR 2014-0019
Filed March 31, 2015

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NOT FOR PUBLICATION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. 31.24.

Appeal from the Superior Court in Pima County
No. CR20113447001
The Honorable Deborah Bernini, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Lori J. Lefferts, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Miller and Chief Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 After a jury trial, James Goodson was convicted of possession of a deadly weapon by a prohibited possessor, a class four felony. The trial court found Goodson had one historical prior conviction and sentenced him to a presumptive prison term of 4.5 years. On appeal, Goodson contends the court erred in instructing the jury and challenges several of its evidentiary rulings. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Goodson. *See State v. Lizardi*, 234 Ariz. 501, ¶ 2, 323 P.3d 1152, 1153 (App. 2014). In September 2011, police officers Steven Pupkoff and Leticia Laplander responded to a 9-1-1 call reporting a disturbance at an apartment complex involving "[s]ome people . . . making gestures like they had a handgun." At the complex, residents directed the officers to Goodson, who was standing in the parking lot next to his vehicle.

¶3 When contacted by the officers, Goodson indicated he had been threatened by one or more residents who gestured to him as though shooting him. He said he then called 9-1-1 and got a shotgun from his apartment, which he had put in the trunk of his car. After locating the weapon and placing it in his police vehicle, Officer Pupkoff initiated a background check on Goodson who then volunteered he had a prior conviction, but "already completed [it]" and therefore had a right to have a gun. The officers confirmed Goodson's prior felony conviction and eventually arrested him for possession of a deadly weapon by a prohibited possessor.

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¶4 Goodson was indicted on one count of possession of a deadly weapon by a prohibited possessor pursuant to A.R.S. § 13-3102, and the state alleged a previous conviction of “forgery, theft of means of transportation and/or by controlling stolen property.” Following a Rule 11 examination, Goodson was found competent to stand trial.

¶5 At trial, a police sergeant testified Goodson had telephoned him the day after his arrest, asking for the return of the shotgun, but also mentioning he was not permitted to have a gun. In contrast, Goodson testified he did not tell the officer he was a prohibited possessor, but rather had asked for the gun to be released to his family because he could not pick it up himself, having been charged with a crime. He also stated that after his first conviction, he had contacted various governmental agencies about reacquiring his right to have a firearm.¹ He further claimed police had released him with his gun after a previous encounter, leading him to believe his right to possess a weapon had been restored and he “was clear to have a firearm.”

¶6 The trial court instructed the jury on the charged offense stating, “A person commits possession of a deadly weapon by a prohibited possessor by knowingly possessing a deadly weapon and such person is a prohibited possessor.” It also provided the jury with similarly worded written instructions. The jury found Goodson guilty as charged, and he was sentenced as noted above. We have jurisdiction over his appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

¹Goodson asserted he had “called around” to the Federal Bureau of Investigations and the Secret Service and had written to then Representative Gabrielle Giffords’s office. He further maintained he had “called the courts” and professed Superior Court staff had advised him to go to “the federal registry,” which he “was in the process of doing and that the Pima County Superior Court was unable to find him “in their system.”

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Jury Instruction

¶7 Goodson first argues the trial court erred in failing to instruct the jury it had to find he knew he was a prohibited possessor in order to be guilty of possession of a deadly weapon by a prohibited possessor. See A.R.S. § 13-3102(A)(4). We review de novo whether jury instructions properly state the law. *State v. Johnson*, 212 Ariz. 425, ¶ 15, 133 P.3d 735, 741 (2006). We consider the adequacy of jury instructions in their entirety to determine if they accurately reflect the law, *State v. Hoskins*, 199 Ariz. 127, ¶ 75, 14 P.3d 997, 1015 (2000), and if as a whole they are “‘substantially free from error,’” we will affirm the conviction, *State v. Cox*, 217 Ariz. 353, ¶ 15, 174 P.3d 265, 268 (2007), quoting *State v. Norgard*, 103 Ariz. 381, 383, 442 P.2d 544, 546 (1968). When a defendant has failed to object at trial, we review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Because he did not object to the instruction,² Goodson bears the burden of establishing the trial court erred, the error was fundamental, and it caused him prejudice. See *id.* ¶ 22.

¶8 Section 13-3102(A) provides: “A person commits misconduct involving weapons by knowingly: . . . (4) Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor.” A “[p]rohibited possessor” is “any person . . . [w]ho has been convicted within or without this state of a felony . . . and whose civil right to possess or carry a gun or firearm has not been restored.” A.R.S. § 13-3101(A)(7)(b). Goodson acknowledges having lost his right to possess a gun after his earlier conviction and admits to having possessed a gun during the incident at issue here. He contends, however, he had believed his rights had been restored.

²Goodson acknowledges he “did not specifically object” to the court’s instruction, which did not apply the requirement of “knowingly” to his status as a prohibited possessor, but points out he had requested an instruction on “the impact of ignorance or mistake of fact on his mental state.” According to Goodson, this request in conjunction with his testimony “show[ed] that he understood that the mental state of ‘knowingly’ applied to his rights as well as to possession.”

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¶9 As the state points out, under § 13-3102(A)(4), it was required to prove Goodson possessed the weapon knowingly, and knew it was a deadly weapon. It was not required, however, to prove Goodson knew he was a prohibited possessor. *See State v. Harmon*, 25 Ariz. App. 137, 139, 541 P.2d 600, 602 (1975) (fact of possession of gun constitutes the crime, “defendant charged with this crime need not have known he acted illegally”); *see also State v. Tyler*, 149 Ariz. 312, 316, 718 P.2d 214, 218 (App. 1986) (state need prove only knowing possession, not that defendant possessed weapon with criminal intent). As we previously have observed, a prohibited possessor offense is essentially one of status. *State v. Mangum*, 214 Ariz. 165, ¶ 16, 150 P.3d 252, 256-57 (App. 2007) (prohibited possessor charge not subject to dismissal on ground conviction giving rise to prohibited possessor status vacated).

¶10 Further, considered in the context of Goodson’s argument, ignorance or a mistaken belief as to a matter of fact relieves a person of criminal liability only when “[i]t negates the culpable mental state required for commission of the offense.” A.R.S. § 13-204(A)(1). “Ignorance or mistake as to a matter of law does not relieve a person of criminal responsibility.” A.R.S. § 13-204(B). Goodson’s claim that he believed his gun rights had been restored involved an error of law. *See State v. Olvera*, 191 Ariz. 75, 77, 952 P.2d 313, 315 (App. 1997) (defendant’s claim he was led to believe ability to possess firearm unaffected by statutory change was mistake of law; thus, no defense to crime charged); *Harmon*, 25 Ariz. App. at 139, 541 P.2d at 602 (defendant’s belief “full status as a citizen” had been restored mistake of law; not cognizable defense to crime involving weapons). Accordingly, the trial court committed no error, much less fundamental error, by not instructing the jury it had to find Goodson knew he was a prohibited possessor before finding him guilty.

Motion to Suppress

¶11 Goodson next contends the trial court erred in denying his motion to suppress statements he had made to officers before being advised of his *Miranda*³ rights. We review the denial of a

³*Miranda v. Arizona*, 384 U.S. 436 (1966).

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motion to suppress evidence for an abuse of discretion. *State v. Peterson*, 228 Ariz. 405, ¶ 6, 267 P.3d 1197, 1199 (App. 2011). In our review, we look only to the evidence presented at the hearing and view it in the light most favorable to sustaining the court's ruling, *State v. Hausner*, 230 Ariz. 60, ¶ 23, 280 P.3d 604, 614 (2012), deferring to the court's determination of facts and witness credibility but reviewing de novo its legal conclusions, *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996).

¶12 At the suppression hearing, Officers Pupkoff and Laplander testified that, upon arriving at the apartment complex, several residents had told them Goodson pointed a shotgun at two men. After speaking with the men and finding them unconcerned and "uncooperative," the officers approached Goodson, who was in the parking lot, standing beside his vehicle. Pupkoff testified he "started conversing" with Goodson, getting "some biographical information" and "asking him what happened."⁴ Goodson informed the officers he was the 9-1-1 caller, identified himself, and handed them his wallet. He said he had felt threatened by an individual at the complex and had responded by getting his shotgun from his apartment and putting it in the trunk of his car.

¶13 Officer Pupkoff testified he had then asked to see the shotgun, and Goodson gave him the keys to his vehicle. Pupkoff found the shotgun in the trunk and inspected it, noting aloud that it was unloaded. Goodson then offered that the shotgun shells were in his pocket and he displayed them. Pupkoff testified he "secure[d] the gun] in [his] car temporarily" and initiated a background check on Goodson. While waiting for the results, Goodson volunteered he had spent two years in prison for auto theft. When asked if Goodson was in custody during the encounter, Pupkoff testified, "No . . . He was just standing there," and "I was talking to him." He continued, "And at the end of the day if he came back as not having any kind of prohibited possessor indication he would have got his shotgun back and we'd drive off." After the results of the records

⁴Officer Laplander testified, in contrast, that the officers had asked Goodson "if he had a shotgun in the car" "for officer safety issues," after he identified himself.

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check indicated Goodson was a prohibited possessor, the officers took him into custody.

¶14 In his motion to suppress his statements to the officers, Goodson maintained he was in custody when questioned by the officers because he was not free to leave once they had taken his wallet containing his identification card. At the suppression hearing, defense counsel argued:

[Goodson] gave his wallet to somebody and they held on to it. There's no indication in the [police] report, . . . but no indication when he got it back. So they had it the entire time. . . . They got his keys. They got his shotgun. He never had any chance to leave. No reasonable person would have felt free to leave after the officers had his or her wallet let alone the keys to the car and weapon.

The trial court found no violation of Goodson's *Miranda* rights and denied his motion.

¶15 The procedural safeguards of *Miranda* apply only when a suspect is in "custody or otherwise deprived of his freedom of action in any significant way." *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977), quoting *Miranda*, 384 U.S. at 444; *State v. Zamora*, 220 Ariz. 63, ¶ 9, 202 P.3d 528, 532 (App. 2009) ("Police are free to ask questions of a person who is not in custody without having to give the person any warnings under *Miranda*"). In deciding whether an interrogation is custodial, we look to "the objective circumstances of the interrogation, not . . . the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994). And we evaluate "whether under the totality of the circumstances a reasonable person would feel that he was in custody or otherwise deprived of his freedom of action in a significant way." *State v. Carter*, 145 Ariz. 101, 105, 700 P.2d 488, 492 (1985). Factors indicating custody include: (1) "whether the objective indicia of arrest are present," (2) "the site of the interrogation," (3) "the length and form of the investigation," and

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(4) “whether the investigation had focused on the accused.”⁵ *Id.* (citation omitted).

¶16 On appeal, Goodson argues that under “the ‘totality of the circumstances,’ a reasonable person would feel that he was in custody in the situation [in which] . . . Goodson found himself.” In support, he points to police possession of his “identification, keys and gun” as “‘objective indicia of arrest,’” and he notes that the officers had been informed he “had pointed a gun at other people in the apartment complex,” thus making him the focus of their investigation. But he acknowledges the site of the interrogation and its length and form “do[] not weigh strongly in favor of a finding that [he] was in custody.”

¶17 The record of the suppression hearing indicates that the officers spoke with Goodson conversationally in the parking lot of his apartment complex, and with no display of force such as drawn weapons. *See State v. Morse*, 127 Ariz. 25, 28, 617 P.2d 1141, 1144 (1980) (defendant not in custody where midday interrogation in shopping center parking lot was short and investigatory, without use or display of force). Goodson told them he had made the 9-1-1 call, and the officers asked him generally what had occurred. *See State v. Mathis*, 110 Ariz. 254, 255, 517 P.2d 1250, 1251 (1974) (*Miranda* not applicable to officer’s “clearly neutral, nonaccusatory” questions “in furtherance of proper preliminary investigation”). The interview lasted approximately five minutes before the discovery of the shotgun and the records check. *See State v. Thompson*, 146 Ariz. 552, 556, 707 P.2d 956, 960 (App. 1985) (police interview that was not protracted and was “investigatory rather than accusatory” tended to show defendant not in custody). The officers did not search Goodson, handcuff him, or in any way restrain him. *See State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P.2d 1368, 1371 (1983) (objective indicia of arrest included whether officers had handcuffed defendant or drawn weapon); *State v. Riffle*, 131 Ariz. 65, 67, 638 P.2d 732, 734 (App. 1981) (*Miranda* warnings not required where “none of

⁵Arizona caselaw is inconsistent with respect to the relevance of this fourth factor. *See, e.g., State v. Wright*, 161 Ariz. 394, 397 n.1, 778 P.2d 1290, 1293 n.1 (App. 1989) (noting inconsistency).

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the usual indicia of arrest – no handcuffs, no locked doors, no drawn guns, no search of appellant’s person or belongings”).

¶18 Additionally, although the officers had approached Goodson after being informed he had pointed a shotgun at two residents of the complex, there is no indication Goodson was aware of what the officers had been told.⁶ See *Stansbury*, 511 U.S. at 324 (“[A] police officer’s subjective view that the individual under questioning is a suspect, if undisclosed, does not bear upon the question whether the individual is in custody for purposes of *Miranda*.”); *State v. Wright*, 161 Ariz. 394, 397, 778 P.2d 1290, 1293 (App. 1989) (“*Miranda* warnings are not required merely because the questioned person is one whom the police suspect.”). Rather, Goodson understood the officers were responding to his own 9-1-1 call.

¶19 Finally, Goodson argues the officers’ retention of his identification, keys and gun was indicia of arrest. At the suppression hearing, the officers testified Goodson had handed them his wallet, apparently containing his identification, but did not say they had asked him for it, nor did they indicate they had retained it and, if so, for how long and to what purpose. Similarly, there was no evidence the officers kept Goodson’s keys after using them to unlock his vehicle. The officers acknowledged securing the shotgun in their police vehicle during the encounter, but noted it would have been returned to Goodson had he not been a prohibited possessor.

⁶Citing Officer Laplander’s testimony, Goodson contends he would have been aware “the officers had focused their attention on him” because they had asked if he had a shotgun soon after approaching him. However, Officer Pupkoff testified they had “ask[ed] . . . what happened,” and that Goodson had responded by telling them about the altercation and the shotgun. We generally defer to the trial court’s assessment of the evidence, and, where conflicting inferences may be drawn, resolve any issues in the manner most favorable to the court. See *State v. Lacy*, 187 Ariz. 340, 347, 929 P.2d 1288, 1295 (1996).

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¶20 Considering the totality of the circumstances, the trial court could reasonably conclude from the evidence presented that Goodson was not in custody when he spoke with the officers. *See Morse*, 127 Ariz. at 28, 617 P.2d at 1144. Accordingly, we cannot say the court erred in denying Goodson’s motion to suppress.

Admission of Evidence

¶21 Prior to trial, Goodson moved to exclude “mention of the alleged altercation” between him and his neighbors, asserting the evidence was “irrelevant, substantially outweighed by the danger of unfair prejudice, lacks foundation for submittal, and is hearsay.” He also sought to exclude statements he had made to the officers—including, “I am going to defend myself,” “I’m going to get them before they get me[,]” and a statement that he would “shoot anyone that threatened him”—arguing these statements were “irrelevant and substantially outweighed by the danger of unfair prejudice.” The court admitted evidence of the altercation to “complete [the] story” for the jury as to why the officers arrived and questioned Goodson, and it found his statements relevant to whether he knowingly possessed the weapon.

¶22 Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Ariz. R. Evid. 401. Relevant evidence may be excluded if “its probative value is substantially outweighed by a danger of . . . unfair prejudice” Ariz. R. Evid. 403. “Unfair prejudice results if the evidence has an undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror,” but “[n]ot all harmful evidence . . . is unfairly prejudicial.” *State v. Mott*, 187 Ariz. 536, 545–46, 931 P.2d 1046, 1055–56 (1997). “Because ‘probative value’ and ‘the danger of unfair prejudice’ are not easily quantifiable factors, we accord substantial discretion to the trial court in the Rule 403 weighing process.” *Hudgins v. Sw. Airlines, Co.*, 221 Ariz. 472, ¶ 13, 212 P.3d 810, 819 (App. 2009), quoting *State v. Gibson*, 202 Ariz. 321, ¶ 17, 44 P.3d 1001, 1004 (2002). We will uphold the court’s ruling if legally correct for any reason supported by the record. *State v. Moreno*, 236 Ariz. 347, ¶ 5, 340 P.3d 426, 429 (App. 2014).

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¶23 Goodson does not deny that evidence of the altercation and his statements to the police officers was relevant or probative to some degree on the issue of whether he knowingly possessed the gun.⁷ Nor does he dispute that the state must prove every element of the charge regardless of his decision to not contest a particular element. *See State v. Dickens*, 187 Ariz. 1, 18, 926 P.2d 468, 485 (1996) (burden to prove every element of the offense is not relieved by a defendant’s failure to contest elements of the offense), *abrogated on other grounds by State v. Ferrero*, 229 Ariz. 239, 274 P.3d 509 (2012). Goodson asserts, however, the statements’ “probative value was low in the Rule 403 balancing test,” given that he did not contest the element of possession, and there was “other less prejudicial information on the element of possession.” The state, however, is not limited to proving its case by evidence of the defendant’s choosing. *See Old Chief v. United States*, 519 U.S. 172, 186–87 (1997) (“the prosecution is entitled to prove its case by evidence of its own choice, or, more exactly, that a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it”); *but see Gibson*, 202 Ariz. 321, ¶ 17, 44 P.3d at 1004 (if issue not in dispute, or other evidence of equal probative value, “then a greater probability of substantial outweighing exists”), *quoting* 1 Joseph M. Livermore, Robert Bartels, & Anne Holt Hameroff, *Arizona Practice: Law of Evidence* § 403 at 82-83, 84-86 (4th ed. 2000).

¶24 Goodson maintains his “statement that he would shoot anyone who threatened him whether they were armed or not, and evidence of his quarrelsomeness, invited a decision on the basis of emotion—that he was a threat to the community—rather than an

⁷In his brief, Goodson observes:

The fact that he got the gun during the confrontation is relevant to whether he knew he had the gun, since he had to know he had a gun in order to get it. His statements that he would shoot anyone who threatened him, whether or not they had a gun, may have a slight probative value since a person could not shoot someone if the person did not have a gun.

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objective evaluation of the evidence in the case.” But on the record here, the trial court could reasonably find the evidence regarding Goodson’s altercation with his neighbors and statements about defending himself, especially in response to perceived threats, not so compelling or pejorative as to influence a jury to make a decision on an improper basis such as emotion or horror. *See Mott*, 187 Ariz. at 545–46, 931 P.2d at 1055–56. Thus, the court’s ruling that the probative value of the evidence was not substantially outweighed by a danger of unfair prejudice was within its substantial discretion. *See Ariz. R. Evid. 403; Hudgins*, 221 Ariz. 472, ¶ 13, 212 P.3d at 819. Moreover, even assuming *arguendo* the evidence was erroneously admitted, it would have had no effect on the jury’s verdict because the evidence that Goodson was a prohibited possessor and knowingly possessed the shotgun was overwhelming. *See State v. Davolt*, 207 Ariz. 191, ¶ 64, 84 P.3d 456, 474 (2004).

Exclusion of Evidence

¶25 Finally, Goodson argues the trial court erred in excluding evidence that he had denied using his shotgun to threaten his neighbors during the confrontation.⁸ At trial, while cross-examining Officer Laplander and in response to an objection by the state, defense counsel asserted he “was completing the record” under Ariz. R. Evid. 106 by asking the officer about Goodson’s denial. The trial court found the statement unnecessary to “put things in context,” but only “to help [Goodson’s] defense” and ruled it inadmissible hearsay.

¶26 The constitutional rights to due process, compulsory process, and confrontation guarantee a defendant “a meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation omitted). A defendant’s right to present evidence, however, may be restricted by the application of reasonable evidentiary rules. *See United States v. Scheffer*, 523 U.S. 303, 308 (1998).

⁸The trial court also excluded evidence that Goodson had pointed a gun at his neighbors during the altercation.

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¶27 Rule 106 “is a partial codification of the rule of completeness.” *State v. Prasertphong*, 210 Ariz. 496, ¶ 14, 114 P.3d 828, 831 (2005). That rule requires the admission of those portions of a statement that are “necessary to qualify, explain or place into context the portion already introduced.” *Id.* ¶ 15, quoting *United States v. Branch*, 91 F.3d 699, 728 (5th Cir. 1996); see Ariz. R. Evid. 106 (requiring admission of other portions of writing or recorded statement “that in fairness ought to be considered at the same time”); Fed. R. Evid. 106 advisory committee’s note (rule designed to prevent “the misleading impression created by taking matters out of context”). The rule may be applied to unrecorded oral statements, see *State v. Ellison*, 213 Ariz. 116, n.9, 140 P.3d 899, 914 n.9 (2006), and to hearsay evidence, see *Prasertphong*, 210 Ariz. 496, ¶ 22, 114 P.3d at 833. But it “does not create a rule of blanket admission for all exculpatory statements simply because an inculpatory statement was also made.” *State v. Cruz*, 218 Ariz. 149, ¶ 58, 181 P.3d 196, 209 (2008).

¶28 Goodson contends evidence of his statement to the officers denying he had threatened his neighbors with his shotgun during the altercation was admissible under Rule 106 and was improperly precluded by the trial court. He asserts the statement would have provided the jury the proper context to consider “his statement about shooting those who threaten him” and “the story of the confrontation and [his] statements to the officers,” and would have indicated “he was . . . venting . . . anger rather than admitting he was going to use the gun after the threat from his neighbors.” We need not resolve this issue, however, because any error would have been harmless in view of the overwhelming evidence that Goodson was a prohibited possessor and knowingly possessed the shotgun. See *State v. Valencia*, 186 Ariz. 493, 502, 924 P.2d 497, 506 (App. 1996) (preclusion of admissible but non-vital hearsay evidence harmless in view of overwhelming evidence of defendant’s guilt on aggravated assault charge).

Disposition

¶29 For all of the foregoing reasons, Goodson’s conviction and sentence are affirmed.