DIVISION ONE
FILED: 11/29/2012
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 12-0077
	)	
Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ALLAN C. KOLAKOWSKI,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-135142-001

The Honorable Jeanne M. Garcia, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Division
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Allan C. Kolakowski (Defendant) appeals his convictions for resisting arrest, a class six felony, and threatening or intimidating, a class one misdemeanor.

¶2 Defendant's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after a search of the entire appellate record, he found no arguable question of law that was not frivolous. However, counsel advises this Court that Defendant wishes us to address three specific issues, and we do so below. Defendant was also afforded leave to file an in propria persona supplemental brief; however, he did not.

¶3 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2010), and -4033.A.1 (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶4 On July 10, 2011, Defendant and his ex-wife were temporarily staying at his adult daughter's home. Defendant's ex-wife had encountered car trouble, and she and Defendant were discussing options to repair the car. During the discussion, Defendant became increasingly loud and agitated, and the argument began to bother his daughter. After the daughter interjected into the argument, Defendant began yelling at the

two women. Defendant approached his ex-wife and told her that if she said one word he would punch her in the jaw. The daughter called the police, who arrived within minutes. Upon their arrival, Phoenix Police Officers T. and K. spoke to the daughter about the argument and entered the house to speak with Defendant.

¶5 When the officers entered the living room, Defendant was sitting with his back to them. Defendant appeared to be crying and talking on the phone. When the officers questioned Defendant about his name, Defendant initially ignored the officers before complying. When asked to provide his Social Security number and date of birth, however, Defendant refused, insisting that the officers did not require that information and did not need to be at the house. The officers observed Defendant clenching his fists and noticed that he appeared tense. Based on these cues, the officers determined that they needed to detain Defendant.

¶6 Officer T. advised Defendant that he was under arrest and asked him to stand up. Defendant stood up, pulled his arms away from the officers, spun around to face Officer K., and raised his clenched fist. Officers K. and T. pulled Defendant to the ground. Defendant struggled to keep his arms away from the officers. Officer T. punched Defendant in the head and then struck him twice in the torso, at which point the officers were

able to handcuff Defendant. Phoenix Fire Department personnel treated Defendant for minor injuries at the scene and released him into the officers' custody.

¶7 Defendant was charged with one count of resisting arrest, a class six felony, one count of threatening or intimidating his ex-wife, a class one misdemeanor and a domestic violence offense, and one count of threatening or intimidating Officer T. After a jury trial, Defendant was convicted of resisting arrest and threatening or intimidating his ex-wife. Defendant was sentenced to one year of supervised probation for each count, to be served concurrently. The trial court classified the resisting arrest conviction as a class six undesignated felony, giving Defendant the opportunity to have the felony reduced to a misdemeanor upon successful completion of probation.

DISCUSSION

¶8 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996).

¶9 On appeal, Defendant contends that the trial court erred in refusing to allow: (1) Defendant to present evidence of his recent heart attack and heart surgery; (2) Defendant to testify regarding mental health issues; and (3) Defendant to testify that he was on blood thinners.

¶10 At trial, Defendant requested and was granted a self-defense jury instruction on the count of resisting arrest. Defendant sought to admit evidence concerning his recent heart attack, heart condition, medication and mental health issues to demonstrate his "state of mind" in relation to his self-defense justification. The State argued that such evidence was unnecessary, unrelated to self-defense, and would inflame the passions of the jury in a prejudicial fashion. Defendant additionally attempted to introduce evidence of his blood thinner medication to explain the lack of bruising on his body in photographs taken by the police immediately after the incident. The State also objected to this use of the evidence.

¶11 The trial court agreed with the State's arguments, finding that the possible prejudice from the evidence greatly outweighed its probative value, and barred Defendant from introducing the evidence. "In reviewing a trial court's decision to admit or exclude evidence, . . . we will not disturb the lower court's ruling absent an abuse of discretion." *State v. Stotts*, 144 Ariz. 72, 82, 695 P.2d 1110, 1120 (1985). Abuse of discretion occurs when "the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983).

¶12 In the instant case, we cannot say that the trial court abused its discretion in its decision to exclude Defendant's medical evidence. It was reasonable for the trial court to conclude that the medical evidence was not sufficiently probative to justify its potentially prejudicial effect as it did not prove any element of the self-defense justification or disprove any element of the charged offenses. Additionally, the theoretical probative value of the blood thinner evidence in relation to the lack of bruising did not outweigh its prejudicial nature, and thus did not justify its admittance. The court properly weighed the evidence and came to a correct conclusion. As the trial court did not abuse its discretion, we affirm.

CONCLUSION

¶13 We have read and considered counsel's brief and the entire record on appeal. We have carefully searched the entire appellate record for reversible error and have found none. *See Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the jury's findings of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶14 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.

¶15 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

/S/
_____
PATRICIA A. OROZCO, Judge

CONCURRING:

/S/
_____
MAURICE PORTLEY, Presiding Judge

/S/
_____
RANDALL M. HOWE, Judge