

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

BUCK EARL PETERSON, *Appellant*.

No. 1 CA-CR 18-0852
FILED 7-30-2019

Appeal from the Superior Court in Navajo County
No. SO900CR201700758
The Honorable Dale P. Nielson, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

The Rigg Law Firm, PLLC, Pinetop
By Brett R. Rigg
Counsel for Appellant

STATE v. PETERSON
Decision of the Court

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Kenton D. Jones joined.

T H O M P S O N, Judge:

¶1 This appeal was timely filed in accordance with *Anders v. California*, 368 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), following Buck Earl Peterson’s (defendant’s) convictions for disorderly conduct involving a deadly weapon or dangerous instrument, a Class 6 felony; kidnapping, a Class 2 felony; and aggravated assault, a Class 3 felony. All the convictions involved domestic violence and were found to be dangerous offenses. Defendant’s counsel searched the entire record on appeal and did not find any arguable questions of law. He subsequently filed a brief requesting this court conduct an *Anders* review of the record for fundamental error. Defendant filed a supplemental brief *in propria persona*.

¶2 On August 4, 2017, A.P. (victim) was on her ranch eating dinner when she received three phone calls from defendant, her ex-husband. Defendant informed her that he was coming to her ranch to take possession of an old car parked on the premises to settle one of his debts. Victim drove down towards the gate to meet him. She encountered defendant some distance away from the gate where the old car was parked. An argument ensued that quickly escalated despite victim’s attempts to calm defendant. Defendant pulled out a knife, alternately waving it around and holding it to his own throat.

¶3 Victim tried to put distance between herself and defendant, but defendant followed her. As the argument went on, defendant continued to move erratically before “lung[ing]” at her with the knife. Victim and defendant eventually arrived at victim’s house, where victim sat down in a chair on the porch and resumed her attempts to defuse the situation. Defendant remained aggressive, at one point pinning victim to the chair and holding the blade of his knife near her throat.

¶4 Defendant was charged with two counts of aggravated assault (one for “lung[ing]” at victim and one for pinning her to the chair) and one count of kidnapping. Over a three-day trial, the jury heard testimony from victim, the police officer who responded to her 911 calls,

STATE v. PETERSON
Decision of the Court

defendant himself, and defendant's son and girlfriend who served as character witnesses. The state introduced several audio recordings made by victim of her phone calls with defendant and during their encounter. Defendant testified that the knife was actually a "fidget spinner," denied ever using it in a threatening manner towards victim and claimed that instead of pinning victim to the chair he was kneeling so as to make eye contact with her. Defendant testified that he had questions about the timeline of events as presented in the recordings but admitted that all statements included on them were his.

¶5 On the first count of aggravated assault (the "lung[ing]"), the jury convicted defendant of the lesser included offense of disorderly conduct involving a deadly weapon or dangerous instrument. The jury also found defendant guilty of the second count of aggravated assault and of kidnapping. Defendant received the presumptive sentence of 2.25 years for disorderly conduct, the presumptive sentence of 7.5 years for aggravated assault, and the minimum sentence of 7 years for kidnapping. The sentences were set to run concurrently with credit for 66 days' time served.

¶6 In his supplemental brief, defendant raises three issues. First, defendant claims that victim's audio recording of the encounter at the ranch should not have been admitted as evidence because the victim had time to edit it and because large portions of the incident are not included in the recording. We review a trial court's rulings on the admissibility of evidence for abuse of discretion. *State v. Lopez*, 234 Ariz. 465, 469, ¶19 (App. 2014). Here, the recording was admitted without objection from defendant's counsel, who agreed to have approximately twenty minutes redacted from the recording. There was no abuse of discretion, let alone fundamental error. *See State v. Escalante*, 245 Ariz. 135, 142, ¶ 21 (2018) ("[T]he first step in fundamental error review is determining whether trial error exists."). Second, defendant argues that victim's actions in recording him without his consent and allegedly editing the recording constituted entrapment. Defendant misunderstands entrapment. The defense of entrapment only applies when law enforcement officers or their agents induce a person to commit a crime. *See Ariz. Rev. Stat. (A.R.S.) § 13-206(B)* (2019).¹ Third, defendant's assertions as to ineffective assistance of counsel must be brought in a petition for post-conviction. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002).

¹ We cite to the current version of any statute unless the statute was amended after the pertinent events and such amendment would affect the result of this appeal.

STATE v. PETERSON
Decision of the Court

¶7 We have read the briefs and searched the entire record for fundamental error. *See Leon*, 104 Ariz. at 300. We conclude the record does not reflect any such errors. All proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and the sentences imposed were within the statutory limits. After informing defendant about this appeal's outcome and his future options, defendant's counsel is released from his obligations under this appeal. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Defendant has thirty days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

BROWN, J. and JONES, J., specially concurring:

¶8 The Honorable Jon W. Thompson passed away on July 22, 2019. Judge Thompson signed this decision before his death. We concur fully in the decision.



AMY M. WOOD • Clerk of the Court
FILED: AA