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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 08-1056
 Appellee,)
) DEPARTMENT D
 v.)
) MEMORANDUM DECISION
 JOVANNI VASQUEZ,)
) (Not for Publication -
 Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-005177-001 DT

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals Section
Attorney for Appellee

Kimerer & Derrick Phoenix
Clark Derrick
Amy Nguyen
Attorneys for Appellant

G E M M I L L, Judge

¶1 Giovanni Vasquez ("Vasquez") appeals from his
convictions and sentences for one count of manslaughter, a

class-two felony, and one count of endangerment, a class-six felony. Vasquez's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. See *Smith v. Robbins*, 528 U.S. 259 (2000). Vasquez was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001). The record reveals the following facts.

¶3 On July 22, 2007, at around ten at night, Vasquez fired sixteen bullets into a trailer home near his house. Four individuals were inside the trailer home at the time of the shooting: Desiree, Camille, Angel, and Danielle. Danielle was killed almost instantly, and Camille now suffers from brain damage because one of the bullets struck her in the head. Vasquez shot at the trailer home because Angel, who lived at the trailer home, had allegedly stolen a magnum revolver from him.

¶4 Prior to the shooting, Vasquez informed his friend Joshua that Angel had stolen a magnum revolver from him.

Vasquez and Joshua then met up with Andrew at the "big park" to further discuss what had happened. The big park is located near the victim's trailer home. Andrew arrived at the big park with three other individuals: Rudy, Dominic, and Oscar. Rudy, Oscar, and Joshua all testified that Vasquez said he wanted to do a drive by of Angel's trailer home because Angel had stolen a revolver from him.¹

¶15 Joshua walked home after Vasquez informed the group that he wanted to do a drive by on Angel's trailer home. The rest of the group told Vasquez that they did not want to do a drive by, and everyone, including Vasquez, got into Rudy's car and drove to another park referred to as the "little park." The little park is located approximately ten minutes walking distance from the big park. Oscar testified that while they were all hanging out at the little park, he again heard Vasquez tell the group that he wanted to do a drive by of Angel's trailer home. After Rudy stated that he would not allow Vasquez to use his car to do a drive by, Vasquez told the group that he was going home, and he started walking north toward his house.

¶16 There was conflicting testimony about what happened next. Oscar testified that Vasquez and Dominic started walking toward the big park together. Dominic's brother, Rudy,

¹ Andrew did not testify, and Dominic testified that he was not paying attention to what Vasquez said that night because he was playing with the car radio.

testified that Dominic walked by himself toward a ditch to urinate. It was undisputed that Andrew, Rudy, and Oscar all heard approximately sixteen to twenty gunshots while Dominic and Vasquez were out of their sight.

¶17 There was also conflicting testimony on whether Dominic and Vasquez returned to the little park together. Oscar indicated that Dominic and Vasquez returned to the little park together. Rudy testified that there was "a minute or two-minute space" between when Dominic and Vasquez returned to the little park. Rudy further testified that Dominic returned to the little park from a different direction than Vasquez.

¶18 After Vasquez and Dominic rejoined the group, Rudy drove everyone to Oscar's house. While in Rudy's car, Vasquez told everyone that he "unloaded the whole gun at the trailer." Oscar testified that he saw a gun on Vasquez's waist while he was in the car. Oscar further testified that Vasquez "opened the . . . [car] seat and threw [the gun] in the trunk" and that Vasquez removed the gun from the trunk as soon as he arrived at his house.

¶19 Rudy dropped Oscar, Vasquez, and Andrew off at Oscar's house and drove home with his brother Dominic. While standing outside of Oscar's house, Vasquez asked Oscar if he would hide the gun at his house. Oscar agreed and placed the gun inside a pair of boxers and tucked the weapon inside his closet. Vasquez

also asked Oscar if he could borrow a shirt and a pair of his shoes. Oscar gave Vasquez a pair of shoes, but Vasquez did not borrow a shirt from Oscar because Oscar's shirts were too small. Oscar heard Vasquez say that he wondered whether he hit somebody in the trailer home.

¶10 Vasquez and Andrew eventually left Oscar's house a little while later. Vasquez returned to Oscar's house that same night and asked Oscar to lie to the police about what happened. Police officers arrived at Oscar's house at around midnight while Vasquez was still at Oscar's house. Although Oscar initially lied to the police about what happened that night, he eventually told police detectives everything he knew.

¶11 Oscar's girlfriend, Cecilia, arrived at Oscar's house as Oscar was being arrested. Cecilia testified that police officers would not allow her to enter Oscar's house because they were searching Oscar's house to find, among other things, the gun that was used in the shooting. Police officers were ultimately unable to locate a gun in Oscar's house. Cecilia testified that she went inside Oscar's house after the police left, and while she was cleaning Oscar's room, she found a nine millimeter handgun inside Oscar's closet. Cecilia eventually delivered the gun to the police.

¶12 Crime technicians determined that eleven of the sixteen bullet cartridges found in or near the victims' trailer

home "were likely fired" from the nine millimeter handgun found in Oscar's closet. It was determined that the remaining five bullets could have been fired from the same handgun, but the test results were inconclusive. Police detectives determined that all of the bullets penetrated through the south wall of the trailer home. Police also found the magnum revolver that Vasquez claimed Angel had stolen from him located inside the victims' trailer home.

¶13 The jury found Vasquez guilty of one count of manslaughter for causing the death of Danielle and one count of endangerment of Desiree. The jury made a separate finding that both offenses were dangerous offenses. The jury found Vasquez not guilty of the remaining three counts: aggravated assault of Camille, discharging a firearm at a structure, and aggravated assault of Angel.

¶14 The State had not alleged any aggravating factors, and Vasquez was sentenced to the presumptive term on both counts. Vasquez was sentenced to 10.5 years for the manslaughter conviction and 2.25 years for the endangerment conviction. The court ordered the sentences to be served consecutively because there were two victims. The court also imposed a consecutive term of community supervision equal to one day for every seven days of his prison sentence. Vasquez was awarded 409 days of presentence incarceration credit.

¶15 Vasquez timely appeals his convictions and sentences. 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) (Supp. 2010).²

DISCUSSION

¶16 Having considered defense counsel's brief and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentences imposed fall within the range permitted by law, and the evidence presented supports the convictions. As far as the record reveals, Vasquez was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶17 The jury verdicts in this case appear inconsistent. The jury found Vasquez guilty of manslaughter for causing the death of Danielle, yet the jury found Vasquez not guilty of discharging a firearm at a structure. These verdicts appear inconsistent because the evidence indicates that Danielle was inside the trailer home when she was shot and killed. Even if we were to conclude that the verdicts were inconsistent, Arizona

² We cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

does not require that verdicts on all counts be consistent. *State v. Zakhar*, 105 Ariz. 31, 32, 459 P.2d 83, 84 (1969). Inconsistent verdicts may be the result of leniency or compromise amongst the jury, and reversal is not warranted simply on this basis. See *State v. Garza*, 196 Ariz. 210, 212, ¶ 7, 994 P.2d 1025, 1027 (App. 1999). We discern no reversible error on the basis that the verdicts may have been inconsistent.

¶18 Pursuant to Arizona Rules of Criminal Procedure 24.1(c)(4) (Supp. 2009), a court may grant a new trial if the court has erred "in the instruction of the jury on a matter of law to the substantial prejudice of a party." Defense counsel filed a motion for a new trial pursuant to Arizona Rules of Criminal Procedure 24.1(c)(4), contending that the trial court incorrectly instructed the jury on a matter of law and/or the jurors were confused about the causation requirement for manslaughter. Defense counsel stated in his motion that he spoke with a juror after the trial, and the juror indicated that some of the jurors were not convinced beyond a reasonable doubt that Vasquez shot the victims' trailer. The juror reportedly stated that the jury convicted Vasquez of manslaughter because they all agreed that Vasquez was somehow indirectly involved by starting the chain of events that resulted in the death of the victim.

¶19 We find no reversible error in the jury instructions.

The final jury instructions stated that “[t]he crime of manslaughter requires proof that the defendant: (1) caused the death of another person and (2) was aware of and showed a conscious disregard of a substantial and unjustifiable risk of death.” Defense counsel did not object to the final instructions on manslaughter, and the trial court’s instructions were identical to the Revised Arizona Jury Instructions (“RAJI”) on manslaughter. See RAJI (Criminal) Ch. 11.03A1 (3d ed. 2008).

¶20 We also agree with the trial court that Vasquez is not entitled to a new trial on the asserted basis that the jury may have misunderstood the law. Even taking the juror’s unsubstantiated statements to defense counsel as true, the juror’s comments would not be admissible to impeach the manslaughter verdict because, pursuant to Arizona Rules of Criminal Procedure 24.1(d), “[n]o testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.” See also *State v. Childs*, 113 Ariz. 318, 324, 553 P.2d 1192, 1198 (1976) (holding that the “[t]he general rule is that a jury verdict cannot be impeached by the affidavit of a juror who has agreed to the verdict in open court.”); *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988) (holding that “[j]uror misunderstanding of instructions is not one of the grounds of misconduct listed in rule 24.1(c)(3)”).

¶21 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Vasquez of the disposition 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. Vasquez has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶22 The convictions and sentences are affirmed.

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
PATRICK IRVINE, Judge