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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, ) 1 CA-CR 09-0145  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
ROBERT STANFORD, )  
) (Not for Publication -  
Appellant. ) Rule 111, Rules of the  
) Arizona Supreme Court)  
)  
)  
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Appeal from the Superior Court in Maricopa County

Cause No. CR2007-151813-001 SE

The Honorable Silvia R. Arellano, Retired Judge

**AFFIRMED**

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Terry Goddard, Arizona Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Kessler Law Offices Mesa  
by Eric W. Kessler  
Attorney for Appellant

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**B A R K E R**, Judge

¶1 Robert Stanford appeals from his conviction and sentence for one count of murder in the second degree. Stanford was sentenced on February 20, 2009, and timely filed a notice of appeal. Stanford'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 searching the entire record on appeal, he finds no arguable ground for reversal. We granted Stanford leave to file a supplemental brief *in propria persona* on or before March 30, 2010, but he failed to do so.

¶2 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 13-4033(A) (2010). We are required to search the record for reversible error. Finding no such error, we affirm.

#### ***Facts and Procedural Background***<sup>1</sup>

¶3 On August 6, 2007, Stanford was asked to leave the Redfish Grill and Bar ("Redfish") because he was arguing with a bar patron. As the head bouncer escorted Stanford to his car, they crossed paths with Victim in the parking lot. Stanford and

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<sup>1</sup> We view the facts in the light most favorable to sustaining the court's judgment and resolve all inferences against Stanford. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998); *State v. Moore*, 183 Ariz. 183, 186, 901 P.2d 1213, 1216 (App. 1995).

Victim made eye contact, and then Stanford asked him "what the f\*\*\* he was looking at." Victim reacted to Stanford by yelling that Stanford did not know who he was. Stanford and Victim continued yelling and tried to fight one another but were separated by other bouncers. The yelling continued across the parking lot as the head bouncer escorted Stanford away from Victim and to his car. Once at the car, Stanford told the head bouncer that "he's got something for [Victim] in the car, that he'll take care of it." Stanford then got into the car, apologized to the bouncer for the situation, said he was leaving for the night, and drove off.

¶4 A few minutes after Stanford drove off, the bouncer monitoring the patio saw Stanford's car return to the parking lot. Stanford was driving and began circling the parking lot in the same direction about five or six times. About ten to fifteen minutes after Stanford left, the head bouncer saw Victim inside the restaurant. Although Victim was acting fine, was not arguing with anyone, and was not as upset as he had been in the parking lot, the head bouncer escorted him out of the restaurant because it was standard procedure for anyone involved in a confrontation to be escorted out of the restaurant. Victim was initially upset that he was asked to leave but was calm as another bouncer escorted him to his car. That bouncer then returned to the front of the restaurant with the head bouncer.

Less than a minute later, they heard gunshots, and then Victim came around the corner of the restaurant and collapsed in front of them. Victim had been shot. A single bullet entered Victim's left shoulder and exited through his mid-back. Victim died from internal bleeding because the bullet hit his lungs.

¶15 Officers from the Chandler Police Department quickly arrived at the crime scene. Officers could not find anyone who witnessed the shooting but found two .45 caliber shell casings, a bullet hole in a nearby restaurant, and a bullet hole in Victim's car. Police determined the shooter used a .45 caliber gun.

¶16 The investigation led police to Stanford. Police searched Stanford's apartment and found a receipt for a .45 caliber gun and .45 caliber ammunition. During a police interview with the case agent, Stanford initially lied and said he was not involved with the shooting at the Redfish. Later in the interview, however, Stanford confessed to shooting Victim with a .45 caliber gun but claimed it was self-defense. According to Stanford, the following occurred. First, Victim hit him while the head bouncer was escorting him to his car. When Stanford was in his car, Victim then jumped on the hood, hit him in the head through the window, leaned into the car, and tried to grab Stanford's gun, which was on his lap. Stanford was scared that Victim was going to kill him, so he pulled the

trigger three times and drove away, not knowing whether or not he shot Victim. Stanford then disposed of the gun and went home.

¶7 Pursuant to A.R.S. § 13-1104 (2010),<sup>2</sup> Stanford was charged with one count of murder in the second degree. Stanford's case proceeded to trial. The jury heard testimony from two bouncers at the Redfish, six officers from the Chandler Police Department, the medical examiner who conducted Victim's autopsy, and a criminalist from the Arizona Department of Public Safety. The State played a recording of Stanford's interview with the case agent. The case agent testified that the physical evidence did not corroborate Stanford's version of the events. There was no visible damage to Stanford's car and no blood or firearms evidence inside the car. The shell casings were found in the parking lot, not inside Stanford's car, and there was no gunshot residue on Victim's shirt. If the events had happened the way Stanford described them, the case agent testified that the shell casings would have landed inside the car just as the shell casings landed inside the car when the case agent reenacted the shooting in the manner Stanford said it happened.

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<sup>2</sup> We cite the current version of this statute and other criminal statutes because no revisions material to this decision have occurred.

¶18 The criminalist testified that she found no particles on Victim's shirt and observed no tearing or singeing of the shirt. If the Victim had been touching the barrel or had been within a few inches from the barrel when the gun was fired, there would have been singeing or tearing. Although the criminalist found lead on Victim's shirt near the left shoulder, she could not determine the distance between the firearm and Victim because the .45 caliber gun was never recovered.

¶19 The defense called Stanford to the stand. Stanford testified that his first contact with Victim was when Victim jumped on the hood of his car while he drove through the parking lot looking for girls. Stanford showed Victim his gun, and then Victim attacked Stanford through the driver-side window. Victim hit Stanford in the head and tried to take his gun. When Victim leaned into the car and grabbed the gun, Stanford yanked it back and fired three times. Stanford testified that he intentionally fired the gun to get Victim off of him and out of his car. Stanford was scared Victim was going to shoot him with his own gun. After firing the gun, Victim ran off, and Stanford drove away because he was afraid Victim was going to get his friends and try to kill him again. Stanford then disposed of the gun.

¶10 The State recalled the criminalist to rebut Stanford's testimony about how the gun was fired. The criminalist testified that the gun would not have been able to fire

additional shots if someone had a tight grip on the top of the gun.

¶11 At the conclusion of the trial, the eight-member jury convicted Stanford of one count of murder in the second degree and found it was a dangerous offense. The trial court sentenced Stanford to 18 years imprisonment and credited Stanford with 560 days of presentence incarceration credit.

### ***Disposition***

#### ***1. Voluntariness Hearing***

¶12 At trial, the State presented evidence of Stanford's interview with the case agent from the Chandler Police Department. Although no hearing was held to determine the voluntariness of Stanford's statements to the case agent, Stanford neither requested a voluntariness hearing nor objected to the evidence at trial. There was no evidence or claim that the statements were involuntary, and the trial court was not required to *sua sponte* raise the issue. *State v. Alvarado*, 121 Ariz. 485, 487, 591 P.2d 973, 975 (1979). In addition, the jury was instructed only to consider Stanford's voluntary statements to law enforcement officers. The court explained to the jury that "[a] defendant's statement was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violation, coercion, threats, or by any direct or implied promise, however slight." Therefore, a

voluntariness hearing was not required. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

## **2. Jury Instructions Regarding Lesser Included Offense**

¶13 Stanford requested the jury be instructed on the lesser included offense of reckless manslaughter pursuant to A.R.S. § 13-1103(A)(1) (2010) and sudden quarrel or heat of passion manslaughter pursuant to A.R.S. § 13-1103(A)(2). Initially, the trial court granted Stanford's request to instruct the jury on the lesser included offense. However, the trial court subsequently granted the State's motion for reconsideration and refused to instruct the jury on manslaughter. Stanford objected and argued a lesser included instruction should be given because a reasonable jury could find that there was adequate provocation.

¶14 "[I]t is fundamental error for the trial court to fail to give a lesser-included offense instruction if one is supported by the evidence." *State v. Andriano*, 215 Ariz. 497, 504, ¶ 32, 161 P.3d 540, 547 (2007) (finding no fundamental error in trial court's failure to instruct on lesser included offenses in capital first degree murder case because the instructions were not supported by the evidence). Pursuant to A.R.S. § 13-1103(A)(1), "[a] person commits manslaughter by . . . [r]ecklessly causing the death of another person." "Recklessly" means that the defendant "is aware of and



consciously disregards a substantial and unjustifiable risk that the result will occur." A.R.S. § 13-105(10)(c) (2010). Based on Stanford's testimony and interview with the case agent, Stanford intentionally fired the gun because he was scared Victim was going to take the gun and kill him. Accordingly, there is no evidence that Stanford recklessly caused Victim's death.

¶15 Pursuant to A.R.S. § 13-1103(A)(2), sudden quarrel or heat of passion manslaughter occurs when a person "[c]ommit[s] second degree murder . . . upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim." "Adequate provocation" is statutorily defined as "conduct or circumstances sufficient to deprive a reasonable person of self-control." A.R.S. § 13-1101(4) (2010). There is no evidence that Stanford was deprived of self-control. On the contrary, on Stanford's version of the facts, Stanford acted in control by intentionally firing the gun during a situation in which he claims self-defense was appropriate. We conclude the evidence does not support either manslaughter instruction and therefore the trial court did not commit fundamental error.

¶16 We reviewed the remainder of the record and found no meritorious grounds for reversal of Stanford's conviction or for modification of the sentence imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. After the filing

of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform Stanford of the status of the appeal and Stanford's 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). Stanford has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/

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DANIEL A. BARKER, Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Presiding Judge

/s/

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PETER B. SWANN, Judge