

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



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FILED: 06-22-010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0208
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MONALISA MORALES,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-106421-001 DT

The Honorable Douglas L. Rayes, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Edith M. Lucero, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Monalisa Morales (Defendant) appeals her conviction
and sentence for aggravated assault, a class 1 misdemeanor.

¶12 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, she found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but she did not do so.

¶13 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 and -4033.A.1 (2010).¹ Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶14 The evidence at trial established the following facts, which we view, along with all reasonable inferences therefrom, in the light most favorable to upholding the verdict. *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶15 On January 27, 2007, Glendale Police Officers R. and L. responded to a call regarding a possible burglary. When they arrived at the residence, Defendant and her children were in the

¹ Unless otherwise specified, we cite to the current version of the applicable statutes because no revisions material to this decision have occurred.

front yard. The officers saw the front door of the residence was open and sitting in the front yard was a container, that items were being loaded into it. Defendant explained that she had recently been evicted from the residence and had returned to pick up her belongings.

¶16 Because Defendant admitted to having been evicted, Officer R. began to interview her to find out if she had permission from the property owner to be on the premises. During questioning, Officer R. asked Defendant if she was armed and she replied "yes." Defendant later claimed that she "was being sarcastic." Officer R. then told Defendant to turn and face the fence along the sidewalk. Officer R. said that as he was performing a pat down, Defendant kicked him in the groin, so he "put her on the ground and placed handcuffs on her." The kick was described as a "mule kick."²

¶17 Defendant testified that Officer R. "threw me on the gate" and "was beating me." Defendant said she did not remember the alleged beating because she blacked out, but her daughter told her about it afterward. She said that after Officer R. threw her into the gate, she started feeling seizure symptoms and "everything [went] dark." Defendant testified she did not

² A "mule kick" is when a person kicks directly back and upward.

intentionally kick Officer R. and did not realize she had kicked him because she was having a seizure.

¶18 Officer R. testified that it did not appear Defendant was having a seizure at the time she kicked him, and Officer L. testified the alleged seizure occurred "post-kick." Officer R. denied beating Defendant.

¶19 Defendant was charged with criminal trespass in the first degree and aggravated assault, both class 6 felonies. Prior to trial, the State moved to designate all counts as misdemeanors.

¶10 A one-day bench trial took place on March 3, 2009. At the conclusion of the State's case, Defendant moved for a directed verdict pursuant to Arizona Rule of Criminal Procedure 20. The trial court granted defense counsel's request for a directed verdict on the criminal trespass charge, but denied the motion as to the aggravated assault charge. The trial court found Defendant guilty of misdemeanor aggravated assault and suspended the sentence, placing Defendant on supervised probation for one year.

DISCUSSION

Sufficiency of the Evidence

¶11 For Defendant to be found guilty of aggravated assault, the State must prove that Defendant knowingly touched

Officer R. with the intent to injure, insult or provoke him.
A.R.S. §§ 13-1203.A.3 and -1204.A.8(a) (2010).

¶12 At trial, Defendant testified she was having a seizure when Officer R. arrested her; she was not aware she kicked Officer R.; and she did not intentionally kick him. Officer R., however, testified that Defendant did not appear to be having a seizure when she kicked him; she was standing up when she kicked him in the groin, at which time he "put her on the ground." Additionally, Officer L. testified that Defendant did not have a seizure until after she was already on the ground – after she kicked Officer R. Officer R. stated that the reason Defendant kicked him was because she was upset that she was being detained.

¶13 "The finder-of-fact, not the appellate court, weighs the evidence and determines the credibility of witnesses." *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995). We will not disturb the fact finder's "decision if there is substantial evidence to support its verdict." *Id.* Based on the testimony given, the trial court could have reasonably concluded that the officers' version of events was more credible than Defendant's. Accordingly, we hold there was substantial evidence to support the trial court's guilty verdict.

CONCLUSION

¶14 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *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 finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and her counsel were given an opportunity to speak and the court imposed a legal sentence.

¶15 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 her 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 she so desires, with an in propria persona motion for reconsideration or petition for review.³

³ Pursuant to Arizona Rule of Criminal Procedure 31.18.b, Defendant or her counsel has fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.

¶16 For the above mentioned reasons, Defendant's conviction and sentence are affirmed.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DIANE M. JOHNSON, Judge

/S/

JON W. THOMPSON, Judge