

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



DIVISION ONE
FILED: 02/07/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 10-0270
)
 Appellee,) DEPARTMENT C
)
 v.) MEMORANDUM DECISION
)
 HEATHER NICOLE MILLER,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR-2007-121129-001 DT

The Honorable Arthur T. Anderson, Judge

AFFIRMED

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

Kenneth S. Countryman Phoenix
Attorney for Appellant

H A L L, Judge

¶1 Heather Nicole Miller (defendant) appeals from her convictions and the sentences imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate 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 that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which she has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 On April 3, 2007, defendant was charged by indictment with: one count first degree murder, a class one felony and dangerous crime against children and domestic violence offense, and one count child abuse, a class two felony and dangerous crime against children and domestic violence offense.

¶5 The following evidence was presented at trial.

¶16 At approximately 10:00 p.m. on March 29, 2007, Officer Tanya Zachary of the Mesa Police Department responded to a priority call at defendant's apartment. Upon entering the apartment, she observed defendant crying. Officer Zachary proceeded to interview defendant and defendant explained that, earlier in the day, she had taken her son, J., and her fiancé's son, I., who was three years old, to visit her parents. When she returned home, she removed I. from his carseat and then, while she was attempting to remove J. from his carseat, "two black males ran up to her and began punching her in the face." Then, one of the men grabbed I. and the two men fled with I. in a green Jetta parked in front of her car.

¶17 The next morning, Detective Derek Samuel of the Mesa Police Department's Sex and Child Crimes Unit interviewed defendant's father. He informed the detective that I. did not accompany defendant and J. when they visited his home the previous day. Shortly thereafter, defendant informed the detective that a woman named Barbara had babysat I. while she visited her parents. When the detective followed-up on that information, however, he learned that Barbara had left the State two weeks earlier.

¶18 At that point, defendant again changed her story and told the detective that she had taken I. over to Ana and Susie's house. When the detective interviewed Ana and Susie, they

denied taking care of I. on March 29, 2007. Instead, Ana informed the detective that she had met defendant at a Jack-in-the-Box restaurant that day and I. was not with her.

¶9 During a subsequent interview, defendant admitted that she lied about I. being at Barbara's house. At the end of the interview, defendant asked to talk to her fiancé, Tyrece. When Tyrece entered the room, he confronted her and told her to "quit telling the lies." Tyrece then asked defendant directly "[i]s [I.] okay?" Defendant shook her head "no." Tyrece then asked "[Is] he dead?" and defendant nodded her head "yes." After Tyrece left the room, defendant told the detective that Susie shook I. until he stopped breathing and defendant panicked, made up the abduction story, and punched her own face to further the story. She maintained, however, that she had no involvement in I.'s death.

¶10 In a subsequent interview, defendant was confronted with Ana and Susie's denials that I. had been in their apartment that day. Defendant then admitted that she had become angry with I. and pushed him. She claimed that he fell down and struck his head and that she picked him up and shook him and he became lifeless. When her attempt to revive him failed, she decided she would bury him. She placed him in a laundry basket, covered it with some clothing, and put it in her car. She then went to Jack-in-the-Box and Food City, and afterward buried I.

in a shallow grave. When asked why she did not attempt to get medical help for I., she explained that she was concerned about "how it would look on her." She provided the detective with directions to the burial site.

¶11 Thereafter, several detectives and Dr. Laura Fulginiti, a forensic anthropologist, drove to the area that defendant described and observed a small mound of dirt under a mesquite tree. They carefully brushed away the sand and dirt and uncovered I.'s body.

¶12 Medical examiner Dr. William Stano testified that, after examining the remains, he concluded the cause of death was "homicidal violence including blunt head trauma."

¶13 After a fourteen-day trial, the jury found defendant guilty as charged.¹ The jury also found two aggravating factors, the emotional harm to the family and the helplessness of the victim. The trial court sentenced defendant to an aggravated term of life with the possibility of parole after 35 years on count one (first degree murder), and the presumptive term of 17 years on count two (child abuse), to be served consecutively.

¶14 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the

¹ During jury deliberations, a sick juror was replaced with an alternate juror in accordance with Arizona Rule of Criminal Procedure 18.5(h).

proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offenses for which she was convicted.

¶15 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no 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. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if she desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

_/s/ _____
PHILIP HALL, Judge

CONCURRING:

_/s/ _____
MICHAEL J. BROWN, Presiding Judge

_/s/ _____
PATRICIA K. NORRIS, Judge