

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: 01/19/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0249
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JESUS GUADALUPE LOPEZ-MORENO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-126883-003DT

The Honorable Sally Schneider Duncan, Judge

AFFIRMED

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

Phoenix

Droban & Company, PC
By Kerrie M. Droban
Attorney for Appellant

Anthem

B R O W N, Judge

¶1 Jesus Guadalupe Lopez-Moreno ("Defendant") appeals his convictions and sentences for six counts of kidnapping, five counts of armed robbery, one count of burglary in the first

degree, one count of conspiracy to commit burglary in the first degree, two counts of sexual assault, and two counts of aggravated assault. Counsel for Defendant 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 searching the record on appeal, she was unable to find any arguable grounds for reversal. Defendant was granted the opportunity to file a supplemental brief in propria persona, but he has not done so.

¶2 Our obligation 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 view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Defendant. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 In May 2009, Defendant was indicted on seven counts of kidnapping, class 2 dangerous felonies, pursuant to Arizona Revised Statutes ("A.R.S.") section 13-1304 (2010);¹ seven counts of armed robbery, class 2 dangerous felonies, pursuant to A.R.S. § 13-1904 (2010); one count of burglary, a class 2 dangerous felony, pursuant to A.R.S. § 13-1508 (2010); one count of

¹ One of the counts of kidnapping was charged as a dangerous crime against children pursuant to A.R.S. § 13-705 (2010).

conspiracy to commit burglary, a class 2 dangerous felony, pursuant to A.R.S. § 13-1508; one count of misconduct involving weapons, a class 4 dangerous felony, pursuant to A.R.S. § 13-3102 (Supp. 2011); two counts of sexual assault, class 2 dangerous felonies, pursuant to A.R.S. § 13-1406 (2010); one count of sexual abuse, a class 5 dangerous felony, pursuant to A.R.S. § 13-1404 (2010); two counts of aggravated assault, class 2 dangerous felonies, pursuant to A.R.S. § 13-1204 (Supp. 2011); and two counts of aggravated assault, class 3 dangerous felonies, pursuant to A.R.S. § 13-1204.² The following evidence was introduced at trial.

¶4 On the evening of April 18, 2009, two armed intruders entered an apartment in Phoenix. At some point, more intruders entered, one of whom was later identified as Defendant. Seven residents and visitors were present at the time. The intruders ordered the occupants to the floor at gunpoint and demanded rings, money, and other property. An intruder hit one of the visitors in the back of the head with a gun. Defendant took a different person, J.C., to a bedroom where he ordered her at gunpoint to undress, perform oral sex, put a condom on him, and have sexual intercourse with him. One of the visitors fled the apartment and called police.

² Absent material revision after the date of the alleged offense, we cite the statute's current version.

¶15 Phoenix Police Officers Herrick and Meelhuysen responded to the call and were informed that Defendant and another intruder had fled on foot. The officers pursued them and Meelhuysen saw that Defendant had a gun. Meelhuysen ordered him to "drop the gun," but Defendant kept running. Meelhuysen kept chasing him, and Defendant aimed the weapon at Meelhuysen and Herrick. Concerned that Defendant might shoot him or Officer Herrick, Meelhuysen fired four rounds at Defendant, hitting him in the chest and leg. Defendant kept running but was eventually apprehended. He was taken to the hospital, where he remained for ten days. During an interview with police the day he was released from the hospital, Defendant admitted to having sex with J.C. A forensic scientist who tested the condom concluded that the DNA inside it matched Defendant's.

¶16 A jury found Defendant guilty of six counts of kidnapping, five counts of armed robbery, one count of burglary in the first degree, one count of conspiracy to commit burglary in the first degree, two counts of sexual assault, and two counts of aggravated assault.³ During the aggravation phase, the State alleged five aggravators: (1) use of a deadly weapon; (2) presence of an accomplice; (3) commission for pecuniary gain;

³ Counts 1, 2, 19, and 23 were dismissed during trial. The jury acquitted Defendant on counts 7, 11, and 14. There was no count 17 on the indictment.

(4) infliction of physical, emotional or financial harm to the victims; and (5) lying in wait or ambushing a victim. The jury found the State had proven most of the aggravators for the respective charges.⁴ The court stacked the sentences by victim, sentencing Defendant to a total of 134 years. Defendant was granted 713 days of presentence incarceration credit. This timely appeal followed.

¶7 We have searched the entire record for reversible error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Defendant was present and represented by counsel at all pertinent stages of the proceedings and that the evidence supports the jury's verdicts. Defendant was afforded the opportunity to speak before sentencing and the sentences imposed were within statutory limits. Accordingly, we affirm Defendant's convictions and sentences.

¶8 Upon the filing of this decision, counsel shall inform Defendant of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz.

⁴ The jury determined the presence of an accomplice and commission for pecuniary gain had not been proven as to the two counts of sexual assault or the two counts of aggravated assault.

582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Judge

/s/

PHILIP HALL, Judge