

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: 04/19/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0272  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
KEYMONTE TREMAYNE WESSON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-141287-001SE

The Honorable Kristin Hoffman, Judge

**AFFIRMED**

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

Droban & Company, PC Phoenix  
By Kerrie M. Droban  
Attorneys for Appellant

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**G O U L D**, Judge

¶1 Keymonte Tremayne Wesson ("Defendant") appeals from his conviction and resulting sentence of aggravated assault, a class three felony.

¶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 filed a supplemental brief in propria persona arguing that Victim's perjured testimony denied him a fair trial.

¶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).<sup>1</sup> Finding no reversible error, we affirm.

### ***Facts and Procedural History***<sup>2</sup>

¶14 Defendant attended a party to watch a Mixed Martial Arts fight on August 7, 2010. During the final fight of the night, Defendant and Victim began bantering with one another about which fighter would win the fight. The bantering turned

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

<sup>2</sup> We view the evidence in the light most favorable to sustaining the convictions and resulting sentences. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

personal and became more heated, and Victim and Defendant stood up to confront one another. The homeowners and other guests worked to diffuse the situation, and directed Defendant and Victim to "take it outside." While Victim went outside to cool off, Defendant began gathering his girlfriend and their child together to leave the party. Victim was still outside as Defendant left; the two continued to yell insults back and forth as Defendant got into his car and his girlfriend drove down the street.

¶15 As the car drove down the street and reached the stop sign at the end of the street and stopped, Victim was walking alongside the car yelling and gesturing at Defendant through Defendant's open passenger window. Defendant had a handgun in the passenger-side door panel of the car. When the car was stopped at the stop sign and Victim approached the car Defendant grabbed the gun fired two shots and then drove away. One of the shots hit Victim in his right arm entering near his bicep and exiting out his right shoulder. Both the homeowner and another guest at the party called 9-1-1 to report the shooting.<sup>3</sup> Police apprehended Defendant driving west on the 202 freeway, and took Defendant into custody. When officers searched Defendant's car

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<sup>3</sup> Defendant also called 9-1-1, about ten minutes after the other 9-1-1 calls, as he was being pulled over by the police.

they recovered a loaded Taurus Millennium .45 caliber handgun on the center console and a single shell casing on the dashboard.

¶16 Defendant was charged with one count of aggravated assault, a class three felony, and one count of discharge of a firearm at a residential structure, a class two felony, both dangerous offenses. At trial, Victim testified that he and Defendant were involved in verbal bantering that escalated to threats of a physical altercation. The State presented evidence that Victim was not armed, and that he did not threaten to kill Defendant or harm Defendant's girlfriend or child. The evidence showed Victim was at least a foot and a half away from Defendant when Defendant shot him. The jury convicted Defendant of aggravated assault, a dangerous offense, and acquitted him of discharge of a firearm at a residential structure. The court sentenced Defendant to a slightly mitigated term of six years' imprisonment. Defendant timely appeals.

#### ***Conclusion***

¶17 We have read and considered both counsel's and Defendant's briefs, carefully searched the entire record for reversible error, and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. In his supplemental brief, Defendant argues he was denied a fair trial because Victim committed perjury. To support his claim, Defendant merely identifies instances where Victim's testimony differed from Defendant's

testimony or the testimony of other witnesses. It is the jury's province to determine witness credibility and resolve any inconsistencies in testimony. See *State v. Morales*, 198 Ariz. 372, 375, ¶ 12, 10 P.3d 630, 633 (App. 2000). We defer to the jury's determination. See *Anderson v. Nissei ASB Mach. Co.*, 197 Ariz. 168, 175, ¶ 23, 3 P.3d 1088, 1095 (App. 1999).

¶8 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 his 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 he so desires, with an in propria persona motion for reconsideration or petition for review.<sup>4</sup>

/S/

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ANDREW W. GOULD, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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ANN A. SCOTT TIMMER, Judge

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<sup>4</sup> Pursuant to Arizona Rule of Criminal Procedure 31.18.b, Defendant or his 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.