

NOTE: 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. 31.34



DIVISION ONE  
FILED: 06/05/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0594  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) MEMORANDUM DECISION  
)  
REFUGIO IBARRA, JR., ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in La Paz County

Cause No. CR201100033

The Honorable Michael J. Burke, Judge

**CONVICTIONS AND SENTENCES AFFIRMED**

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

David Goldberg Fort Collins, CO  
Attorney for Appellant

\_\_\_\_\_  
J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Refugio Ibarra, Jr.'s conviction of two counts of aggravated assault, Class 3 dangerous felonies, and two counts of endangerment, Class 6 dangerous felonies. Ibarra's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Ibarra was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Ibarra's convictions and sentences.

#### FACTS AND PROCEDURAL HISTORY

¶2 At the time of the offenses, T.S. and his mother, L.S., were staying with Ibarra and his brother, sister and mother.<sup>1</sup> Just before 4:00 a.m. one morning, after a long night of drinking, Ibarra's mother began a verbal dispute with T.S. about his relationship with Ibarra's sister. When Ibarra heard the argument, he came out from the back bedroom and "exchanged words" with T.S. When T.S. would not back down, Ibarra began to

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<sup>1</sup> Upon review, we view the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Ibarra. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

hit him, and they started wrestling. Although T.S. was weaponless, Ibarra pulled a knife from his back pocket and stabbed T.S. repeatedly. T.S. then fled out the door. L.S. stood in front of Ibarra to prevent him from following, and Ibarra stabbed her in the back.

¶3 After police arrived on the scene, Ibarra spontaneously asked an officer about T.S.'s condition, stating "Well, I stabbed that guy in the back. Is he going to be okay?" Later that day, after being advised of his *Miranda*<sup>2</sup> rights, Ibarra told an officer that he had stabbed T.S. with a three-inch knife and that, although he did not remember stabbing L.S., he did remember her crying out in pain. Ibarra stated that at the time "it was all rage and that he was not really thinking."

¶4 Ibarra was charged with two counts of aggravated assault (one pertaining to each victim) and two counts of endangerment (one pertaining to each victim). At trial, the jury found Ibarra guilty of all counts as charged, and further found each offense to be dangerous. After a trial on aggravating factors, the jury found the State had proven four aggravating circumstances beyond a reasonable doubt. The court sentenced Ibarra to mitigated terms of five years for each count of aggravated assault and one and one-half years for each

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

endangerment count, all terms to run concurrently, with 191 days' presentence incarceration credit.

¶15 Ibarra timely appealed. 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), 13-4031 and -4033 (West 2012).<sup>3</sup>

#### DISCUSSION

¶16 The record reflects Ibarra received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings. It did not conduct a voluntariness hearing; however, the record did not suggest a question about the voluntariness of Ibarra's statements to police. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶17 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of 12 members. The court properly instructed the jury on the elements of the charges and of justification, the State's burden of proof and the necessity of a unanimous verdict. The jury returned unanimous verdicts, which were

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<sup>3</sup> Absent material revision after the date of an alleged offense, we cite a statute's current version.

confirmed by juror polling. The court received and considered a presentence report, addressed its contents during the sentencing hearing and imposed legal sentences for the crimes of which Ibarra was convicted.

**CONCLUSION**

¶18 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. After the filing of this decision, defense counsel's obligations pertaining to Ibarra have ended. Defense counsel need do no more than inform Ibarra of the outcome of this appeal and his future options, 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. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Ibarra has 30 days from the date of this decision to file a *pro per* motion for reconsideration. Ibarra has 30 days from the date of this decision to file a *pro per* petition for review.

/s/  
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/  
DONN KESSLER, Judge

/s/  
LAWRENCE F. WINTHROP, Chief Judge