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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JOSEPH A. MAVERICK, Appellant.	)	2 CA-CR 2010-0406 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20093824001

Honorable Deborah Bernini, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By Rebecca A. McLean
Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 After a jury trial, appellant Joseph Maverick was convicted of leaving the scene of an accident resulting in death or serious physical injury and tampering with physical evidence. The trial court placed Maverick on probation for concurrent, three-year terms, with the condition that he would serve thirty days in jail.

¶2 Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), avowing she has searched the record conscientiously and found no "arguably meritorious issue to raise on appeal." Apparently in keeping with the Supreme Court's suggestion in *Anders* that such a brief "refer[] to anything in the record that might arguably support [an] appeal," 386 U.S. at 744,[1] counsel asks that, in our search of the record for error, we consider whether certain photographs "were introduced solely to inflame the jury," resulting in "reversible error under Rules 401 and 403, Ariz. R. Evid."[2] Maverick has not filed a supplemental brief.

¶3 Viewed in the light most favorable to sustaining the verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence was sufficient to support Maverick's convictions. In sum, evidence at trial established that Maverick had begun speeding and driving erratically while Aaron S., who had been a passenger in

[1]The Supreme Court since has clarified that such references are not constitutionally required. *Smith v. Robbins*, 528 U.S. 259, 271-72, 276 n.7 (2000) (citing with approval briefing procedure outlined in *State v. Clark*, 196 Ariz. 530, ¶ 30, 2 P.3d 89, 96 (App. 1999)).

[2]Although counsel suggests the erroneous introduction of inflammatory photographs is "reversible error," any such error would not require reversal if it were determined to be harmless. *See State v. Tucker*, 215 Ariz. 298, ¶ 51, 160 P.3d 177, 192 (2007) (any error in admitting gruesome photographs would have been harmless in light of other overwhelming evidence).

the vehicle, was trying to reenter the back seat, apparently causing Aaron to be thrown or knocked from the vehicle, severing his right arm. Maverick continued driving to a friend's house where he called 9-1-1 and reported his vehicle had been stolen. When he returned to the automobile to retrieve some belongings from the back seat, a human arm fell out of the open door. Maverick put the arm in a nearby dumpster, where a police officer discovered it the following day, after Maverick's vehicle had been located.

¶4 Counsel asks us to consider whether, arguably, "there was no . . . proper or necessary purpose to introduce two photographs of the severed arm" in the dumpster, because Maverick did not dispute he had been driving when Aaron was knocked from his vehicle or that he had put Aaron's arm in a dumpster after finding it. But "[e]ven if a defendant does not contest certain issues, photographs are still admissible if relevant because the 'burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense.'" *State v. Dickens*, 187 Ariz. 1, 18, 926 P.2d 468, 485 (1996), *quoting Estelle v. McGuire*, 502 U.S. 62, 69 (1991). Thus, "gruesome or inflam[m]atory evidence may be admitted if it is material to some aspect of the case" and its probative value outweighs the potential for prejudice, and we will not disturb a ruling admitting such evidence absent a clear abuse of discretion. *State v. Gerlaugh*, 134 Ariz. 164, 169, 654 P.2d 800, 805 (1982).

¶5 Here, although the photographs depicting Aaron's intact forearm and hand surrounded by debris in the dumpster are disturbing, they not only helped to clarify the testimony of the officer who found it, but corroborated the state's theory that, upon discovering the arm, Maverick must have known he had injured someone when his

vehicle had collided with a pole and sideswiped trash cans in an alley, but had failed to return to that scene and had concealed the evidence of Aaron's injury.[3] *See State v. Anderson*, 210 Ariz. 327, ¶¶ 41-42, 111 P.3d 369, 382 (2005) (admission of gruesome photographs not improper where relevant to corroborate state's theory of case or refute defendant's testimony). The trial court did not abuse its discretion in admitting the photographs. *See Gerlaugh*, 134 Ariz. at 169, 654 P.2d at 805.

¶6 In our examination of the record pursuant to *Anders*, we have found no fundamental or reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Accordingly, we affirm Maverick's convictions and dispositions of probation.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

[3]Maverick testified at trial that, when he found the human arm in his vehicle, he "freaked out" and did not relate the presence of the arm to his collisions earlier that morning.