DIVISION ONE
FILED: 07/05/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 11-0683
	)	
Appellee,	)	DEPARTMENT S
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
PENNY COBERLEY VASQUEZ,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-008098-001 DT

The Honorable Jeanne Garcia, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender — Phoenix
By Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Chief Judge

¶1 Penny Coberley Vasquez ("Appellant") appeals her convictions and placement on probation for aggravated assault and assault. Appellant's counsel has filed a brief in

accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, she has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),[1] 13-4031, and 13-4033(A). Finding no reversible error, we affirm.

I. FACTS AND PROCEDURAL HISTORY[2]

¶3 On December 16, 2010, a grand jury issued an indictment, charging Appellant with Count I, aggravated assault, a class four felony in violation of A.R.S. § 13-1204, and Count II, assault, a class one misdemeanor in violation of A.R.S.

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[1] We cite the current Westlaw version of the applicable statutes because no revisions material to this decision have since occurred.

[2] We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

§ 13-1203. In pertinent part, the indictment alleged in Count I that Appellant "intentionally, knowingly or recklessly caused injury to [C.B., a supervisor at Appellant's place of work] by any means of force, which caused a temporary but substantial loss or impairment of any body organ or part of [C.B.] and/or a fracture of any body part of [C.B.]." The indictment alleged in Count II that Appellant "intentionally or knowingly caused physical injury to [S.K., a station manager at Appellant's place of work]." The State later alleged the presence of several aggravating circumstances.

¶4 At trial, the following testimony was presented: Appellant worked as a postal employee for approximately twenty years, most recently at the Shaw Butte Post Office. C.B. was Appellant's new supervisor, and S.K. was the recently appointed station manager.[3]

¶5 On October 6, 2009, Appellant asked C.B. for overtime or additional help due to the volume of mail assigned to her

[3] Both C.B. and S.K. had been at the Shaw Butte Post Office for approximately three to four weeks. Several employees testified that the workplace had been increasingly hostile and ineffective since C.B. and S.K. arrived and numerous employees "wanted to file grievances in regards to the way that they were being treated." Employees also testified that S.K. "didn't know what she was doing," had engaged in improper procedures, and "tore [the] station down in one month by herself."

postal route that day.[4] Appellant maintained that the volume of mail would require at least two extra hours beyond the eight hours allotted to complete the route. C.B. and S.K. reviewed the volume of mail and decided that, rather than approve overtime, they could delay some of the mail. Appellant did not agree with this decision and became upset because the mail at issue was first-class mail that should not have been delayed.[5]

¶6 Appellant resumed working at her station, but C.B. and S.K. followed her into the station and harassed her for approximately thirty minutes as she worked, including telling her that she was incapable of doing her job. Appellant asked them to leave, and when they did not do so, Appellant herself walked away. C.B. and S.K. left the work station, and after composing herself in the restroom, Appellant returned.

¶7 Throughout much of the rest of the morning, C.B. and S.K. stared at Appellant, and S.K. sent another supervisor,

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[4] A supervisor, E.O., testified that he had evaluated the route "about ten different times" and determined that the route and amount of mail took substantially more time than one carrier could handle in an eight-hour day. The regular mail carrier on that route had previously complained about the length of the route, and testified that the closing supervisor had someone help him every day because it took approximately two more hours to complete than the eight hours designated for the route.

[5] Apparently someone removed the blue tag signifying the day the curtailed mail was received soon after Appellant pointed out that the mail at issue should not be delayed.

E.O., to watch Appellant work.[6] Appellant, frustrated, informed her union representative that she wished to file a grievance against C.B. and S.K for harassment. C.B. and S.K. requested a "fact finding" session with the union representative to discuss Appellant's purportedly "disrespectful behavior." Appellant, C.B., and the union steward went into an office, but when the latter two had a disagreement over whether C.B. was required to follow the procedural rules during the fact finding session, Appellant cursed and walked out the door.

¶8 C.B. followed closely behind Appellant and demanded she leave the building. Appellant turned and pushed C.B., who "was so close that while she was yelling, she was spitting in [Appellant's] face." C.B. fell and sustained a slight, non-displaced fracture to her wrist.

¶9 Appellant walked quickly across the floor toward the exit and yelled at S.K., who was near the exit, "[Y]ou might want to help your little bitch, she's on the floor." S.K. screamed several times, "Get the hell out of my station." As Appellant walked past her, S.K. stepped in front of Appellant,

[6] E.O. testified that after S.K. and C.B. stood in Appellant's work station and watched Appellant work for approximately twenty to thirty minutes, S.K. ordered him to stand behind Appellant and watch her work, ostensibly to ensure she was being efficient but primarily as "a form of intimidation."

who felt someone grab her arm, and Appellant pushed S.K. to the floor.

¶10 Appellant left shortly thereafter. The paramedics were called and took C.B. to the hospital. Later that day, S.K. also visited the hospital.[7]

¶11 The jury found Appellant guilty as charged on both counts. The trial court suspended sentencing and placed Appellant on a two-year term of supervised probation for Count I and a concurrent one-year term of supervised probation for Count II. The court also credited Appellant for two days of presentence incarceration. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶12 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdicts,

[7] Although not fundamental, reversible error, the trial court over objection allowed extensive and largely irrelevant testimony by C.B. and S.K. and a marginally-at-best qualified family practice physician regarding the purported existence of post-traumatic stress disorder. We caution the trial court to consider in the future the relevance of such testimony in this setting and to carefully balance its probative value against the danger of unfair prejudice and/or confusion before allowing it into evidence. *See generally* Ariz. R. Evid. 401 to 403. Further, to the extent the trial court believed the testimony was relevant to prove an aggravating factor, such testimony should have been received during a separate trial after the guilt phase was completed.

and the sentencing proceedings followed the statutory requirements. Appellant was represented by counsel at all stages of the proceedings, and she was given the opportunity to present statements from family and co-workers and to speak at sentencing.[8] The proceedings were conducted in compliance with her constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶13 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of her future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant 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.

[8] At sentencing, E.O. sought to explain that S.K. and C.B. had continued to harass Appellant during trial by following her into the restroom and taunting her. The trial court sustained the State's objection to E.O.'s report, as well as objections to the declarations of others who sought to explain Appellant's conduct by stating they believed the actions of C.B. and S.K. had precipitated Appellant's behavior.

III. CONCLUSION

¶14 Appellant's convictions and placement on probation are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Judge

_____/S/_____
PETER B. SWANN, Judge