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: 4/16/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 11-0782
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
LUCIA MADRIL,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-137600-001

The Honorable Steven P. Lynch, Commissioner

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Joseph T. Maziarz, Acting Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Lucia Madril (Defendant) appeals her conviction for aggravated assault, a class one misdemeanor.

¶2 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. However, counsel advises this court that Defendant wishes us to address two specific issues, and we do so below. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but she has not done so.

¶3 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 (2010), and -4033.A.1 (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶4 At approximately 1:10 a.m. on July 18, 2010, three deputies from the Maricopa County Sheriff's Office responded to a high priority call in Guadalupe regarding a fight in progress. When the deputies arrived, Deputy W. approached the rear of the property and encountered Defendant standing near the northwest corner. Defendant smelled of alcohol and struggled to walk, and her speech was slurred.

¶5 As Deputy W. began interviewing Defendant, Defendant became uncooperative and attempted to walk away. After Defendant did not comply with Deputy W.'s verbal requests to remain still, he took hold of the sleeve of Defendant's shirt. Defendant pulled her shirt from his hand, prompting Deputy W. to firmly grip Defendant's left arm. Because Defendant was uncooperative, Deputy W. restrained Defendant through a takedown maneuver. Deputy G. assisted Deputy W. in restraining and handcuffing Defendant.

¶6 Deputy G. and Deputy W. helped Defendant to her feet and sat her on the curb near Deputy G.'s patrol vehicle. Deputy G. contacted the fire department after he noticed minor abrasions on Defendant's forehead. Because Defendant remained uncooperative and highly aggressive, the deputies placed Defendant in the rear of the patrol vehicle.

¶7 As the fire department arrived, Deputy W. discovered that Defendant had escaped from her handcuffs. As Deputy G. and Deputy W. removed Defendant from the patrol vehicle and re-handcuffed her, Defendant became verbally aggressive towards Deputy G. Due to safety concerns, Deputy G. refused to allow the fire department to address Defendant's injury. When Deputy G. attempted to place Defendant back into the patrol vehicle, she struck him in the groin with her right foot.

¶8 Defendant was charged with one count of aggravated assault, a class six felony. After a bench trial,[1] Defendant was convicted as charged. The court suspended Defendant's sentence and placed her on supervised probation for a period of eighteen months. Defendant timely appealed.

DISCUSSION

Sufficiency of the Evidence

¶9 When considering the sufficiency of the evidence, "we view the evidence in the light most favorable to sustaining the verdict and reverse only if no substantial evidence supports the conviction." *State v. Pena*, 209 Ariz. 503, 505, ¶ 7, 104 P.3d 873, 875 (App. 2005). "'Substantial evidence' is evidence that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

¶10 A person commits aggravated assault by "[k]nowingly touching another person with the intent to injure, insult or provoke," and the person committing the assault knows or has reason to know that the victim is a "peace officer, or a person summoned and directed by the officer while engaged in the

[1] Prior to trial, the State moved to designate the charge as a class one misdemeanor and proceeded with a bench trial.

execution of any official duties." A.R.S. §§ 13-1203.A.3 (2010), -1204.A.8(a) (Supp. 2012).[2]

¶11 Defendant knew or had reason to know Deputy G. was a peace officer because the deputies were in uniform, and at one point, Defendant was handcuffed and placed in the back of a patrol vehicle. Defendant specifically directed her "verbal belligerence" towards Deputy G. before the assault. Deputy W. testified that Defendant bent down and, while pivoting, she extended one of her legs to kick Deputy G. in the groin. Furthermore, Deputy S. witnessed the kick and testified that the kick did not occur as a result of Defendant "falling." Thus, based on the testimony of Deputy W. and Deputy S., sufficient evidence supports the finding that Defendant was guilty of committing aggravated assault.

Timeliness of Filings

¶12 Defendant argues the case should have been dismissed because the State missed filing deadlines. Defendant's argument does not reference a specific late filing; however, her counsel did repeatedly object to the granting of State's motion to continue. The decision to grant a motion to continue is within the sound discretion of the trial court. *State v. Laffoon*, 125 Ariz. 484, 486, 610 P.2d 1045, 1047 (1980). "The trial court's

[2] We cite the current version of the applicable statutes when no revisions material to this decision have occurred.

decision will not be disturbed unless there is a clear abuse of discretion and prejudice results." *Id.* Abuse of discretion occurs when "the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983).

¶13 On August 30, 2011, the State filed a motion to continue trial, which was set for September 1, 2011. On September 1, 2011, Defendant's counsel raised timing issues concerning the motion to continue and requested to proceed with trial. The court granted the motion to continue in order to allow a judge with a "better grasp of the facts" to address the timing issues. A pretrial management conference was scheduled for September 6, 2011, and the trial date was reset for September 7, 2011. Although another motion to continue was not filed, the State did renew its request for more time at the pretrial management conference. However, we find no error because the State's motion to continue and request for additional time were ultimately denied. Also, Defendant's trial took place within the required time limits prescribed by Arizona Rule of Criminal Procedure 8.

Judicial Bias

¶14 Defendant argues that the trial court's ruling may have been influenced as a result of Deputy G.'s previous

employment as a courthouse security guard. We review for fundamental error when a defendant fails to object at trial. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). To amount to fundamental error, "the error must be clear, egregious, and curable only via a new trial." *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶15 A trial judge is presumed to be unbiased and free of prejudice. *State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987). "Bare allegations of bias and prejudice, unsupported by factual evidence, are insufficient to overcome the presumption of impartiality . . . ." *State v. Carver*, 160 Ariz. 167, 173, 771 P.2d 1382, 1388 (1989).

¶16 Deputy G. was previously employed as a court security guard. No personal relationship, however, existed between Deputy G. and the court. At most, the court may have "chatted" with Deputy G. during breaks. Furthermore, Defendant's counsel had no concerns. We find nothing on the record supporting Defendant's allegation of bias and prejudice. As a result, the presumption of impartiality has not been overcome and does not rise to the level of fundamental error.

CONCLUSION

¶17 We have read and considered counsel's brief and carefully searched the entire record for reversible error, and we have found none. *See Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d

at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and substantial evidence supported the court's finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and her counsel were given an opportunity to speak and the court imposed a legal sentence.

¶18 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 her 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 she so desires, with an in propria persona motion for reconsideration or petition for review.

¶19 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

/S/
_____
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/
_____
PETER B. SWANN, Judge

/S/
_____
LAWRENCE F. WINTHROP, JUDGE