

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RAMONA MARIA HEINEKAMP, *Appellant*.

No. 1 CA-CR 15-0355
FILED 6-30-2016

Appeal from the Superior Court in Maricopa County
No. CR2013-432372-001
The Honorable Joseph C. Kreamer, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Michael J. Dew Attorney at Law, Phoenix
By Michael J. Dew
Counsel for Appellant

Ramona Maria Heinekamp, Goodyear
Appellant

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge Samuel A. Thumma joined.

S W A N N, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), from Ramona Maria Heinekamp's ("Defendant['s]") conviction and sentence for dangerous aggravated assault. We have reviewed the record for fundamental error. See *Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530 (App. 1999). We have also considered Defendant's *pro per* supplemental brief.

¶2 A person commits dangerous aggravated assault when she intentionally, knowingly, or recklessly causes a serious physical injury to another person, or when she intentionally, knowingly, or recklessly causes any physical injury to another person by using a firearm. A.R.S. §§ 13-105(13), (15), -1203(A), -1204(A)(1)-(2). The state presented sufficient evidence to support Defendant's conviction.

¶3 The state presented evidence that Defendant and the victim were alone together in a parked car, with nobody else around, when Defendant raised a blanket between them and leaned forward. Several seconds later, the victim heard a loud bang and saw blood rushing out of his abdomen. Unsure of what had happened, the victim complied with Defendant's suggestion that he switch seats with her to allow her to drive them away from the area. Defendant then proceeded to drive on the highway under the speed limit, pretended to call 911 using the victim's cell phone, and held the phone out of the window when Defendant tried to reclaim it. She drove past a gas station despite the victim's request that she stop; she stopped at a different gas station only after the victim threatened to pull on the car's gear shift. The victim received medical assistance from others at the gas station and was eventually transported to a hospital, where he underwent surgery for a life-threatening wound.

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¶4 Law enforcement retrieved a blanket from Defendant's person and found a small hole in it. They also retrieved a bullet from the seat of the car and a casing from the scene of the injury. They were unable to locate a firearm. Almost a year after the incident, however, the person whose pickup truck had been parked next to the victim's at the gas station notified the police that he had found a pistol in his vehicle. Testing showed that the firearm, which appeared to have been exposed to the elements for some time, matched both the bullet and the casing.

¶5 The state also presented sufficient evidence to support the court's imposition of an aggravated ten-year prison sentence under A.R.S. §§ 13-1204(D) and -704(A). The jury found, consistent with A.R.S. § 13-701(D)(6) and (9), that Defendant committed the offense in the expectation of receiving something of pecuniary value and that the victim suffered physical, emotional, or financial harm among other aggravators. In support of the first aggravating factor, the state presented evidence that Defendant and the victim held several properties as joint tenants with the right of survivorship. And in support of the second aggravating factor, the state presented evidence that the victim suffered a serious physical injury, had flashbacks about the incident, and was forced to pay out-of-pocket medical expenses as well as take time off from his business endeavors during his recovery.

¶6 Contrary to Defendant's assertion, the jury did not hear evidence of prior bad acts in violation of Ariz. R. Evid. 404(b). And to the extent the state argued the prior bad acts to the court at sentencing, the court expressly stated that it did not take those acts into consideration.

¶7 We discern no fundamental error. Defendant was present and represented by counsel at all critical stages, the jury was properly comprised, and there is no evidence of any juror misconduct or bias. The court properly denied Defendant's *Batson v. Kentucky*, 476 U.S. 79 (1986), challenge during jury selection. The prosecutor offered a race-neutral reason for the challenged peremptory strike. *See State v. Lucas*, 199 Ariz. 366, 368, ¶ 7 (App. 2001). And though the prosecutor mistook the nuances of the relevant veniremember's statements, the court expressly found that the mistake was made in good faith. *See Aleman v. Uribe*, 723 F.3d 976, 981 (9th Cir. 2013).

¶8 We affirm Defendant's conviction and sentence. Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Unless, upon review,

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counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and her future options. *Id.* Defendant has 30 days from the date of this decision to file a petition for review *in propria persona*. See Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Defendant has 30 days from the date of this decision in which to file a motion for reconsideration.



Ruth A. Willingham · Clerk of the Court
FILED : AA