

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

MATTHEW DEAN CARTER, *Appellant*.

No. 1 CA-CR 18-0036  
FILED 6-27-2019

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Appeal from the Superior Court in Maricopa County  
No. CR2017-121183-001  
The Honorable Gregory Como, Judge

**AFFIRMED**

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COUNSEL

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

Maricopa County Public Defender's Office, Phoenix  
By Jeffrey L. Force  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge Peter B. Swann joined.

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**H O W E**, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Matthew Dean Carter has advised this Court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Carter was convicted of three counts of aggravated assault, all class 3 felonies. Carter has filed a supplemental brief in propria persona, which the Court has considered. After reviewing the record, we affirm Carter’s convictions and sentences.

**FACTS AND PROCEDURAL HISTORY**

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Carter. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). One morning on May 8, 2017, Y.P., A.P., and I.S. got out of a light-rail train as it idled at a Phoenix station near 19th Avenue and Montebello Avenue. The three women then proceeded toward the street. As A.P. was about to “jaywalk,” Y.P. yelled profanities at her and instructed her to move back because she noticed a yellow Monte Carlo speeding down the street. Shortly thereafter, the driver made a U-turn, stopped next to the three women, and drew a silver and black handgun from inside his car. He pointed the handgun at them and yelled, “[W]hat you bitches say? I’m from L.A. I shoot you bitches.” Y.P., A.P., and I.S. felt “scared” because they thought their lives were in danger. After the man drove away from the scene, Y.P. called the police.

¶3 Phoenix Police Department Officer Gary Stockton responded to the emergency call and was immediately flagged down and approached by the victims when he arrived at the scene. He noticed that Y.P. appeared very “frantic” and that she was crying and breathing heavily. He further observed that A.P. and I.S. also seemed “scared” and “shaken.” After Officer Stockton interviewed each victim individually, he dispatched a description of the suspect and his car.

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¶4 Within minutes, another officer had located the suspect and had him in custody a few miles away, at the corner of 4th Avenue and Jefferson Street. Officer Stockton drove Y.P. to the location, and she identified Carter as the man who had pointed the gun at her. A.P. and I.S. likewise positively identified Carter as the assailant. Meanwhile, the other responding officers searched the car, found two loaded magazines, and retrieved a 9-millimeter handgun from the center console.

¶5 A grand jury indicted Carter on three counts of aggravated assault. At trial, the jury heard testimony from several witnesses and received exhibits. A surveillance video from the light-rail platform was played for the jury, showing a yellow Monte Carlo travelling southbound around 11 a.m. on May 8. In addition, Officer Stockton testified that, during his interview with Carter, Carter admitted that he was from Los Angeles and that he had a handgun in his car but denied pointing the gun at anyone. Y.P., A.P., and I.S. all testified, however, that Carter pulled up next to them, pointed a gun at them, and threatened to shoot them.

¶6 During Y.P.'s testimony, she denied saying anything to Carter during the incident. A portion of Y.P.'s 9-1-1 call was played for the jury, however, where Y.P. was heard telling the 9-1-1 operator that she did, in fact, tell Carter to "stop speeding." Y.P. also testified that she pushed a homeless man out of the way during the incident because she thought "he would have got shot." Later at trial, however, she denied pushing the man.

¶7 The jury found Carter guilty on all counts. The trial court conducted the sentencing hearing in compliance with Carter's constitutional rights and Arizona Rule of Criminal Procedure 26. The court sentenced Carter to a minimum term of five years' imprisonment on each count, with each count to run concurrently. The court credited Carter with 120 days' presentence incarceration credit. Carter timely appealed.

## DISCUSSION

¶8 We review the entire record for reversible error. *State v. Thompson*, 229 Ariz. 43, 45 ¶ 3 (App. 2012). Counsel for Carter has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. Carter, however, has filed a supplemental brief arguing that he was denied a fair trial because (1) Y.P. was not a credible witness and her testimony should have been excluded at trial, (2) the court did not ask A.P. four questions that were submitted by the jury, (3) the court erred in admitting Officer Robert Scott's testimony, and (4) the court allowed witness testimony that was a "waste of time."

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¶9 Carter first argues that he was “denied a fair trial by the introductions of [Y.P.’s] testimony[.]” In making this argument, he cites a portion of the trial transcript in which Y.P. was asked by Carter’s counsel if A.P. and I.S. were telling the truth about what they witnessed on the day of the incident. The State, however, objected to this question on the ground that the question “call[ed] on [Y.P.] to speculate as to the credibility of other witnesses.” The trial court sustained the objection and Y.P. did not answer. Carter does not cite to any relevant legal authority nor does he specify how this unanswered question prejudiced him or interfered with his defense. Because he has failed to adequately develop this argument, it is deemed waived. *See* Ariz. R. Crim. P. 31.10(a)(7) (“An opening brief must set forth “appellant’s contentions with supporting reasons for each contention, and with citations of legal authorities[.]”); *see also* *State v. Moody*, 208 Ariz. 424, 452 ¶ 101 n.9 (2004) (“Merely mentioning an argument is not enough: ‘In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant’s position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.’” (quoting *State v. Carver*, 160 Ariz. 167, 175 (1989))).

¶10 Additionally, Carter appears to contend that Y.P. was not a credible witness and that her testimony should have been rejected because portions of it were inconsistent with others. This argument fails, however, because the inconsistencies described by Carter relate solely to credibility, and the credibility of witnesses and the weight to be given to their testimony are questions exclusively for the jury. *See State v. Cid*, 181 Ariz. 496, 500 (App. 1995). Moreover, even without Y.P.’s testimony, the record contains ample evidence that Carter pointed a firearm at the victims and threatened to shoot them. *See id.* (“[T]his court will not disturb the jury’s decision if there is substantial evidence to support its verdict.”).

¶11 Second, Carter argues that the trial court erred and violated the Arizona Constitution by not asking A.P. four questions that the jury had submitted. The trial court has broad discretion in conducting trial and determining whether juror questions are appropriate. *See State v. LeMaster*, 137 Ariz. 159, 164–65 (App. 1983). A question should not be asked if it is irrelevant or clearly improper and prejudicial to the rights of either party. *Id.* Here, the trial court held a bench conference to discuss each of the jury questions presented and counsel was given an opportunity to object. Neither Carter nor the State objected to the court’s determination to strike the four questions at issue and the record reflects that those questions were properly stricken because they posed either relevancy or foundation issues. Furthermore, Carter has identified no reason these questions were relevant

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or that proper foundation was established. Thus, our review of the record does not indicate any abuse of discretion or issues of fundamental error.

¶12 Third, Carter argues that the trial court erred in admitting Officer Scott's testimony about the time between "the radio broadcast" and his stopping Carter. He asserts that, because Officer Scott's statements about the matter were contradicting, those statements were inadmissible as hearsay. "Hearsay" is a statement that a "declarant does not make while testifying at the current trial or hearing" and that "a party offers in evidence to prove the truth of the matter asserted in the statement." Ariz. R. Evid. 801(c)(1)-(2). Here, Officer Scott made both statements while testifying during trial. Indeed, his statements are not hearsay.

¶13 Last, Carter argues that eliciting Officer Victoria Beighle's testimony about the legality of possessing a handgun was a "waste of time" and accordingly should have been rejected under Arizona Rule of Evidence 403. The Rule 403 balancing process is a specific function of the trial court that this Court reviews only for an abuse of discretion. *Girouard v. Skyline Steel, Inc.*, 215 Ariz. 126, 129 ¶ 10. All relevant evidence is admissible if the law does not otherwise prohibit it. Ariz. R. Evid. 402; *State v. Kiper*, 181 Ariz. 62, 65 (App. 1994); *see also* Ariz. R. Evid. 403 (Although relevant, evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."). In conducting a Rule 403 analysis, the trial court should first "assess the probative value of the evidence on the issue for which it is offered." *State v. Gibson*, 202 Ariz. 321, 324 ¶ 17 (2002). This assessment is then weighed against potential unfair prejudice to the opposing party. *Girouard*, 215 Ariz. at 129 ¶ 11. Here, the record reflects that a discussion was held outside of the jury's presence during which Carter's own counsel advocated for eliciting testimony about Carter's lawful possession of the handgun. Carter's counsel proposed that such questioning was relevant because the jury submitted questions on whether Carter was lawfully carrying a handgun. The court agreed because the topic needed to be "cleared up." Accordingly, the court did not err by allowing the testimony.

¶14 We have read and considered counsel's brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Carter at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Carter's convictions and sentences.

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¶15 Upon the filing of this decision, defense counsel shall inform Carter of the status of the appeal and of his future options. Counsel has no further obligations 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 (1984). Carter shall have 30 days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶16 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA