IN THE
# ARIZONA COURT OF APPEALS
**DIVISION ONE**

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STATE OF ARIZONA, *Appellee*,

*v.*

VICTOR GUILLERMO MALDONADO, *Appellant*.

No. 1 CA-CR 18-0747
FILED 3-19-2020

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Appeal from the Superior Court in Maricopa County
No. CR2016-100232-001
The Honorable John Christian Rea, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
*Counsel for Appellee*

Law Office of Katia Mehu, Phoenix
By Katia Mehu
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge D. Steven Williams delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Kenton D. Jones joined.

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**W I L L I A M S, Judge**:

**¶1** Victor Guillermo Maldonado appeals his convictions and sentences for two counts of aggravated assault (dangerous) and one count of leaving the scene of a serious injury accident. For the following reasons, we affirm.

## FACTUAL AND PROCEDURAL HISTORY[1]

**¶2** Maldonado was driving a Ford pickup truck at sixty-seven to seventy miles per hour in a forty-five-mile-per-hour zone when he ran a red light and collided with an SUV that was crossing through an intersection. The driver of the SUV, M.G., and her passenger, F.G., sustained serious physical injuries. Maldonado fled the scene on foot, and police officers subsequently located him in a nearby neighborhood. Maldonado exhibited signs of impairment, and his blood tested positive for methamphetamine, amphetamine, and marijuana. At trial, Maldonado argued someone else was driving the pickup, and he was merely a passenger.

**¶3** The jury found Maldonado guilty of two counts of aggravated assault (dangerous), class three felonies, and one count of leaving the scene of a serious injury accident, a class two felony. The jury also found the following aggravating factors: (1) that Maldonado caused the victims physical, emotional, or financial harm, and (2) that he committed the offenses while on felony probation. The trial court subsequently found Maldonado had two historic prior felony convictions and sentenced him as a category three repetitive offender to a total of twenty-seven years' imprisonment. Maldonado timely appealed. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).

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[1] We view the facts in the light most favorable to sustaining the verdicts. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

## DISCUSSION

*I. Evidence of Handgun*

**¶4** Maldonado first argues the trial court erred in admitting testimony regarding a handgun found at the collision scene near the driver's door of the pickup. We do not address the propriety of the handgun evidence, however, because Maldonado invited the alleged error. *See State v. Pandeli*, 215 Ariz. 514, 528, ¶ 50 (2007) ("This court has long held that a defendant who invited error at trial may not then assign the same as error on appeal." (quoting *State v. Moody*, 208 Ariz. 424, 453, ¶ 111 (2004))).

**¶5** The jury first learned of the gun during opening statements when Maldonado's counsel forecast the defense's theory of the case by stating the following:

> [T]he 2002 Ford Ranger is not registered to Mr. Maldonado. It's registered to another lady whose daughter is approximately the same build, weight, height, X, Y, Z as Mr. Maldonado. And, according to the mother, she had been missing for some time and the family had not kept in touch with her. Also that her best friend is a gang member, same roughly build, same size, X, Y, Z as Mr. Maldonado, and they haven't heard from her that much at all.
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> The reason that that is important is because, according to police, a handgun was found about six feet from the driver's seat of the Ford Ranger. This is a handgun that, according to police, was stolen from the Phoenix Police Department evidence locker. All right. How it was stolen, background on it, anybody's guess. But according to the actual mother of the registered owner of the truck, her daughter's friend is a gang member. You're going to hear all that.
>
> You're also going to hear that forensic testing was done on the handgun to figure out who the owner was. That was only after I requested it, after I came on the case, I requested it of the State. Brought in for forensics, fingerprints, DNA, that sort of thing to figure out who's the owner. And it came back no match, no match to Mr. Maldonado.

*See State v. Pedroza-Perez*, 240 Ariz. 114, 116, ¶ 12 (2016) ("Opening statements are predictions about what the evidence will show.").

**¶6** During cross-examination of the State's witnesses, defense counsel elicited testimony that was consistent with his opening statement. Indeed, much of the testimony Maldonado challenges on appeal occurred in response to his questioning of the State's witnesses. And during closing arguments, the State did not refer to the firearm, but Maldonado did: "The gun, right? We talked a lot about the gun, or at least I did. The gun says four people were there, right? The DNA expert said four different people's DNA was there."

**¶7** The record therefore indicates Maldonado perceived the gun evidence as supporting his theory that someone else was driving the pickup at the time of the collision. Accordingly, if admission of the gun evidence was error, Maldonado invited it. We will not reverse on this basis. *See State v. Parker*, 231 Ariz. 391, 405, ¶ 61 (2013) ("[The defendant's] stipulation to admit [the evidence] precludes him from asserting on appeal that [its] admission was error."); *see also State v. Fulminante*, 161 Ariz. 237, 248-49 (1991) (finding "no error" where defense counsel strategically stipulated to admission of the defendant's prior conviction).

*II. Request for New Counsel*

**¶8** More than two years after his arraignment, Maldonado moved to change appointed counsel. The trial court granted the motion. Five months later, on the day before trial,[2] Maldonado again requested new counsel, claiming his current counsel "threatens me that I'm going to get 27 to 85" and that he was getting paid whether Maldonado "win[s] or lose[s]." Maldonado also asserted counsel improperly failed to (1) provide Maldonado "the police report or any other document in Spanish"; (2) request a *Dessureault*[3] hearing; and (3) interview witnesses. Finding Maldonado's request was untimely and unjustified, the court summarily denied Maldonado's request and confirmed his desire to begin trial.

**¶9** Maldonado argues the trial court reversibly erred by denying his request for new counsel without conducting an evidentiary hearing. We review a trial court's decision to deny a request for new counsel for an abuse of discretion. *State v. Cromwell*, 211 Ariz. 181, 186, ¶ 27 (2005).

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[2] In his brief, Maldonado incorrectly asserts trial started September 14, 2018. The first day of trial was September 4, 2018—the first business day after Maldonado requested new counsel at the August 31, 2018 status conference.

[3] *State v. Dessureault*, 104 Ariz. 380 (1969).

**¶10** A criminal defendant has the right to be represented by competent counsel, but he is entitled neither to counsel of his choice nor to a meaningful relationship with his attorney. *Id.* at ¶ 28. Generally, only the presence of an "irreconcilable conflict or a completely fractured relationship" between trial counsel and an accused will require the appointment of new counsel. *Id.* at ¶ 29. "[D]isagreements over defense strategies do not constitute an irreconcilable conflict." *Id.*

**¶11** If a defendant alleges sufficient facts raising a colorable claim of an irreconcilable conflict or showing a complete breakdown in communication with counsel, the court must conduct a hearing. *State v. Torres*, 208 Ariz. 340, 343, ¶ 9 (2004). However, not every complaint requires a formal hearing or an evidentiary proceeding. *Id.* at ¶ 8. "For example, generalized complaints about differences in strategy may not require a formal hearing or an evidentiary proceeding." *Id.* Thus, the nature of the inquiry is directly dependent upon the nature of a defendant's allegations and complaints. *Id.*

**¶12** Here, the trial court sufficiently inquired into Maldonado's basis for requesting new counsel, noting that Maldonado's lawyer informed the court he "was ready for trial," and "prepared to represent [Maldonado] in the best way he can." The court also properly determined Maldonado's discontent with counsel's trial strategy did not amount to an irreconcilable conflict and counsel correctly advised Maldonado that he faced a minimum twenty-seven-year sentence upon conviction. The court therefore did not abuse its discretion by denying Maldonado's request, made the day before trial, for new counsel.

*III. Verdict Forms*

**¶13** The jury was instructed under A.R.S. § 28-661(A) as follows:[4]

> The crime of leaving the scene of a serious injury accident requires proof that the defendant:
>
> 1. *Was driving* a vehicle that caused an accident that resulted in serious physical injury of any person; ***and***

[4] Maldonado does not dispute that the instruction "tracked" the criminal offense statute. *See* A.R.S. § 28-661(A). Nor does he contest that the jury was properly instructed on the statutory "duties required by law" when an accident involving a serious injury occurs. *See* A.R.S. § 28-663.

> 2. Actually knew of an injury or *knew that the accident was of such nature that one would reasonably anticipate that it resulted in injury;* ***and***
>
> 3. *Failed to remain at the scene* of the accident until the defendant fulfilled the duties required by law of a driver involved in an accident resulting in a serious injury.

(Emphasis added.)

**¶14** The trial court provided the jury with the following verdict form:

> We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, unanimously do find the Defendant as to Count 3, Leaving Scene of a Serious Injury Accident, as follows (check only one):
>
> ___ Not Guilty
>
> ___ Guilty

**¶15** Maldonado contends the verdict form was a "general verdict" that improperly failed to "contain interrogatories for the three findings required by statute." Maldonado does not indicate where in the record he objected to the verdict forms; thus, we review for fundamental error. *State v. Alvarez*, 213 Ariz. 467, 469, ¶ 7 (App. 2006). In reviewing for fundamental error, we must first determine whether error occurred. *State v. Escalante*, 245 Ariz. 135, 142, ¶ 21 (2018).

**¶16** According to the instruction's use of the word "and," the jury was limited to rendering a guilty verdict only if it unanimously found each of the following factual predicates proven beyond a reasonable doubt: (1) Maldonado was the driver of the vehicle that caused the accident resulting in serious physical injuries; (2) he knew, or should have known, of the resulting injuries; and (3) he failed to remain at the scene. Based upon the wording of the instruction, specific interrogatories were not required to ensure the jurors' unanimity on all three requirements. Maldonado therefore fails to establish error, let alone fundamental error. *See id.* (indicating that to warrant reversal, defendant bears the burden of establishing fundamental error).

*IV. Sufficiency of Evidence: Aggravating Factors*

**¶17** Finally, Maldonado challenges the sufficiency of evidence supporting the aggravating factors finding. The trial court, however, did not impose an aggravated sentence. Instead, Maldonado was sentenced as a category three repetitive offender based upon his prior felony convictions, and the court imposed presumptive terms. *See* A.R.S. § 13-703(J). No error occurred.

## CONCLUSION

**¶18** For the foregoing reasons, we affirm the convictions and sentences.


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