

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

MARLON IVAN FERRER-COLLADO, *Appellant*.

No. 1 CA-CR 19-0350  
FILED 2-27-2020

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Appeal from the Superior Court in Mohave County  
No. S8015CR201801161  
The Honorable Richard D. Lambert, Judge

**AFFIRMED**

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COUNSEL

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

Janelle A. McEachern, Chandler  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in  
which Judge Randall M. Howe and Judge Diane M. Johnsen joined.

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**T H U M M A**, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for defendant Marlon Ferrer-Collado has advised the court that, after searching the entire record, she has found no arguable question of law and asks this court to conduct an *Anders* review of the record. Ferrer-Collado was given the opportunity to file a supplemental brief pro se but has not done so. This court has reviewed the record and has found no reversible error. Accordingly, his conviction and resulting sentence are affirmed.

**FACTS<sup>1</sup> AND PROCEDURAL HISTORY**

¶2 The State charged the defendant by indictment with disorderly conduct with a weapon. The first trial, held in March 2019, resulted in a mistrial when the jury could not reach a unanimous verdict. At a retrial in May 2019, the jury found the defendant guilty as charged. The court later sentenced the defendant to a minimum sentence of a year and a half in prison, with 31 days of pre-sentence incarceration credit, for this Class 6 dangerous but non-repetitive conviction.

¶3 An altercation occurred between the defendant and victim at a gas station on a “really hot” day in July 2018. Both the victim and the defendant testified to very different versions of what happened.

¶4 The victim testified that he pulled into the gas station and tried to park in the only available spot. The defendant was standing in the middle of the spot, so the victim waited for him to move. After the defendant eventually moved, the victim parked his truck. The victim testified that he “half-jokingly” told the defendant, “Hey, man, that’s a parking spot, not a standing spot.” In response, the defendant began to curse and shout and walked toward the victim’s truck as if he was going to rummage around in the back. The victim testified he told the defendant in “probably not the nicest of terms to get away from my truck.”

¶5 As the victim turned to enter the store, he testified that the defendant approached him and punched him in the back. The victim turned around and walked toward the defendant but did not touch the defendant. The defendant retreated toward the gas station’s propane tank. The victim,

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<sup>1</sup> This court views the facts “in the light most favorable to sustaining the verdict, and resolve[s] all reasonable inferences against the defendant.” *State v. Rienhardt*, 190 Ariz. 579, 588-89 (1997) (citation omitted).

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assuming the confrontation was over, testified he then headed back toward the store when he heard some yell out “look out!”

¶6 When the victim turned around, he saw the defendant start to lift a 40-ounce beer bottle over his head. In response, the victim, who was trained in martial arts, kicked the bottle out of the defendant’s hand. The victim testified he then again thought the confrontation was over and again headed toward the store. Someone then yelled “Look out! He’s got a knife.” The victim testified that he turned around and saw a shiny, approximately six-inch knife blade in the defendant’s hand. The defendant repeatedly yelled that he was going to kill the victim, causing the victim to back up and grab a shovel from his truck for protection.

¶7 After the victim did so, the defendant stopped advancing and backed up next to the door into the store with the knife “half-concealed” in his arms. A bystander with a gun offered to shoot the defendant. The victim declined the offer but borrowed the bystander’s phone to call the police. The owner then came out and unsuccessfully attempted to convince the defendant to move away from the front of the store. Eventually, the victim testified that the defendant wandered out of his sight toward the road.

¶8 The defendant, who elected to testify at trial, provided quite different testimony. The defendant testified that he had spent most of the day working in the sun at his friend’s house, where he admitted to drinking “[o]ne or two beers.” He called his wife to pick him up at the gas station after his friend dropped him off there, and he went inside to buy a 40-ounce beer while he waited for his wife.

¶9 The defendant testified he heard a vehicle approach, and thinking it might be his wife, went to the parking lot to look. He saw the victim’s truck pulling into a parking spot, then the victim got out of his truck and began yelling at him to move away. The defendant testified that the victim approached him and pushed him into a mailbox and magazine rack. The defendant testified that he had one side of his body on the mailbox and his beer in the other hand when the victim kicked the beer bottle out of his hand.

¶10 When he regained his balance, the defendant testified that the victim was behind his truck with a shovel in his hands and three or four men were standing behind the victim. The defendant testified that the men began approaching and he fearfully began running away.

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¶11 The defendant denied saying that he was going to kill the victim. However, he testified that he did say in Spanish “Hey, Papi, I don’t want any trouble. I don’t want any trouble.” The defendant testified that he then ran toward the gas pumps as if he was running for his life. After running to the farthest gas pump, the defendant testified he turned around and saw the victim, still holding the shovel, and the other men standing about 100 yards away. The defendant testified that he then yelled “Don’t follow me. I don’t want any trouble. I have a knife, do not come towards me.” The defendant testified that he then held up an unopened knife gesturing toward the men. The defendant saw that one of the men in the crowd was aiming a gun at him. The defendant ran and then hid in some bushes until the police arrived.

¶12 When the police did arrive, the defendant testified that he signaled for them to come toward him. An officer asked if he had a knife and, when he saw the knife, directed the defendant to put it on the patrol car. The defendant testified that he tried to explain to the officer that the victim and other men had followed him with a shovel and a gun and they wanted to kill him. When he tried to explain what happened, the defendant testified that the officer told him to “[s]hut up,” handcuffed him and put him in the back of the patrol car.

¶13 The defendant, who testified through a court interpreter during the trial, said he speaks primarily Spanish and that he transitioned between Spanish and English during the altercation. The victim testified that he understood some Spanish. Defense counsel attempted to show that the defendant telling the victim in Spanish that he did not want any trouble sounded like the defendant telling the victim that he was going to kill him. The victim testified that the defendant spoke to him in English and that the victim understood what he was saying. The victim also testified that “I don’t want any problems” in Spanish did not sound similar to “I’m going to kill you.”

¶14 Along with the victim and the defendant, a responding officer and two eyewitnesses testified at trial. None of these other witnesses saw the altercation from start to finish.

¶15 The owner of the gas station testified that, when he arrived, two men were standing at the front of the store – the defendant leaning against the wall and the victim against his truck; neither man had an exposed weapon at that point. The owner testified that he told the defendant to move away from the front of the store. The owner also testified, without objection, that the defendant was intoxicated because his

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“clerk had already told me she refused to sell him any more alcohol. So when I went out there, I could tell. I see him 5 days a week. I know him well enough to know when he’s been drinking and when he hasn’t.” Eventually, the defendant moved to a different location on the property where he was later apprehended by police.

¶16 A witness who heard (but did not see) the glass bottle break testified that he saw the defendant pull the knife on the victim and that he heard the defendant repeatedly say that he was going to kill the victim.

¶17 There was no evidence that a sobriety test was performed, but the responding officer testified that the defendant’s speech was slurred, and he smelled of alcohol. The responding officer also testified that the defendant was uncooperative.

¶18 This court has jurisdiction over the defendant’s timely appeal pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031 and -4033(A) (2020).<sup>2</sup>

**DISCUSSION**

¶19 The court has reviewed and considered defense counsel’s brief and has searched the record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537 ¶ 30 (App. 1999) (providing guidelines for briefs when counsel has determined no arguable issues to appeal). Searching the record and briefing reveals no reversible error. The record shows that the defendant was represented by counsel at all critical stages. From the record, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The sentence imposed was within the statutory limit. Neither counsel nor the defendant raised any issues on appeal.

¶20 One issue merits discussion. During cross-examination of the victim, the defendant’s attorney asked whether he had “talked to any other witnesses in this case” after the incident. The witness answered “other than after the first trial, no.” When counsel followed by saying “I didn’t ask about that. Did you talk to any other witnesses in this case after the incident,” the prosecutor objected that the question had been asked and answered and the judge overruled the objection. The judge, however, asked counsel to approach and, at a bench conference the jury could not hear, warned both attorneys that if the jury asked a question regarding the previous trial, he would have to declare a mistrial. During the bench

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<sup>2</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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conference, the defendant's attorney said he "didn't mean for him to do that," adding any error "may be like a harmless error." The prosecutor noted that it likely did not rise to the level of a mistrial. After the bench conference, no further reference was made to a prior trial and no juror questions were asked about this passing reference.

¶21 The defendant did not object to the answer "other than after the first trial" and did not move to strike that response. Accordingly, no evidentiary issue was preserved for appeal. *See* Ariz. R. Evid. 103(a)(1). Moreover, the defendant does not claim fundamental error resulting in prejudice, *see State v. Escalante*, 245 Ariz. 135, 138 ¶ 1 (2018), nor does the record show such error. Accordingly, and noting the superior court properly took appropriate action to avoid any subsequent issue, on this record, this passing reference required no further action and did not result in reversible error.

CONCLUSION

¶22 This court has read and considered counsel's brief and has searched the record for reversible error and has found none. *Leon*, 104 Ariz. at 300; *Clark*, 196 Ariz. at 537 ¶ 30. Accordingly, Ferrer-Collado's conviction and resulting sentence are affirmed.

¶23 Upon the filing of this decision, defense counsel is directed to inform Ferrer-Collado of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Ferrer-Collado shall have 30 days from the date of this decision to proceed, if he desires, with a pro se motion for reconsideration or petition for review.



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