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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: 03/09/2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 08-0847
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MATTHEW JAMES BOROWSKY,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR-2008-109176-001 DT

The Honorable James T. Blomo, Judge Pro Tempore

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, 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
Attorney for Appellant

H A L L, Judge

¶1 Defendant, Matthew James Borowsky, appeals from his convictions and the sentences imposed. For the reasons set forth below, we affirm.

¶12 Defendant's appellate 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 that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. The brief also advised that defendant asks the court to consider three issues: insufficiency of the evidence, interference with defendant's ability to present a defense, and alleged interference by the prosecutor's office with the assignment of defense counsel. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶13 We review for fundamental error, which is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quotation omitted). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Alvarado*, 219 Ariz. 540, 541, ¶ 2, 200 P.3d 1037, 1038 (App. 2008). Finding no reversible error, we affirm.

¶14 Defendant was indicted for one count of unlawful imprisonment, a class six felony; one count of assault, a class one misdemeanor; and one count of criminal damage, a class two

misdemeanor. On the state's motion, the criminal damage charge was dismissed before trial.

¶15 The following evidence was presented at trial. Defendant and his father (Father) were arguing upon their return to Father's house from a shopping trip. Father later found defendant sitting in the kitchen with a broken dish lying on the floor. When Father asked defendant to pick up the dish, defendant became enraged and began shoving and "taking swings at" Father while verbally threatening him.

¶16 When the confrontation eventually ended, defendant returned to Father's guesthouse (where defendant lived), and Father retreated to his office. Father made a 9-1-1 call because he was concerned about his safety after being threatened by defendant, who was physically larger than Father. When defendant saw police cars, he re-entered Father's house, took the phone from him, and hung it up. Defendant stood in front of the office door and prevented Father from leaving the room.

¶17 When the first officer entered the home, she heard an older man's voice shouting "help me" and "he's hitting me." When she opened the office door, she saw defendant hit Father in the face with a closed fist. The officer tried to convince defendant to exit the room and sit down in the kitchen to deescalate the situation, but defendant shut the door to keep her out. At that

point, Father asked him to open the door and let him out. Instead, defendant grabbed him, wrestled him to the ground, and hit him. The officer requested over the radio that her backup "step it up" to arrive faster, as she heard signs of a struggle and cries for help coming from the room.

¶18 When the second officer arrived a minute later, he heard the struggle and cries for help. The officer broke down the office door and entered the room. He found that the door had been blocked by an exercise machine. The officers handcuffed defendant and took him into custody. Both officers noticed redness on the left side of Father's face.

¶19 In preparation for trial, defendant submitted a motion asking for an order to allow a defense investigator access to measure, photograph, and inspect the crime scene at Father's home. The state objected to the request, citing victim's rights and the fact that the police had already provided defendant with photographs of the scene. After Father appeared in court telephonically to consent, the court issued an order to provide access.

¶10 After a two-day trial, the jury found defendant guilty of both charges. The jury also found two aggravating circumstances: that the offense caused physical, emotional, or financial harm to

the victim, and that the victim of the offense was sixty-five or more years of age.

¶11 At the sentencing hearing, defendant admitted to one historical prior felony conviction for aggravated assault on a law enforcement officer in 2002. Defendant also admitted to a prior conviction for possession of dangerous drugs in 1999, which the state used as an aggravating factor. For the conviction for wrongful imprisonment, the court sentenced defendant to a super-aggravated term of 2.75 years, relying on three aggravators: the prior felony conviction, Arizona Revised Statutes (A.R.S.) section 13-701(D)(11) (2009),¹ the age of the victim, § 13-701(D)(13), and the harm to the victim, § 13-701(D)(9). The court sentenced defendant to a concurrent term of 180 days for the assault offense, and granted defendant credit for serving 215 days before the sentencing hearing.

¶12 Defendant timely appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and

¹ Effective December 31, 2008, significant portions of the Arizona criminal sentencing code were reorganized. See 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. This renumbering included no substantive changes. See *id.* § 119. Thus, for ease of reference, we refer to the most current section numbers for sentencing statutes rather than those in effect when the offenses were committed.

A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001), and -4033(A)(1) (Supp. 2009).

¶13 We first review whether the state presented substantial evidence to support a conviction. Based on our review of the record, there was substantial evidence supporting defendant's convictions for both the assault and unlawful imprisonment offenses. Father and the first officer on the scene testified to the fact that defendant hit Father with a closed fist, and both officers heard defendant struggle with Father in the office and witnessed Father's injury afterward. Father testified, and the officers corroborated, that defendant kept Father from leaving the room, and blocked the only exit door both with his body and exercise equipment. Father also testified that he asked defendant to let him out of the room and defendant refused. The officers testified that they each heard Father calling for help from the closed room. Accordingly, we conclude that substantial evidence was presented that defendant knowingly held Father in the office against his will.

¶14 The second question presented for our review is whether the Maricopa County Attorney's Office interfered with the assignment of his defense counsel. Our review of the record reveals nothing to support such a claim.

¶15 Finally, we examine whether defendant's ability to present his defense was interfered with because he was not provided with a "mock-up" of the office where the crime took place. A court may order the state to provide defendants with material and information for which they show "substantial need" if they are "unable without undue hardship to obtain the substantial equivalent by other means." Ariz. R. Crim. P. 15.1(g). In this case, the state provided defendant crime scene photos and access by his investigator to take his own photos and measurements of the office. In doing so, the state provided defendant the information he sought, albeit not in the form he preferred. We conclude that the trial court did not err in refusing to provide a mock-up because defendant did not show substantial need for a mock-up rather than the information the state provided about the office's physical layout.

¶16 In addition, we have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 299, 451 P.2d at 880. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits.

¶17 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended.

