IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 06-10-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,	)	1 CA-CR 09-0325
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
DEBORAH KIM HAMMONS,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-143688-001 DT

The Honorable Michael W. Kemp, Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Law Offices of Robert Gaffney — Scottsdale
by Robert Gaffney
Attorney for Appellant

W I N T H R O P, Judge

¶1 Deborah Kim Hammons ("Appellant") appeals from her conviction and sentence for aggravated assault, a class three dangerous felony. Appellant's counsel filed a brief in

accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that, after a search of the record on appeal, he found no appealable issues. Counsel now asks this court to search the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). This court afforded Appellant the opportunity to file a supplemental brief *in propria persona*, but she did not do so. However, she has raised two issues through counsel, which we address below. After reviewing the entire record, we affirm Appellant's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 At trial, the State presented the following evidence: On the night of July 11-12, 2008, Glendale police officer John Doe was dispatched to Appellant's address in response to a call that a gunshot had been fired. Officer Doe arrived shortly thereafter, entered the home, and found the victim still on the phone with the police dispatcher. The victim had a bloody paper towel held to his neck, and he identified himself as Appellant's husband. Officer Doe found no other person in the home, but he

[1] We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

found a Smith and Wesson .357 revolver in the master bedroom. When he removed the revolver's bullets to make the gun safe, Officer Doe found that one of the six bullets had been fired. Paramedics from the Glendale Fire Department recorded that the victim's chief complaint was neck pain after a gunshot wound and that the victim told them the weapon used had a .357 caliber.

¶3 Glendale police officer Eric Toonstra arrived and was directed to a neighbor's house. The officer found Appellant in the neighbor's bedroom, where he watched her until he was directed to transport her to jail. While in the bedroom with Officer Toonstra and the neighbor, Appellant made numerous unsolicited incriminating statements, including the following: "it's bad for me, isn't it?"; "I shot him"; "I could have killed him, I tried"; "this is bad for me, so bad"; "I shot him. This is bad. Can you imagine me in jail?"; and "I'm going to jail for a long time." After arresting and transporting Appellant to jail, Officer Toonstra called a female officer to search Appellant. When the female officer asked Officer Toonstra why Appellant was there, Appellant responded, "I tried to kill my husband."

¶4 Appellant testified that she and the victim visited a bar near their home on the evening of July 11, 2008. Following a disagreement between the couple while returning home, the victim told Appellant he was going to spend the night at his

mother's home, and he left. Appellant returned home, prepared for bed, and fell asleep. Later, she was awoken and realized there was another person in the house. She announced that she had a gun, removed the gun from the nightstand, turned and pointed the gun toward the hallway, and then heard the gun fire. Appellant testified that it was her intent to shoot the gun at whoever was coming down the hallway.

¶5 Upon realizing that she had shot her husband, Appellant retrieved the phone and dialed 911. She then went to her neighbor's house, where two police officers, including Officer Toonstra, later arrived. In her testimony at trial, Appellant admitted making statements against her interest in Officer Toonstra's presence, but she maintained for the first time that she believed the female officer at the jail was looking at her when the officer asked why she was at the jail - the question to which Appellant responded, "I tried to kill my husband."

¶6 Appellant was charged by indictment with one count of aggravated assault, a class three dangerous felony. An eight-member jury found Appellant guilty as charged, including finding that the felony was a dangerous offense. The trial court sentenced Appellant to a mitigated term of six years' incarceration in the Arizona Department of Corrections and credited her for 71 days of pre-sentence incarceration.

Appellant filed a timely notice of appeal, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

ANALYSIS

¶7 Through counsel, Appellant argues that the trial court erred in not suppressing from evidence the statements against interest she made in Officer Toonstra's presence. Appellant argued in the trial court that admission of the statements violated her constitutional rights under *Miranda*[2] and that the statements were involuntary. In general, we review the trial court's rulings on evidentiary matters for an abuse of discretion. *State v. Lacy*, 187 Ariz. 340, 348, 929 P.2d 1288, 1296 (1996).

¶8 We find no abuse of the court's discretion, much less reversible error. Following an evidentiary hearing, the trial court ruled that the statements were admissible because they did not violate *Miranda* and were voluntary. Although Appellant made the pertinent statements while in custody and before being advised of her *Miranda* rights, the record supports the conclusion that Appellant's statements inside the neighbor's home were part of conversations voluntarily initiated by Appellant and not made in response to questioning by law

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

enforcement. *See Miranda*, 384 U.S. at 444. Further, the State presented testimony that the female police officer's question at the jail was not directed at Appellant,[3] and the record indicates no other actions or words on the part of police that should have been known by them to be reasonably likely to elicit an incriminating response. *See Rhode Island v. Innis*, 446 U.S. 291, 301 (1980); *see also State v. Kemp*, 185 Ariz. 52, 58, 912 P.2d 1281, 1287 (1996) (holding that questions concerning day-to-day circumstances of incarceration did not obligate the defendant to respond). Likewise, we have reviewed the record and find that it presents no suggestion that Appellant's statements were coerced, induced by direct or implied promises, or otherwise involuntary. *See generally Lacy*, 187 Ariz. at 346, 929 P.2d at 1294; *State v. Scott*, 177 Ariz. 131, 136, 865 P.2d 792, 797 (1993). Therefore, we find no abuse of the court's discretion, much less reversible error, in the admission of Appellant's statements.

¶9 Appellant also argues through counsel that the trial court ordered her to disclose the specific defense she intended to use at trial. Appellant asserts that the court's order went beyond the scope of Arizona Rule of Criminal Procedure ("Rule") 15, and that she was not required to disclose a specific

[3] We also note that, even if directed at Appellant, the question did not require an incriminating response to be answered.

defense. We find her assertions unavailing. The trial court ordered the disclosure of Appellant's defense theory in order to make a pretrial determination as to the relevance of proposed testimony regarding Appellant's and the victim's character. And, pursuant to Rule 15.2(b), Appellant was required to provide notice before trial of all defenses for which she intended to introduce evidence at trial. *See also* Ariz. R. Crim. P. 15.2(g).

¶10 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supported the jury's verdict. Further, the sentence was within the statutory limits. Appellant was represented by counsel and was allowed the opportunity to speak at sentencing. The proceedings were conducted in compliance with her constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶11 After the filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of her future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

Appellant has thirty days from the date of this decision to proceed, if she desires, with a *pro per* motion for reconsideration or petition for review.

CONCLUSION

¶12 We affirm Appellant's conviction and sentence.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge