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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0340
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
GREGORY ALAN MCCLANAHAN,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court
)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-126912-001 DT

The Honorable John R. Ditsworth, Judge

AFFIRMED

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

Pamela J. Eaton, Attorney Phoenix
Attorney for Appellant

B A R K E R, Judge

¶1 Gregory Alan McClanahan appeals from his convictions
and sentences for two counts of kidnapping, class two felonies;

one count of sexual assault, a class two felony; two counts of attempted sexual assault, class three felonies; and one count of aggravated assault, a class six felony. McClanahan's 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 this court that after searching the entire record on appeal, she finds no arguable ground for reversal. We granted McClanahan leave to file a supplemental brief *in propria persona* on or before May 24, 2010, but he failed to do so.

¶2 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶3 V.G. was waiting at a bus stop when McClanahan drove by in a white BMW once and then stopped and asked her if she wanted a ride. She saw a black object in the car that looked like a gun. After she declined his offer, McClanahan parked the car, walked over to V.G. and said "come with me, come with me

¹ We view the facts in the light most favorable to sustaining the court's judgment and resolve all inferences against McClanahan. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998); *State v. Moore*, 183 Ariz. 183, 186, 901 P.2d 1213, 1216 (App. 1995).

now." V.G. went with McClanahan because she "feared for [her] life." In the car, McClanahan told V.G. he was from Texas and asked for one of her Newport cigarettes. McClanahan started talking "nasty" and then drove into an alley and told V.G. to perform oral sex on him. V.G. attempted to get out of the car, but McClanahan locked the doors and then pulled her down when she attempted to climb through the sunroof. Because of her inability to get out of the car she decided to do what she was told to get "out of the situation alive," and she performed oral sex on McClanahan. McClanahan told V.G. that if she "told anybody or if anybody knew, he would kill [her]" and "throw [her] in the dumpster."

¶14 McClanahan then wanted to have vaginal sex, but because V.G. was on her period he decided to have anal sex. McClanahan removed V.G.'s pants. V.G. started to cry and then McClanahan told her to "sit on it," motioning to her to sit on his penis and have sex with him. She said no, but he picked her up out of the seat and put her in his lap. McClanahan first rubbed his penis on V.G.'s butt and then penetrated her anus with his penis. McClanahan yelled at her five or six times during the incident and said "stop fighting and just stay in the car, [] there's no way out, you have to do this."

¶15 After McClanahan was done, he drove around the alley and then told V.G. to get out and walk in the opposite direction

and not look back. V.G. remembered that McClanahan was a black male approximately six feet and five inches, weighing more than 250 pounds, and had gaps in between his teeth and gray braces. V.G. asked a man where she was and how she could get out of there, but did not tell him what had happened because she "was scared of every man coming by [her]." She called her mother at a gas station and her mother told her to go to a nearby hospital. Police took V.G. to have an exam by a sexual assault nurse. A forensic nurse found a contusion on V.G.'s left forearm. She also determined V.G. suffered a penetration injury consistent with penile penetration because she had a one centimeter tear to her anus. The case agent recovered two cigarette butts from the alley where V.G. was attacked. McClanahan's and V.G.'s DNA were found on a piece of paper at the crime scene.

¶16 While police were searching for V.G.'s attacker, a similar crime happened ten days later. On April 24, 2007, R.A. was waiting at a bus stop when she noticed McClanahan looking at her and slowing down as he drove by in a royal blue car. McClanahan then parked at a nearby restaurant, honked the horn, and called for R.A. to come over. Although R.A. did not know McClanahan and felt uncomfortable, she approached McClanahan's car. When asked by McClanahan where she was going, R.A. said she was late for school. McClanahan offered her a ride, and

R.A. got into the car. McClanahan was smoking a Black and Mild cigarette.

¶17 McClanahan drove to a residential alley. After asking R.A. if she had ever had sex with a black man, McClanahan unzipped his pants and said "just kiss it." McClanahan offered R.A. fifty dollars in exchange for sex and told her "[y]ou can either have sex with me or I can leave you dead in one of these trash cans." McClanahan groped R.A.'s leg and touched her inner thigh. R.A. tried to unlock the door and flee from the car, but McClanahan reached across and locked the door. McClanahan then put R.A. in a headlock, choked her, and punched her in the face, but R.A. fought back for five to seven minutes until she could run from the car. During the attack, McClanahan said he had a gun in the backseat, but R.A. never saw it. McClanahan also tried to grab R.A.'s breasts as they were fighting. R.A. ran down the alley until she saw a mail lady, who called the police. R.A. described her attacker as a man with gapped teeth and blue braces. A forensic nurse examined R.A. and found twenty-eight separate injuries on R.A.'s body consisting of abrasions, scratches, and bruises.

¶18 Although R.A. and V.G. did not know one another, the police believed it was possible the crimes were committed by the same person. The investigation led police to McClanahan, who had received a traffic ticket two days before V.G.'s attack

while driving a white BMW. The police also learned that McClanahan's girlfriend owned a blue Chevy Cobalt. After reading McClanahan his Miranda rights, McClanahan told the case agent he was from California but lived in Texas prior to moving to Arizona and he said he smoked Newports and Black and Mild cigarettes. McClanahan initially denied knowing V.G., but then admitted to having consensual sexual contact with her in exchange for drugs. McClanahan denied knowing or ever seeing R.A.

¶19 McClanahan was charged with kidnapping V.G., a class two dangerous felony (count 1); four counts of sexually assaulting V.G., class two felonies (counts 2, 3, 4, and 6); two counts of attempted sexual assault of V.G. and R.A., class three felonies (counts 5 and 8); one count of kidnapping R.A., a class two felony (count 7); and one count of aggravated assault of R.A., a class six felony (count 9). The jury heard testimony from the two victims, the mail carrier, the neighbor who gave V.G. directions after the attack, a homeowner who saw a black man driving a blue car with a girl in the passenger seat in the alley, the forensic nurses who examined V.G. and R.A., McClanahan's girlfriend, four officers from the Phoenix Police Department, a forensic scientist, and a DNA analyst. V.G. identified McClanahan in court as the man who sexually assaulted her. R.A. identified McClanahan in court as the man who

attacked her and tried to sexually assault her. The State played a video of McClanahan's interview with the case agent from the Phoenix Police Department.

¶10 The defense called McClanahan to the stand. According to McClanahan, he was a drug dealer, and V.G. waived McClanahan down as he drove by in a white BMW. McClanahan and V.G. then had consensual oral sex in exchange for McClanahan's promise to provide V.G. with drugs. McClanahan also testified that V.G. became upset when he tricked her because he could not provide her with drugs or money for the oral sex. Ten days later, McClanahan was driving, noticed R.A. at a bus stop, and thought she wanted drugs. R.A. got in his car, he drove her to the alley, she smoked some drugs, and then tried to steal the drugs from McClanahan and run. McClanahan grabbed R.A. because she stabbed him with a glass pipe. McClanahan got his drugs back and then R.A. left.

¶11 The State recalled the case agent to rebut McClanahan's testimony. The case agent testified that police did not impound any drugs or drug-related paraphernalia after searching McClanahan's residence.

¶12 At the conclusion of the trial, the twelve-member jury found McClanahan guilty of kidnapping V.G. (count 1), attempted sexual assault of V.G. with anal penile contact (count 5), sexual assault of V.G. with anal penile contact (count 6),

kidnapping R.A. (count 7), attempted sexual assault of R.A. (count 8), and aggravated assault of R.A. (count 9); and not guilty of sexually assaulting V.G. with oral penile contact, digital vaginal contact, and digital anal contact (counts 2, 3, and 4). The jury further found that kidnapping V.G. (count 1) was not a dangerous offense. McClanahan admitted to a prior felony conviction as an aggravator. The court also found two more aggravators including multiple victims and the emotional harm to the victims.

¶13 At sentencing, the trial court provided McClanahan an opportunity to speak and then ordered an aggravated concurrent term of 15 years imprisonment on counts 1, 5, and 6, an aggravated concurrent term of 14 years imprisonment on counts 7 and 8, and 2.25 years on Count 9. The trial court ordered the sentences on counts 7, 8, and 9 to be served consecutively to the sentences on counts 1, 5, and 6. The trial court credited McClanahan with 742 days of presentence incarceration credit on counts 1, 5, and 6.

Disposition

¶14 At trial, the State presented evidence of McClanahan's interview with the case agent. Although no hearing was held to determine the voluntariness of McClanahan's statements to the case agent, McClanahan neither requested a voluntariness hearing nor objected to the evidence at trial. There was no evidence or

claim that the statements were involuntary, and the trial court was not required to *sua sponte* raise the issue. *State v. Alvarado*, 121 Ariz. 485, 487, 591 P.2d 973, 975 (1979). Therefore, a voluntariness hearing was not required. *See State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

¶15 We have reviewed the entirety of the record and found no meritorious grounds for reversal of McClanahan's convictions or for modification of the sentences imposed. *See Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform McClanahan of the status of the appeal and McClanahan's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). McClanahan has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/S/

DANIEL A. BARKER, Judge

CONCURRING:

/S/

PATRICIA A. OROZCO, Presiding Judge

/S/

LAWRENCE F. WINTHROP, Judge