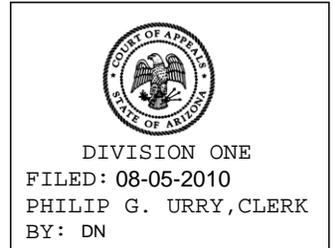


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCP 28(c);
Ariz. R. Crim. P. 31.21

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0378
)
) DEPARTMENT C
Appellee,)
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RANDALL PERRY LENTZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Yavapai County

Cause No. P-1300-CR-0020081280

The Honorable Warren R. Darrow, Judge
The Honorable Thomas B. Lindberg, Judge

AFFIRMED

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

Phoenix

Abigail Jensen, P.C.
By Abigail Jensen.
Attorney for Appellant

Prescott

K E S S L E R, Judge

¶1 Defendant-Appellant Randall Perry Lentz ("Lentz") was
tried and convicted of aggravated domestic violence, a class 5
felony, and aggravated assault per domestic violence, a class 6

felony. He was sentenced to four months in jail and three years probation. Lentz appeals his conviction and sentence. Counsel for Lentz 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). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Lentz was given the opportunity to, but did not file, a supplemental brief *in propria persona*. For the reasons that follow, we affirm Lentz' conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶12 In October 2008, "sheriff's deputies responded to a domestic incident call." As a result of the call, the defendant was arrested and charged with aggravated domestic violence, aggravated assault per domestic violence and disorderly conduct. Defendant pled not guilty to all the charges.¹

¶13 The victim, M.L., testified that prior to the assault she suffered from different types of medical conditions, including cancer. She has brittle bones due to the radiation treatments and suffers from clinical depression. She experiences chronic pain and, at times, is left immobile. Those series of medical conditions impeded her from being sexually active. As a result, Lentz "would constantly get angry."

¹ Lentz has been convicted of two other previous domestic violence offenses within the last seven years.

¶14 The day of the incident, M.L. and Lentz were helping an older friend of M.L.'s with some house work. Lentz left early due to an altercation with the neighbor. When he returned, M.L. noticed he had been drinking. Not too long after they arrived at home, they began arguing. Then Lentz went outside M.L.'s recreational vehicle ("RV") to do some weed-whacking. When he finished, M.L. followed to rake and pick up the dry weeds and leaves.

¶15 M.L. testified that Lentz took the bags filled with dry leaves and threw them on her. She threw a handful of dry weeds at him and Lentz responded by punching her repeatedly in the head, chin and temple. "[H]e pinned [her] up against the railroad tie with his left arm and continued punching [her] . [She] was dazed from him punching [her]... like [she] was a boxer." He finally knocked M.L. "down to the ground against [a] railroad tie." She protected her face and head with her arms while in the fetal position. He also punched her in her pelvic area and kicked her throughout the body while she was on the ground. She did not hit him back, but was "begging" him to stop. This went on for about ten minutes. He told her to get up and that if she did get up, he would "kill" her. D., a neighbor, saw what was happening and told Lentz he was calling the police. At that point, Lentz got in his car and left. M.L. stood up and walked up to her neighbor's steps while she waited

for the paramedics and police to arrive. M.L. chose not to go to the hospital.

¶16 Deputy Sheriff P.J. testified that M.L. appeared to be "shaken," that "her hair was messed up," "she had dirt on her clothing," he "noticed she had some redness to her left ear," and "had some trouble walking." Based on his training and experience, she appeared that she had just been beaten, but he did not see any bruises at the time.

¶17 When M.L. was talking to another Officer, J.L., she received several calls from Lentz. Lentz spoke to J.L. on the phone and returned to the home 20-30 minutes later. Officer P.J. noticed that Lentz was intoxicated. He proceeded to conduct a sobriety test on Lentz and Lentz become "argumentative" and "confrontational." He thought that "[they] were going to end up fighting Mr. Lentz."

¶18 P.J. noticed that Lentz had fresh scratches on his face, which Lentz alleged were the result of M.L.'s attacks. Lentz denied having a physical confrontation with M.L. However, pictures taken by J.L. the next day show bruising on M.L.'s arm, legs and shoulder area.

¶19 Lentz testified that he had been dating M.L. for a little over three years. He also testified that their relationship was "rocky" because of M.L.'s casino habits and financial chaos and not because of M.L.'s health and intimacy

issues. When they met, he was aware of her medical conditions, which throughout their relationship "required a lot of aid" and left her "bedridden" many times.

¶10 According to Lentz, the day of the incident, M.L. had become upset and began hitting him because he informed her that he was leaving her. She struck him several times with her cane. He testified that he never struck her back. When he was outside cleaning the yard, she came out and physically and verbally attacked him. After she fell on the ground, she began kicking Lentz. According to Lentz, the kicking and shoulder movements that D. witnessed, were from him trying to block M.L.'s kicks and denied ever pinning her down or punching her. Consequently, Lentz became frustrated and left the house.

¶11 Lentz also testified that he had previously been convicted of domestic violence related offenses in 2003 and 2004 involving his ex-wife.

¶12 The neighbor, D., testified that his house is next to M.L.'s house and sits a little higher, which gives him a clear view of M.L.'s yard. On the day of the incident, he heard yelling coming from M.L.'s house. He heard M.L. telling Lentz to stop hitting and kicking her, but he could not see M.L. being struck because of the height of the railroad ties. He was only able to see a "gentleman standing up" moving his hips and shoulders "like he was hitting somebody." He also testified

that he heard a man say, "Go Ahead. Get up. Because I'll kill you."

¶13 The superior court did not conduct a voluntariness hearing. The State did introduce statements made by Lentz to the police, but there is no evidence in the record of threats or coercion.² A voluntariness hearing is not required if there is no evidence that defendant's statements were coerced. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974) ("The trial judge is not required, [s]ua sponte, to enter into an examination outside the presence of the jury to determine possible involuntariness where the question of voluntariness is not raised either by the evidence or the defense counsel.")

¶14 The jury found Lentz guilty of Count I: aggravated domestic violence, and Count II: aggravated assault per domestic violence while the person assaulted was bound or otherwise physically restrained or while the assaulted person's capacity to resist was substantially impaired. The jury acquitted Lentz of disorderly conduct.

¶15 On May 4, 2009 the court suspended the imposition of sentence and placed Lentz on probation for three years pursuant

² There is no evidence in the record that Lentz was given his *Miranda* rights. However, the only statements introduced at trial are statements made by Lentz claiming that he did not assault M.L., but that M.L. had attacked him.

to Arizona Revised Statutes ("A.R.S") Section 13-902 (4)(2010). The court ordered 120 days of jail time³ and awarded Lentz 65 days credit for time served.

ANALYSIS

¶16 This Court has reviewed the entire record for fundamental error. Error is fundamental when it affects the foundation of the case, deprives the defendant of a right essential to his defense, or is an error of such magnitude that the defendant could not possibly have had a fair trial. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). We do not reweigh the evidence found by the fact-finder. *State v. Lucero*, 204 Ariz. 363, 366, ¶ 20, 64 P.3d 191, 194 (App. 2003). We review the evidence in light most favorable to sustaining the trial court's judgment. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998) (quoting *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997)). Error based on insufficiency of the evidence must be "a complete absence of probative acts to support the conviction." *Lucero*, 204 Ariz. at 366, ¶ 20, 64 P.3d at 194 (quoting *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996)).

¶17 After careful review of the record, we find no

³ For a person who has been convicted of aggravated domestic violence with 2 prior violations to be eligible for probation, the person must serve at least 4 months in jail. See A.R.S. §§ 13-3601(M)(2), -3601.01(B) and -3601.02(B)(2010).

meritorious grounds for reversal of Lentz' conviction or modification of the sentence imposed. The evidence was sufficient for the trier of fact to conclude that Lentz committed the offense of aggravated domestic violence and aggravated assault per domestic violence. The sentence imposed was within the sentencing limits, and Lentz was represented at all stages of the proceedings below.

¶18 The crime of aggravated domestic violence requires proof that: (1) defendant committed a predicate offense under A.R.S. § 13-3601(A) of aggravated assault while the person assaulted was bound or otherwise physically restrained or while the assaulted person's capacity to resist was substantially impaired, A.R.S. § 13-1204(4)(2010); (2) the relationship between the victim and the defendant was one of persons residing or having resided in the same household, A.R.S. § 13-3601(A)(1); and (3) the defendant has been convicted of two prior domestic violence offenses within a period of 84 months. A.R.S. § 13-3601.02(B)(2010).

¶19 The crime of aggravated assault per domestic violence while the person assaulted was bound or otherwise physically restrained or while the assaulted person's capacity to resist was substantially impaired requires proof that: (1) the defendant committed assault by intentionally, knowingly or recklessly causing a physical injury to another person, A.R.S. §

13-1203(A)(1)(2010); (2) the assault was aggravated in that the person assaulted was bound or otherwise physically restrained or the person's capacity to resist was substantially impaired, A.R.S. § 13-1204(4); and (3) the relationship between the victim and the defendant was one of persons residing or having resided in the same household. A.R.S. § 13-3601(A)(1).

AGGRAVATED DOMESTIC VIOLENCE

Defendant committed the offense while the person assaulted was bound or otherwise physically restrained or while the assaulted person's capacity to resist was substantially impaired.

¶20 M.L. testified that she suffers from severe medical conditions, including cancer. As a result of the radiation, she experiences chronic pain and, at times, is left immobile. During the altercation, Lentz "pinned" her and punched her repeatedly in the head, chin and temple. Dazed from the punches, he knocked her down and she crawled into the fetal position protecting her face and head with her arms. He also punched her in her pelvic area and kicked her throughout the body while she was on the ground. She never hit him back, but kept "begging" him to stop. The neighbor also testified that he heard M.L. asking Lentz to stop and that he was able to see him making hip and shoulder movements consistent with someone who is kicking and punching something.

¶21 From the evidence presented, the jury could reasonably

find that M.L.'s physical condition was weak, she was on the ground without the ability to defend herself, and Lentz committed the domestic violence offense while M.L.'s capacity to resist was substantially impaired.⁴

The relationship between the victim and the defendant was one of persons residing or having resided in the same household.

¶122 Both Lentz and M.L. testified that they had been dating for a little over three years. At the time of the incident they were living together in M.L.'s RV. Therefore, the second element is satisfied.⁵

The defendant has been convicted of two prior domestic violence offenses within a period of 84 months.

¶123 In 2003 and 2004, Lentz was convicted of assault per domestic violence, which Lentz admitted while testifying. See *State v. Seymour*, 101 Ariz. 498, 500, 421 P.2d 517, 519 (1966) ("An admission on cross-examination is surely the strongest evidence available to prove a prior conviction ... and thus, the truth of the fact is assured.")

AGGRAVATED ASSAULT PER DOMESTIC VIOLENCE

The defendant committed assault by intentionally, knowingly or

⁴ This evidence also supports the jury's finding of this same element for aggravated assault per domestic violence.

⁵ This evidence also supports the jury's finding of this same element for aggravated assault per domestic violence.

recklessly causing a physical injury to another person.

¶24 There was evidence that M.L. was in a weak physical condition and that any physical assault could cause serious harm. She would also be left with little, if any, physical means to defend herself. Furthermore, she had already been rendered defenseless when she was knocked down to the ground and "begging" Lentz to stop. Photographs taken by Officer J.L. show that M.L. sustained bruising to her left arm, both legs and right shoulder area. The jury could reasonably find that Lentz intentionally, knowingly or recklessly caused a physical injury to M.L.

¶25 After careful review of the record, we find no meritorious grounds for reversal of Lentz' conviction or sentence. The record reflects Lentz had a fair trial, was present, and represented by counsel at all critical stages prior to and during trial, as well as for the verdict and at sentencing. The jury was properly comprised of eight members pursuant to A.R.S. § 21-102(B)(2002). Additionally, the court imposed the proper sentence for Lentz' offense. We affirm Lentz' conviction and sentence.

¶26 Upon the filing of this decision, counsel shall inform Lentz of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme

Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the Court's own motion, Lentz shall have thirty days from the date of this decision to proceed, if he so desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶127 For the foregoing reasons, we affirm Lentz' conviction and sentence.

/S/

DONN KESSLER, Judge

CONCURRING:

/S/

MARGARET H. DOWNIE, Presiding Judge

/S/

PETER B. SWANN, Judge