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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,) No. 1 CA-CR 09-0415
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
ROBERT VILLALOBOS ACUNA,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-144541-001 DT

The Honorable Joseph C. Welty, Judge

AFFIRMED

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

Bruce Peterson, Office of the Legal Advocate Phoenix
By Frances J. Gray, Deputy Legal Advocate
Attorneys for Appellant

B R O W N, Judge

¶1 Robert Villalobos Acuna appeals from his conviction and sentence for second degree murder. Acuna'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). Finding no arguable issues to raise, counsel requests that this court search the record for fundamental error. Acuna was afforded the opportunity to file a supplemental brief *in propria persona*, but has not done so.

¶2 Our obligation in this appeal is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Acuna. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 Acuna was charged by indictment with one count of first degree murder, a class 1 dangerous felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1105 (2010),¹ and one count of misconduct involving weapons, a class 4 felony, in

¹ We cite the current version of the applicable statutes if no revisions material to this decision have since occurred.

violation of A.R.S. § 13-3102 (2010).² The following evidence was presented at trial.

¶14 A.G. testified that she and Acuna were in a relationship and had a son together. Shortly after the birth of their child, Acuna was arrested and incarcerated for a crime unrelated to this matter. While Acuna was in prison, A.G. began a relationship with N.N.;³ they too had a child together. When Acuna was released from prison he tried to resume his relationship with A.G., causing significant tension between the three which often led to violent behavior. After one of the altercations, A.G. contacted her cousin, who assisted Acuna in purchasing a nine-millimeter gun.

¶15 Despite the escalating tension and violence, A.G. and N.N. went to a water park together on June 23, 2007 even though she was planning to see Acuna later that evening. Afterwards, A.G. drove N.N. to his parents' house. In an effort to prolong his time with her, N.N. went inside the house and retrieved a cell phone charger so A.G. could charge her phone. A.G. parked in a parking lot across from the house because of N.N.'s

² Prior to trial, the court granted Acuna's motion to sever the weapons misconduct charge from the murder charge. Disposition of the weapons charge is not at issue in this appeal.

³ The jury was not informed of Acuna's prior convictions or incarceration and instead was told that Acuna was "out of town" when N.N. and A.G. began their relationship.

family's animosity towards her. N.N.'s sister saw them in the parking lot in A.G.'s Chevrolet Malibu during the evening. After talking for some time, A.G. and N.N. relocated to a different area in the neighborhood and "had an intimate moment." Afterwards, they continued their conversation, with A.G. sitting in the front seat on the driver's side and N.N. outside the car, crouched by the window. A.G. testified that Acuna's Cadillac pulled up behind them, Acuna walked in front of her vehicle, shouted at N.N., displayed a handgun, and shot three times at N.N. Acuna then walked back to his car and quickly drove away. A.G. also sped out of the neighborhood.

¶16 When police arrived they found N.N. lying on the curb with a gunshot wound to the neck. N.N. died shortly after arriving at the hospital. During their investigation, police found three shell casings, consistent with a nine-millimeter gun, in the area where N.N.'s body was found. They also found a cell phone and charger in the same location.

¶17 A.G.'s testimony was corroborated by four other witnesses. S.J. and T.W. were returning home when they noticed a Chevy Impala or Malibu parked the wrong direction along the side of the street. Crouched by the driver's side of the Chevy was a Hispanic male. From their observation, he appeared to be talking to the driver of the vehicle. A few minutes later, they also witnessed a green Cadillac driving out of the neighborhood

at a high rate of speed. D.H. lived on the corner of 15th Avenue and Catalina and peered out of her window after hearing three gun shots. From her window, she saw two cars driving quickly down the street. She identified one vehicle as a dark green Cadillac, followed by a smaller light colored vehicle. D.C. also lived in the area and heard gunshots followed by vehicles accelerating quickly through the neighborhood. D.C. identified one of the vehicles as a black Cadillac. Shortly after hearing the gunshots, D.C. got in his truck to leave the neighborhood. When he turned onto Catalina his headlights revealed a body lying on the curb; he stopped, called police, and remained at the scene until they arrived.

¶18 The State submitted cell phone records to track the origin of the calls made from Acuna's phone⁴ on the evening of the murder. By mapping the cell phone towers that received Acuna's calls, the State demonstrated they were first made from Avondale, where Acuna lived, and continued at various points throughout Phoenix, including the area where the murder occurred.⁵

⁴ Even though the cell phone was not registered to Acuna, from the evidence presented at trial, the jury reasonably could have believed that the cell phone belonged to Acuna.

⁵ The State was able to determine an approximate location of the caller because each cell phone tower has a limited radius from which it receives calls.

¶19 The jury found Acuna guilty of the lesser-included offense of second degree murder, a dangerous crime. The jury also found aggravating circumstances of (1) emotional, financial, or physical harm to the victim's immediate family; and (2) the use of a dangerous weapon. Following an evidentiary hearing, the court found that Acuna had three prior felony convictions and he was on supervised release at the time of the offense. The court sentenced Acuna to twenty-two years imprisonment with presentence incarceration credit of 681 days. Acuna then filed a timely notice of appeal.

¶10 We have read and considered counsel's brief and have reviewed the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows that Acuna was present and represented by counsel at all pertinent stages of the proceedings, the evidence was sufficient to sustain the verdict, he was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits.

¶11 Upon the filing of this decision, counsel shall inform Acuna 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). Acuna 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.

¶12 Accordingly, we affirm Acuna's conviction and sentence.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PATRICK IRVINE, Presiding Judge

/s/

DONN KESSLER, Judge