DIVISION ONE
FILED: 10-19-2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 09-0540
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
LANCE WALTER CRUMES,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-124073-001 DT

The Honorable Edward O. Burke, Judge

AFFIRMED

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

Ronald M. DeBrigida, Jr. — Glendale
Attorney for Appellant

O R O Z C O, Judge

¶1 Lance Walter Crumes (Defendant) timely appeals from his conviction and the sentence imposed for one count of

aggravated assault, a class six felony, in violation of Arizona Revised Statutes ("A.R.S.") sections 13-1203 and 13-1204.A.4 (2009).[1]

¶2 Defendant's counsel filed this appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). After searching the entire record on appeal, Defendant's counsel found no arguable question of law that is not frivolous and requests that we review 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). Although this court granted Defendant the opportunity to file a supplemental brief in propria persona, he has not done so.

¶3 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21.A.1 (2003), 13-4031 (2010), and 13-4033.A (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶4 We review the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Defendant. *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994). On June 5, 2009, a jury

[1] We cite the current versions of applicable statutes because no revisions material to this decision have since occurred.

convicted Defendant of one count of aggravated assault,[2] but acquitted him on a second count of aggravated assault.[3] Defendant's co-defendant (R.S.), was tried on the same charges as Defendant, but was acquitted.

¶5 Defendant lived with his wife and two children in an apartment complex in north Phoenix. R.S., a good friend of Defendant, was staying temporarily with Defendant. Victim lived in the same apartment complex.

¶6 In August 2007, Victim loaned Defendant twenty dollars. According to Victim, the money was never repaid. After two verbal requests for the money, Victim left a note on the windshield of Defendant's car asking again to be repaid. Defendant disputed Victim's testimony, claiming he previously repaid Victim the twenty dollars.

¶7 On September 27, 2007, Defendant was outside in front of his apartment. Victim saw Defendant and confronted Defendant about the twenty dollars. When Defendant refused, Victim got into his car to leave. As he was backing out, Defendant hollered at Victim to stop and indicated he was going to give

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[2] A.R.S. § 13-1204.A.4 ("If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.").

[3] A.R.S. § 13-1204.A.3 ("If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.").

Victim twenty dollars. The testimony of the Victim, Defendant and the various witnesses conflicts at this point.

¶8 Victim testified he rolled down the passenger side window of his car, and Defendant reached through the window and struck Victim in the head. Victim stepped out of the car to avoid getting struck again by Defendant. According to Victim, R.S. came outside after hearing the confrontation and restrained Victim by grabbing his arms. Defendant continued to strike Victim several more times in the face while R.S. restrained Victim. Victim eventually broke free and police were called.

¶9 Defendant testified he never struck Victim while Victim was in the car, but instead threw the twenty dollars into the car and, out of frustration over the situation, shook Victim's school bag, which was in the front passenger seat. After throwing the money into Victim's car, Defendant turned to walk away. Victim jumped out of the car with his fists raised and came toward Defendant. Defendant contends Victim swung at him and missed. In response, Defendant swung and struck Victim. Victim swung a total of four times without making contact with Defendant. Defendant landed three punches. Defendant testified he acted in self-defense throughout the confrontation.

¶10 At trial, City of Phoenix Police Officer E., verified Victim's statement that Defendant attacked Victim. Officer E. also affirmed Defendant claimed that he acted in self-defense.

Victim's girlfriend and a 10-year-old neighbor testified against Defendant supporting Victim's version of the events, although the neighbor's testimony supported Defendant's claim that Victim exited the car with his hands in a fighting position. Testimony by Defendant's wife and co-defendant, R.S., was consistent with Defendant's version of the events.

DISCUSSION

¶11 Defendant's counsel has searched the entire record and found no arguable grounds for reversal. Defendant's counsel claimed there were inconsistent verdicts rendered by the jury. The jury found Defendant guilty of assaulting the victim while the victim was restrained, however, the co-defendant, R.S., who the State claimed restrained the victim, was acquitted. We find these verdicts are not contradictory. The jury could reasonably conclude that R.S. restrained the Victim, but also conclude the State failed to prove R.S. caused or intended to cause any physical injury to the Victim.

¶12 There was substantial evidence to support the jury's verdict, which precludes us from reversing the decision. *State v. Atwood*, 171 Ariz. 576, 597, 832 P.2d 593, 614 (1992), *overruled by State v. Nordstrom*, 200 Ariz. 229, 241, ¶ 25, 25 P.3d 717, 729 (2001) (addressing use of identification evidence tainted by state action). Evidence is sufficient when it is "more than a [mere] scintilla and is such proof" as could

convince reasonable persons of a defendant's guilt beyond a reasonable doubt. *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981).

¶13 Defendant admitted punching Victim three times. Although Defendant claims Victim swung at him first and repeatedly, Defendant concedes he was never hit by Victim. The testimony and pictures taken by Officer E. confirm this account. Witnesses for Defendant and Victim merely reiterated the conflicting testimonies of Defendant and Victim. Here, there is sufficient evidence to support the jury's verdict. When contradictory evidence is presented, the trier of fact determines credibility, and we will not overturn a verdict where there is evidence to support it. *In re Estate of Newman*, 219 Ariz. 260, 271, ¶ 40, 196 P.3d 863, 874 (App. 2008).

¶14 We have reviewed the entire record for reversible error and found none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶30, 2 P.3d at 96. Defendant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with Defendant's constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

CONCLUSION

¶15 For the foregoing reasons, we affirm the Defendant's conviction and sentence. After the filing of this decision,

defense counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do no more than inform Defendant of the status of his appeal and his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.[4]

/S/
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/
DANIEL A. BARKER, Judge

/S/
LAWRENCE F. WINTHROP, Judge

[4] Pursuant to Rule 31.18.b, Defendant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.