DIVISION ONE
FILED: 02/01/2011
RUTH WILLINGHAM, ACTING CLERK
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**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

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| STATE OF ARIZONA, | ) | No. 1 CA-CR 09-0825 |
| | ) | |
| Appellee, | ) | DEPARTMENT E |
| | ) | |
| v. | ) | **MEMORANDUM DECISION** |
| | ) | (Not for Publication - |
| JOSE ANTONIO CORONEL-RODRIGUEZ, | ) | Rule 111, Rules of the |
| | ) | Arizona Supreme Court) |
| Appellant. | ) | |
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| | ) | |
| | ) | |

Appeal from the Superior Court in Maricopa County

Cause No. No. CR2007-007126-001 DT

The Honorable George H. Foster, Judge

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender — Phoenix
By Cory Engle, Deputy Public Defender
Attorneys for Appellant

Jose Antonio Coronel-Rodriguez — Florence
Appellant

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**S W A N N**, Judge

**¶1** Jose Antonio Coronel-Rodriguez ("defendant") timely appeals his criminal convictions and sentences. The appeal was filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for defendant has searched the record and found no arguable question of law that is not frivolous, and requests that we search the record for fundamental error. *See State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given an opportunity to file a supplemental brief *in propria persona* and did so.

*FACTS AND PROCEDURAL HISTORY*[1]

**¶2** Rosario A. and defendant were married in August 2000 and had two sons, K. and A. On July 3, 2007, a Phoenix police officer served an order of protection on defendant that prohibited him from going near the apartment ("apartment 140") where Rosario and the children were staying.[2] On the night of July 14, 2007, Rosario's mother Martha; her teen-aged sister Lilu; her teen-aged brother Manuel; Rosario, K. and A.; and

[1] "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against appellant." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997).

[2] At trial two years later, the officer could not remember defendant's physical appearance well enough to make an in-court identification. But the officer testified that his usual process was to ask for identification before he served an order of protection, to verify he was serving the right person.

three other children slept in apartment 140.[3] The next morning, the family was awakened by defendant hitting the apartment door to get inside. Defendant entered the apartment, carrying a gun that he pointed at Rosario. Defendant shot her in the hand. Defendant struggled with Rosario and Martha while the others "huddled back . . . all frightened and trying to get away from where [defendant] was pointing the gun." Martha yelled for Rosario to run out of the apartment, which she did, and Lilu followed. Defendant shot Rosario in the arm as she ran.

**¶3** Lilu and Rosario ran through the apartment complex, knocking on doors and screaming for help. Back in the apartment, Manuel and Martha tried to take the gun away from defendant and stop him from following Rosario. Defendant threw Martha to the floor. He grabbed her hair with one hand, pointed the gun down at her head with the other, and shot her. Defendant then pointed the gun at Manuel and left the apartment.

**¶4** Manuel S., a neighbor, heard three gunshots. About ten minutes later, he saw Rosario and Lilu "running and screaming" with defendant chasing them. Defendant fired a shot at them and Rosario and Lilu crouched down; when they got up, defendant was right behind them. Defendant kicked Rosario's

[3] The studio apartment had no separate rooms, just a bathroom, a closet, and an open area. There were two beds in the apartment. On July 14, Rosario and Lilu shared one bed, Manuel slept in the other, and Martha and the other children slept on the floor.

feet and when she fell to her knees, he grabbed her by the hair. Lilu "was screaming and yelling" at the defendant to stop. Defendant turned the gun towards Lilu and told her to "move away" from Rosario. Defendant told Rosario she was going to die and she "asked him to please not to do it." Defendant pointed the gun at Rosario's head, but she "kept moving" away from it. Defendant "put the gun right on top of her head and pulled the trigger." Defendant "took off running" and threw the gun down. Lilu helped Rosario go to the street for help. Blood was "pouring out" of Rosario's head. Defendant went back to apartment 140. A resident at the apartment complex saw defendant "running with his two kids." She also saw a gun in the grass near apartment 140.

**¶5** At the front of the apartment complex, Lilu waved down responding Phoenix police officers and told them a shooting had occurred at apartment 140. Rosario told an officer that defendant shot her. Officers followed a trail of blood through the complex toward apartment 140. They saw a footprint on the open front door and that the doorframe was cracked. Inside apartment 140, they saw Martha lying on the floor and an empty shell casing next to her. The woman was not breathing, she had no pulse, and there was blood on her head and upper body. Searching inside, officers found fired ammunition casings and bullet fragments. Outside, officers retrieved shell casings,

some human hair, and the gun, which had no live rounds in it. An Amber Alert was placed for K. and A., who were later found safe with family members. A border alert was placed for defendant.

**¶6** Rosario was treated for injuries to her arm, face, hand and wrist that included lacerations, broken bones, and arterial and tendon damage. A doctor noted that a bullet entered her right cheek and exited near her ear.

**¶7** On July 24, 2007, the Phoenix Police Department was notified that defendant was being held at the state police headquarters in Sonora, Mexico, where he stayed until returned to Phoenix in April 2008. Defendant was indicted for first degree murder, a Class 1 dangerous felony and a domestic violence offense ("count 1"); attempted first degree murder, a Class 2 dangerous felony and domestic violence offense ("count 2"); burglary in the first degree, a Class 2 dangerous felony and a domestic violence offense ("count 3"); aggravated assault against Lilu, a Class 3 dangerous felony and domestic violence offense ("count 4"); and aggravated assault against Manuel, a Class 3 dangerous felony and domestic violence offense ("count 5"). The state alleged four aggravating factors. An eight-day trial was held. At the conclusion of the state's case, defendant moved for a judgment of acquittal pursuant to Ariz. R. Crim. P. ("Rule") 20 on counts 1 and 5. The motion was denied.

**¶8** The jury found defendant guilty of all counts. He was sentenced to natural life without possibility of parole for count 1; an aggravated term of 12.5 years each for counts 2 and 3; and an aggravated term of 9.5 years each for counts 4 and 5. Counts 1, 3 and 5 were to run concurrent to each other, and he was given 551 days presentence incarceration credit for each count. Counts 2 and 4 were to run concurrent to each other but consecutive to counts 1, 3, and 5.

**¶9** Defendant timely appeals. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033.

*DISCUSSION*

**¶10** We have read and considered the briefs submitted by defendant and his counsel and have reviewed the entire record. *See Leon,* 104 Ariz. at 300, 451 P.2d at 881. In his supplemental brief, defendant seeks reversal for due process violations and ineffective assistance of counsel.

*I. DUE PROCESS RIGHTS*

**¶11** Defendant asserts that his due process rights were violated because he (1) was denied the right to testify; (2) has "limited (almost non-existent English skills)" [sic]; and (3) disagreed with counsel about how to proceed at trial.

A. Right to Testify

**¶12** Contrary to defendant's assertion that he was denied the right to testify, the record reflects that he voluntarily, knowingly, and intelligently waived his right to testify.

**¶13** It is not generally required that a defendant make an on-the-record waiver of his right to testify, but doing so may be "prudent." *See State v. Gulbrandson,* 184 Ariz. 46, 65, 906 P.2d 579, 598 (1995).

**¶14** Here, the trial court directly addressed defendant, who was assisted by an interpreter, and explained the privilege against self-incrimination, that the jurors would be instructed not to use his silence to determine guilt, and that defendant *could* "testify if you want." After each query, defendant affirmed that he understood. The court also determined that defendant made his decision after conferring with counsel, that no one threatened or promised him anything, and that he made the decision "voluntarily on [his] own."

B. Limited English Skill

**¶15** "It is axiomatic that an indigent defendant who is unable to speak and understand the English language should be afforded the right to have the trial proceedings translated into his native language in order to participate effectively in his own defense, provided he makes a timely request for such

assistance." *State v. Natividad,* 111 Ariz. 191, 194, 526 P.2d 730, 733 (1974).

**¶16** Here, the court ordered an interpreter to assist with pre-trial matters and trial. The record demonstrates that an interpreter was present during pre-trial matters and sentencing, and assisted defendant throughout trial.

C. Disagreement with Counsel

**¶17** Defendant asserts he had "overwhelming disagreements" with counsel. Because the trial court denied defendant's pre-trial motions to change counsel, we consider this issue separately from his claim on appeal of ineffective assistance of counsel.

**¶18** While a criminal defendant has a right to be represented by competent counsel, he is not entitled to counsel of his choice or even a meaningful relationship with counsel. *State v. Cromwell,* 211 Ariz. 181, 186, ¶ 28, 119 P.3d 448, 453 (2005). Only the presence of an "irreconcilable conflict or a completely fractured relationship" between counsel and an accused requires the appointment of new counsel. *Id.* at ¶ 29, 119 P.3d at 453. When addressing a request to change counsel, a trial court should consider "whether an irreconcilable conflict exists between counsel and the accused; whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already

elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and the quality of counsel." *State v. Peralta,* 221 Ariz. 359, 361, ¶ 5, 212 P.3d 51, 53 (App. 2009). Loss of trust or confidence is not sufficient; instead "a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible." *State v. Paris-Sheldon,* 214 Ariz. 500, 505, ¶¶ 12, 14, 154 P.3d 1046, 1051 (App. 2007).

**¶19** Defendant's original motion for change of counsel alleged that an "irreconcilable conflict" existed because counsel would not engage in appropriate investigations and interviews, "deliberately refused" to visit defendant, and "completely ignore[d]" him such that "defendant [would] no longer discuss his case [with] current counsel."[4] During oral argument, counsel asserted that any disagreement between the two

[4] The handwritten motion was offered to the court during a case management conference held November 13, 2008, and the trial court set oral argument on it. During oral argument, defendant handed the court an additional handwritten document that further alleged that counsel "refused" to properly investigate, order a Rule 11 mental evaluation, or look for mitigating evidence; failed to raise "heat of passion/crime of passion," provide discovery material, visit in "adequate timing," or establish a client-attorney relationship; and engaged in "constant verbal abuse and [belittling]." Counsel denied the new allegations as "not accurate statements of fact." The record indicates that a mental evaluation was later completed. Additionally, the Rule 20 motion was based on defendant's assertion that Martha's death was the result of a "struggle" between her and defendant.

had "more to do with what I'm telling him than anything else given the nature of this case." When the court specifically asked defendant "what is it you want [counsel] to do for you that he hasn't done," defendant stated that he wanted counsel to "clear up what happened, that it was really an accident." Before denying defendant's motions, the trial court found that counsel had provided "consistent representation" for six months prior to defendant's motion for new counsel, which was filed "six weeks before trial"; that counsel had visited defendant and had other communications with him; that none of defendant's allegations "suggest that [counsel] is not acting as adequate counsel in the matter"; and that no "irreconcilable conflict exists that would not exist between [defendant] and the next attorney appointed." Under these facts, we find no error in denying defendant's motions to change counsel.

*II. INEFFECTIVE ASSISTANCE OF COUNSEL*

**¶20** In his supplemental brief, defendant also identifies several situations that he characterizes as ineffective assistance of counsel. But ineffective assistance of counsel claims must be brought in proceedings pursuant to Rule 32. *See State v. Spreitz,* 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002) ("Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of their merit."). We therefore decline to address these issues.

*III. RESTITUTION ORDER*

**¶21** During defendant's October 2009 sentencing hearing, defendant stipulated to a "number of restitution claims."[5] The trial court ordered $18,724.32 in restitution, but granted the state's motion to "keep restitution open" and set a January restitution hearing to address "further clarifications regarding restitution to the victims and any further costs associated with extradition or otherwise that the parties prove at that time." On January 28, 2010 -- *after* defendant filed his notice of appeal -- the trial court entered an order for additional restitution.[6]

**¶22** "No new matter, other than a petition for post-conviction relief not precluded under Rule 32.2, may be filed in the trial court by any party to an appeal later than 15 days after the record on appeal has been filed." Ariz. R. Crim. P. 31.11.

**¶23** Even assuming *arguendo* that the January 2010 restitution order was a "new matter," the court had jurisdiction

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[5] The restitution claims on record included "a $12,000 claim for Rosario . . . other claims of $2,712 for her lost wages . . . funeral expenses in the amount of $1,275.68, and . . . loss of support that Rosario incurred . . . in the amount of $18,724.32." But the state was unclear whether the $12,000 figure included certain medical expenses, extradition expenses, or further lost wages.

[6] Minute entries and transcripts of those proceedings were not included in the record on appeal.

to hear and decide the matter. The Notice of Completion of Record on Appeal was mailed to parties and filed with the court January 19, 2010. The trial court's order of additional restitution was entered January 28, 2010 -- nine days later and well within the fifteen-day time limit prescribed by Rule 31.11. The trial court, therefore, had jurisdiction to consider and order new restitution. Also, the record demonstrates that the "additional" amounts ordered in January represent specific amounts the defendant had already agreed to pay during the October sentencing hearing –- specifically, $1,275.68 for funeral expenses and $2,712 for lost wages.[7] *See* A.R.S. § 13-603(C) (requiring the court to order restitution to the victim of crime or to the immediate family of the victim who has died "in the full amount of the economic loss as determined by the court"); *State v. Blanton,* 173 Ariz. 517, 520, 844 P.2d 1167, 1170 (App. 1992) (requiring courts to use a "but for" or "direct result" analysis that considers the "causal connection" between the criminal conduct and claimed loss when determining whether

[7] For the same reason, we find no error in defendant's absence at the January 2010 restitution hearing even though he specifically requested to attend that hearing during his October sentencing. The January 2010 minute order states that "per the defendant's consent at Sentencing, [defendant's] presence has been waived for this hearing." Defendant was represented by counsel and had stipulated to the amounts at issue during the October sentencing hearing. *State v. Steffy*, 173 Ariz. 90, 93, 839 P.2d 1135, 1138 (App. 1992) ("[T]he right to be heard as to the amount of restitution may be waived.").

specific expenses are economic losses under Arizona's restitution statutes).

*IV. RULE 20 MOTION*

**¶24** The trial court properly denied defendant's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

**¶25** The state presented substantial evidence of guilt on all counts.

A. First Degree Murder

**¶26** In his Rule 20 motion, defendant asserted that the state had presented no substantial evidence that he acted with premeditation when he killed Martha.

**¶27** A person commits first degree murder if he intends or knows that his conduct will cause death and he causes the death of another with premeditation. A.R.S. § 13-1105(A)(1). "'Premeditation' means that the defendant acts with either the

intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion." A.R.S. § 13-1101(1). To establish premeditated murder, the state must prove that defendant made a decision to kill before committing the act, but the premeditation "may be as instantaneous as successive thoughts of the mind." *Gulbrandson*, 184 Ariz. at 65, 906 P.2d at 598. Premeditation can be shown from circumstantial evidence. *State v. Izzo,* 94 Ariz. 226, 230, 383 P.2d 116, 118 (1963).

**¶28** Manuel testified that the defendant remained in the apartment after Rosario and Lilu ran from it. One of the children present told police that Martha had been lying next to him on the floor and defendant "picked her up . . . grabbed [her] by the hair and he pointed the gun to her head." Manuel testified that defendant threw Martha down on the floor and then pointed the gun down "really close" to her head before he shot her. After defendant shot Martha, he pointed the gun at Manuel but did not shoot him. The coroner who conducted Martha's autopsy testified that the cause of death was "homicide" caused by a single gunshot that "entered in the top of the head and

passed downward towards the right chest." A hand wound indicated that Martha had covered her head before she was shot.

**¶29** A reasonable jury could have concluded that the precision of the gunshot that killed Martha demonstrated deliberation and premeditation, *see Izzo,* 94 Ariz. at 230, 383 P.2d at 118 (finding the angle of wounds sufficient to demonstrate deliberation and premeditation), and that sufficient time for reflection occurred before defendant shot her.

B. Attempted First Degree Murder

**¶30** "[A]ll that is required to sustain an attempted murder conviction is evidence of 'some overt act or steps taken toward the commission of . . . [murder] and an intent to commit the crime.'" *State v. Cleere*, 213 Ariz. 54, 57, ¶ 5, 138 P.3d 1181, 1184 (App. 2006).

**¶31** Here, the record demonstrates that defendant pointed the gun at Rosario numerous times and shot her in the hand and arm while she was inside the apartment. After Rosario ran from the apartment, defendant chased her through the complex. When defendant caught up to Rosario, he kicked her legs out from under her, grabbed her by the hair, placed the gun against her head, and shot her. Before he shot her, defendant told Rosario she was going to die.

**¶32** On this record, a reasonable jury could have concluded that defendant intended to shoot Rosario, that his plan was

premeditated, and that he took sufficient steps toward the commission of her murder.

C. Burglary in the First Degree

**¶33** Burglary in the first degree is committed when a person enters or remains unlawfully in or on a residential structure with the intent to commit any theft or felony, A.R.S. § 13-1507(A), and "knowingly possesses a deadly weapon." A.R.S. § 13-1508(A). A deadly weapon includes anything designed for lethal use, including an unloaded or loaded firearm. A.R.S. § 13-3101(A)(1), (4).

**¶34** Here, an order of protection prohibited defendant's presence at Martha's apartment. Additionally, Lilu, Rosario and Manuel testified that defendant did not have permission to enter the apartment that day. Defendant kicked down the apartment door to gain entry. He carried a gun. Once inside, defendant pointed the gun and shot at Rosario. He also pointed the gun at Manuel and used it to kill Martha. Murder, attempted murder, and aggravated assault are all felonies. A.R.S. §§ 13-1105(D), -1001(C), -1204(E).

**¶35** On this record, a reasonable jury could have concluded that defendant unlawfully entered the apartment with intent to commit a felony.

D. Aggravated Assault

**¶36** Defendant was charged with aggravated assault against Lilu (count 4) and Manuel (count 5). At trial the defendant moved for a judgment of acquittal on count 5 based on "testimony that [Manuel] was not in reasonable apprehension of imminent physical injury or death."

**¶37** A person commits assault by "1. Intentionally, knowingly or recklessly causing any physical injury to another person; or 2. Intentionally placing another person in reasonable apprehension of imminent physical injury." A.R.S. § 13-1203(A). The assault is "aggravated" when a person "uses a deadly weapon," including a firearm. A.R.S. § 13-1204(A)(2), -105(15), (19). Direct or circumstantial evidence can prove a victim's apprehension. *State v. Wood,* 180 Ariz. 53, 66, 881 P.2d 1158, 1171 (1994). The victim need not "testify to actual fright." *Id.*

**¶38** The testimony that defendant shot the gun inside the apartment demonstrated that the weapon was functional on the day in question. Lilu testified that she and Rosario ran from the apartment "to get help," but defendant chased them and pointed a gun at Lilu when she tried to help Rosario. She further testified that she was "very scared" and afraid that defendant would kill Rosario and "shoot me too." Manuel S., the neighbor,

testified that defendant pointed the gun at Lilu. Manuel testified that he struggled with the defendant to "stop him from using the gun" -- a physical struggle so intense that it caused bruising. Although Manuel testified that he was "not afraid," the context of his testimony demonstrates apprehension of imminent physical injury:

> [State] Q. What did you think [defendant] was going to do when he pointed the gun at you?
>
> [Manuel] A. Well, at that time I don't think I was afraid. I mean, I could have had a lot of thoughts running through my head, but I figured that if he did kill me that I could go with my mother, because I instantly knew that my mother had not survived that, so I wasn't afraid anymore, my mind was just blank.
>
> Q. Did you think that he might shoot, might actually pull the trigger?
>
> A. No, I didn't think about that.
>
> Q. But you thought you might die and go with your mother; is that right?
>
> A. Yes. During the whole time I was aware that that could also happen.

**¶39** On this record, a reasonable jury could have concluded that defendant was guilty of aggravated assault on Lilu and Manuel.

E. Domestic Violence Offenses

**¶40** Arizona statute allows certain crimes to be charged as domestic violence offenses when the defendant and the victim are married, or the victim is the parent-in-law, brother-in-law, or sister-in-law to the defendant. A.R.S. § 13-3601(A)(1), (4) (2004).

**¶41** Here, the state charged each offense as a domestic violence offense and the jury was instructed to consider whether a domestic violence offense occurred if it found that defendant committed "first degree murder, attempted first degree murder, the lesser offense of second degree murder, burglary, aggravated assault or the lesser offense of disorderly conduct." The jury found beyond a reasonable doubt that each count was a domestic violence offense. But while the requisite family relationships[8] were present to support such a finding, only the aggravated assault charge could be designated as a domestic violence offense under the version of A.R.S. § 13-3601(A) in existence at that time.[9]

**¶42** Although an error in charging was made, defendant makes no showing that he was prejudiced by it. *See State v.*

[8] Martha was defendant's mother-in-law; Rosario was his wife; Lilu was his sister-in-law; and Manuel was his brother-in-law.

[9] The lesser included charge of disorderly conduct was also an enumerated domestic violence offense under the version of A.R.S. § 13-3601(A) then in effect.

*Henderson,* 210 Ariz. 561, 567, ¶ 20, 115 P.3d 601, 607 (2005) (to prevail under a fundamental error review, defendant "must establish both that fundamental error exists and that the error in his case caused him prejudice"). The record demonstrates that defendant never objected to the designation of all counts as domestic violence offenses. The application of A.R.S. § 13-3601(A) did not increase his sentence or have any substantive effect. As such, we find defendant was not prejudiced by the error.

F. Dangerous Felonies

**¶43** The state alleged each count was a "dangerous felony." An offense is "dangerous" if it involved the discharge, use, or threatening exhibition of a handgun, deadly weapon or dangerous instrument. A.R.S. § 13-604(P) (2008). The jury found each allegation proved beyond a reasonable doubt.

**¶44** Here, numerous witnesses testified that defendant entered the apartment with a gun, which he used to shoot Rosario and Martha, and brandished at Manuel and Lilu. A Phoenix Police Department crime lab technician testified that defendant's DNA was found on the gun. On this record, a reasonable jury could have concluded beyond a reasonable doubt that each count was a dangerous felony.

G. Aggravators to Enhance Sentence

**¶45** The state alleged that the offenses: (1) were committed in an especially heinous, cruel or depraved manner ("aggravator 1"); (2) caused physical, emotional, or financial harm to the victims and their immediate families, or if a victim died as a result of the conduct of the defendant, caused emotional or financial harm to that victim's immediate family; (3) were domestic violence offenses committed in the presence of a child; and (4) that there were multiple victims involved in a single incident. *See* A.R.S. § 13-702(C)(5), (9), (18), (24)(2008). The jury found all aggravators proven beyond a reasonable doubt, except aggravator 1 on counts 3, 4, and 5.

**¶46** The presumptive term for a Class 2 or 3 dangerous felony may be aggravated within a specified range if "one or more" of the alleged aggravators are found to be true beyond a reasonable doubt by the trier of fact. *See* A.R.S. §§ 13-604(I), -702(B),(C). "[O]nce a jury finds . . . a single aggravating factor . . . the sentencing judge [may] find and consider additional factors relevant to the imposition of a sentence up to the maximum prescribed in that statute." *State v. Martinez*, 210 Ariz. 578, 585, ¶ 26, 115 P.3d 618, 625 (2005). Section 13-702(C)(9) creates an aggravating circumstance when the trier of fact finds beyond a reasonable doubt that the "victim, or if

the victim has died as a result of the conduct of the defendant, the victim's immediate family suffered physical, emotional or financial harm." Here, the jury found this allegation proven beyond a reasonable doubt as to all counts.

**¶47** During trial, Rosario and hospital medical personnel testified about the physical injuries she suffered when defendant shot her; Manuel testified about his struggles with defendant and that he watched defendant shoot his mother; and Lilu testified about seeing her mother and Rosario struggle with defendant over the gun, and her attempts to protect Rosario. At the aggravation phase of trial, Rosario testified that her injuries required two surgeries on her face, one on her arm, and "a lot" on her hand to reconstruct tendons. Her injuries kept her from working and holding her youngest son, who would "cry because [she] couldn't hold him." The family held "car washes" to pay the rent. She testified that her mother's death had a "great impact" on her family because it left her and her teen-aged siblings without a mother's support. Manuel testified about the effects of his emotional stress over the incident and loss of his mother, and the financial effect felt by the family caused by his mother's death. Another of Martha's daughters, who was not present the day of the incident, testified about the emotional harm she suffered from her mother's death and the injuries to her sisters, as well as the financial cost of

Martha's funeral and burial. Martha's sister-in-law testified about the emotional effect of Martha's death on her, Rosario and Lilu. The trial court imposed aggravated sentences on counts 2 through 5.

**¶48** Under these facts, a reasonable jury could have found beyond a reasonable doubt that the victims and Martha's immediate family suffered physical, emotional or financial harm, which justified the aggravated sentence.

*CONCLUSION*

**¶49** We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and represented by counsel. The jury was properly impaneled and the jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

**¶50** We affirm defendant's convictions and sentences. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than inform defendant of the status of the appeal and his 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). On the court's own motion, defendant shall have 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.

/s/
PETER B. SWANN, Judge

CONCURRING:

/s/
PHILIP HALL, Presiding Judge

/s/
SHELDON H. WEISBERG, Judge