

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); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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|--------------------|---|----------------------------|
| STATE OF ARIZONA, |) | No. 1 CA-CR 10-0090 |
| |) | |
| Appellee, |) | DEPARTMENT A |
| |) | |
| v. |) | MEMORANDUM DECISION |
| |) | |
| DARREN LEE BALTES, |) | (Not for Publication - |
| |) | Rule 111, Rules of the |
| Appellant. |) | Arizona Supreme Court) |
| |) | |

Appeal from the Superior Court in Mohave County

Cause No. CR-2009-00215

The Honorable Rick A. Williams, Judge

CONVICTIONS AND SENTENCES AFFIRMED

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

| | |
|-------------------------------------------------|---------|
| Jill L. Evans, Mohave County Appellate Defender | Kingman |
| By Jill L. Evans, Appellate Defender | |
| Attorneys for Appellant | |

| | |
|-------------------|--------|
| Darren Lee Baltes | Tucson |
| Appellant | |

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Darren Lee Baltes's conviction on two counts of attempted second-degree murder, three counts of aggravated assault and one count of burglary in the first degree. Baltes's counsel has searched the record on appeal and found no arguable question of law that is not frivolous, and asks us to search the record for fundamental error. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Baltes filed a supplemental brief raising several issues, which we address below. After reviewing the entire record, we affirm Baltes's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 Disturbed that L., his long-time romantic partner, had begun a relationship with E., Baltes entered the home in which L. was staying, found her in bed with E., and struck E. in the face.¹ After wrestling with E. for a few minutes, Baltes withdrew, walked to his car and retrieved a rifle. He then re-entered the house and shot E., L. and the owner of the home multiple times. Upon his arrest, he told police, "I thought in

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Baltes. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

Arizona you could shoot the man . . . that was [having sex with] your old lady.”

¶13 The jury convicted Baltes of both aggravated assault and attempted second-degree murder with respect to L. and to E. The court imposed concurrent sentences of 7.5 years and 10.5 years, respectively, on the charges involving L., and the same concurrent sentences on the charges involving E., and ordered the two pairs of sentences to run consecutively. The court also imposed another consecutive sentence of 9 years for the aggravated assault of the woman who owned the home, and a concurrent 8-year sentence on the burglary charge.

¶14 Baltes timely appealed. 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 -4033(A)(1) (2010).²

DISCUSSION

A. Fundamental Error Review.

¶15 The record reflects Baltes received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages.³ The State

² Absent material revisions after the date of an alleged offense, we cite a statute’s current version.

³ Although Baltes was not present at the restitution hearing, his counsel waived his presence.

presented direct evidence sufficient to allow the jury to convict. The jury was properly comprised of 12 members. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict. The court received and considered a presentence report, addressed its contents during the sentencing hearing and imposed legal sentences on the crimes of which Baltes was convicted.

B. Issues Raised by Baltes.

¶6 Baltes first argues the indictment was constitutionally infirm. The original indictment against Baltes alleged three counts of attempted first-degree murder. On October 1, 2009, more than two months prior to trial, the grand jury handed down a new indictment adding the aggravated assault and burglary charges. Without objection, the court then dismissed the original indictment.

¶7 Pursuant to Arizona Rule of Criminal Procedure 13.5(b), absent the defendant's consent, a "charge may be amended only to correct mistakes of fact or remedy formal or technical defects." Rule 13.5(b) is prophylactic in nature; its purpose is to ensure the defendant has notice of the charges against him. *State v. Freeney*, 223 Ariz. 110, 114, ¶¶ 25-26, 219 P.3d 1039, 1043 (2009). A violation of Rule 13.5(b), however, does not

necessarily infringe on a defendant's Sixth Amendment rights. *Id.* at ¶ 25.

¶18 Assuming without deciding that the new indictment constituted a violation of Rule 13.5(b), we review for fundamental error because Baltes did not raise this issue prior to this appeal. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). Fundamental error review requires the defendant to establish that fundamental error occurred and that it caused him prejudice. *Id.* at ¶ 20.

¶19 Baltes cannot satisfy this standard because there is no indication in the record that the new indictment prejudiced his defense. As noted, the indictment was issued two months before the start of his trial. Moreover, the charges contained in the new indictment stemmed from the same incident that underlay the original indictment. Under the circumstances, the new indictment did not violate Baltes's due-process notice rights. See *Freeney*, 223 Ariz. at 114, ¶ 27, 219 P.3d at 1043.⁴

¶10 Baltes next asserts that his double-jeopardy rights were violated in that he will be punished twice in connection with his convictions for attempted second-degree murder and aggravated assault involving L. and E. A violation of the

⁴ To the extent that Baltes means to argue that initialed handwritten entries on the October 1 indictment rendered it constitutionally invalid, we are aware of no authority to support that assertion.

prohibition against double jeopardy constitutes fundamental, reversible error. See *State v. Price*, 218 Ariz. 311, 313, ¶ 4, 183 P.3d 1279, 1281 (App. 2008).

¶11 To the extent that the aggravated assault and attempted second-degree murder convictions involving either of the victims were based on the same act, the superior court properly imposed concurrent rather than consecutive sentences for each pair of crimes. See A.R.S. § 13-116 (2010). Therefore, contrary to Baltes's argument, he will be punished just once, not twice, for the acts he committed against each of the victims. To the extent that Baltes means to argue that his double-jeopardy rights are violated by the consecutive sentences the court imposed in connection with each pair of crimes, that argument also is unfounded. See *State v. Gordon*, 161 Ariz. 308, 313, 778 P.2d 1204, 1209 (1989) (single act that harms multiple victims may be punished by consecutive sentences).

¶12 Nor were Baltes's rights against double jeopardy violated by the pair of convictions arising from his acts against L. and E., respectively. Double jeopardy is not implicated when "each of two offenses contains an element not contained in the other." *State v. Sanders*, 205 Ariz. 208, 222, ¶ 65, 68 P.3d 434, 448 (App. 2003) (citing *United States v. Dixon*, 509 U.S. 688, 696 (1993)). Attempted second-degree

murder requires a person to intentionally or knowingly engage in a course of conduct planned to culminate in the death of another. A.R.S. §§ 13-1001 (2010), -1104 (2010). As charged in the indictment, aggravated assault requires a person to intentionally, knowingly or recklessly cause physical injury to another using a deadly weapon or dangerous instrument. A.R.S. §§ 13-1203(A)(1) (2010), -1204(A)(2) (2010).

¶13 To the extent that Baltes argues it was impossible for him to commit attempted second-degree murder without also committing aggravated assault, we disagree. Baltes could have been convicted of attempted second-degree murder for the acts he committed that were aimed at carrying out the attacks on L. and E., but prior to actually inflicting the injuries on which the aggravated assault convictions were based.

¶14 Next, Baltes contends that because he was acquitted of attempted murder in connection with the shooting of the owner of the home, there was insufficient evidence to support the jury's guilty verdict as to the other attempted second-degree murder charges. The record does not support this assertion. Baltes testified he intentionally shot all three victims. This is sufficient evidence to support the two attempted second-degree murder convictions. Furthermore, "consistency between the verdicts on the several counts of an indictment is unnecessary."

State v. Zakhar, 105 Ariz. 31, 32, 459 P.2d 83, 84 (1969). Inconsistency within the verdicts may reflect a number of factors, such as jury-room compromises or leniency. *Id.*; see also *State v. DiGiulio*, 172 Ariz. 156, 162, 835 P.2d 488, 494 (App. 1992) ("There is no constitutional requirement that verdicts be consistent.").

¶15 Baltes further argues the court denied him a "viable defense" arising from the fact that his long-time relationship with L. created a common-law marriage, which he seems to argue gave him the right to shoot E. (and/or L.). We construe Baltes's argument to be that his inability to assert the existence of a common-law marriage prejudiced him in that he was not permitted to give the jury a full justification for why he shot his "wife" and her lover.

¶16 This argument has no merit. Arizona does not recognize common-law marriages. See A.R.S. § 25-111 (2007); *Smith v. Mangum*, 155 Ariz. 448, 450 n.1, 747 P.2d 609, 611 (App. 1987). Even so, Baltes was not denied the opportunity to present L. as his "wife." His defense counsel consistently referred to L. as Baltes's wife. The jury heard evidence that L. and Baltes had a 19-year relationship; that they had a child together; that they cohabitated; that they split bills and had joint bank accounts;

and that they generally conducted themselves as if they were married.

¶17 Baltes also argues he received an unconstitutionally enhanced sentence because he "could not have known the rules being applied to enhance his sentence on Count 7 aggravated assault." Ignorance of the law, however, is no defense to criminal liability. A.R.S. § 13-204 (2010); *State v. Soltero*, 205 Ariz. 378, 380, ¶¶ 7-8, 71 P.3d 370, 372 (App. 2003).

¶18 Baltes further contends it was error to impose consecutive sentences for his crimes. Arizona Rule of Criminal Procedure 26.13, however, allows consecutive sentences for multiple offenses "unless the judge expressly directs otherwise." See *State v. Girdler*, 138 Ariz. 482, 489, 675 P.2d 1301, 1308 (1983) (decision to impose consecutive sentences rests with the discretion of the superior court).

¶19 Finally, Baltes argues that the evidence was insufficient to prove his "intent to commit aggravated assault with a deadly weapon" and that "[t]here was no evidence to prove attempted murder by premeditation." Baltes was convicted of attempted second-degree murder; premeditation is not an element of this offense. See A.R.S. § 13-1104. Moreover, the record contains sufficient evidence to prove his intent to commit aggravated assault.

CONCLUSION

¶20 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶21 After the filing of this decision, defense counsel's obligations in this appeal have ended. Defense counsel need do no more than inform Baltes of the outcome of this appeal and his future options, 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, Baltes has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Baltes has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

JON W. THOMPSON, Judge