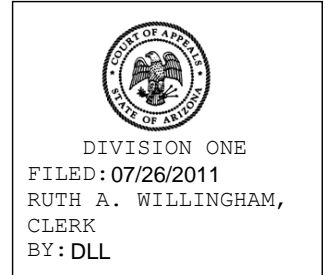


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0341
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SANTOS LAZARO ESPINAL FLORES,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-007316-001 DT

The Honorable Arthur T. Anderson, Judge

AFFIRMED AS MODIFIED

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

Tyrone Mitchell, PC Phoenix
By Tyrone Mitchell
Attorney for Appellant

O R O Z C O, Judge

¶1 Santos Lazaro Espinal Flores (Defendant) timely
appeals his convictions and sentences for seven counts of

aggravated assault, four counts of kidnapping, and one count of sexual assault. Defendant'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), advising this Court that after a search of the entire appellate record, he found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but he did not do 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 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, and -4033.A.1 (2010).¹ Finding no reversible error, we affirm as modified.

FACTS AND PROCEDURAL HISTORY

¶3 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996). Defendant was charged with seven counts of aggravated assault, a class three dangerous felony, four counts of kidnapping, a class

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

two dangerous felony, and one count of sexual assault, a class two felony.²

¶4 The victims in this case were held for ransom between October 28 and November 2, 2007. All four victims, Salustia R., Mario S., Jeronimo A., and Daniel L. (collectively, Victims), testified that they came into the United States from Mexico illegally, were abducted, and forcibly held in an apartment guarded by Defendant, who would periodically point a gun at them in a threatening manner. Victims also testified that their captors showed them a fake, bloody human hand for purposes of instilling fear and threatened to cut off Victims' hands if the ransoms were not paid.

¶5 The three male victims, Daniel L., Mario S., and Jeronimo A., testified that during the time they were held in the apartment, and in the presence of Defendant, they were individually forced into a tub with water and electrocuted with a cable that was plugged into the wall.

¶6 Salustia R. testified that one night, Defendant, armed with a gun, forced her into a closet and raped her. Daniel L., Mario S., and Jeronimo A. corroborated that Defendant,

² Throughout the proceedings, Defendant is referred to using either his full name, "Santos" for short, or the nicknames, "Catracho" and "Honduras." Also, Defendant's name varies on the different pleadings in the record; sometimes he is named as Santos Flores Espinal, while others he is named as Santos Lazaro Espinal Flores.

specifically, took Salustia R. at gunpoint during one of the nights and they subsequently heard her make sounds of resistance and repeatedly say "no." The parties stipulated that Defendant's DNA was found in Salustia R.'s vagina.

¶17 Detective V. interviewed Defendant. Defendant told the detective that he was staying at the apartment during the time Victims were being held there. Defendant also told the detective that he knew what was happening to Victims at the time, but that he had nothing to do with it. However, Defendant admitted to guarding Victims in the apartment. Defendant also told the detective "that he did have sex with [Salustia R.], but it was consensual."

¶18 Defendant testified that he did not help abduct Victims; he was merely staying at the apartment where the four victims were being held. Defendant further testified that he witnessed the electrocutions of the three male victims but he did not assist in the electrocution. Defendant also testified that he had sex with Salustia R. but that he did not force it upon her. Defendant stated, "I had touched the guns, but I never threatened them the way they supposedly say."

¶19 A jury found Defendant guilty of all counts. The jury also found that the state proved aggravating circumstances as to all counts.

¶10 The court sentenced Defendant as follows: a presumptive 7.5 years' imprisonment for each of counts one through four (aggravated assault), running concurrent with each other; a presumptive 10.5 years' imprisonment for each of counts five through eight (kidnapping), running consecutive to counts one through four but concurrent with each other; a presumptive 7.5 years' imprisonment for each of counts nine through eleven (aggravated assault), running concurrent with counts one through eleven; and an aggravated ten years' imprisonment for count thirteen (sexual assault), running consecutive to counts one through eleven. Thus, the court sentenced Defendant to a total term of imprisonment of twenty-eight years. Defendant received 850 days' presentence incarceration credit³ towards counts one through four and no credit towards counts five through thirteen.⁴

DISCUSSION

¶11 There is sufficient evidence to support the jury's verdict of guilty on all counts. Evidence is sufficient when it

³ The record shows that Defendant was arrested and booked on July 18, 2008 and sentenced on March 19, 2010. Thus, Defendant should have received only 609 days' presentence credit. Because the state failed to raise this on appeal, we leave Defendant's presentence credit undisturbed. *State v. Dawson*, 164 Ariz. 278, 282-83, 792 P.2d 741, 745-46 (1990).

⁴ Defendant should have received presentence incarceration credit towards counts nine to eleven because they were sentenced to run concurrently with counts one to four. A.R.S. § 13-712.B (2010). We therefore correct the sentence to reflect 609 days' presentence incarceration credit for counts nine to eleven.

is "more than a [mere] scintilla and is such proof" as could convince reasonable persons of Defendant's guilt beyond a reasonable doubt. *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) (citation omitted). "If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the defendant." *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶12 A person is guilty of aggravated assault if he intentionally, knowingly, or recklessly causes physical injury to another person, or places another person in reasonable apprehension of imminent physical injury, and either (1) the injury is serious, (2) the injury is caused by the use of a deadly weapon or dangerous instrument, (3) the use of force causes temporary but substantial disfigurement or a fracture of any body part, or (4) the assault occurs while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired. A.R.S. §§ 13-1203 (2010), -1204 (Supp. 2010). A person is criminally accountable for the conduct of another if he is an accomplice in the commission of an offense. A.R.S. § 13-303 (2010). In this

case, Victims testified that Defendant used a gun to beat them and threaten to kill them while he was standing guard over them. Also, because evidence supports that Defendant aided in detention of Victims, Defendant was an accomplice to the electrocution of the three male victims that occurred during their detention. Thus, sufficient evidence supports Defendant's convictions for seven counts of aggravated assault.

¶13 A person is guilty of kidnapping when he knowingly restrains another person with intent to (1) hold the victim for ransom, (2) inflict physical injury or a sexual offense on the victim, or (3) place the victim in reasonable apprehension of imminent physical injury. A.R.S. § 13-1304 (2010). Again, a person is criminally accountable for the conduct of another if he is an accomplice in the commission of an offense. A.R.S. § 13-303. In this case, evidence supports that Defendant actively assisted in holding all four victims captive in the apartment. Thus, evidence supports Defendant's convictions for four counts of kidnapping.

¶14 A person is guilty of sexual assault when he intentionally or knowingly engages in sexual intercourse with any person without his or her consent. A.R.S. § 13-1406 (2010). In this case, there is evidence that Defendant had sexual intercourse with Salustia R. without her consent. Thus,

evidence supports Defendant's conviction for one count of sexual assault.

¶15 Thus, there is substantial evidence to support the jury's verdicts of guilty on all twelve counts.

CONCLUSION

¶16 We have read and considered counsel's brief, carefully searched the entire record for reversible error, and we have found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the jury's finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶17 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). 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.⁵

¶18 For the foregoing reasons, Defendant's convictions and sentences are affirmed as modified.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge

⁵ 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.