DIVISION ONE
FILED: 07/21/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. ODIS FELDER, Appellant.	)	1 CA-CR 10-0407 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-113798-001DT

The Honorable James T. Blomo, Judge Pro Tempore

AFFIRMED

Thomas C. Horne, Arizona 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 Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

K E S S L E R, Presiding Judge

¶1 Odis Felder ("Appellant") filed this appeal in accordance with *Anders v. California*, 386 U.S. 378 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following his conviction of one count of aggravated assault, a class three dangerous felony and a domestic violence offense under Arizona Revised Statutes ("A.R.S.") section 13-105(13) (2010), -1204 (Supp. 2010), and -3601 (Supp. 2010)[1] and one count of unlawful imprisonment, a class six felony and a domestic violence offense under A.R.S. § 13-1303 (2010), and -3601.

¶2 Finding no arguable issues to raise, counsel requested that this Court search the record for fundamental error. Appellant was given the opportunity to file a *pro per* supplemental brief, but did not file one.

¶3 After reviewing the entire record, we conclude that the evidence is sufficient to support the verdicts and there is no reversible error. Therefore, we affirm Appellant's convictions and sentences.

FACTUAL AND PROCEDURAL HISTORY

¶4 Prior to the incident for which Appellant was indicted and found guilty, Appellant and K.C. had been dating each other

[1] We cite the current version of the aggravated assault statute, as well as the dangerous offense and domestic violence statutes, because no revisions material to this decision have occurred since the underlying events in this case.

for almost two years and lived with each other from April of 2007 until April of 2008.

¶5 On June 26, 2008, K.C. was at home waiting for her seventeen-year-old son, J.W., to come home. Appellant had picked up J.W. earlier that day to visit with Appellant's son. Appellant returned J.W. to his home at roughly 10:00 p.m. Upon arriving, Appellant entered the house and went into K.C.'s bedroom where an argument quickly ensued. At some point, Appellant asked K.C. if she wanted the relationship to be over. K.C. replied that she did.

¶6 After being informed that the relationship was over, Appellant left the bedroom. However, rather than leaving the house, Appellant retrieved a butcher's knife from the kitchen and returned with it to the bedroom. Appellant then proceeded to throw K.C. off of the bed and onto the floor, kick her once, hit her multiple times with the handle of the knife, and repeatedly slap her with the blade of the knife. In doing so, Appellant inflicted three or four cuts on the left side of K.C.'s face, one of which was roughly an inch long, resulting in significant bleeding and substantial bruising.

¶7 During the attack, K.C. yelled for J.W. to call 911. Rather than immediately calling the police, J.W. went to the bedroom to investigate what was going on. Upon seeing the condition of his mother, J.W. attempted to flee to a safe place

from which he could call 911. However, Appellant pursued J.W. and took J.W.'s cell phone away at knife point. Appellant then made J.W. return to the bedroom, where Appellant confined him and his mother by holding the knife and standing in front of the only exit from the room.

¶8 Once Appellant had K.C. and J.W. in the room, K.C. requested that Appellant allow J.W. to retrieve some ice and a towel to try to stop her face from bleeding and to prevent it from swelling up. However, Appellant refused to let J.W. leave the room.

¶9 Appellant ultimately decided to just leave the house at roughly 4:00 a.m. After Appellant left, K.C. and J.W. called the police.

¶10 At 4:11 a.m., Detective E.F. arrived at the house. He recorded K.C.'s and J.W.'s statements, collected the bloody butcher's knife, which he secured in his police vehicle, and took photographs of the scene and of K.C.'s various injuries.

¶11 The grand jury indicted Appellant for aggravated assault, a class three dangerous felony and a domestic violence offence, and unlawful imprisonment, a class six felony and a domestic violence offense. At the close of the State's evidence the superior court denied defense counsel's Rule 20 motion for judgment of acquittal. The jury found Appellant guilty on both counts. It further found that the aggravated assault was a

dangerous felony and that both counts constituted domestic violence.

¶12 The trial court sentenced Appellant to a mitigated term of six years for aggravated assault and a presumptive one year term for unlawful imprisonment. The two sentences run concurrently, and Appellant received 115 days of presentence incarceration credit for both sentences.

¶13 Appellant timely appealed. *See* Arizona Rules of Criminal Procedure ("Ariz. R. Crim. P.") Rule 31.3. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, as well as A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and -4033(A)(1) (2010).[2]

STANDARD OF REVIEW

¶14 This Court must review the entire record for fundamental error. *State v. Barraza*, 209 Ariz. 441, 447, ¶ 19, 104 P.3d 172, 178 (App. 2005). Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quoting *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984)). Defendant must also show that such

[2] Again, we cite the current version of these statutes because no revisions material to this decision have since occurred.

error prejudiced him. *Henderson*, 210 Ariz. at 567, ¶ 20, 115 P.3d at 607. On review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against the defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

DISCUSSION

¶15 This Court has reviewed the entire record for fundamental error. After careful review of the record, we find no meritorious grounds for reversal of Appellant's conviction or modification of the sentence imposed. The record reflects Appellant had a fair trial and was present and represented by counsel at all critical stages of trial. Appellant was given the opportunity to speak at sentencing and the trial was conducted in accordance with the Arizona Rules of Criminal Procedure. The evidence is sufficient to sustain the verdict and the trial court imposed proper sentences for Appellant's offenses.

I. Substantial evidence in the record supports the jury's verdict.

¶16 In reviewing a claim of the sufficiency of the evidence, "[w]e construe the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998). We review the

evidence presented to determine if substantial evidence exists to support the jury verdict. *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005). Substantial evidence has been described as more than a "mere scintilla and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 469 (1997) (internal quotation marks omitted). "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) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

A. Aggravated Assault

¶17 For the jury to find Appellant guilty of aggravated assault under A.R.S. § 13-1204, it had to find Appellant intentionally, knowingly or recklessly caused any physical injury to another person and that Appellant used a deadly weapon or dangerous instrument in the commission of such crime.

¶18 The State presented substantial evidence to support the jury's verdict. Both of the victims testified that Appellant kicked K.C. and repeatedly cut her with a butcher's knife. The injuries sustained were corroborated by Detective E.F.'s testimony and the photographs he had taken that evening.

¶19 The testimony of the victims coupled with the testimony of Detective E.F. is sufficient to support Appellant's conviction for aggravated assault.

B. Dangerous Finding

¶20 For the jury to find that Appellant's aggravated assault conviction constituted a dangerous offense under A.R.S. § 13-105(13), it had to find either that Appellant used or exhibited in a threatening manner a deadly weapon or dangerous instrument, or that Appellant knowingly inflicted a serious physical injury on another person.

¶21 Sufficient evidence supports the finding that Appellant's aggravated assault was a dangerous offense. At trial, the victims testified that Appellant used a knife, which constitutes a deadly weapon or dangerous instrument, to inflict serious physical injury to K.C.'s face. This testimony was corroborated by the testimony of Detective E.F. as well as the photographs he took. This is sufficient evidence to support the finding of dangerousness.

C. Unlawful Imprisonment

¶22 For the jury to find Appellant guilty of unlawful imprisonment under A.R.S. § 13-1303, it had to find that Appellant knowingly restrained another person.

¶23 The record contains sufficient evidence to support Appellant's conviction. J.W. testified at trial that Appellant

forced him into the bedroom with his mother, held them in the room at knife point, and would not let them leave the room for several hours. J.W.'s testimony was corroborated by K.C.'s testimony. The testimony of both victims is sufficient to support Appellant's conviction for unlawful imprisonment.

D. Domestic Violence Finding

¶24 For the jury to find that either of the counts constituted domestic violence under A.R.S. § 13-3601, it had to find that the relationship between Appellant and the victims "is one of . . . persons residing or having resided in the same household." A.R.S. § 13-3601(A)(1). The victims testified that they and Appellant had lived together for a year shortly before the incident. This is sufficient evidence to support the finding that both counts constituted domestic violence.

II. Appellant's sentences were appropriate.

¶25 At the sentencing hearing, the State did not allege any aggravating factors. Moreover, the trial court found Appellant's lack of a criminal history coupled with his service in Vietnam to be mitigating factors.

¶26 The court sentenced Appellant to a mitigated term of six years for aggravated assault and a presumptive one year term, running concurrently to his other sentence, for unlawful imprisonment. These sentences were appropriate under A.R.S. §§ 13-702(D) (2010) and -704(A) (2010).

¶27 Appellant received 115 days of presentence incarceration credit for both counts. There was no error in the calculation of Appellant's pre-sentencing incarceration credit.

CONCLUSION

¶28 For the foregoing reasons, we affirm Appellant's convictions and sentences. Upon the filing of this decision, counsel shall inform Appellant of the status of his appeal and his future appellate 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). Upon the Court's own motion, Appellant shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/S/
DONN G. KESSLER, Presiding Judge

CONCURRING:

/S/
DIANE M. JOHNSEN, Judge

/S/
SHELDON H. WEISBERG, Judge*

*Pursuant to Article VI, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable Sheldon H. Weisberg, as appointed to serve as a judge pro tempore in the Arizona Court of Appeals, Division One, to sit in this matter.