DIVISION ONE
FILED: 06/21/2011
RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 10-0430
	)	
Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ERIC JOHN JONES,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-006358-001 DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

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

Thomas A. Gorman — Sedona
Attorney for Appellant

S W A N N, Judge

¶1 Eric John Jones ("Defendant") timely appeals from his conviction on two counts of aggravated assault, and one count each of attempted aggravated assault and misconduct involving weapons. Pursuant to *Anders v. California,* 386 U.S. 738 (1967),

and *State v. Leon,* 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has advised us that a thorough search of the record has revealed no arguable question of law, and requests that we review 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* but did not.

FACTS AND PROCEDURAL HISTORY[1]

¶2 On May 13, 2003, Phoenix Police Officers Cameron, Cook, Hillman and Huskisson were members of a Neighborhood Enforcement Team that conducted felony warrant pickups. The four officers, all wearing police uniforms and riding in marked patrol vehicles, were part of a surveillance detail assigned to take Defendant into custody. As Cameron and Cook approached the hotel where Defendant was staying, they saw him driving his car toward them. Defendant's vehicle "took off" back to the hotel and the officers followed. Hillman and Huskisson also responded to the hotel in their individual patrol cars. Defendant parked at the hotel and the officers surrounded his car.

¶3 The four officers and Defendant exited their vehicles at the same time. The officers yelled "Police, stop" and told

[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).

Defendant to put "his hands up where [officers] could see them." Instead, Defendant reached behind his back and pulled out "a large handgun" and pointed it "towards the northeast" where Hillman and Huskisson were. Cameron and Cook believed Defendant would shoot the other officers. Cook fired one round at Defendant. Defendant ducked down and "started crawling . . . hunched over" toward some stairs.

¶4 Fearing he was "an easy target," Cameron took cover behind a pillar as he tracked Defendant's movements. He saw Defendant sit down in the stairwell with his back against the wall and point the gun at him. Cameron fired one round and yelled at Defendant to drop his weapon, but Defendant ignored his commands and continued to point the gun at him. Cameron fired two more rounds and Cook heard "two or three rounds" come "immediately" from Defendant's location. Hillman heard Defendant yelling at the officers in an "[a]gitated, angry" voice but could not discern Defendant's words.

¶5 Defendant put his hands up, yelled "okay, okay" and started "scooting" downstairs. Cameron could not see whether Defendant still held his gun. Although Cameron ordered Defendant to stop and keep his hands up, Defendant continued to "move himself a few feet and then put his hands back up" as he worked his way down the hotel breezeway and ignored the

officer's commands to "stop, keep his hands up." Cameron still had "no idea" what Defendant had done with his weapon.

¶6 When Defendant reached a hotel room door, someone inside opened the door, Defendant dropped his weapon, and crawled inside. Cameron placed a fresh magazine in his weapon and relocated to a safer place "in case [Defendant] came out shooting."

¶7 The Special Assignment Unit ("SAU"), tactically equipped and trained to handle "high-risk" situations, arrived and took over. SAU officers retrieved and impounded Defendant's gun. Eventually the other person in the hotel room came out, and then Defendant, who had been shot in the leg, was taken into custody. He was transported to the hospital in an ambulance; Phoenix Police Officer Vine rode with Defendant. Vine issued *Miranda* warnings, which Defendant said he did not understand. Defendant later told the treating paramedic that he did understand his rights. At the hospital Phoenix Police Officer Petrosino attempted to again advise Defendant of his *Miranda* rights, but Defendant "cut [him] off" and "said that he had heard them a bunch of times and he knew what his rights were." Defendant agreed to answer questions and admitted he saw the officers at the scene and heard them yelling "don't move, or stay there" when he was by his vehicle. When Defendant realized he could not get back to the room before the officers reached

him, “he pulled out a gun and displayed it.” Defendant also admitted that he fired the gun “once or twice into the air” from the stairwell because “he wanted [the officers] to know that he had a gun and that he wasn’t afraid to use it.”

¶8 Defendant was indicted on three counts of aggravated assault, all class 2 dangerous felonies, for using a dangerous weapon to intentionally place Hillman (“Count 1”), Cameron (“Count 2”), and Huskisson (“Count 3”), all peace officers engaged in official duties, in reasonable apprehension of imminent physical injury; and one count of misconduct involving weapons (“Count 4”), a class 4 dangerous felony, for knowingly possessing a gun while being a prohibited possessor. The state amended the indictment to allege historical non-dangerous felonies, aggravating factors, and other crimes not committed on the same occasion for sentencing purposes.[2]

¶9 Before trial, the court granted Defendant’s motion for a Rule 11 examination and appointed experts to evaluate his competency to stand trial. After an evidentiary hearing, the court found Defendant competent to stand trial.

¶10 The case was tried to a jury. At the conclusion of the state’s case, Defendant moved for a judgment of acquittal

[2] On Defendant’s motion, the trial court designated this as a complex case.

pursuant to Ariz. R. Crim. P. 20. The motion was denied. Defendant presented no witnesses or evidence.

¶11 After deliberations, the jury found Defendant guilty of Counts 1, 2 and 4, and of attempted aggravated assault on Count 3. The jury additionally found that all counts were dangerous offenses and that the officers were engaged in their official duties on the day of the incident. After an aggravation hearing, the jury found that Defendant had four prior felony convictions the trial court could use to enhance sentencing.

¶12 Defendant was sentenced to concurrent maximum terms of 28 years in prison for each of Counts 1 and 2; 20 years for Count 3; and 10 years for Count 4. Defendant was given 1,461 days presentence incarceration credit for each count.

DISCUSSION

¶13 We have read and considered the briefs submitted by counsel and have reviewed the entire record. *Leon,* 104 Ariz. at 300, 451 P.2d at 881. 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 instructed. The jury instructions were

consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

I. RULE 20 MOTION[3]

¶14 A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Rule 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).

A. Aggravated Assault (Officers Hillman and Cameron)

¶15 A person commits assault by intentionally placing another in reasonable apprehension of imminent physical injury. A.R.S. § 13-1203(A)(2).[4] An assault is aggravated if the person committing the assault uses a deadly weapon, or knows or has reason to know that the victim is a peace officer engaged in official duty. A.R.S. § 13-1204(A)(2), (5).

[3] Although Defendant's Rule 20 motion was limited to Counts 1, 3, and 4, we review all counts.

[4] We cite to the versions of statutes in effect at the time of the offense (May 13, 2003).

¶16 Here, substantial evidence was presented for a reasonable jury to find Defendant guilty of aggravated assault on Hillman and Cameron.

1. Engaged in Official Duties

¶17 Both officers were dressed in police uniforms and rode inside marked patrol cars, supporting a reasonable inference that they were engaged in their official duties when they encountered Defendant and commanded him to stop, put up his hands, and drop his weapon. Additionally, Defendant told Petrosino that he knew they were police officers.

2. Deadly Weapon

¶18 Cameron, Cook, and Hillman saw Defendant holding the gun, which was presented at trial. Cook's testimony that he heard shots coming from the stairwell and Defendant's admission to Petrosino that he shot his weapon are evidence that the gun was loaded.

3. Reasonable Apprehension of Imminent Physical Injury

¶19 Cook and Cameron testified that Defendant pointed the gun in the direction of Hillman, and that they believed Defendant was going to shoot Hillman. Hillman described being "pinned down" behind his patrol car because he believed Defendant would shoot him if he moved. Cameron testified that he felt like "an easy target" and that he took cover to protect

himself. Cameron saw Defendant point his gun directly at him, and said Defendant ignored his commands to put down the gun. After Defendant went inside the hotel room, Cameron reloaded his gun in case Defendant came out shooting.

B. Attempted Aggravated Assault (Officer Huskisson)

¶20 A person commits attempt "if such person intentionally does anything which is a step in a course of conduct planned to culminate in the commission of an offense." *State v. May,* 137 Ariz. 183, 187, 669 P.2d 616, 620 (App. 1983). *See also* A.R.S. § 13-1001(A)(2).

¶21 Here, substantial evidence was presented for a reasonable jury to find Defendant guilty of attempted aggravated assault. Defendant pointed his gun in the direction of Huskisson. Even though Huskisson never saw Defendant or his gun, he knew the officers were pursuing Defendant and saw Cameron and Cook with guns drawn and yelling. He also heard "an exchange of gunfire" from two locations –- one where Cook and Cameron were stationed, and the other the stairwell. Huskisson testified that his anxiety level was "up" and that he took cover behind a patrol car because he heard "a firefight" but did not know where the "threat" came from. He further testified that he feared for his life.

C. Misconduct Involving Weapons

¶22 Misconduct involving weapons occurs when a person knowingly possesses a deadly weapon while being a prohibited possessor. A.R.S. § 13-3102(A)(4). A "deadly weapon" includes a loaded or unloaded revolver. A.R.S. § 13-3101(A)(1), (4).

¶23 Here, substantial evidence was presented for a reasonable jury to find Defendant guilty. The weapon was collected from outside Defendant's hotel room. The state presented evidence that Defendant's civil rights to have a gun had not been restored.

II. RULE 11 COMPETENCY

¶24 A defendant cannot be tried while incompetent. *Bishop v. Super. Ct. (Roylston),* 150 Ariz. 404, 406, 724 P.2d 23, 25 (1986). *See also* Rule 11.2 (allowing a party to request or the court to *sua sponte* order an examination to determine whether a defendant is competent to stand trial); Rule 26.5 (allowing a mental health examination at any time before sentence is pronounced); *State v. Amaya-Ruiz,* 166 Ariz. 152, 161-62, 800 P.2d 1260, 1269-70 (1990) (providing a defendant the right to a mental examination and hearing where "reasonable grounds" exist "to indicate that the defendant is not able to understand the nature of the proceeding against him and to assist in his defense").

¶25 Here, we find no abnormalities in the record documenting the Rule 11 evaluation process. The trial court granted Defendant's request for a competency determination and appointed three experts to conduct an evaluation. *See* Rule 11.3 (requiring appointment of experts), Rule 11.5 (requiring hearing to determine competency). An evidentiary hearing was held, during which the competency examiners' reports were admitted and one psychologist testified. *See* A.R.S. § 13-4505(A) (allowing testimony of mental health experts during competency hearing), -4510(A) (allowing parties to present evidence at hearing). Moreover, the court granted Defendant's requests to admit additional medical records that documented Defendant's physical and mental health history, and considered these documents in its ruling.[5] *See* A.R.S. § 13-4510(A) (allowing parties to introduce "other evidence regarding the defendant's mental condition"). In a detailed minute entry, the court documented numerous expert reports that opined Defendant was "malingering" and "exaggerating and/or feigning the lack of cognitive ability." The court additionally noted that Defendant's "demeanor in the courtroom was appropriate," that he "interact[ed] with his

[5] None of the evaluation reports or historical records, however, were included in the record. Defendant is responsible to provide a complete record on appeal. *State v. Mendoza,* 181 Ariz. 472, 474, 891 P.2d 939, 941 (App. 1995). "When matters are not included in the record on appeal, the missing portion of the record is presumed to support the decision of the trial court." *Id.*

attorney and the Court during the proceedings," and that his "presentation of deficits is unconvincing." It found Defendant competent and that he "has the capacity to understand the proceedings and is able to assist counsel with [his] defense, *if he so chooses*."

CONCLUSION

¶26 We affirm Defendant's conviction and sentence. 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, Presiding Judge

CONCURRING:

/s/
_____
DANIEL A. BARKER, Judge

/s/
_____
PATRICIA K. NORRIS, Judge