

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



DIVISION ONE
FILED: 09/15/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 10-0734
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SIXTO BALBUENA, JR.,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-124835-001SE

The Honorable Christopher T. Whitten, Judge

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 Spencer D. Heffel, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Judge

¶1 Sixto Balbuena, Jr. ("Appellant") appeals his conviction and sentence for second degree murder. Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*,

528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm.

I. FACTS AND PROCEDURAL HISTORY¹

¶3 On April 17, 2009, a grand jury issued an indictment, charging Appellant with one count of second degree murder, a class one dangerous felony in violation of A.R.S. § 13-1104 (2010).²

¹ We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

² We cite the current version of the applicable statute because no revisions material to our decision have since occurred.

¶4 At trial, the State presented the following evidence: At approximately 2:40 a.m. on April 10, 2009, Chandler police officers responded to a call informing them that a stabbing had occurred at a Chandler residence. Detective Arbizu and Officer McGrath arrived and entered the residence. Officer McGrath discovered two people, Appellant and a female, Tamara Hoffman, sitting in the living room talking. Officer McGrath asked who had been stabbed, and Hoffman pointed toward the master bedroom. The officer proceeded to the bedroom and found the victim, clad only in boxer shorts, lying on his left side with a severe abdominal wound.

¶5 Detective Arbizu tended to the victim, and Officer McGrath remained in the living room with Appellant and Hoffman. Officer McGrath inquired who had stabbed the victim, and Appellant stood up and said, "I did it." Appellant was arrested and handcuffed.

¶6 After being arrested, Appellant was transported to the Chandler police station, where he was advised of his rights pursuant to *Miranda*,³ and interviewed by Detective Minor. During the interview, Appellant described the events leading up to the victim's death.

¶7 Appellant explained that, at the time of the incident, he was twenty years old and serving as an aircraft mechanic in

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

the United States Navy in El Centro, California. When not stationed on the base at El Centro, he lived with his fiancée, Hoffman, at her home in Chandler. Hoffman and Appellant had met and begun a sexual relationship when she was his teacher at Marcos de Niza High School in Tempe. They had continued that relationship after Appellant's graduation and purportedly became engaged approximately eight months before the stabbing incident.

¶18 Appellant had received several days of furlough and decided to visit Hoffman at her home. At approximately 10:00 p.m. on April 9, 2009, Appellant telephoned Hoffman to let her know he was coming home, and he left El Centro. When he arrived at Hoffman's residence in the early morning hours of April 10, 2009, Appellant tried calling Hoffman, but no one answered the phone.

¶19 When Appellant opened the front door, he heard noises inside. The house was dark, and as he walked through the kitchen, Appellant grabbed a knife, ostensibly for protection. As he neared the master bedroom, Appellant saw a stranger (the victim) run toward the bathroom. Appellant pushed the bathroom door open, and the stranger punched him.

¶10 Appellant fought with the stranger, threw him to the ground, and kicked and threw objects at him. While the stranger was lying on the bathroom floor, Appellant stabbed him once in the stomach. Appellant claimed that he did not intend to

seriously injure the stranger, but he wanted to send a message that the stranger should not have been with Appellant's fiancée. After the stabbing, Appellant called 911 to seek medical assistance for the stranger.

¶11 At trial, a forensic pathologist from the Maricopa County Medical Examiner's Office testified that the cause of the victim's death was a single stab wound to the abdomen. The stab wound was approximately eight inches deep, cutting the victim's aorta and causing him to die within minutes.

¶12 The jury convicted Appellant as charged. The trial court sentenced Appellant to a mitigated term of ten years' incarceration in the Arizona Department of Corrections and credited him for 100 days of presentence incarceration. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶13 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶14 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶15 Appellant's conviction and sentence are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Presiding Judge

_____/S/_____
PATRICK IRVINE, Judge