

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: 11/10/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0855
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ROBERT L. CONRAD,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2004-018577-001 DT

The Honorable Kristin Hoffman, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General By Kent E. Cattani, Chief Counsel Criminal Appeals/Capital Litigation Section Attorneys for Appellee	Phoenix
Bruce Peterson, Office of the Legal Advocate By Thomas J. Dennis, Deputy Legal Advocate Attorneys for Appellant	Phoenix
Robert L. Conrad Appellant	Winslow

B R O W N, Judge

¶1 Robert L. Conrad appeals his conviction and sentence for aggravated assault. Counsel for Conrad 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 that after searching the record on appeal, he was unable to find any arguable grounds for reversal. Conrad was granted the opportunity to file a supplemental brief *in propria persona*, and he has done so.¹

¶2 Our obligation 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 view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Conrad. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 In July 2004, Conrad was indicted for aggravated assault, a class 3 dangerous felony,² in violation of Arizona

¹ Appellant filed two supplemental briefs. In our discretion, we consider both.

² The indictment also read "in the alternative . . . Conrad . . . knowingly or recklessly caused physical injury to [the victim] which caused a temporary but substantial loss or impairment of any body organ of [the victim] pursuant to A.R.S. § 13-1204[(A)(3)(2010)]," a class 4 felony.

Revised Statutes ("A.R.S.") sections 13-1203 (2010)³ and 13-1204 (Supp. 2010).⁴ The following evidence was presented at trial.

¶4 Police were dispatched to the home Conrad shared with the victim following a 9-1-1 priority one domestic violence call from the victim's mother. Officer Perry knocked and rang the doorbell for more than a minute, announcing "Phoenix Police." Officer Susuras observed a man walking through the house, apparently ignoring their attempts to elicit a response. Perry opened the outer screen door and inside door, both of which were unlocked, and again announced "Phoenix Police." After continuing to receive no response, both officers entered the house. Conrad and the victim, who had a swollen lip, numerous bruises, scratches, and extremely red swollen eyes, were in the master bathroom.

¶5 The officers separated the couple and questioned both. The victim initially said her injuries resulted from accidentally falling onto the coffee table. However, when she was later escorted out of the home to receive medical attention, she stated that Conrad had pushed his thumbs into her eyes. She also said Conrad poured nail polish remover over her head,

³ Absent material revision to the statute after the date of the offense, we cite the current version.

⁴ Appellant's initial conviction for this crime was vacated for ineffective assistance of counsel via post-conviction relief.

choked her, and pounded on her chest. The victim was treated for a 7-millimeter laceration of her retina that caused loss of vision in her right eye. The victim recanted after resuming her relationship with Conrad.

¶16 After a four day trial, the jury found Conrad guilty of aggravated assault. Conrad was sentenced to an aggravated term of 15 years, with credit for 1056 days of presentence incarceration credit. This timely appeal followed.

¶17 In his supplemental briefing,⁵ Conrad raises three issues.⁶ He argues first that the trial court erred in finding the police entry into his home did not constitute an illegal search and seizure. Before trial, Conrad filed a motion to suppress, claiming that the warrantless entry was unlawful and that evidence obtained as a result of the entry should be suppressed. While Conrad's motion failed to specify what evidence he sought to suppress, this evidently included Conrad's statements and the officers' observations while inside the home.⁷

⁵ In his second supplemental brief, Conrad asserts he was not permitted a direct appeal from his aggravated assault conviction in 1999; however, a notice of appeal was filed on December 23, 1999.

⁶ In addition, Conrad argues that his trial counsel was ineffective. However, claims of ineffective assistance of counsel may not be raised on direct appeal. *State ex rel Thomas v. Rayes*, 214 Ariz. 411, 415, ¶ 20, 153 P.3d 1040, 1044 (2007).

⁷ It was undisputed that the officers removed no physical evidence from the home.

After an evidentiary hearing, the trial court denied the motion to suppress, concluding that exigent circumstances justified the warrantless entry.

¶8 We review an order involving a motion to suppress for “clear and manifest error.” *State v. Dean*, 206 Ariz. 158, 161, ¶ 9, 76 P.3d 429, 432 (2003) (citation and internal quotations omitted). “[A] warrantless entry into a dwelling to effect an arrest is per se unreasonable unless exigent circumstances require police to act before a warrant can be obtained.” *State v. Love*, 123 Ariz. 157, 159, 598 P.2d 976, 978 (1979). A domestic violence situation is recognized as an exigent circumstance permitting police to enter a dwelling without a warrant. *State v. Greene*, 162 Ariz. 431, 432-33, 784 P.2d 257, 258-59 (1989) (noting that the domestic violence “call itself creates a sufficient indication that an exigency exists allowing the officer to enter a dwelling if no circumstance indicates that entry is unnecessary”) (citation omitted). Once an officer enters a dwelling pursuant to the exigency, he may “lawfully take steps reasonably related to the routine investigation of the offense and the identification of the perpetrator, . . . includ[ing] a protective walk-through of the dwelling.” *Id.* at 433, 784 P.2d at 259 (citations and internal quotations omitted).

¶9 Here, the officers were responding to a priority one domestic violence call. They had been informed prior to arriving of Conrad's previous assault conviction. They knocked and rang the doorbell numerous times, but received no response despite observing Conrad walking through the house. Although the house seemed orderly and there was no yelling or screaming, Perry testified that violence sometimes escalates during domestic situations when the perpetrator realizes that police have arrived. The inability of the police officers to confirm the victim's whereabouts or ascertain whether she was injured, coupled with Conrad's failure to answer the door, suggested urgent action could be needed to prevent harm. We conclude the trial court did not err in finding that exigent circumstances justified the warrantless entry. Once inside the dwelling, the officers were permitted to conduct a protective walk-through, investigate the offense, and take reasonable steps to identify Conrad as the perpetrator. See *id.* Thus, the trial court properly denied Conrad's motion to suppress.

¶10 Conrad next argues that the probative value of tape recordings of vulgar and threatening phone calls he made to the victim at the time of his original trial was substantially outweighed by their prejudicial effect. The trial court initially denied admission of the tapes during the State's case

as being too prejudicial, but ruled that they could be used for impeachment.

¶11 Absent an abuse of discretion we will not disturb the trial court's decision to admit evidence. *State v. Lopez*, 174 Ariz. 131, 139, 847 P.2d 1078, 1086 (1992). "Trial courts have broad discretion in ruling on the admission of evidence." *State v. Campoy*, 214 Ariz. 132, 134, ¶ 5, 149 P.3d 756, 758 (App. 2006). A trial court may exclude relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice." Ariz. R. Evid. 403; see also *State v. Jeffers*, 135 Ariz. 404, 417, 661 P.2d 1105, 1118 (1983). "Generally, any evidence that substantiates the credibility of a prosecuting witness on the question of guilt is material and relevant, and may be properly admitted." *State v. Mosley*, 119 Ariz. 393, 401, 581 P.2d 238, 246 (1978).

¶12 When Conrad's mother testified that the victim had a reputation in the community as a liar and manipulator, the court determined Conrad had opened the door to the admission of the tapes by putting the victim's credibility in issue. The tapes were admitted to rebut the mother's allegations and bolster the victim's credibility by offering proof that the victim's statements about Conrad threatening her in the past were true. We find no abuse of discretion in admitting the tapes because they substantiated the victim's testimony that she had

previously recanted her allegations that Conrad caused her injuries because she was afraid of him.

¶13 Finally, Conrad argues that his presentence incarceration credit was calculated incorrectly because he was not given credit for the time he served in CR2003-011423 before the case against him was dismissed without prejudice.⁸ Credit is granted for each day spent in custody beginning on the date of booking and ending on the date preceding sentence. A.R.S. § 13-712(B) (2010); *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993).

¶14 Conrad was given 1056 days of presentence incarceration credit. This includes 277 days of credit covering the time he served (1) between his arrest on April 8, 2003, and the dismissal on September 9, 2003, of the case against him in CR2003-011423, and (2) between his arrest on July 9, 2005, and his original sentencing on November 15, 2005, in this matter. He was also given credit for the 779 days he served in the Department of Corrections before his conviction in CR2004-018577 was vacated on January 2, 2008. These two figures result in a correct calculation of 1056 days of presentence incarceration credit.

⁸ That case was later re-filed as the current case.

¶15 We have reviewed the entire record for fundamental error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Conrad was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Accordingly, we affirm Conrad's conviction and sentence.

¶16 Upon the filing of this decision, counsel shall inform Conrad of the status of the appeal and his 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). Conrad 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/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

DONN KESSLER, Judge