IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ENRIQUE CALDERON-LOPEZ,
Appellant.

No. 2 CA-CR 2014-0411
Filed November 10, 2015

Appeal from the Superior Court in Pinal County
No. S1100CR201300743
The Honorable Craig A. Raymond, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Flores & Clark, LLC, Globe
By Daisy Flores
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 After a jury trial, Enrique Calderon-Lopez was convicted of child abuse, unlawful flight, and two counts of aggravated assault with a deadly weapon or dangerous instrument, committed against a peace officer while engaged in an official duty. The trial court sentenced him to concurrent prison terms, the longest of which were 10.5 years. On appeal, Calderon-Lopez argues the trial court erred because it did not require the state to prove, as to the aggravated assault counts, that he had "focused or targeted his actions toward a peace officer."

¶2 Calderon-Lopez's convictions stem from an incident in May 2013 in which he engaged police in an extended pursuit while his ten-year-old son was with him. During the chase, Calderon-Lopez approached two police officers outside their vehicles and turned his truck toward them, nearly striking the vehicles as the officers fled on foot. Before trial, the state requested "a pretrial determination" that it was not required to prove that Calderon-Lopez had known "that the relevant victims were peace officers" for any resulting sentence for aggravated assault to be enhanced pursuant to § 13-1204(C). Calderon-Lopez argued in response that "knowing that the alleged victim was a police officer" was "one of the elements of the offense" requiring "the State to prove that [he] knowingly knew [sic] that the victim was a police officer." The court ruled, "[I]t is not required and will not be part of the jury instructions that the defendant knew or had reason to know that the two alleged victims were officers."

¶3 Section 13-1204(C) provides:

> A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence . . . and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

Section 13-1204(E) provides that a person convicted, inter alia, of aggravated assault with a deadly weapon or dangerous instrument "committed on a peace officer while the officer is engaged in the execution of any official duties" is guilty of a class two felony. Calderon-Lopez was convicted of two counts of aggravated assault with a deadly weapon or dangerous instrument pursuant to § 13-1204(A)(2). For each count, the trial court sentenced him for a class two felony and imposed a flat-time sentence.

¶4 Calderon-Lopez argues the trial court "should have applied the same standard from the Dangerous Crimes Against Children statute necessitating the State prove a defendant's conduct be focused or targeted at a child." *See State v. Miranda-Cabrera*, 209 Ariz. 220, ¶¶ 17-19, 99 P.3d 35, 39 (App. 2004). He contends the court's failure to do so "created fundamental error, taking a right essential to [his] defense" and preventing him from receiving a fair trial. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (error not alleged below reviewed only for fundamental error). He reasons "[t]here is no evidence" he "was focusing any criminal conduct toward peace officers and there was insufficient evidence to support such a jury finding." And, he asserts, the jury might have found he did not know the victims were police officers. Thus, he concludes his convictions for aggravated assault "should be overturned."

¶5 This court recently rejected the same argument. In *State v. Pledger*, we determined the state was not required to show the

defendant knew the victim was a police officer for § 13-1204(E) to apply. 236 Ariz. 469, ¶¶ 10, 12, 341 P.3d 511, 513-14 (App. 2015). And in *State v. Williams*, we rejected the theory that, in order for § 13-1204(C) to apply, the state must demonstrate the defendant's conduct was directed at a peace officer. 236 Ariz. 600, ¶¶ 12-13, 343 P.2d 470, 473 (App. 2015).

¶6 Although Calderon-Lopez seems to suggest the reasoning in *Pledger* and *Williams* was flawed, we will not disregard previous decisions of this court "'unless we are convinced that the prior decisions are based upon clearly erroneous principles, or conditions have changed so as to render these prior decisions inapplicable.'" *State v. Patterson*, 222 Ariz. 574, ¶ 19, 218 P.3d 1031, 1037 (App. 2009), *quoting Scappaticci v. Sw. Sav. & Loan Ass'n*, 135 Ariz. 456, 461, 662 P.2d 131, 136 (1983). Calderon-Lopez has not identified any clearly erroneous principle relied on in *Pledger* or *Williams*, or any changed condition that could render them inapplicable. Accordingly, we decline his apparent invitation to reconsider our precedent.

¶7 We affirm Calderon-Lopez's convictions and sentences.