

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,

Appellee,

v.

EWING REDMOND SAMUELS,

Appellant.

No. 1 CA-CR 17-0225

Maricopa County Superior
Court No. CR-2016-113647-001 DT

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE.....	1
PROCEDURAL HISTORY.....	1
FACTS	3
COMPLIANCE WITH <i>ANDERS</i> v. <i>CALIFORNIA</i>	8
CERTIFICATE OF RULE 31.13(b) COMPLIANCE	9
CERTIFICATE OF SERVICE	10

TABLE OF CITATIONS

Page

UNITED STATES SUPREME COURT CASES

Anders v. California, 386 U.S. 738 (1967).....8

ARIZONA SUPREME COURT CASES

State v. Burns, 237 Ariz. 1, 344 P.3d 303 (2015).....2

State v. Leon, 104 Ariz. 297, 451 P.2d 878 (1969).....8

CONSTITUTIONAL PROVISIONS

Arizona Constitution

Article 6, § 9.....2

STATUTES

ARS §§ 13-4031.....2

ARS §§ 13-4033.....2

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On March 30, 2016, Appellant was charged by indictment by a Maricopa County Grand Jury with 5 felony charges, resulting from an event that occurred in his home on March 21, 2016. The charges included 3 counts of aggravated assault, all class 3 dangerous offenses; one count of kidnapping, a class 2 dangerous felony; and one count of disorderly conduct, a class 6 dangerous felony, and domestic violence offense. (Appeals Index, ROA, Item 7.) Count 5, disorderly conduct, was dismissed by motion on February 3, 2017. (ROA, Item 77.) On June 13, 2016, Appellant filed a notice of defenses, including self-defense and defense of others. (ROA, Item 35.)

On June 2, 2016, the state filed an allegation of aggravating circumstances, including the offense involving infliction of serious physical injury; the use of a deadly weapon; committing the offense in an especially heinous, cruel or depraved manner; causing physical, emotional or financial harm to victim; and multiple felony counts. (ROA, Item 29.)

The matter went to trial on January 19, 2017. (ROA, Item 58.) The defense argued that the shooting was justified based upon self-defense. (ROA, Item 35.) The defense did not raise a rule 20 request at the time of the state resting. The jury found

Appellant guilty on counts one and two, both aggravated assaults, and the lesser included offense of unlawful imprisonment for count 3. (RT 2/2/17, pgs. 6-7; ROA Items 68-71.) The jury found aggravating circumstances for counts one and two. (Id., p. 38, ROA Items 72-75.) The jury found the Appellant not guilty of count 4, aggravated assault.

On March 31, 2017, the Appellant was sentenced to the presumptive term of 7.5 years for counts one and two, to be served concurrently, and the presumptive term of one year for count three, to be served concurrent to counts one and two. (RT 3/31/17., pgs. 20-21, Item 99.) A notice of appeal was timely filed. (Item 96.)

The Court has jurisdiction over this appeal pursuant to Arizona Constitution, Article 6, § 9; ARS §§ 13-4031, and 13-4033.

STATEMENT OF FACTS

This is a case with two different versions of the same event. With that in mind, the facts adduced at trial, in the light most favorable to sustaining the verdicts, *State v. Burns*, 237 Ariz. 1, 344 P.3d 303 (2015), are as follows:

The Appellant Ewing Samuels suffered a serious head wound when he was 16 or 17 years old. (RT 1/31/17, p. 82.) As a result, he received a titanium alloy mesh in his skull. (Id., p. 83.) The injury caused him to have seizures and intense migraines. (Id.) The Appellant was told that a subsequent injury to the head could

cause the Appellant to suffer brain damage or death. (Id.) The injury also caused the Appellant to have difficulty remembering things, so he took notes to compensate. (Id., pgs. 90-91.)

Jamil Curd is the son of Alisa Hudson. Ms. Hudson had been dating the Appellant for five years, leading up to the incident in March 2016. (RT 1/25/17, p. 19.) Mr. Samuels had known Jamil Curd for over twenty years and had told Mr. Curd about his injury many times. (Id., p. 84.) Mr. Samuels believed Mr. Curd had a criminal record and had robbed several Circle K's with his friends. (Id., p. 101.) The Appellant was aware that Mr. Curd had been in several fights. (Id.) The Appellant testified that he was afraid of Mr. Curd prior to the incident on March 21, 2016. (Id., p. 106.)

After a domestic altercation between the Appellant and Ms. Hudson during the evening of March 20, 2016, the Appellant arrived at his home around 9:00 a.m. of March 21st, in order to pack up his things and move out. (RT 1/31/17, p. 89.) His gun was in his office in the closet. (Id., p. 93.) As he was packing up his stuff, Mr. Samuels put the gun on an ironing board, and then in his waistband. (Id., p. 94.) When Mr. Samuels realized that Mr. Curd was in the home, the Appellant was frightened, and felt Mr. Curd was there to harass him. (Id., p. 106.) Mr. Curd was badgering the Appellant and calling him names. (RT 2/1/17, p. 35.) The matter

escalated, and Mr. Samuels was frightened and disoriented after Mr. Curd hit him in the head. (RT 1/31/17, pgs. 90-91.) Mr. Samuels told the state on cross-examination, "He punched me in the face, ma'am, in my most delicate area, that he's fully aware of what could happen." (RT 2/1/17, p. 11.)

Once Mr. Curd punched the Appellant, the Appellant reacted by firing a "low warning shot," at Mr. Curd. (RT 1/31/17, p. 107.) At the time, the Appellant was not aware that he had struck the victim. Once he became aware of shooting Mr. Curd, the Appellant called 9-1-1. (Id., p. 95.)

Mr. Curd testified that on the evening of March 20, 2016, he was asked by his mother to go to her home at 2011 S. 81st Drive. (Id., p. 22.) When he arrived, Mr. Curd saw a footprint on the TV, and that his mom was upset. (Id.) While he was at the house, Mr. Curd was drinking beer. (Id., p. 59.)

The next morning, Mr. Curd's mother left the house around 7:00 a.m. (Id., p. 60.) Jamil was asked to stay at the house and make sure the Appellant did not wreck anything. (Id., p. 61.) Mr. Curd left his mother's home for a short time, and Mr. Samuels was home when he returned. (Id.) Mr. Curd heard the Appellant entering and leaving the house and putting items in his car. (Id., p. 66.)

Mr. Curd approached Mr. Samuels and asked for a car key that belonged to Mr. Curd's mother. (Id., p. 69.) Mr. Samuels asked about a computer. (Id.) The two

exchanged words. (Id., p. 70.) Mr. Curd then saw the Appellant with a gun. (Id., p. 72.) The gun was in the bedroom in the back of the house. (Id., p. 75.) The Appellant then had the gun at his side, but not pointed at Mr. Curd. (Id., p. 76.) The Appellant yelled at the victim, who stood up and "tapped" Mr. Samuels on the forehead. (Id., p. 79.) The Appellant then fired two shots at Mr. Curd, striking him once in the leg. (Id., p. 80.) The Appellant left and continued to load up his car but returned and seized Mr. Curd's cell phone. (Id., p. 81.)

The victim asked Mr. Samuels to call an ambulance, but the Appellant refused. (Id., p. 83.) Mr. Curd went to the bathroom and washed his face. (Id.) He then crawled into the garage, but the Appellant pointed the gun and told him to stay in the house. (Id., p. 85.) Sometime after, Mr. Curd hopped to the neighbors and asked them to call 9-1-1. (Id., p. 90.) The police and fire then arrived. (Id., p. 91.)

On cross examination, Mr. Curd admitted to taunting the Appellant. (Id., p. 111.) He also admitted that he didn't think he would be shot. (Id., p. 113.) Mr. Curd was aware that the Appellant had plates in his head. (Id., p. 116.)

Officer Daniel Jones was the first police officer to arrive. (RT 1/26/16, p. 6.) He approached the Appellant who was calm, and who had placed his gun inside the car. (Id., p. 8.) Officer Jones secured the gun in his patrol car, and then approached the victim. (Id., p. 10.) After requesting fire to approach the scene, Officer Jones

spoke with the victim. (Id., p. 12.) The discussion with the victim was captured on Officer Jones' bodycam. (Id., p. 13.) Officer Jones spoke with Mr. Curd a second time, while Mr. Curd was recovering at the hospital. (Id., p. 17.)

Officer Todd Stevens arrived at the scene around 9:43 a.m., on March 21, 2016. (RT 1/24/17, p. 135.) Once he arrived, the fire department was helping the victim. (Id., p. 137.) A sergeant was speaking with the Appellant. (Id.) Officer Stevens activated his body camera and interviewed the Appellant. (Id., p. 138.) While interviewing Mr. Samuels, Officer Stevens testified that the Appellant appeared confused. (RT 1/25/17, p. 9.) The officer did notice a scar on the side of the Appellant where he said he had a titanium plate. (Id., p. 10.)

Dr. Michael Billhymer testified the victim suffered a gunshot wound to his left thigh that fractured his femur. (RT 1/25/17., p. 32.) The injury required surgery. (Id.) The doctor testified it would be difficult to walk on an injury like that, because of the broken bone. (Id., p. 36.) Dr. Billhymer testified the victim had a blood alcohol content of .182 while at the hospital. (Id., p. 48.)

Benjamin Flynn, a crime scene specialist, arrived on scene at 4:05 p.m., and began processing the two scenes. (RT 1/24/17, p. 59.) He located possible a blood stain near the doorway at 2006 South 81st Drive. (Id.) However, Mr. Flynn did not find any blood in the garage. (Id., p. 113.) Nor was any blood collected in the

bathroom the victim said he stayed in after being shot. (Id., p. 116.) In addition, Mr. Flynn did not find any blood in the house where the shooting occurred. (Id.)

The northeast bedroom had a bed that appeared to have a projectile strike on the bed. (Id., p. 85, Exhibits 100-104, 106, 108-110.) There appeared to be a second projectile strike into the carpet in the room. (Id., p. 88, Exhibits 114-116.) Mr. Flynn collected a shell casing from the bedroom. (Id., p. 103, Exhibits 125-127.)

Detective Marchete Miller met the Appellant at the scene, and later interviewed him at the police station. (RT 1/26/17, pgs. 114-115.) In watching the video of the interview, the Appellant testified that he only remembered bits and pieces, that he was medicated, and something was “terribly wrong with me.” (RT 1/31/17, p. 85.) The Appellant had suffered a seizure and had been taken to the hospital prior to being interviewed by Detective Miller. (Id., p. 87.)

As case agent, Detective Miller also met with Mr. Curd, and listened to the two 9-1-1 calls, one made by the Appellant, and one made by a neighbor. (RT 1/31/17, pgs. 22-23.)

Detective Miller also went through Mr. Curd’s text messages. On cross-examination, Detective Miller confirmed that Mr. Curd and his mother were “messing” with the Appellant. (RT 1/31/17, p. 57.) One of the text messages from

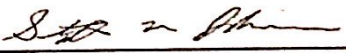
the mother was, "just sit back and listen to him go off." (Id.) The mother also admitted to taking the Appellant's computer. (Id., p. 59.)

COMPLIANCE WITH ANDERS v. CALIFORNIA

Counsel for Appellant has searched the record on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel has found no arguable question of law that is not frivolous. Counsel respectfully requests that this Court search the record for fundamental error.

Because counsel's brief is an *Anders* Brief, counsel has filed a motion for leave to allow Appellant to file a supplemental brief *in propria persona*.

Respectfully submitted this 7th day of February, 2018.

By 
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CERTIFICATE OF RULE 31.13(b) COMPLIANCE

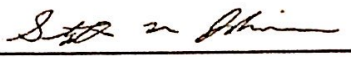
The brief is double-spaced, uses a 14-point Times New Roman proportionately-spaced typeface, and contains 1,857 words, according to the processing system used to prepare this brief.

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CERTIFICATE OF SERVICE

Appellant's Opening Brief e-mailed this 7th day of February, 2018, to Joseph T. Maziarz, Criminal Appeals, Office of the Attorney General 1275 West Washington, Phoenix, Arizona 85007.

ONE COPY of Appellant's Opening Brief will be mailed on the 8th day of February, 2018, to EWING SAMUELS, #317774, Arizona State Prison Complex, Yuma, Cibola Unit 1, P.O. Box 8909, San Luis, Arizona 85349.

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