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

FILED BY CLERK
JUN 24 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,
v.
ARMANDO LOPEZ,
Appellant.

2 CA-CR 2009-0225
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200601641

Honorable Boyd T. Johnson, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra — Tucson
Attorneys for Appellee

Harriette P. Levitt — Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 Armando Lopez appeals from his convictions and sentences for attempted first-degree murder, attempted second-degree murder, and first-degree burglary. He

asserts there was insufficient evidence to support his attempted second-degree murder conviction and the trial court considered improper factors in aggravating his sentences. We affirm.

Factual and Procedural Background

¶2 On appeal, we view the facts in the light most favorable to sustaining Lopez's convictions and sentences. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). Lopez separated from his wife, R., in May 2006. In early September of that year, R. began dating J., who occasionally spent nights at R.'s home, where she lived with her and Lopez's three-year-old son and her six-year-old daughter from a previous relationship. On one occasion, after Lopez had returned their son to R.'s home, R. noticed that one of the remote-control devices for her garage door was missing. In early September, on a night when J. was staying at R.'s home, Lopez telephoned R. at about 3:00 a.m., demanding to know whose car was parked outside her house. In mid-September, J.'s car was vandalized while parked outside R.'s house. On another occasion, Lopez telephoned R. and "describe[d to her] . . . what [she] was doing in [her] own house."

¶3 On September 24, J. and R. returned to R.'s house from a weekend trip and put the children to bed. They locked the home's exterior doors but left the door from the garage unlocked. Early the next morning, J. and R. heard a "light knocking" on the master bedroom door but attributed the noise to R.'s dog. Approximately half an hour later, R. got up and went to her daughter's bedroom to awaken her for school. As her

daughter opened her eyes, she got a "terrified look on her face" and said, "Oh, no, Mommy. Daddy." When R. turned, she saw Lopez standing behind her, holding a machete, with which he then attacked her, hitting her in the back of her head. She fell to the floor, but Lopez continued to strike her with the machete, wounding her arms, hands, and torso.

¶4 Hearing R. and her daughter screaming, J. ran to the bedroom and saw Lopez "laying into [R.] viciously" with the machete. J. knocked Lopez away from R., and Lopez then struck J. twice on the head with the machete. After a struggle, J. wrested the machete from Lopez and hit him with it. Lopez fled the house through the door to the garage and began to drive away in R.'s car. After the car became "hung up on [a] rock" in the front yard, Lopez fled on foot.

¶5 Law enforcement officers found duct tape and the missing remote-control device in R.'s garage and discovered R.'s telephone line had been cut. Officers arrested Lopez two days later after finding his truck, bearing a license plate from another vehicle, parked at a resort. During a search of Lopez's residence, they found the license plate for Lopez's truck and a receipt showing he recently had purchased a machete and duct tape. Lopez also had attempted to obtain a handgun from a former wife several days before attacking R. and J.

¶6 A grand jury charged Lopez with two counts of attempted first-degree murder and one count of first-degree burglary. The state additionally alleged fourteen aggravating factors and that the charged offenses were dangerous because they involved

the use of a dangerous weapon—the machete—and the intentional or knowing infliction of serious injury. After a four-day trial, the jury found Lopez guilty of attempted first-degree murder of R., attempted second-degree murder of J. as a lesser-included offense of attempted first-degree murder, and first-degree burglary. Additionally, the jury found the offenses were dangerous and the state had proven seven of the alleged aggravating factors. At sentencing, the trial court found an additional aggravating factor—that the crimes were "committed in a very cruel manner." The court sentenced Lopez to enhanced, aggravated prison terms of twenty-one years for each conviction, with the sentence for attempted first-degree murder to be served consecutively to Lopez's sentence for attempted second-degree murder and concurrently with his sentence for burglary. This appeal followed.

Discussion

<u>Sufficiency of the Evidence</u>

¶7 Lopez first asserts there was insufficient evidence to support his conviction for attempted second-degree murder of J. When addressing a challenge to the sufficiency of the evidence, we view the facts in the light most favorable to sustaining the verdict and resolve all inferences against the defendant. *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987); *see also* Ariz. R. Crim. P. 20(a) (judgment of acquittal required if "there is no

substantial evidence to warrant a conviction"). It is the jury's function to weigh all of the evidence and to assess witness credibility. *State v. Reynolds*, 108 Ariz. 541, 543, 503 P.2d 369, 371 (1972); *State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶8 Lopez argues that, although he "was armed with a weapon at the time of his confrontation with [J.], there is no evidence that he actually attempted to murder [him]." This argument is meritless. "The offense of attempted second-degree murder requires proof that the defendant intended or knew that his conduct would cause death." *State v. Ontiveros*, 206 Ariz. 539, ¶ 14, 81 P.3d 330, 333 (App. 2003); *see also* A.R.S. §§ 13-1001, 13-1104. Lopez intentionally struck J. twice on the head with a machete. A jury readily could conclude from this evidence that Lopez had intended to kill J. *See State v. Bearup*, 221 Ariz. 163, ¶ 16, 211 P.3d 684, 688 (2009) ("Criminal intent, being a state of mind, is shown by circumstantial evidence. Defendant's conduct . . . [is] evidence of his state of mind."), *quoting State v. Routhier*, 137 Ariz. 90, 99, 669 P.2d 68, 77 (1983); *Ontiveros*, 206 Ariz. 539, ¶ 16, 81 P.3d at 333 ("[T]he act of shooting another person may support an inference that the act was committed with intent [to cause death] or knowledge [the action would cause death].").

¶9 In a related argument, Lopez notes that second-degree murder may be committed by reckless conduct. *See* § 13-1104(A)(3). Thus, he reasons, because "[a]ttempt involves an act of deliberation" and "[o]ne cannot both be reckless and deliberate at the same time," "the crime of attempt cannot be sustained because one cannot attempt to act recklessly." He asserts the jury might have found him guilty of

attempted second-degree murder by basing its verdict improperly on reckless conduct because "[t]he jury did not make any finding of how [he] attempted to commit" second-degree murder.

¶10 Lopez is correct that "there is no offense of attempted second-degree murder based on reckless conduct." *Ontiveros*, 206 Ariz. 539, ¶ 14, 81 P.3d at 333. But he overlooks that the jury was not instructed that it could find him guilty of second-degree murder based on his reckless conduct. Instead, the trial court correctly instructed the jury only on intentional and knowing second-degree murder, and we presume the jury followed those instructions.[1] *See State v. Morris*, 215 Ariz. 324, ¶ 55, 160 P.3d 203, 216 (2007). Thus, there is no basis for concluding the jury found Lopez guilty of attempted second-degree murder based on reckless conduct.

Aggravated Sentences

¶11 Lopez next contends the trial court aggravated his sentences improperly by relying on invalid aggravating factors. The state had alleged fourteen aggravating

[1]Although Lopez does not raise this argument, the state correctly observes that the attempted second-degree murder instruction was erroneous in another respect. The trial court instructed the jury, without objection, that attempted second-degree murder could be established by proof Lopez knew his conduct "would cause death or serious physical injury." But attempted second-degree murder may not be "based on knowing merely that one's conduct will cause serious physical injury." *Ontiveros*, 206 Ariz. 539, ¶ 14, 81 P.3d at 333. We agree with the state, however, that Lopez was not prejudiced by the error, and Lopez does not argue otherwise. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005) (to obtain appellate relief on issue not raised below, appellant "must establish both that fundamental error exists and that the error in his case caused him prejudice"); *see also State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (concluding argument waived because defendant "d[id] not argue the alleged error was fundamental"). We therefore do not address this issue further.

factors, seven of which the jury found the state had proven beyond a reasonable doubt. Three of those seven are variations of enumerated aggravating factors in A.R.S. § 13-702(C).[2] The jury found:

> 1. The offense(s) caused emotional or financial harm to the victim(s).
>
> 2. The offense(s) involved lying in wait for the victim(s).
>
> 3. The offense(s) was an act of domestic violence committed in the presence of a minor child.

See § 13-702(C)(9) (emotional or financial harm), (17) (lying in wait for victim during commission of any felony), (18) (domestic violence in presence of child). The other four aggravating factors found by the jury—"[t]he offense(s) involved multiple victims in a single incident," "[t]he defendant evaded police," "[t]he defendant left the scene of the crime," and "[t]he defendant did not seek medical help for the victim(s)"—are not specifically enumerated in § 13-702(C). Rather, they fall within the "catch-all" provision of § 13-702(C)(24), which permits a trial court to consider "[a]ny other factor that the state alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime."

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[2]The Arizona criminal sentencing code has been amended and renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective "from and after December 31, 2008." *Id.* § 120. We refer in this decision to the statutes as they were worded and numbered at the time of the offenses. *See* 2006 Ariz. Sess. Laws, ch. 104, § 1 (§ 13-702); 2006 Ariz. Sess. Laws, ch. 148, § 1 (§ 13-702); 2005 Ariz. Sess. Laws, ch. 188, § 1 (A.R.S. § 13-604).

¶12 Because Lopez did not object below either to these findings or to the trial court's imposition of an aggravated sentence, we review only for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). The imposition of an illegal sentence, however, constitutes fundamental error. *State v. Zinsmeyer*, 222 Ariz. 612, ¶ 26, 219 P.3d 1069, 1080 (App. 2009). We address Lopez's offense-specific claims before evaluating his more general contentions that these aggravators were found and relied upon improperly.

¶13 Lopez contends there was insufficient evidence to establish as a factor in aggravation of his sentence for attempted first-degree murder of R. that Lopez had been "lying in wait" for her.[3] *See* § 13-702(C)(17). Necessary elements of this allegation are that the defendant "'watch[ed], wait[ed], and conceal[ed]'" himself in order to take his victim "unawares." *State v. Brooks*, 103 Ariz. 472, 473-74, 445 P.2d 831, 832-33 (1968), *quoting People v. Atchley*, 53 Cal. 2d 160, 176, 346 P.2d 764, 772 (1959). More specifically, "the prosecution must prove there was a concealment of purpose, a substantial period of watching and waiting for a favorable or opportune time to act, and that immediately thereafter the defendant launched a surprise attack on an unsuspecting victim from a position of advantage." *People v. Gurule*, 28 Cal. 4th 557, 630, 51 P.3d 225, 274 (2002); *see also State v. Miller*, 110 Ariz. 489, 490, 520 P.2d 1113, 1114 (1974)

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[3]Lopez also contends there was insufficient evidence to establish as an aggravating factor that Lopez was "lying in wait" for J. But the trial court explicitly stated it did not use this factor to aggravate the term it imposed for attempted second-degree murder of J. We therefore do not address this contention further.

(because Arizona's former lying-in-wait statute "had as its source [§] 189 of the California Code, those cases interpreting the statute are persuasive").

¶14 We conclude there was substantial evidence to support the allegation that Lopez's attempted first-degree murder of R. involved his lying in wait for her. In the early morning of September 24, 2006, J. and R. heard a "light knocking" on the master bedroom door but attributed the noise to R.'s dog. Only when R. went to her daughter's bedroom roughly thirty minutes later to rouse her for school did Lopez ambush R., attacking her from behind with a machete. Evidencing the surprise, R.'s daughter expressed a "terrified look on her face" and cried out her surprise at Lopez's presence. From these facts, reasonable jurors could conclude Lopez had concealed himself, watching and waiting for an opportune time to attack R. Accordingly, the trial court properly relied on his having lain in wait as an aggravating factor, exposing Lopez to the maximum sentence of twenty-one years for his attempted first-degree murder of R.

¶15 Alternatively, Lopez asserts that lying in wait constitutes an element of premeditation and therefore was used improperly to aggravate his sentence for attempted first-degree murder of R. An element of an offense may be used as an aggravating factor, however, if the legislature has so specified. *State v. Tschilar*, 200 Ariz. 427, 435, 27 P.3d 331, 339 (App. 2001); *see also State v. Lara*, 171 Ariz. 282, 283-85, 830 P.2d 803, 804-06 (1992); *State v. Bly*, 127 Ariz. 370, 372-73, 621 P.2d 279, 281-82 (1980). Here, the legislature specified in the statutory scheme that lying in wait may be used to aggravate a

defendant's sentence even if also an element of the defendant's offense. *See* § 13-702(C)(17). Accordingly, Lopez's assertion is facially unavailing.

¶16 Moreover, he is incorrect that lying in wait constitutes a necessary element of premeditation. *See* A.R.S. § 13-1101(1) (defining "[p]remeditation" as acting "with either the intention or the knowledge that [the defendant] will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection"). In any event, the evidence demonstrating Lopez had been lying in wait for R., as described above, was separate and distinct from the evidence demonstrating he had premeditated her murder. Premeditation was demonstrated amply by the discovery of duct tape and R.'s missing remote-control device in R.'s garage, and finding a receipt in Lopez's house showing he recently had purchased a machete and duct tape.

¶17 Lopez broadly contends that none of the seven aggravating factors the trial court considered in aggravation of first-degree burglary "have any application" to that offense. The only specific argument he makes addresses the lying-in-wait aggravator.[4] But Lopez does not allege he was prejudiced by the court's reliance on that factor, even assuming it was improper. He identifies nothing in the record suggesting the court would have imposed a lesser sentence absent that factor. He therefore has failed to carry his burden under fundamental error review. *See State v. Munninger*, 213 Ariz. 393, ¶¶ 9-15,

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[4]Because Lopez fails to make any argument tailored to the other aggravating factors with which he takes issue, we do not address them. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (claim waived on appeal by insufficient argument).

142 P.3d 701, 703-06 (App. 2006) (no fundamental error where sentencing judge relied on one improper aggravating factor but "explicitly found that each of the aggravating factors alone would outweigh the mitigating factors"); *State v. Ruggiero*, 211 Ariz. 262, n.6, 120 P.3d 690, 697 n.6 (App. 2005) (no reversal where trial court relied on invalid aggravating factor but defendant did not demonstrate prejudice); *see also Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607.

¶18 Nor could Lopez demonstrate prejudice here. At a minimum, the jury's finding that the offenses caused emotional harm to the victims was applicable to the offense of first-degree burglary. This finding alone exposed Lopez to an aggravated sentence with a maximum term of twenty-one years in prison for first-degree burglary. *See* § 13-604(I) (twenty-one years maximum punishment for class two felony), § 13-1508(B) (first-degree burglary of residential structure is class two felony), § 13-702(C)(9); *State v. Schmidt*, 220 Ariz. 563, ¶ 11, 208 P.3d 214, 217 (2009) (if catch-all not sole provision used to aggravate sentence and one or more enumerated aggravators found, defendant exposed to greatest sentence); *State v. Brown*, 212 Ariz. 225, ¶ 28, 129 P.3d 947, 953 (2006) (if jury finds one statutorily enumerated aggravating factor, defendant exposed to maximum punishment); *State v. Martinez*, 210 Ariz. 578, ¶ 26, 115 P.3d 618, 625 (2005) (same); *Zinsmeyer*, 222 Ariz. 612, ¶ 26, 219 P.3d at 1080 (applying *Schmidt* to vacate sentence). And the trial court noted at sentencing that "[t]he aggravating factors clearly outweigh the mitigating factors." Accordingly, Lopez has failed to demonstrate reversible error.

¶19 With respect to the attempted second-degree murder of J., Lopez asserts the evidence was insufficient to demonstrate J suffered emotional or financial harm.[5] He predicates this argument on J.'s trial testimony acknowledging he had not sought counseling after the attack. But, J. testified he had not received counseling after the attack because his busy schedule would not permit it; he did state he "certainly felt like [he] could benefit from [counseling]." J. explained further that, since the incident, he had experienced increased anxiety, which goes "through the roof" when he hears a child scream. Lopez cites no authority, and indeed we find none, supporting his suggestion that a victim necessarily must seek or receive counseling for the state to prove emotional harm.

¶20 Substantial evidence thus supported the jury's finding that J. had suffered emotional harm, and the trial court properly considered it in aggravation of Lopez's sentence. Again, this factor alone was sufficient to subject Lopez to the maximum punishment for attempted second-degree murder of J. *See* § 13-702(C)(9); *Schmidt*, 220 Ariz. 563, ¶ 11, 208 P.3d at 217; *Brown*, 212 Ariz. 225, ¶ 28, 129 P.3d at 953; *Martinez*, 210 Ariz. 578, ¶ 26, 115 P.3d at 625.

¶21 Lopez also asserts that his attempted murder of J. was not an act of domestic violence committed in the presence of a minor child. We need not address this

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[5]Lopez also asserts generally there was insufficient evidence to establish any aggravating factors for attempted second-degree murder of J., but he provides no argument with respect to any of these other factors. We therefore do not address them. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

contention, however, because Lopez again fails to assert, much less demonstrate, prejudice. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607; *Munninger*, 213 Ariz. 393, ¶¶ 9-15, 142 P.3d at 703-06; *Ruggiero*, 211 Ariz. 262, n.6, 120 P.3d at 697 n.6.

¶22 With respect to Lopez's more general allegations, he argues the trial court violated his right to a trial by jury when it found sua sponte an additional aggravating factor. Specifically, he takes issue with the court's determination that he had committed the offenses in a manner that was especially cruel.

¶23 Any fact, except that of a prior conviction, that increases the penalty for a crime beyond the presumptive sentence must be submitted to the jury and proved beyond a reasonable doubt. *See Blakely v. Washington*, 542 U.S. 296, 301 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *State v. Brown*, 209 Ariz. 200, ¶ 12, 99 P.3d 15, 18 (2004). If, however, the jury finds beyond a reasonable doubt any statutorily enumerated aggravating factor under § 13-702(C), a trial court may find additional aggravating circumstances and impose the maximum aggravated sentence. *See* § 13-702(D) ("If the trier of fact finds at least one aggravating circumstance, the trial court may find by a preponderance of the evidence additional aggravating circumstances."); *Brown*, 212 Ariz. 225, ¶ 28, 129 P.3d at 953; *Martinez*, 210 Ariz. 578, ¶ 26, 115 P.3d at 625.

¶24 As noted above, the jury here found the state had alleged and proven beyond a reasonable doubt three such enumerated factors—that the crimes "caused emotional or financial harm to the victims," "involved lying in wait" for them, and

involved "an act of domestic violence committed in the presence of a minor child." *See* § 13-702(C)(9), (17), (18). At the very least, the finding that the victims had suffered emotional harm was applicable to each of the three dangerous, class two felonies—attempted first-degree murder of R., attempted second-degree murder of J., and first-degree burglary—exposing Lopez to the maximum sentences of twenty-one years' imprisonment. *See* § 13-604(I). The trial court thus was entitled to find and rely on its sua sponte determination that the offenses were committed in a manner that was especially cruel. *See* § 13-702(C)(5). The preponderance of the evidence supported that determination. *See* § 13-702(D) (preponderance of evidence standard).

¶25 Lopez also argues it was "inappropriate" to aggravate his sentences based on evidence he had evaded police, left the scene, and failed to seek medical attention for his victims, three other factors the jury found the state had proven beyond a reasonable doubt. These considerations are not specifically enumerated aggravating factors in § 13-702(C) but fall within the "catch-all" provision of § 13-702(C)(24). That provision permits a trial court to consider as an aggravating circumstance "[a]ny other factor that the state alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime," once the jury finds the state has proven the factor beyond a reasonable doubt.

¶26 Evading officers and leaving the scene are both relevant to Lopez's character and to the nature or circumstances of the crimes he committed. *See State v. Webb*, 164 Ariz. 348, 355, 793 P.2d 105, 112 (App. 1990) (upholding "leaving the

scene[] and leaving the victim to die" as aggravating factors because not elements of second-degree murder). Such conduct is made no less relevant simply because, as Lopez suggests, one would expect a serious offender to abscond. We are also not persuaded by his insistence that such conduct "has nothing to do with the offense itself."

¶27 Challenging from a different angle the aggravating factor that he had failed to seek medical attention for his victims, Lopez contends Rule 39, Ariz. R. Crim. P., precluded him from taking any action to do so.[6] *See* Ariz. R. Crim. P. 39(b)(10) (victim entitled to have home address and telephone number withheld), (b)(11) ("After charges are filed, defense initiated requests to interview the victim shall be communicated to the victim through the prosecutor."). But Lopez is mistaken.

¶28 Rule 39 does not prohibit an aggressor from seeking or attempting to provide medical attention for his victims immediately after inflicting injury, nor does it prevent a defendant from indirectly inquiring about his victims' condition. Lopez's failure to seek or provide medical attention for his victims at any time after the attack was relevant to his character and the circumstances surrounding the offenses he committed. *See State v. Jenkins*, 193 Ariz. 115, ¶ 27, 970 P.3d 947, 954 (App. 1998) (finding aggravated sentence not abuse of discretion because defendant "did not seek help for the victim"); *Webb*, 164 Ariz. at 355, 793 P.2d at 11; *State v. Meador*, 132 Ariz. 343, 347,

[6]To the extent Lopez claims the prosecutor engaged in prosecutorial misconduct by arguing to the jury as an aggravating factor that Lopez failed to seek medical attention for his victims, he provides no supporting argument and therefore has waived the claim. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

645 P.2d 1257, 1261 (App. 1982) (concluding trial court properly considered defendant's failure to "seek assistance for the helpless victim" in finding commission of offense cruel and depraved). Here, substantial evidence supported this factor, and the trial court appropriately considered it.

¶29 Lopez also argues the trial court balanced improperly the aggravating and mitigating factors before sentencing.[7] Trial courts are vested with broad discretion in assigning weight to aggravating and mitigating circumstances. *State v. Harvey*, 193 Ariz. 472 ¶ 24, 974 P.2d 451, 456 (App. 1998). A court's sentencing decision is not arbitrary if it investigated all relevant facts and found aggravating and mitigating factors within statutory guidelines. *Id.* We presume the court here considered all relevant facts in mitigation. *State v. Cid*, 181 Ariz. 496, 501, 892 P.2d 216, 221 (App. 1995).

¶30 Although a trial court is not required to articulate factual findings as to mitigating circumstances, *id.*, the court did so here. It explicitly considered in mitigation Lopez's minimal criminal history and that he was employed before the jury found him guilty of these offenses. The court did not, as Lopez implies, completely disregard all the mitigating circumstances. Rather, it properly concluded the aggravating factors found by the jury outweighed those in mitigation. Thus, Lopez's claim fails.

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[7]Lopez also suggests that one or all of his sentences were aggravated improperly based on factors also constituting elements of the offenses. But he does not explain to which sentences or factors he refers, and we therefore do not address the claim further. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

Disposition

¶31 For the reasons stated, we affirm Lopez's convictions and sentences.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge