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NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c),
THIS DECISION IS NOT PRECEDENTIAL AND MAY
BE CITED ONLY AS AUTHORIZED BY RULE.

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

STATE OF ARIZONA, *Respondent*,

v.

REGIS BLAKE ROSS, *Petitioner*.

No. 1 CA-CR 16-0410 PRPC
FILED 8-22-2017

Petition for Review from the
Superior Court in Maricopa County
No. CR2013-421182-001
The Honorable Jeffrey A. Rueter, Judge
REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Amanda M. Parker
Counsel for Respondent

The Nolan Law Firm PLLC, Mesa
By Cari McConeghy Nolan, Todd Nolan
Counsel for Petitioner

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STATE v. ROSS
Decision of the Court

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

THUMMA, Chief Judge:

¶1 Petitioner Regis Blake Ross seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).¹ Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Because Ross has shown no such error, this court grants review but denies relief.

¶2 In September 2014, Ross pled guilty to (1) assault, a Class 1 misdemeanor and a domestic violence offense and (2) attempted aggravated assault, a Class 6 undesignated felony, both non-dangerous, non-repetitive offenses committed in May 2013. After acceptance of the plea but before sentencing, counsel for Ross moved to withdraw from the plea, citing a videotape discovered

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

after entry of the plea that purportedly contradicted the victim's testimony and showed no assault. The actual videotape was not offered into evidence or included in the record. After oral argument, and based upon the statements of counsel, the superior court denied the motion to withdraw from the plea, finding no "good cause" to set the plea aside. The court then suspended sentence and placed Ross on concurrent standard probation grants for one year.

¶3 Ross filed a timely petition for post-conviction relief "of right," claiming ineffective assistance of counsel, and that his plea was not knowing, voluntary and intelligent because the videotape was not known before he pled guilty. The superior court summarily denied his petition noting "[c]ounsel has conceded that the video does not establish the Defendant's innocence nor does it even capture the events in which the Defendant was alleged to have assaulted the officer."

¶4 Ross then filed a timely petition for review with this court, reiterating his claims of ineffective assistance of counsel and that the plea was not knowing, voluntary and intelligent. To state a colorable claim for ineffective assistance of counsel, Ross must show that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Ross has not met his burden on either prong.

¶5 First, the video was never presented to the superior court or included in the record. Although counsel for Ross and the State described the video, those

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avowals are not definitive about what the video does and does not show. This gap in the record precludes any finding that the video, which was discovered after the entry of the plea, mandates a finding of ineffective assistance of counsel.

¶6 Once Ross' counsel found out about the video, he moved to withdraw the plea. There is nothing in the record to show that counsel was defective in not finding out about the video sooner than he did. Nor is it clear from the record how the video was discovered, when it was discovered or how it was obtained. The filings state it came from video surveillance done by a neighbor, but the neighbor is not named, and there is no affidavit in the record to corroborate this information. For these reasons, the record is insufficient to show that counsel's actions were deficient, or that there was any resulting prejudice to Ross.

¶7 Turning to the claim that the discovery of the video rendered his decision to plead involuntary, a plea agreement waives all non-jurisdictional defenses, errors and defects that occurred before the plea. *State v. Moreno*, 134 Ariz. 199, 200 (App. 1982). A defendant's decision to plead guilty must be voluntary, knowing and intelligent. See *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *State v. Brown*, 212 Ariz. 225, 229 ¶15 (2006); see also Ariz. R. Crim. P. 17.1 (b). A defendant's statements at a change of plea hearing regarding voluntariness are normally binding. *State v. Hamilton*, 142 Ariz. 91, 93 (1984). A plea will be found involuntary only where a defendant lacks information of "true

importance in the decision-making process.” *State v. Pac*, 165 Ariz. 294, 295-96 (1990).

¶8 During the plea colloquy, Ross agreed that he understood the plea and that it was voluntary. Ross admitted to the superior court, consistent with the plea agreement, that he injured one victim and attempted to kick another. Ross’ affidavit, attached to his petition for post-conviction relief, does not recant this factual basis, although it does include a belief that Ross could have raised self-defense to the assault charge.

¶9 On this record, Ross has not shown that the superior court erred. Ross does not establish that the late discovery rendered his plea involuntary. The video is not included in the record and there is no evidence from the neighbor who apparently created the video. When a party does not provide necessary portions of the record, this court presumes that any missing testimony or evidence supports the action taken by the superior court. *State v. Wilson*, 95 Ariz. 372, 373 (1964).

¶10 Finally, the record shows (and Ross’ counsel conceded) that even with the video, there is a gap in the timeframe when the assault could have taken place. Moreover, Ross’ affidavit does not deny the factual basis for the plea, only that he felt he had a better self-defense argument with the video and would have gone to trial. Finally, Ross was initially charged with touching with the intent to injure, insult, or provoke, which means he could have been convicted for any part of the altercation wherein a touching, or attempted touching with the requisite intent, might have taken place.

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Thus, the video does not rise to the level of materiality sufficient to render the plea involuntary.

¶11 For these reasons, this court grants review but denies relief.

[SEAL]

AMY M. WOOD Clerk of the Court
FILED: AA

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-421182-001 DT

04/25/2016

HONORABLE

CLERK OF THE COURT

JEFFREY A. RUETER

K. Sotello-Stevenson

Deputy

STATE OF ARIZONA AMANDA M. PARKER

v.

REGIS BLAKE ROSS REGIS BLAKE ROSS

(001)

16450 E AVE OF

THE FOUNTAINS

#81

FOUNTAIN HILLS AZ 85268

TODD E NOLAN

CARI M MCCONEGHY-NOLAN

COURT ADMIN-CRIMINAL-PCR

**PETITION FOR
POST-CONVICTION RELIEF DISMISSED**

(Filed Apr. 26, 2016)

The Court has received Defendant's Petition for Post-Conviction Relief, the State's Response and Defendant's Reply.

Defendant's claim for relief hinges on video surveillance captured on a neighbor's video surveillance system. The video surveillance was obtained by the Defendant after the plea but before sentencing. Defendant filed a Motion to Withdraw from the plea which

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was denied. Counsel has conceded that the video does not establish the defendant's innocence nor does it even capture the events in which the Defendant was alleged to have assaulted the officer.

The Defendant has failed to raise a colorable claim for Post-Conviction Relief. Therefore,

IT IS ORDERED dismissing the Defendant's Petition for Post-Conviction Relief.

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[SEAL]

SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

**Supreme Court
STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231
TELEPHONE: (602) 452-3396**

April 11, 2018

RE: STATE OF ARIZONA v REGIS BLAKE ROSS

Arizona Supreme Court No. CR-17-0442-PR

Court of Appeals, Division One

No. 1 CA-CR 16-0410 PRPC

Maricopa County Superior Court

No. CR2013-421182-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on April 11, 2018, in regard to the above-referenced cause:

ORDERED: Petition for Review Post-Conviction Relief (Rule 32) = DENIED.

Janet Johnson, Clerk

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TO:

Joseph T Maziarz

Diane Meloche

Todd E Nolan

Cari McConeghy Nolan

Amy M Wood

es

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-----Original Message-----

From: Regis Ross <reg01@cox.net>
Date: Saturday, September 6, 2014 11:45 AM
To: jlaboy <jlaboy@laboylaw.com>
Subject: Thoughts About My Case

Julio,

Please read this email in its entirety.

I'm still undecided about taking the plea offer or going to trial after all the time I spent on this case trying to prove my innocence. I know I have until Monday to decide.

**Per our last meeting, I know you said that you believe I am innocent but, when I was yelling and upset on the Taser Video, I was acting that way just after the front door was slammed into my chest by Deputy Haarala and I was punched in the eye by Deputy Kurtz.

**I wasn't just yelling and upset for nothing on the Taser Video. IN THE BEGINNING OF THE THE [sic] VIDEO, I WAS YELLING AND UPSET PLEADING WITH THE DEPUTIES NOT TO HIT ME AGAIN. I was not using fowl language nor being verbally abusive

on the video, I was only begging for the deputies not to hit me. Also, when I was on my back facing up towards the laser Camera after the missing section of video, I was scared and you can see that I looked scared. In addition, I was not fighting with the deputies nor

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resisting them, I was only begging for my pants to put them on.

If you look at the video you will see what I am telling you and you can read the transcription I emailed you of the Taser Video on Tuesday, July 15, 2014 at 8:25 PM. The email subject line says TASER VIDEO TRANSCRIPTION.

The Taser Video is not as horrible as it seems.

Just before the door was slammed into me by Deputy Haarala, I told the deputies that I was going to get my mother for them as they were still outside the door & also I was punched in the eye by Deputy Kurtz IMMEDIATELY BEFORE the Taser Video started, so this video inaccurately shows my true demeanor of being calm.

**I know I may be excitable; but, I believe ANYONE would have been excitable by yelling and acting upset like I was on the Taser Video if they were hit by a door and punched in the eye. Also, I am not physically abusive.

Furthermore, Deputy Haarala said in his police report that he only pushed me in the chest with the palm of his hand and never mentioned slamming the door into me. If he only pushed me with the palm of his hand, I should NOT have a bruise in the shape of the door lock shown in the digital photos. Yes, I know he is covering himself by not mentioning that he hit me with the door and is lying.

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Also, Deputy Haarala said in his Police Report that I was hesitant and that he stepped into the house and said he told me he needed to speak with my mother. Deputy Haarala then said I stepped in front of him and told him that he had to wait outside while I got my mother which is a lie.

I was trying to be helpful and told him that I would get my mother for the deputies as I was closing the door slowly to get my mother for them, that's when Deputy Haarala slammed the door into me.

In our meeting, you mentioned that Deputy Haarala was rough by hitting me with the door; but, would not look too bad because he forced his way in to check on my mother's "well being." Okay, I can understand that, he's getting around the 4th amendment with a loophole.

**If Deputy Haarala was checking on my mother's "well being" by forcing his way in and slamming the door into the right side of my chest, why didn't he just put this information into his Police Report or USE OF FORCE REPORT? I know that law enforcement can get around the 4th amendment by conducting a wellness check, so if he had to force his way in to check on my mother, he could have just said in his reports that he had slammed or shoved the door into me to see if my mother was all right; but, he didn't, he covered up and said in his police report that he only pushed me in the chest with the palm of his hand.

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You can see that I was hit with the door because you see the bruise on my chest in the shape of the door lock in the digital photos.

In my opinion, Deputy Haarala was worried or concerned about something regarding slamming the door into me and he did not put that information in his Police Report or his Use Of Force Report. If he was there to check on my mother's "well being" as he said, he would not have anything to worry about if he said he hit me with the door in his Use Of Force Report; but, he didn't say that.

I don't even need to mention Deputy Haarala's false claim about me allegedly spinning and kicking him.

**As you pointed out, his partner, Deputy Kurtz not only said he did not see me kick Deputy Haarala in his recorded interview on October 4, 2013; but, Deputy Kurtz also said in his police report that Deputy Haarala only ADVISED HIM that I allegedly assaulted him during the struggle. Later, in the same paragraph, Deputy Kurtz said that Deputy Haarala TOLD HIM that I kicked him when we were

exiting the residence.

Also, Deputy Kurtz sounds ridiculous in his recorded interview on October 4, 2013 when he talks about being stunned by Deputy Haarala's Taser saying,

"I don't know. As far as what happened with the Taser, I don't remember even seeing a laser through the entire incident. All I remember was there was one thing that was put in my report; but, trying to get him in

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custody and I was trying to hold on to his arms and get his arms behind his back. At one point I felt a shock and I don't know how it happened or where it came from, it was enough where it made me say some type of a word to the effect of ouch and I ended up letting go of Regis for that second because it was a very uncomfortable feeling and then after the feeling went away then I was able to grab back on to him again, I don't know beyond that where that shock came from or how it happened or anything. I just recall feeling it."

**When Deputy Kurtz felt the shock of the Taser Gun, he knew it was a Taser because I heard him yell out in pain saying, "Oh Shit", let go of my arm, and he stood up on his knees. Then I saw Deputy Kurtz grab Deputy Haarala's hand with the Taser and push it in the opposite direction. I did not grab Deputy Haarala's right hand that was holding the Taser and direct it away from myself as he claims in his police report, it was Deputy Kurtz who admitted during his recorded interview on October 4, 2013 that he felt a shock that was very uncomfortable making him let go of me and the shock from the Taser Gun was so strong it made him say some type of word to the effect of ouch.

Only in the last few years my mother learned that she can call the police and easily have me taken to jail by just saying that I allegedly hit her. She calls the police when she becomes very irate when we have a verbal argument and makes a false report. I have no police records or history of any physical abuse except from when my mother has falsely reported me.

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Also, you told me that some jurors believe the police can do no wrong; but, there are a lot of things both the deputies say that are false and don't make sense. I know you will try to impeach/discredit both of the deputies enough to convince a jury of my innocence, although you believe my chances are 60/40 in the State's favor; but, it is disturbing that these deputies are lying about me just because they don't like me. They are not upholding the law, they are being prejudiced.

I understand that either going to trial or accepting a plea would be my decision.

Also, you had said the prosecutor is doing his job. I disagree and believe he is abusing his job and his authority as well as the deputies just because they don't like me.

As I said in our meeting, my mug shot may look smug because I am smiling; but, that is because deputies at 4th Avenue Jail were making jokes to me like, "Smile, you're on Candid Camera." They just made me laugh, I wasn't being smug or smiling about the incident that day.

I appreciate your input about me making a decision between going to trial and taking the plea. It is frustrating that I have to admit guilt for things that I did not do. I know that if I take the plea, it is a safe decision; but, then I have to admit to attempted aggravated assault on Deputy Haarala and assaulting my mother. Also, I will have to pay restitution for Deputy Haarala's "Tweaked Hip" that never happened in

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addition to probation, possible community service, & other fees.

I appreciate your subtle and tactful explanations during our latest meeting why I should take the plea; but, for me it is still a very difficult decision.

If you have any further input either about helpful information on my case, going to trial, or taking a plea, please let me know. Hopefully in your opinion my odds will increase from 60/40 and will be in my favor.

Thanks,

Regis

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IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
Plaintiff,)	
v.)	CR2013-421182-001
REGIS BLAKE ROSS,)	
Defendant.)	

Phoenix, Arizona

September 2, 2014

10:01 a.m.

BEFORE: THE HONORABLE DANIEL J. KILEY
REPORTER'S TRANSCRIPT OF PROCEEDINGS
FINAL TRIAL MANAGEMENT CONFERENCE

(Copy)

[2] APPEARANCES

For the Plaintiff:

NICHOLAS D. MICHAUD, Deputy County Attor-
ney

For the Defendant:

JULIO LABOY

For Victim Gloria Ross:

MATTHEW O. BROWN

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SUPERIOR COURT
Phoenix, Arizona

[3] Phoenix, Arizona

September 2, 2014

THE COURT: Number 11 is CR2013-421182, *State of Arizona v. Regis Blake Ross*. This is the time set for final trial management conference. Appearances, please?

MR. MICHAUD: Good morning, Your Honor. Nick Michaud for the State.

MR. LABOY: Good morning, Your Honor. Julio Laboy on behalf of Mr. Ross. He's present not in custody. May I approach with a statement?

THE COURT: Certainly.

MR. LABOY: Thank you, Judge.

THE COURT: Good morning. Good morning, Mr. Ross.

THE DEFENDANT: Good morning.

MR. BROWN: Good morning. Matt Brown for the victim, Gloria Ross.

THE COURT: Good morning.

MR. MICHAUD: And, Your Honor, this is just an updated version of the pretrial statement that was filed last year in this case.

THE COURT: This looks like an original. So you'd like us to file this?

MR. MICHAUD: Yes, please.

THE COURT: So we'll file the pretrial statement. [4] Trial is set for September 8th. Any other issues we need to address?

MR. MICHAUD: Just to let the Court know, I won't be able to begin presenting evidence on the 10th. Deputy Haarala, the victim in this case, will be returning from an out-of-town trip on the 10th or he will be available on that day. I think that's something we can handle at master calendar, though. And beyond that, I would just ask that all subpoenas remain in full force and effect.

THE COURT: Anything else?

MR. LABOY: No, Your Honor.

THE COURT: So I'll affirm the trial September 8th at eight o'clock before the master calendar assignment judge in Courtroom 5B of the South Court Tower. All trial subpoenas will remain in full force and effect.

And, Mr. Ross, you're required to be present September 8th at eight o'clock before the master calendar. If you're not present, a warrant may be issued for your arrest and the trial could proceed without you. Anything else?

MR. LABOY: No, Judge.

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MR. MICHAUD: No, Judge.

MR. BROWN: No.

MR. MICHAUD: Thank you, Your Honor.

MR. LABOY: Thank you.

(Whereupon the matter concluded at 10:04 a.m.)

[5] [Certificate Omitted]

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IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

v.

REGIS BLAKE ROSS (001),
Defendant.

No. CR2013-421182-
001 DT

Phoenix, Arizona
September 09, 2014
10:47 a.m.

BEFORE COMMISSIONER JEFFREY RUETER

TRANSCRIPT OF PROCEEDINGS

Plea Agreement/Change of Plea

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September 09, 2014

DIRECT CROSS REDIRECT RECROSS VD

STATE'S

WITNESSES

None

DIRECT CROSS REDIRECT RECROSS VD

DEFENDANT'S

WITNESSES

None

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MISCELLANEOUS

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[3] APPEARANCES

September 09, 2014

Judge: Jeffrey Rueter

For the State:

Nicholas D. Michaud

Witnesses:

None

For the Defendant:

Julio Laboy

Witnesses:

None

Also Appearing:

Regis Blake Ross

[4] Phoenix, Arizona

September 09, 2014

(Commissioner Jeffrey Rueter Presiding)

PLEA AGREEMENT/CHANGE OF PLEA

THE COURT: All right. This is CR2013-421182-001-DT, State versus Regis Ross. Time set for trial, but I understand that you've reached a resolution in the case.

MR. LABOY: Yes, Your Honor. May I approach?

THE COURT: Sure. Can I get appearances?

MR. MICHAUD: Good morning, Your Honor. Nick Michaud for the State.

MR. LABOY: Good morning, Your Honor. Julio Laboy on behalf of Mr. Ross. He is present, not in custody, standing next to me at the podium.

THE COURT: Good morning, sir. Can I have your name and date of birth, please.

THE DEFENDANT: Regis Blake Ross, August 24th, 1967.

THE COURT: All right. Thank you. I have been handed a plea agreement that indicates you want to waive your right to a trial and plead guilty to Count I, assault, a Class 1 misdemeanor, and Amended Count III, attempted aggravated assault, a Class 6 undesignated offense. Is that what you want to do this morning?

THE DEFENDANT: Yes.

THE COURT: What's the last grade in school you have [5] finished?

THE DEFENDANT: Bachelor's degree in college.

THE COURT: Do you read and understand English?

THE DEFENDANT: Yes.

THE COURT: Have you taken any drugs, alcohol or medication in the last 24 hours?

THE DEFENDANT: No.

THE COURT: If you could take a look at your copy of the plea agreement, is that your true and correct name in the upper left-hand corner?

THE DEFENDANT: Yes, that is my name.

THE COURT: Are those your initials next to each of the numbered paragraphs?

THE DEFENDANT: They are.

THE COURT: Is that your signature on the third and fourth page?

THE DEFENDANT: Correct.

THE COURT: Have you read the plea agreement and discussed it with your lawyer?

THE DEFENDANT: Yes.

THE COURT: Do you understand the plea agreement?

THE DEFENDANT: Yes.

THE COURT: Does it contain everything that you and the State have agreed to?

THE DEFENDANT: Yes.

[6] THE COURT: Is there anything in this plea agreement you do not agree with?

THE DEFENDANT: Everything is the way we agreed, yes.

THE COURT: All right. I'm going to cover the sentencing possibilities for these offenses. I know you've reached some agreements in paragraph two, but the law requires I cover the sentencing ranges with you.

THE DEFENDANT: Yes.

THE COURT: For Count I, it's an assault, Class 1 misdemeanor. The maximum sentence is six months in the county jail. Maximum fine is \$2,500, plus surcharges. You could be placed on probation for up to three years. As to Amended Count III, it's a Class 6 undesignated offense. If you were sentenced to prison, the presumptive or usual sentence is one year in the Department of Corrections; aggravated sentence is two years; mitigated sentence is .33 years.

As alternative to prison, you could be placed on probation for up to three years. As a term or condition of that probation, you could be ordered to spend up to one year in the county jail. Maximum fine that could be imposed is \$150,000, plus surcharges.

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With respect to Count I, it is a domestic violence offense. It carries some special sentencing provisions there that you must pay two \$50 assessments, one to the Address Confidentiality Program and one to the Domestic Violence [7] Shelter Fund.

Some additional sentencing things I need to cover with you. On Count III, if you were sentenced to prison, you would be required to serve a term of community supervision. Its equal to one-seventh of the prison sentence actually imposed. That's served consecutively.

If you violate the rules and conditions of community supervision, it could be revoked. You could be returned to prison to serve out that remaining term of community supervision. There will be a one-time \$20 probation assessment; a one-time \$13 assessment to the investigating police agency. You'll be required to give a DNA sample within 30 days of sentencing.

If your conduct has caused an economic loss to anyone, you'll be required to pay restitution for that loss. The Court may order restitution at sentencing or a later date and at that time may issue a criminal restitution order.

If a criminal restitution order is entered, interest will begin to accrue in the amount ordered. Additional fees and assessments may be imposed, and liens could be placed on your property. Sir, do you understand the sentencing possibilities for these offenses?

THE DEFENDANT: Yes.

THE COURT: All right. There could be immigration consequences if you're not a citizen of the United States. [8] Pleading guilty or no contest to a crime may affect your immigration status. It may or may not result in your deportation even if the charge is later dismissed.

Your plea or admission of guilt could result in your deportation or removal, could you [sic] prevent you from being able to get legal status or could prevent you from becoming a United States citizen. Do you understand those possible consequences?

THE DEFENDANT: Yes.

THE COURT: If you plead guilty, you're giving up the following constitutional rights to a trial. You're presumed innocent. You have the right to deny charges and have a jury trial where you'll be represented by counsel. At your trial you could not [sic] be found guilty.

Once the State has proved at least one of the charges against you beyond a reasonable doubt, at trial you'd have the right to confront and cross-examine the State's witnesses through your lawyer.

You have the right to present witnesses and present evidence. You have the right to have the Court order witnesses to appear for your trial. You have the right to testify yourself, but you could not be forced to testify, and if you chose not to testify, that silence could not be used against you.

You also have the right to have any sentencing aggravating factors determined by a jury. They would be [9] determined by your sentencing judge. By entering into a plea, you have the right to a direct appeal, and your only remedy would be a petition for post-conviction relief.

And, finally, if you plead guilty and your plea is accepted by the Court, you will not be allowed to withdraw from that plea unless you are able to show a manifest injustice. Sir, do you understand your constitutional rights to a trial?

THE DEFENDANT: Yes.

THE COURT: Do you want to waive those rights to a trial and enter into this plea agreement?

THE DEFENDANT: Yes.

THE COURT: All right. You've reached some agreements with the State. They are that you be placed on supervised probation with domestic violence terms. There's a stipulation to no upfront jail.

If you successfully complete domestic violence counseling and anger management counseling, pay restitution – it looks like in the amount of \$1,326.55 – the offense will not be designated – Count III, the offense will not be designated a misdemeanor until you successfully complete probation. The State agrees to dismiss Count II. Is that your understanding of your agreement?

THE DEFENDANT: Yes.

THE COURT: You've avowed you have no prior felony convictions, that you are not on felony probation at the time [10] of the offense, and you have no additional pending felony matters in any jurisdiction under any name. Are those statements all true and correct?

THE DEFENDANT: Yes.

THE COURT: Has anybody forced you or threatened you in any way to make you plead guilty?

THE DEFENDANT: No.

THE COURT: Has anybody promised you anything that's not contained in this plea agreement to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: How do you plead then to Count I, assault, a Class 1 misdemeanor committed on or about May 10th, 2013, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: How do you plead to Amended Count III, attempted aggravated assault, a Class 6 undesignated offense also committed on or about May 10th, 2013, guilty –

THE DEFENDANT: Guilty.

THE COURT: Factual basis, please.

MR. LABOY: Yes, sir. Your Honor, as to Count I, on May 10th, 2013, here in Maricopa County,

Arizona, therefore within the jurisdiction of this Court, my client, Regis Blake Ross, became involved in an argument which then became physical. That argument was with his mother. They reside [11] together, and after it became physical, it left a bruise on her arm.

THE COURT: All right. As to Count III?

MR. LABOY: As the [sic] Count III, Judge, the police were summoned to that same address in Maricopa County, Arizona. When they arrived, my client, Regis Blake Ross, attempted to kick one of the police officers who he knew as a peace officer serving his lawful duties.

THE COURT: Any additions or corrections from the State?

MR. MICHAUD: Nothing to add, Your Honor,

THE COURT: Victim's rights complied with?

MR. MICHAUD: They have, Your Honor.

THE COURT: Sir, you heard what your attorney said. Is everything that he said true and correct?

THE DEFENDANT: Yes,

THE COURT: The Court finds the Defendant's plea is knowingly, intelligently and voluntarily made. There is a factual basis for the plea. The plea is

accepted and entered on record. Do you want to keep sentencing here?

MR. LABOY: Yes, sir.

THE COURT: All right. We'll set sentencing for October 9th. That will be at 9:30 in this division.

So, sir, you need to be back in court on October 9th at 9:30, the same courtroom. If you fail to appear, a warrant [12] would issue for your arrest. Also, the stipulations employed here would be no longer binding, and you could be sentenced up to two years in Department of Corrections on Count III.

So it's important that you be here. Plus you need to meet with the probation department. Were going to give you some instructions on how, where and when to do that.

Anything further, Mr. Laboy?

MR. LABOY: No, Your Honor.

THE COURT: All right. Thank you. We are in recess.

MR. MICHAUD: All right. Thank you very much, Your Honor.

(Proceedings concluded at 10:55 a.m.)

[13] [Certificate Omitted]

App. 33

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

v.

REGIS BLAKE ROSS (001),
Defendant.

No. CR 2013-421182-
001 DT

Phoenix, Arizona
November 14, 2014
9:53 a.m.

BEFORE COMMISSIONER JEFFREY RUETER

TRANSCRIPT OF PROCEEDINGS

Suspension of Sentence

[2] INDEX

November 14, 2014

DIRECT CROSS REDIRECT RECROSS VD
STATE'S
WITNESSES

None

DIRECT CROSS REDIRECT RECROSS VD
DEFENDANT'S
WITNESSES

None

MISCELLANEOUS

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[3] APPEARANCES

November 14, 2014

Judge: Jeffrey Rueter

For the State:

Nicholas D. Michaud

Witnesses:

None

For the Defendant:

Julio Laboy

Witnesses:

None

Also Appearing:

Regis Blake Ross

[4] Phoenix, Arizona

November 14, 2014

(Commissioner Jeffrey Rueter Presiding)

SUSPENSION OF SENTENCE

THE COURT: Mr. Laboy, are you ready in your matter?

MR. LABOY: Yes, sir.

THE COURT: This is Number 14, CR 2013-421182-001-DT, State versus Regis Blake Ross. It's titled for sentencing.

MR. MICHAUD: Good morning, Your Honor. Nick Michaud for the State.

MR. LABOY: Good morning, Your Honor. Julio Laboy on behalf of Mr. Regis Ross. He is present, he is in custody. Your Honor, today is the scheduled sentencing; however, I'd like to address the Court prior to beginning the sentencing phase.

THE COURT: All right. Tell the Court your name and date of birth, please.

THE DEFENDANT: Regis Blake Ross, August 24th, 1967.

THE COURT: All right. Thank you, sir. We did have a brief meeting before coming out here, so – we discussed it previously, but, Mr. Laboy, go ahead and let's put it on the record.

MR. LABOY: Yes, Your Honor. Thank you. Your Honor, this was a case that we have been working on for a long time trying to negotiate a fair disposition based on police reports [5] and video that were – was disclosed to us and reviewed and analyzed and given

consideration so that we can come up with the right kind of decision to enter a plea agreement. My client did that.

However, after entering into that plea agreement, new evidence was discovered in the form of videos that were taken unbeknownst to anybody by a neighbor that was properly and timely disclosed to the State, again, after the plea agreement was entered into and accepted.

It is our view that that video shows exculpatory – is exculpatory and specifically shows that there was no alleged kick, which gives rise to the count that he pled to as an attempted aggravated assault. That video does not show the kick at the time that the officers allege it had taken place, and further, it persecutes the victim of this alleged kick. They're showing no sign of being the victim of such a kick, walking without any kind of interruption in their path.

And, additionally, the video shows my client being escorted in handcuffs, I would say, approximately 15 yards to the police car. In the police reports, the officers indicated, again, without us having the benefit of seeing it through video, that my client engaged in a continuing ongoing struggle as he was escorted to the police car. Well, there is no struggle. They didn't know and it was surprising to them that a neighbor had a surveillance camera on the roof.

[6] And so based on that new evidence which we believe is exculpatory, we are at this point submitting

respectfully to the Court that my client be permitted to withdraw from the plea agreement.

THE COURT: All right. And so you've watched the video, obviously?

MR. LABOY: I have.

THE COURT: And so it's your contention that the video captures the moments where the alleged incident occurred, so the specific incident involving the police officer?

MR. LABOY: As an officer of the Court, I will have to say that there is a moment in time where there could be a question mark as to whether in that moment, in that second, a kick takes place or doesn't. However, what is shown a second, if not less, after is the deputy who would be the victim on that kick and they are not responsive to a kick reacting in any way.

So for us, circumstantially anyway, it would show that there was no aggravated assault. I'm sure the State has a different perspective.

THE COURT: All right. Mr. Michaud, you've seen the video?

MR. MICHAUD: I have reviewed the video, Your Honor, and just to start off, I don't think it showing of manifest injustice can be made based upon this video. The alleged – [7] well, just a very rough overview of the facts, the Defendant beat his mother. His mother terrified locked herself in the bathroom door – bathroom and called 9-1-1. The police arrived on scene. The

Defendant struggled with police. Some of that struggle is actually recorded on a tazer camera with footage, Your Honor. The Defendant was eventually apprehended, eventually put in handcuffs and eventually taken out from that home.

Now, as they were exiting the doorway of that home is when the Defendant then kicked one of the deputies in the leg. Now, admittedly, this was a kick that did not cause any lasting injury or anything of that sort in the scale of things. It was a minor kick, but it was, indeed, a kick.

Now, the video in this case, the video – not the video that's already been disclosed, but the video that Mr. Laboy is referring to that was disclosed after the plea was accepted and entered, shows portions of the driveway. It does not show the front door. It does not show where the kick is alleged to have taken place. What it does show is the – for the most part, just the second half of the driveway with the Defendant being led out and the Defendant pulling away.

I understand that the Defense challenges the characterization that he continued to struggle. There is evidence that the Defendant was pulling away in that video, but, of course, like I say, the video does not show the area [8] where the kick is – actually took place.

THE COURT: All right. So the allegation of the kick, it occurred at the doorway of the house, either in the interior of the house or just at the threshold or

the door, and that's an angle not captured by the surveillance camera?

MR. MICHAUD: That's correct, Your Honor.

THE COURT: Mr. Laboy, you've seen it. Is that an accurate characterization of what –

MR. LABOY: There is a portion that is unseen.

THE COURT: Okay. So, basically, camera catches right after as they exit the door and then between the whatever and to the car?

MR. LABOY: Yes.

THE COURT: All right. Mr. Laboy, I'll give you the last word since it is your motion to withdraw from the plea.

MR. LABOY: Yes, Your Honor, based on new information, that is evidence that was not provided to the parties prior to entering into the plea agreement, and based on the fact that it's our contention that this is exculpatory information, we believe that our client – my client should be permitted to withdraw from the plea agreement and as this would have probably caused a trial. I believe that the credibility of the officers could have also been called into question.

So with that, Judge, we would ask that my client be permitted to withdraw from his plea agreement.

[9] THE COURT: All right. So you're contending that although the kick wasn't – or the exact

moment of the alleged kick wasn't captured on video, the video does capture the aftermath of it, and it did not appear that the officer was limping or suffered any injury; is that correct?

MR. LABOY: Correct. And it's – it's – it would be – it would have to be, given the measurements, within a second or less, and our contention is that there is no – no response or reaction whatsoever from this alleged victim deputy. The body language is not at all consistent with someone, in my view, who would have suffered a kick.

THE COURT: Well, I mean, there's all sorts of different kicks. Mr. Michaud, you said the injury – the officer was not injured?

MR. MICHAUD: Your Honor, this was not a major injury kick, no, and any injuries would have been minor bruising, things like that.

THE COURT: All right. All right. Well, I'm going to – based on what I've been told – I haven't seen a video, but based on – I mean, basically, the parties agree sort of what is depicted. Since the video does not actually depict the alleged incident, I'm going to find that is not exculpatory evidence and does not rise to a manifest injustice and permit the Defendant to withdraw from the plea.

Sir, did I ask you your name and date of birth [10] already?

THE DEFENDANT: Yes.

THE COURT: Okay. All right. Based on the findings of the Court and the Defendant's plea, it's the judgment of the Court the Defendant is guilty of Count I, assault, a Class 1 misdemeanor committed on or about May 10th, 2013, and Count III, attempted aggravated assault, a Class 6 undesignated offense committed on or about May 10th, 2013. Both are non-dangerous, non-repetitive offenses.

I've reviewed the presentence report, the plea agreement, a letter from the Defendant's mother, who is the victim in Count I, taking into consideration that he spent two days in custody. Does the State have a recommendation?

MR. MICHAUD: Your Honor, the state recommends two years of supervised probation. We agree with the recommendation from the adult probation office.

THE COURT: All right. Thank you. Mr. Laboy.

MR. LABOY: Your Honor, we would recommend a much lesser time on probation given the fact that this case is somewhat aged. My client has been in compliance with all release conditions and orders. He has had no significant, for example, negative law enforcement contact since. He has accepted responsibility.

I believe paragraph two also has him agreeing to a restitution amount. He has the support of the victim, which [11] should speak loudly as well. He is also

seeking employment, and so we would ask that there be a – oh, and also because my client has a certificate of completion for a domestic violence program and anger management dated May 9th of 2014, that the probation grant be much shorter and that he be permitted to submit these certificates to the probation officer so that they can make an independent determination as to whether or not these would qualify to stand in for statutory or any other classes that might be required.

THE COURT: Okay. All right. Thank you.

Mr. Ross, is there anything you would like to say before I sentence you?

THE DEFENDANT: Yes, Your Honor. I do want to say that – and I know you’ve made your decision, Your Honor, but I did not kick the police officer. I really did not. I think this has been an injustice, and I did reluctantly accept this plea. I only took this plea because I did not have enough evidence beforehand, but now that I have these videos, and if a jury were to see these videos, they would see that I did not kick that police officer or the deputy, and I was not struggling on the way to the patrol vehicle as well.

I think that has been an exaggeration and also an injustice, Your Honor, and I believe that I am being wrongly convicted here. And I also wanted to say that I do reluctantly accept the plea, but I feel that I have been given an injustice [12] here, sir.

THE COURT: Well, I mean, when I took your factual basis, I asked you if it was true and

correct, you said yes. You gave a statement to the probation department where you indicated that during the arrest, you made contact with the police officer's leg, and now you're standing here telling me that you didn't do any of this?

THE DEFENDANT: Well, Your Honor, I did not do any of this –

THE COURT: You've either lied to me at the change of plea and then lied to the probation officer or you're lying to me now to get out of this plea. You know what, it's – you're in a bit of a mess right now, so –

MR. LABOY: I think – give me one moment.

THE COURT: What – what I was thinking about

MR. LABOY: He's proceeding forward.

THE COURT: What I was thinking about doing was giving you – I mean, you've taken some steps to address the issues that probably caused you to be here today. I was going to give you a short amount of probation because I think you've taken responsibility. Obviously, you've taken responsibility because you've recognized some issues. You've taken some steps to address those issues. But now you're telling me you either lied to me back then or you're lying to me now. Now, it's making me rethink my stance on this sentence.

[13] So why don't you take a moment to discuss it with your attorney and tell me what your position is on the factual basis.

MR. LABOY: Your Honor, we don't believe we need that moment other than for my client who has already indicated to me in a whisper that he wants to proceed forward, and he does not contest the factual basis.

THE COURT: All right. Is that true, Mr. Ross?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Thank you. Okay. I'm sorry, I think I cut you off. Aside from your unhappiness with the situation as a whole, is there anything that you want me to consider before I sentence you?

THE DEFENDANT: The only thing to consider, Your Honor, is as we just mentioned, that I've taken the anger management and the domestic violence already, which has been completed and finished. And, Your Honor, I would like to appreciate – if I can present this to the probation officer, just letting them know that everything in that respect has been completed, Your Honor.

THE COURT: Sure, you can totally do that. The only thing is the probation department has certain – I can't think of the word for it, certain providers for those classes, and if you were – if the class you took was an approved provider, but I don't know what their – I don't know who the provider was, [14] and I don't know what the list of providers the probation department uses. That's certainly something you would be able to do and discuss with the probation department.

THE DEFENDANT: Yes, Your Honor, and I have – did my research, and I did go through what’s called Community Health Services, which is a provider of the Court.

THE COURT: Okay. Well, you might be in good shape then. Mr. Laboy, any legal cause?

MR. LABOY: No.

THE COURT: All right. Based on the information presented, it’s the judgment of the Court the imposition of sentence be suspended in both counts. The Court is placing the Defendant on one year of standard supervised probation. That begins today.

Sir, all your terms are going to be in writing, and I’m going to cover a few of them with you. You’ll be responsible for all of them. You’re to maintain a crime-free lifestyle; don’t possess any weapons; report to the probation department within 72 hours of sentencing. Since you’re already at the courthouse, I’m going to order you do that today. It just saves you having to come back down here in a day or two. Provide access to your residence; obtain approval before moving; participate and cooperate with any programs or counseling or assistance.

Under Term 16, you’re not to consume or possess any [15] substance containing alcohol. Under Term 19, no contact with victim. Under 21, abide by the domestic violence special conditions of probation.

With respect to your financial conditions, I’ll award restitution. Is that – what count is the

restitution on? Is it for the – for his mom or for the police officer?

MR. LABOY: It would be for Count –

MR. MICHAUD: It's the police officer, Your Honor.

THE COURT: The police officer? Okay.

(Court and Clerk confer)

THE COURT: All right. In Count I, there will be a \$65 per month probation service fee. Mr. Laboy, you indicated your client is currently unemployed; is that correct?

MR. LABOY: Yes, Judge. Any discretion you would regard would be appreciated.

THE COURT: All right. Is he on disability?

MR. LABOY: I do not believe he's on disability, no.

THE COURT: But he's unemployed due to a medical condition?

THE DEFENDANT: Oh, I just had cataract surgery on both eyes, Your Honor.

THE COURT: All right. What I will do is, I will reduce the probation service fee to \$35 per month. I'll have that begin February 1st, 2015, so that gives you a couple extra months before that kicks in.

[16] There's going to be a one-time probation assessment of \$20, then by statute a \$50 assessment to the Address Confidentiality Program, \$50 assessment to the Domestic Violence Shelter Fund, \$13 assessment to the investigating police agency. In Count III, I'll award the restitution in the amount of \$1,326.55. That will be payable at \$10 per month.

Sir, you have the right to file a petition for post-conviction relief. If you choose to do that, you must do that within 90 days of today's date or you could lose that right. If you cannot afford an attorney, one with [sic] be appointed to assist you. If you cannot afford to [sic] the records and transcripts, they'll be provided to you at no cost.

Pursuant to the plea agreement, it's ordered dismissing Count II. Sir, do you understand your sentence?

THE DEFENDANT: Yes.

THE COURT: Okay. I'm going to have you step over and see our bailiff. Good luck.

MR. MICHAUD: Thank you. Your Honor.

(Proceedings concluded at 10:11 a.m.)

[17] [Certificate Omitted]

AFFIDAVIT OF REGIS ROSS

In accordance with A.R.S. § 13-4235 and Rule 32.5 of the Arizona Rules of Criminal Procedure, I, Regis Ross, present the following facts that are within my personal knowledge:

1. My name is Regis Ross, and I am the defendant in Maricopa County Superior Court Cause Number CR 2013-421182-001 DT.
2. I retained Julio LaBoy to represent me in the criminal matter designated as Maricopa County Superior Court Cause Number CR 2013-421182-001 DT for pre-trial/trial proceedings.
3. I have personal knowledge of the following facts relevant to the Petition for Post-Conviction Relief filed herewith in Maricopa County Superior Court Cause Number CR 2013-421182-001 DT:
 - a. I was represented by Julio LaBoy at all relevant times during pre-trial and trial proceedings in the Maricopa County Superior Court.
 - b. I plead [sic] guilty in Maricopa County CR2013-421182-001 DT to one count of assault, domestic violence as to my mother, a class I misdemeanor, and one count of attempted aggravated assault, a class 6 undesignated offense as to a police officer, both of which were alleged to have occurred on May 10, 2013.

- c. I was injured when I was arrested to include a bruised eye, and scratches and bruises on other portions of my body.
- d. I believe I had an excellent justification/self-defense claim that could have been presented at trial.
- e. I was concerned about pleading guilty and in a quandary about whether to do so up until the day that the plea was actually entered.
- f. At the Final Trial Management Conference on September 2, 2014, I was still preparing for and anticipating going to trial.
- g. I expressed my continuing concerns and my desire to challenge the evidence presented against me to Mr. LaBoy as reflected in the e-mail I sent to him on September 6, 2014, which is attached to the Petition for Post-Conviction Relief as Exhibit A.
- h. Mr. LaBoy informed me of the amount of time I was facing if I proceeded to trial and advised me to take the plea that was offered.
- i. I entered the plea on September 9, 2014, as reflected in the Reporter's Transcript from 9/22/14, which is attached to the Petition for Post-Conviction Relief as Exhibit C.

- j. After I plead [sic] guilty, new video evidence emerged that captured events relevant to the charges.
 - k. The video was from a neighbor's surveillance camera which provided exculpatory evidence that could have been utilized at trial as evidence of innocence.
 - l. Mr. LaBoy raised the issue at Sentencing and asked the court to allow me to withdraw from the plea for Manifest Injustice based on the newly discovered evidence. That argument and the court's decision is reflected in the Reporter's Transcript from sentencing on November 14, 2014, attached to the Petition for Post-Conviction Relief as Exhibit D.
 - m. I would have decided to go to trial, rather than enter the plea, had I been informed that there were videos of the incident that cast a serious doubt upon whether I could be convicted of the aggravated assault of a police officer at trial.
4. I am available to answer any questions or to provide further information to the court at any time regarding my personal knowledge and attestations of fact as contained within this 3 page Affidavit, attached to the Petition for Post-Conviction Relief as Exhibit E.

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FURTHER AFFIANT SAYETH NAUGHT

1/21/2016

Date

/s/ Regis Ross

Regis Ross

[NOTARY STAMP]

/s/ Amber Dawn Crosby

Comm expires 12/12/2018

DECLARATION OF REGIS ROSS

In accordance with A.R.S. § 13-4235 and Rule 32.5 of the Arizona Rules of Criminal Procedure, I, Regis Ross, the defendant in Maricopa County Superior Court Cause Number CR 2013421182-001 DT, hereby declare and attest under penalty of perjury that the information contained within the Petition for Post-Conviction Relief and all attached Exhibits including my Affidavit of Facts are true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT

1/21/2016

Date

/s/ Regis Ross

Regis Ross

[NOTARY STAMP]

/s/ Amber Dawn Crosby

Comm expires 12/12/2018
