

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 07/24/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0542  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
MICHAEL RAY BLAYLOCK, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-121207-001

The Honorable James T. Blomo, Judge *Pro Tempore*

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Kathryn L. Petroff, Deputy Public Defender  
Attorneys for Appellant

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**G O U L D**, Judge

¶1 Michael Blaylock appeals from his convictions and resulting sentences of burglary in the third degree and possession of burglary tools.

¶2 Blaylock's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this Court that after a search of the entire appellate record, she found no arguable question of law that was not frivolous. Blaylock was afforded the opportunity to file a supplemental brief in propria persona, but he has not done so. Instead he directed counsel to raise three issues on his behalf; we address these issues below.

¶3 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and -4033(A)(1) (2010).<sup>1</sup> Finding no reversible error, we affirm.

***Facts and Procedural History***<sup>2</sup>

¶4 In the early morning of April 22, 2010, John W. ("Witness") observed two individuals driving a truck down the utility easement to a commercial lot on 53rd Avenue and Madison.

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<sup>1</sup> Unless otherwise specified, we cite to the current version of the applicable statutes because no revisions material to this decision have occurred.

<sup>2</sup> We view the evidence in the light most favorable to sustaining the convictions and resulting sentences. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

From his vehicle, Witness watched as Blaylock got out of the passenger side of the truck and approached the chain link fence carrying a pair of twenty-four inch yellow bolt cutters. Witness could not actually see Blaylock cutting the fence; however, after Blaylock paused at the fence for a few moments, Witness saw Blaylock walking inside of the fenced area. Upon later inspection, police observed fresh cut marks on the otherwise weathered chain link fence.

¶5 When Blaylock saw Witness observing him, Blaylock returned to the truck to leave. Witness drove up to the two individuals and "asked them what they were doing" at the lot. The individuals replied that they saw some pipe and were interested in who owned it. When they admitted the pipe did not belong to them, Witness directed them to leave. As they drove away, Witness followed their truck and called 9-1-1. Witness continued to follow the truck until police arrived and took Blaylock and the other individual into custody. Witness remained at the scene to identify Blaylock as the individual he had seen carrying the bolt cutters and entering the commercial lot.

¶6 After being detained, Blaylock was searched by Officer Whitlock; the search produced two pairs of pliers in Blaylock's pockets. Officer Whitlock also searched the truck and found a large pair of yellow bolt cutters. Blaylock was arrested and

charged with one count of burglary in the third degree and one count of possession of burglary tools. At trial, he was convicted of both counts and sentenced to concurrent sentences at the department of corrections - a mitigated term of one-and-a-half years for burglary in the third degree and the presumptive term of one year for possession of burglary tools. Blaylock timely appealed.

**Conclusion**

¶7 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the finding of guilt. Blaylock was present and represented by counsel at all critical stages of the proceedings. At sentencing, Blaylock and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶8 On appeal, Blaylock challenges the sufficiency of the evidence and the reliability of Witness's identification of him. When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State and draw all reasonable inferences against Blaylock. *State v. French*, 104 Ariz. 359, 362, 453 P.2d 505, 508 (1969). We leave determinations of the credibility of a witness's identification

of the defendant to the jury. *State v. Nieto*, 118 Ariz. 603, 606, 578 P.2d 1032, 1035 (App. 1978).

¶9 The evidence supports the jury's verdicts. At trial, Witness testified he saw Blaylock exit the truck carrying a large pair of yellow bolt cutters. Officer Whitlock also testified a pair of yellow bolt cutters was recovered from the truck at the time of Blaylock's arrest. Both Witness and Officer Whitlock identified Blaylock as the individual they encountered on April 22, 2010. Although Witness saw Blaylock cut through the fence from a distance, he had the opportunity to observe Blaylock at close range when he confronted Blaylock about his reason for remaining on the property.

¶10 Blaylock also argues there was insufficient evidence of theft because the alleged stolen property was not admitted into evidence. Blaylock was not charged with theft. In order to prove Blaylock committed burglary in the third degree, the State only needed to show beyond a reasonable doubt that Blaylock entered or remained unlawfully on the fenced commercial yard with the intent to commit a theft. A.R.S. § 13-1506. The evidence supports this verdict.

¶11 Counsel's obligations pertaining to Blaylock's representation in this appeal have ended. Counsel need do nothing more than inform Blaylock of the status of the appeal and his future options, unless counsel's review reveals an issue

appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Blaylock shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.<sup>3</sup>

/S/

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ANDREW W. GOULD, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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ANN A. SCOTT TIMMER, Judge

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<sup>3</sup> Pursuant to Arizona Rule of Criminal Procedure 31.18.b, Blaylock or his counsel has fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.