

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: 10/23/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0882
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOSEPH KELLY POWERS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-127356-001

The Honorable Steven P. Lynch, Judge

AFFIRMED

Thomas C. Horne, Arizona 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 Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Joseph Kelly Powers (Defendant) appeals his
convictions and sentences. Defendant's counsel filed a brief in

accordance with *Smith v. Robbins*, 528 U.S. 259 (2000), *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), advising this court that after a search of the entire record on appeal, he found no arguable grounds for reversal. This court granted Defendant an opportunity to file a supplemental brief in propria persona, but he has not done so.

¶12 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 (2010), and - 4033.A.1 and 3 (2010). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶13 At trial, Maricopa County Sheriff's Officer Deputy C. testified that he was on patrol in a marked Sheriff's Office vehicle in May 2011, when he clocked a vehicle travelling seventy-six miles per hour in an area with a posted speed limit of fifty miles per hour. Deputy C. pursued the vehicle to initiate a traffic stop but did not immediately activate the patrol vehicle's overhead emergency lights. He testified that as he accelerated to catch up with the vehicle, he observed the speeding vehicle's headlights had been turned off. The vehicle made a left turn onto 160th Street and Deputy C. followed. Deputy C. testified that less than a mile up the street the pavement ended, 160th Street became a dirt road and Deputy C.

activated the patrol vehicle's overhead emergency lights. The vehicle being pursued by Deputy C. did not stop, but instead continued down the road and made a right turn onto another small dirt road. Shortly thereafter, the vehicle stopped near a house that Deputy C. later learned was where Defendant lived. Defendant, who was driving the vehicle, and a female passenger, exited the car. Defendant and the female passenger attempted to flee on foot. Deputy C. chased Defendant and found him on the patio of the house and placed Defendant under arrest.

¶14 The female passenger testified at trial that she noticed the red and blue emergency lights from the patrol vehicle after Defendant turned onto the unpaved road and that she started "freaking out." She testified that Defendant responded by saying, "It's going to be okay. We're almost home." She also testified that Defendant never made a statement indicating he was aware that a law enforcement vehicle was following them.

¶15 A custodian of records from the Arizona Motor Vehicle Division (MVD) testified that Defendant's driver's license had been suspended since June 2009 and was suspended at the time of his arrest in September 2011.

¶16 A jury convicted Defendant of unlawful flight from a law enforcement vehicle and driving on a suspended license. Defendant was sentenced to nine months' supervised probation for

each conviction, to be served concurrently. The trial court also imposed a fine of \$572 on the suspended license conviction. Defendant timely appealed.

DISCUSSION

¶17 When considering the sufficiency of the evidence, “we view the evidence in the light most favorable to sustaining the verdict and reverse only if no substantial evidence supports the conviction.” *State v. Pena*, 209 Ariz. 503, 505, ¶ 7, 104 P.3d 873, 875 (App. 2005). “‘Substantial evidence’ is evidence that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.” *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

Unlawful Flight

¶18 A driver is guilty of unlawful flight from a law enforcement vehicle if he “wilfully flees or attempts to elude a pursuing official law enforcement vehicle” that is appropriately marked and is using its emergency lights and, if reasonably necessary, a siren. A.R.S. §§ 28-622.01 (2012), -624.C (2012).¹

¶19 Deputy C. testified that he was driving a marked Sherriff’s Office patrol vehicle and he activated his overhead emergency lights on 160th Street, but Defendant did not stop

¹ We cite the current version of the applicable statutes when no revisions material to this decision have occurred.

until he reached his residence. Deputy C. also testified that at some point Defendant's headlights were turned off, though they were later turned back on when the deputy pursued Defendant onto 160th Street. Although Deputy C. testified that he never activated the patrol vehicle's siren, he stated that he did not believe a siren was necessary under the circumstances.

¶10 This evidence was sufficient to support the jury's finding that Defendant was guilty of unlawful flight from a law enforcement vehicle.

Suspended License

¶11 A person is guilty of driving on a suspended license if he drives a motor vehicle on a public highway when his privilege to drive is suspended. A.R.S. § 28-3473.A (Supp. 2011). The custodian of records for the MVD testified that Defendant's license to drive was suspended at the time of his arrest on May 31, 2011. Thus, sufficient evidence supports the jury's finding that Defendant was guilty of driving on a suspended license.

CONCLUSION

¶12 We have read and considered counsel's brief and have searched the entire record for reversible error. *See State v. Leon*, 104 Ariz. 297, 300, 451 P.2d 878, 881 (1969). We find none. The record indicates Defendant was represented by counsel at all stages of the proceedings and that the trial court

afforded Defendant all of his rights under the Constitution, Arizona statutes, and the Arizona Rules of Criminal Procedure. See *Clark*, 196 Ariz. at 541, ¶ 50, 2 P.3d at 100. The sentence imposed by the trial court was within the statutory limits. *Id.*

¶13 After the filing of this decision, counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant shall have thirty days from the date of this decision to proceed, if he desires, with an in propria persona motion for reconsideration or petition for review.

¶14 Accordingly, we affirm Defendant's convictions and sentences.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

JON W. THOMPSON, Judge

/S/

SAMUEL A. THUMMA, Judge