

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: 6/27/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0346
)
Appellee,) DEPARTMENT C
)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 28, Arizona Rules of
LARRY DAVID FULKS,) Civil Appellate Procedure)
)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-048138-002

The Honorable Brian Kaiser, Judge *Pro Tempore*

AFFIRMED

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

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

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Larry David Fulks's

conviction of unlawful flight from a law enforcement vehicle, a Class 5 felony. Fulks's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Fulks was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Fulks's conviction and suspended sentence.

FACTS AND PROCEDURAL HISTORY

¶2 In April 2011, a deputy encountered Fulks driving a pickup truck that the deputy recognized from a previous interaction with Fulks and Fulks's girlfriend, who had outstanding warrants.¹ The deputy turned on his lights and siren and proceeded after Fulks, maintaining a distance no greater than one car length. Fulks did not pull over but continued to drive to his carport, approximately 853 feet away. Fulks then ran from the vehicle to his residence, where he stopped and told the deputy that it was illegal for him to be at the house. According to the deputy, Fulks was screaming profanities at him and refusing to comply with his orders.

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Fulks. See *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶13 The State charged Fulks with violating Arizona Revised Statutes ("A.R.S.") section 28-622.01 (West 2013), which prohibits wilfully fleeing or attempting to elude a pursuing law enforcement vehicle being operated with proper emergency equipment.² At trial, Fulks acknowledged he saw the deputy's lights but asserted he did not hear a siren. He further testified that he did not stop when he first saw the deputy because the areas next to the road were either gated or frequently used by young children. Fulks admitted, however, that he could have stopped in an area 200 feet before his residence. Fulks also denied telling the deputy that it was illegal for the deputy to be at his house. Fulks additionally testified that he did not want to elude anyone, but only wanted to get his car to his home.

¶14 The jury found Fulks guilty. The court suspended imposition of sentence and placed Fulks on supervised probation for one year. We have jurisdiction of Fulks's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (West 2013), 13-4031 (West 2013) and -4033(A)(1) (West 2013).

DISCUSSION

² Absent material revision after the date of the alleged offense, we cite a statute's current version.

¶15 The record reflects Fulks received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The superior court did not conduct a voluntariness hearing; however, neither Fulks nor the evidence raised a question about the voluntariness of Fulks's statements to law enforcement. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶16 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of ten members with two alternates. The court properly instructed the jury on the elements of the charge, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict; Fulks declined to poll the jury. The court received and considered a presentence report and addressed its contents during the sentencing hearing and had the legal authority to impose the terms of probation it ordered.

CONCLUSION

¶17 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Fulks's representation in this appeal have ended. Defense counsel need do no more than inform Fulks

of the outcome of this appeal and his future options, unless, upon review, counsel finds "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). On the court's own motion, Fulks has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for reconsideration. Fulks has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

_____/s/_____
DIANE M. JOHNSEN, Judge

CONCURRING:

_____/s/_____
SAMUEL A. THUMMA, Presiding Judge

_____/s/_____
MICHAEL J. BROWN, Judge