

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: 06/27/2013
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0553
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
AUSTEN R. LEWIS,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-123490-001

The Honorable Robert L. Gottsfield, Retired Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel, Criminal Appeals
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Austen R. Lewis appeals from his conviction and probation for resisting arrest, a class one misdemeanor. Ariz. Rev. Stat. ("A.R.S.") § 13-2508(A)(1) (2010). After searching the record on appeal and finding no arguable question of law

that was not frivolous, Lewis' counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Lewis to file a supplemental brief *in propria persona*, but Lewis did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Lewis' conviction and probation.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 On May 5, 2010, at approximately 9:00 p.m., a police detective and an officer, while driving in a patrol car, saw Lewis' car drift out of its lane and swerve into a turning lane, with "the left side of the car . . . over the line [designated for the turning lane]." After police stopped Lewis and asked for his I.D., he became "verbal[ly] aggressi[ve]," insisted police "had no reason to pull him over," and repeatedly called the police profane names. Because of Lewis' "verbal aggression," the detective asked him to sit on the curb. As Lewis walked towards the curb, he "flicked" his driver's license at the detective and it hit him in the chin, prompting police to arrest Lewis. Although the police told Lewis he was under

¹We view the facts in the light most favorable to sustaining the verdict. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

arrest, Lewis used his hands and arms to avoid being handcuffed. The detective and Lewis fell to the ground, and Lewis continued to resist. After backup officers arrived and tasered him, police finally handcuffed Lewis and took him into custody.

¶13 The State charged Lewis with aggravated assault and resisting arrest, and designated both counts as class one misdemeanors. Lewis waived his right to a jury trial and, at the ensuing bench trial, he testified he did not "flick," but merely "dropped" his driver's license in front of the detective. He also testified that after he dropped his driver's license, the detective began to punch him and the detective and officer pulled him to the ground.

¶14 The superior court found Lewis not guilty of aggravated assault, but guilty of resisting arrest. The court suspended imposition of sentence and placed Lewis on unsupervised probation for one year. A.R.S. § 13-902(A)(5) (Supp. 2012).²

DISCUSSION

¶15 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record

²Although the Arizona Legislature amended this statute after the date of Lewis' offense, the revisions are immaterial. Thus, we cite to the current version of this statute.

reveals, Lewis was represented by counsel at all stages of the proceedings and was present at all critical stages. There was sufficient evidence for the superior court to find Lewis committed the offense, and the probation imposed was within the statutory limits.

CONCLUSION

¶16 We decline to order briefing and affirm Lewis' conviction and probation.

¶17 After the filing of this decision, defense counsel's obligations pertaining to Lewis' representation in this appeal have ended. Defense counsel need do no more than inform Lewis 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

