

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

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

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STATE OF ARIZONA, *Appellee*,

*v.*

SHAWN ENGLISH, *Appellant*.

No. 1 CA-CR 12-0810

FILED 11-14-2013

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Appeal from the Superior Court in Maricopa County

No. CR2010-160894-001

The Honorable Patricia A. Starr, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz

*Counsel for Appellee*

Maricopa County Public Defender, Phoenix  
By Terry J. Reid

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge Samuel A. Thumma joined.

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**K E S S L E R**, Judge:

¶1 Shawn English (“English”) filed this appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following her conviction of taking the identity of another, a class 4 felony, under Arizona Revised Statutes (“A.R.S.”) section 13-2008 (2010).<sup>1</sup> Finding no arguable issues to raise, English’s counsel requested that this Court search the record for fundamental error. English was given the opportunity to, but did not file a *pro per* supplemental brief. For the following reasons, we affirm English’s conviction and sentence.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 “M.C.,” a JC Penney loss prevention officer, observed English trying on sunglasses over store surveillance cameras. M.C. watched English remove the sales sticker from the glasses, put them on her head, and walk out of the store without paying for them. M.C. stopped English outside and brought her inside to the loss prevention office, at which point English falsely identified herself as “S.D.” M.C. then called the police pursuant to store policy.

¶3 Phoenix Police Officer “H.” responded to the call and found English in the loss prevention office. There is no evidence in the record indicating that English received any *Miranda* warnings prior to speaking with Officer H. See *Miranda v. Arizona*, 384 U.S. 436 (1966). English told Officer H. that her name was S.D. and that she had inadvertently left the store with the sunglasses on her head. Officer H. testified that he searched English’s purse incident to her arrest and found various identification cards bearing the name S.D. Officer H. wrote up a shoplifting citation, and English signed it using the name S.D.

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<sup>1</sup> We cite the current version of the applicable statute when no revisions material to this decision have since occurred.

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¶4 English knew S.D. personally because they had worked together. As the office manager, English had handled employee matters and had access to S.D.'s personal information. English and S.D. were also friends, and English had met with S.D. after the shoplifting incident and complained about the citation, not mentioning that she had identified herself as S.D. S.D. was not at JC Penney on the day of the shoplifting citation, and had never given English permission to use her identity for any purpose.

¶5 S.D. received a demand letter from JC Penney a few weeks later in relation to the shoplifting incident. Because English had complained about the citation, S.D. suspected that English had used her identity. Consequently, S.D. called the police to report the letter. Officer "K." investigated the identity theft, and showed a photo lineup to Officer H. that included English. Officer H. identified English as the person he cited for shoplifting at JC Penney and who had identified herself as S.D.

¶6 English was indicted for shoplifting and taking the identity of another. A jury found English not guilty of shoplifting, but guilty of taking the identity of another. The trial court sentenced English to twelve months' probation with applicable fees.

¶7 English timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), -4033(A)(1) (2010).

#### STANDARD OF REVIEW

¶8 In an *Anders* appeal, this Court must review the entire record for fundamental error. *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quoting *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984)). To obtain a reversal, the defendant must also demonstrate that the error caused prejudice. *Id.* at ¶ 20. On review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against the defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

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DISCUSSION

¶9 After careful review of the record, we find no grounds for reversal of English’s conviction or modification of her sentence. The record reflects that English had a fair trial and all proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. English was represented at all critical stages of trial, was given the opportunity to speak at sentencing, and the sentence imposed was within the range for English’s offense.

¶10 In reviewing the sufficiency of the evidence, we review the “evidence presented at trial only to determine if substantial evidence exists to support the jury verdict.” *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005). Substantial evidence is “more than a mere scintilla and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.” *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997) (internal quotation marks omitted). “Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction.” *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶11 A person commits taking the identity of another person if the person knowingly uses personal identifying information of another person without consent and with the intent to use that identity for an unlawful purpose. A.R.S. § 13-2008(A).

¶12 There is sufficient evidence in the record to support English’s conviction of taking the identity of another. First, there is evidence that English used S.D.’s personal information without consent. “Personal identifying information” is defined as “any written document or electronic data that does or purports to provide information concerning a name, signature . . . residence or mailing address, telephone number . . . social security number . . . [or] birth date . . .” A.R.S. § 13-2001(10) (2010). Officer H. testified that he searched English’s purse incident to her arrest

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and found various identification cards bearing the name S.D.<sup>2</sup> In addition, S.D. testified that she never gave English permission to use her personal identifying information for any reason.

¶13 There is also evidence in the record that English intended to use S.D.'s identity for an unlawful purpose. English identified herself as S.D. to Officer H. and signed the shoplifting citation with S.D.'s name. *See* A.R.S. §§ 13-2907.01 (2010) (false reporting to law enforcement agencies), - 2002 (Supp. 2012) (forgery). Given that English knew Officer H. had seen the cards referring to S.D., English's unlawful acts in this instance support the inference that she also intended to use S.D.'s personal identifying information (the identification cards) for an unlawful purpose.

¶14 In comparing the evidence in the record to the elements listed in the statute, we find there was sufficient evidence to support English's conviction of taking the identity of another person.

### CONCLUSION

¶15 Upon the filing of this decision, defense counsel shall inform English of the status of her appeal and her future appellate options. Defense counsel has no further obligations, 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

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<sup>2</sup> The Fourth Amendment protects against unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). Searches conducted without a warrant are considered *per se* unreasonable absent an established exception to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357 (1967). One such exception is a search incident to a lawful arrest. *Arizona v. Gant*, 556 U.S. 332, 338 (2009). The exception is based on interests in officer safety and the preservation of evidence, and the scope is limited to the arrestee's person and the area within her immediate control. *Id.* at 338-39.

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154, 156-57 (1984). Upon the Court's own motion, English shall have thirty days from the date of this decision to proceed, if she so desires, with a *pro per* motion for reconsideration or petition for review.



Ruth A. Willingham · Clerk of the Court  
FILED: mjt