

NOTICE: NOT FOR PUBLICATION.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

STATE OF ARIZONA, *Appellee*,

v.

JERRY JAMES DUARTE, *Appellant*.

No. 1 CA-CR 13-0040
FILED 12-10-2013

Appeal from the Superior Court in Maricopa County
No. CR2012-112448-001
The Honorable M. Scott McCoy, Judge

AFFIRMED

COUNSEL

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

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Christopher V. Johns

Counsel for Appellant

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge John C. Gemmill joined.

C A T T A N I, Judge:

¶1 Jerry James Duarte appeals his conviction of three counts of aggravated assault, Class 3 dangerous felonies, and one count of unlawful discharge of a firearm, a Class 6 dangerous felony, and the resulting sentences. Duarte'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), certifying that, after a diligent search of the record, he found no arguable question of law that was not frivolous. Duarte was given the opportunity to file a supplemental brief, but did not do so. Counsel asks this court to search the record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). After reviewing the record, we affirm Duarte's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Undercover Phoenix Police Detectives Miller and Casados noticed a vehicle, driven by Duarte and carrying one passenger, driving fast and switching lanes erratically as the vehicle passed their unmarked police car early one morning in March 2012. Because Duarte's passenger resembled someone wanted in an unrelated matter, the officers ran a record check and discovered a mandatory insurance violation. When the officers tried to get a closer look at the passenger by driving up to the passenger side, Duarte cut the officers off, moved into their lane, and brake-checked them. Because it was the end of the officers' shift, the officers decided not to further investigate the passenger's identification. The officers created distance between Duarte's vehicle and their unmarked police car and went over to the left lane. The officers stayed behind, and to the left of, Duarte's vehicle as Duarte stopped for a red light at I-17 and Seventh

¹ We view the facts in the light most favorable to sustaining the jury's verdicts. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

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Street in Phoenix. Once at this intersection, Duarte took a gun from the center console of his car, rolled down the driver's side window, turned back toward the officers, and fired a round in their direction. When the officers saw the gun, they got down as low as they could in their vehicle to avoid the gunfire. At the time of the shooting, there were pedestrians and other vehicles around the intersection. Detective Miller immediately radioed for assistance. Duarte then drove through the red light.

¶3 The officers followed Duarte's vehicle from a distance. Duarte stopped his vehicle near Elwood Street and Seventh Street. Detective Miller, who was wearing a t-shirt, jeans, gun belt, and clip-on police badge, got out of his vehicle, drew his firearm, and identified himself as a police officer four or five times. Duarte looked at Detective Miller and pointed his gun at him. Detective Miller thought there was about to be a "gun battle," but Duarte sped off. The officers resumed their chase until Duarte crashed his vehicle at a bus terminal while trying to avoid a police roadblock.

¶4 Duarte fled by jumping over two fences and hiding in an alley trash can. Approximately 45 police cars responded to the shooting, including air support and a K-9 unit. A police dog led the officers to the trash can where Duarte was hiding. After being taken into custody, Duarte apologized, saying that he did not realize the occupants of the other vehicle were police officers.

¶5 Police officers searching a nearby trash dumpster found a set of keys that matched Duarte's car ignition. They also found a revolver, lying next to a holster, in the middle of the bus terminal platform. Officers found a .38 caliber slug, a .38 caliber bullet, and a speed loader in Duarte's vehicle. The pillar immediately behind Duarte's driver door had a bullet strike.

¶6 After Duarte was taken to a hospital for treatment, an officer read him his *Miranda*² rights. Duarte admitted firing his gun up in the air (not in the direction of the officers) and reiterated that he did not know the occupants of the other vehicle were police officers. He also stated that he threw his gun and holster out the window and ran because he was scared.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

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¶7 Duarte testified at trial that on the morning of the shooting, he was in a “little hurry” because he was taking his father-in-law to jail to self-surrender for a DUI. A few days before the shooting, someone had tried to carjack him, so when he saw a vehicle following him, he thought they were going to do the same. He took out his gun from the center console and “discharged one round into the air,” when he thought one of the occupants was looking at him in a threatening manner. Duarte denied firing in the direction of the other vehicle. He admitted that he pulled the trigger without concern as to where the bullet might go or who might be injured by it.

¶8 Duarte denied hearing Detective Miller identify himself as a police officer or seeing a police badge when Duarte stopped his vehicle near Elwood Street. He admitted, however, that he saw Detective Miller’s handgun aimed at him, although he denied pointing his handgun back at Detective Miller. Duarte admitted throwing his gun out the window right before he lost control of his car because he “wanted to be as far [away] from the weapon as possible.”

¶9 Duarte was arrested and charged with three counts of aggravated assault and one count of unlawful discharge of a firearm. After a five-day trial, a jury found Duarte guilty as charged on all four counts. The court sentenced Duarte to concurrent, mitigated terms of five years each for three counts of aggravated assault and one and one half years for unlawful discharge of a firearm, with 310 days’ presentence incarceration credit.

¶10 Duarte timely appealed. 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), 13-4031, and -4033.³

DISCUSSION

¶11 We have read and considered counsel’s brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶12 Duarte was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Duarte his rights under the constitution and our statutes, and

³ Absent material revisions after the relevant date, we cite a statute’s current version.

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that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial and summarized above was sufficient to support the jury's guilty verdicts. Duarte's sentence falls within the range prescribed by law, with proper credit given for presentence incarceration. Duarte's convictions and sentences are therefore affirmed.

¶13 After the filing of this decision, defense counsel's obligations pertaining to Duarte's representation in this appeal will end after informing Duarte of the outcome of this appeal and his future options. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Duarte shall have 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.



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