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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/17/2013  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 13-0190  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
BRYAN EUGENE DILLON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2012-123890-002

The Honorable Margaret R. Mahoney, Judge

**AFFIRMED**

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

James J. Haas, Maricopa Public Defender Phoenix  
By Thomas K. Baird, Deputy Public Defender  
Attorneys for Appellant

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**D O W N I E**, Judge

¶1 Bryan Eugene Dillon timely appeals his convictions for aggravated criminal damage, burglary in the third degree, and

possession of burglary tools in violation of Arizona Revised Statutes ("A.R.S.") sections 13-1505, -1506, and -1604. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for reversible error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant did not file a supplemental brief. On appeal, we view the evidence in the light most favorable to sustaining the convictions. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

#### **FACTS AND PROCEDURAL HISTORY**

¶12 Around 10:30 a.m., security officer R.H. patrolled an underground parking garage in his marked security vehicle. R.H. heard a "clinking noise" and saw a man standing at the rear of a yellow car with its hatchback open. R.H. saw that copper piping was missing from the wall behind the car. R.H. heard the man say, "Oh, shit, let's get out of here" before he shut the hatchback and got into the passenger seat. Within seconds, R.H. saw a second man get into the driver's seat. R.H. followed the vehicle out of the garage and called 9-1-1, giving a description of the vehicle, its occupants, and its direction of travel.

¶13 Officer Keller was patrolling in the vicinity when she heard that a bright yellow vehicle with two male passengers had

been involved in a copper theft. She saw a similar vehicle and stopped it. Dillon was the driver. Inside the vehicle, officers discovered four lengths of cut copper piping and a large cutting tool between the driver and passenger seats, as well as a pair of gloves. When he was brought to the traffic stop location, R.H. immediately identified the vehicle and its passenger, though he could not identify the driver. Officers confiscated the pipe, gloves, and cutting tool.

¶14 Dillon told an officer his name, date of birth, and address, and explained "he didn't work, that's why he was doing this." Dillon also said the vehicle belonged to his girlfriend. At the garage, an officer matched the physical attributes of the confiscated pipe with the pipe remaining in the garage; its length matched the space where the missing pipe should have been. A building manager identified the seized pipe as belonging to the complex.

¶15 Dillon and his passenger were charged as accomplices<sup>1</sup> and indicted on aggravated criminal damage ("count 1"), burglary

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<sup>1</sup> An accomplice is a person who, with intent to promote or facilitate the commission of an offense, solicits or commands another to commit the offense; aids, counsels, agrees to aid or attempts to aid another in planning or committing the offense; or provides opportunity or means to another to commit the offense. A.R.S. § 13-301. Under Arizona statutes, "all participants are criminally accountable as principals, regardless of whether a participant was the accomplice in fact." *State v. Jobe*, 157 Ariz. 328, 331-32, 757 P.2d 604, 607-08 (App. 1988).

in the third degree ("count 2"), and possession of burglary tools ("count 3"). A jury trial ensued.

¶16 At the conclusion of the State's case, Dillon moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). The trial court denied the motion. The jury convicted Dillon of all charges. The State proved four aggravators for sentencing purposes: presence of an accomplice, the offenses were committed in expectation of pecuniary gain, the defendants left the scene of the crime, and Dillon was on release status when the offenses occurred. The State also proved that Dillon had six prior felony convictions.

¶17 Dillon was sentenced to concurrent aggravated terms of imprisonment of six years for count 1, ten years for count 2, and five years for count 3, and received 312 days' presentence incarceration credit.

#### **DISCUSSION**

¶18 We have read and considered the brief submitted by counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no reversible error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within the statutory range. Defendant was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were

consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶9 The court properly denied Dillon's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citation 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).

#### **I. Count 1**

¶10 A person commits aggravated criminal damage by intentionally or recklessly, and without permission, "[d]efacing, damaging or tampering with any utility or agricultural infrastructure or property, construction site or existing structure for the purpose of obtaining nonferrous metals." A.R.S. § 13-1604(A)(4). The property manager testified that the stolen pipes were copper ("nonferrous metal[]"). Dillon was driving the vehicle R.H. saw in the garage, and the missing pipe was next to his seat. The passenger was the person R.H. saw standing next to the yellow

car who said, “[L]et’s go,” when R.H.’s security vehicle entered the garage. Based on the evidence presented, reasonable jurors could find that Dillon or his accomplice took copper piping from the garage.

## **II. Count 2**

¶11 A person commits burglary in the third degree by “[e]ntering or remaining unlawfully in or on a nonresidential structure . . . with the intent to commit any theft or any felony therein.” A.R.S. § 13-1506(A)(1). The car Dillon was driving was in the garage, the location from which the copper pipe was stolen. Dillon told an officer “he didn’t work, that’s why he was doing this.” Reasonable jurors could conclude from the trial evidence that Dillon went to the garage, a non-residential structure, intending to steal copper piping, or that he aided or assisted an accomplice in its removal.

## **III. Count 3**

¶12 A person who possesses any “tool, instrument or other article adapted or commonly used for committing any form of burglary” is guilty of possession of burglary tools. A.R.S. § 13-1505(A)(1). Possession can be actual or constructive. *State v. Cox*, 214 Ariz. 518, 520, ¶¶ 9-10, 155 P.3d 357, 359 (App. 2007). “Constructive possession exists when the prohibited property ‘is found in a place under [the defendant’s] dominion [or] control and under circumstances from which it can

be reasonably inferred that the defendant had actual knowledge of the existence of the [property].'" *Id.* at ¶ 10.

¶13 A police officer testified that copper is a soft metal and "shear-type cutting tools or loppers," like those found next to Dillon in the vehicle, were often used to cut it. The officer further testified that he had found gloves like those seized from the vehicle at similar crime scenes. The cutting tool contained residue similar to the copper pipe. Reasonable jurors could infer that the cutting tool and gloves were used to steal the pipe. And from their location in the vehicle, as well as Dillon's possession of that vehicle, jurors could conclude that Dillon actually or constructively possessed the items.

#### CONCLUSION

¶14 We affirm Dillon's conviction and sentence. Counsel's obligations pertaining to Dillon's representation in this appeal have ended. Counsel need do nothing more than inform Dillon of the status of the appeal and his future options, unless counsel's review reveals 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). On the court's own motion, Dillon shall have 30 days from the date of this decision to proceed, if he desires,

with an *in propria persona* motion for reconsideration or petition for review.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
LAWRENCE F. WINTHROP, Presiding Judge

/s/  
JON W. THOMPSON, Judge