

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: 02/02/2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0047
)
 Appellee,) DEPARTMENT E
)
 v.) **MEMORANDUM DECISION**
)
 ROBERT MERCADO,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-143829-003 DT

The Honorable Pendleton Gaines, Judge

AFFIRMED AS MODIFIED

Terry Goddard, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James Haas, Maricopa County Public Defender Phoenix
by Cory Engle, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Robert Mercado (defendant) appeals from his conviction and the sentence imposed.

¶2 Defendant's appellate 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), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 Defendant was charged by indictment with count one: burglary in the third degree, a class four felony, in violation of Arizona Revised Statutes (A.R.S.) section 13-1506(A) (Supp. 2009) and count two: aggravated assault, a class three felony, in violation of A.R.S. § 13-1204(A)(2) (Supp. 2009). The state's motion to dismiss count two made the day of trial was granted by the trial court.

¶15 The following evidence was presented at trial. At approximately 3:00 a.m. on July 14, 2008, G.S. was awoken by noises outside his bedroom window. He opened his blinds and observed two people in his brother's car. One man was inside the car and the other was in the trunk. G.S. asked his wife to call 9-1-1 while he went to wake his brother. G.S. then went outside and said, "Hey, what is going on?" In response, the two men exited the vehicle and ran to a nearby parked Crown Victoria, with one of the men pointing a gun at G.S. as they fled. The men entered the Crown Victoria, with one man sitting in the passenger seat and the other man sitting behind the driver. The car then sped away.

¶16 When the police arrived, G.S. provided a description of the vehicle. Shortly thereafter, Officer E.D. of the Phoenix Police Department observed a vehicle matching the description. The officer then started following the vehicle. When the vehicle turned down a dead-end street, Officer E.D. called for back-up and approached the vehicle. There were three occupants of the vehicle. Officer E.D. testified that defendant was the driver.

¶17 The victims were brought to the location where the suspects were being detained and positively identified two of the suspects, but not defendant. The suspects were placed under arrest and searched. The officer found a pair of wire cutters

and a multi-function tool on defendant's person. Officer E.D. also testified that he found the victim's car stereo inside the Crown Victoria. He also found screwdrivers and a tool bag with assorted tools around the passenger compartment.

¶18 After a three-day trial, the jury found defendant guilty. After a trial on the priors, the trial court found the defendant had multiple prior historical felony convictions. The trial court sentenced defendant to an exceptionally mitigated six-year term of imprisonment on count one with 107 days of presentence incarceration.

¶19 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offense for which he was convicted.

¶10 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for

