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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: 12/31/2009
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IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
)
 Appellee,) 1 CA-CR 09-0095
)
 v.) DEPARTMENT B
)
) MEMORANDUM DECISION
) (Not for Publication -
 POLO VARGAS,) Rule 111, Rules of the
) Arizona Supreme Court)
 Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR 2007-009048-001 DT

The Honorable Cari A. Harrison, Judge *Pro Tempore*

AFFIRMED

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

James Haas, Maricopa County Public Defender
by Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant Phoenix

W E I S B E R G, Judge

¶1 Palo Vargas ("Defendant") appeals from the conviction and sentence imposed after a jury trial. His counsel has filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 744 (1967),

and *State v. Leon*, 104 Ariz. 297, 299, 451 P.2d 878, 880 (1969), advising this court that after a search of the entire record on appeal, he finds no arguable ground for reversal. This court granted Defendant an opportunity to file a supplemental brief, but he has not done so. Counsel now requests that we search the record for fundamental error. *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶2 We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033 (A) (2001). We review the facts in the light most favorable to sustaining the verdict. See *State v. Stroud*, 209 Ariz. at 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). Finding no reversible error, we affirm.

BACKGROUND

¶3 Defendant was indicted on sixteen counts of theft and one count of burglary in the second degree, a class 3 felony. The State alleged that these were multiple offenses not committed on the same occasion; that Defendant had historical prior felonies from 1988, 1991, and 1997; and that numerous aggravating circumstances existed. Defendant successfully moved to sever the burglary count from the theft counts. On October 2, 2008, he pled guilty to the theft charges, but went to trial on the burglary charge.

¶4 At trial, J.T., the next-door neighbor of the burglary victims, J. and C. H., testified that he lived in Sun City West on

August 13, 2007. J.T. was keeping a close eye on the H.'s house because it had been broken into four or five days before. At about 2:00 a.m., J.T. saw a car that had backed into the H.'s driveway. He called 911, and two officers arrived. J.T. went outside and saw Defendant sitting in front of the H.'s garage door. J.T. testified that the molding and the door leading into the house were "broken and hanging loose."

¶15 Deputy M.M. testified that she responded to a call at approximately 2:45 a.m. on August 13. After hearing noises in the H.'s garage, she called for back-up. Four deputies and a canine arrived. One of the deputies used a key from J.T. to unlock the garage side door and announced "come out, I'm going to release the dog." The dog ran to a car that had backed into the garage and barked and scratched at the driver's door. One deputy spotted a person in the car and ordered him to come out. M.M. identified Defendant as that person. Defendant told M.M. his name was Polo Vargas, that he did not live in the house, and that he did not have permission to be there. M.M. read him *Miranda* warnings.

¶16 Deputy S.F. testified that he arrived with Deputy M.M. and entered the H.'s house. He observed that the "living room was a mess" and cabinets had been opened and rummaged through. The kitchen cabinets also were open and food and other items were on the counter. The beds looked as if someone had been sleeping in them. Another deputy, D.B., who arrived as part of the backup, testified that he had encountered Defendant in the middle of the

night at another address in Sun City. Detective J.V. testified that he noticed that the battery was missing from the SUV in the H.'s garage and that a Toyota parked in the garage had the SUV's battery.

¶7 Detective D.G. testified that he processed the burglary scene and ordered photographs to be taken, evidence collected, and the Toyota towed to a substation for processing. The car was registered to Jesus Carbollo Castillo. D.G. also went to an address in Phoenix on August 13 and 14, 2007 to assist with a search warrant. The deed to that home was titled to Hipolito Erives Giron. During the search, D.G. identified a teapot and three pieces of mail: two were addressed to Hipolito Erives, and one to N. and M. Vargas. On August 22, D.G. returned to the house. A female answered the door and identified herself as M.L. Vargas Giron. A second female in the house identified herself as I. Erives Giron.

¶8 Detective G.W. testified that he recorded the items seized during the search, one of which was a computer. The monitor had a label with the names "J. and C." and an email address on it. He also impounded a bracelet with the name "H.," a necklace with a "C." pendant, other jewelry, a painting, and a coin collection. G.W. impounded a shoe box with more jewelry that contained a note "Love you, Hon, J.," an envelope with the name J.H., a checkbook with the names J. and C. H., and a large wall clock. Detective

R.F. testified that he impounded a toolbox and briefcase from the garage which contained numerous identification cards.

¶9 J.H. testified that he and his wife, C., live in Sun City West and that he was 77 years of age. While away in August 2007, they asked J.T. to watch their home. When J.H. and his wife, C., returned on August 14, he said the garage door was damaged and bent, the garage was in disarray, the deadbolt had been "busted out of the door" and the door casing had been pried open. The battery had been removed from his SUV in the garage. Several paintings from the house were stacked against the washer in the garage and he found a toolbox and garage door openers that were not his in the garage. J.H.'s computer, monitor, and speakers were gone, but he said that he had put a label with his email address on the monitor. A locked four-drawer file cabinet had been forced open and papers thrown on the floor. The beds in the bedrooms had been disturbed. J.H. testified that he did not know Defendant and had not given him permission to be in the home.

¶10 His wife, C. H., testified that she was 77 years of age. She said that the kitchen drawers had been emptied and food taken. A bedspread, sterling silver flatware, jewelry, clothing and other personal items were missing. She identified two paintings, a teapot, dishes, jewelry, and a coin collection that had been found in Defendant's home. She also testified that she had not given Defendant permission to take the items.

¶11 Detective J.V. testified that he interviewed Defendant, who said he had gotten lost and when he saw a house with the garage door open, he went into the house to ask for help. Defendant also told the detective that once inside the house, he realized that no one was at home and started taking things. Defendant told J.V. the car belonged to someone named, Hector. J.V. said that in a briefcase found in Defendant's house, there were numerous identification cards, including a driver's license with Defendant's photograph, in the name of Jesus Jose Carbollo Castillo. During his interview, Defendant said that he also used the name Hipolito Erives and other names to avoid getting traffic tickets. J.V. identified a warranty deed for Defendant's home that listed the owner as Hipolito Erives.

¶12 Defendant made a Rule 20 motion on the ground that there was no substantial evidence to warrant the conviction. He also moved for a mistrial, claiming that J.V.'s statement about the reason for Defendant's use of other names was "very prejudicial" character evidence. The court denied both motions.

¶13 The jury found Defendant guilty and found one aggravating factor, namely, that the victims were over the age of 65. The court imposed an aggravated seven-year term of imprisonment and credited Defendant with 383 days of presentence incarceration.

CONCLUSION

¶14 We have read and considered defense 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. So far as the record reveals, Defendant was represented by counsel at all stages of the proceedings, the sentence imposed was within statutory limits, and sufficient evidence existed for the jury to find that Defendant committed the offense charged.

¶15 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 of Defendant's future options, unless counsel's review reveals 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 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he desires, with a motion for reconsideration or petition for review *in propria persona*.

¶16 Accordingly, we affirm Defendant's conviction and sentence.

/S/_____
SHELDON H. WEISBERG, Judge

CONCURRING:

/S/_____
PATRICIA K. NORRIS, Presiding Judge

/S/_____
MARGARET H. DOWNIE, Judge