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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: 12-24-2009  
PHILIP G. URRY, CLERK  
BY: PJL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 ) 1 CA-CR 09-0117  
 )  
 Appellee, ) DEPARTMENT E  
 )  
 v. )  
 )  
 ) **MEMORANDUM DECISION**  
 ) (Not for Publication -  
 ) Rule 111, Rules of the  
 ) Arizona Supreme Court)  
 )  
 GEORGE TORRES, JR., )  
 )  
 )  
 Appellant. )  
 )

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-173219-001 DT

The Honorable John R. Ditsworth, Judge

**AFFIRMED**

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Terry Goddard, Arizona Attorney General  
By Kent E. Cattani, Chief Counsel  
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Attorneys for Appellee

Phoenix

James J. Haas, Maricopa County Public Defender  
By Christopher V. Johns, Deputy Public Defender  
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**K E S S L E R**, Judge

¶1 Defendant-Appellant George Torres, Jr. ("Torres") was  
tried and convicted of theft of means of transportation, a class

3 felony under Arizona Revised Statutes ("A.R.S.") section 13-1814(A)(1) (Supp. 2009). Counsel for Torres 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). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Torres was given the opportunity to, but did not file a pro per supplemental brief. Finding no fundamental error, we affirm Torres' conviction and sentence.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶12 We view the facts in the light most favorable to sustaining the conviction. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶13 In July 2006, Victim contacted the Phoenix Police Department to report his stolen Chevy 4x4 pickup truck. Victim's truck had unique identifying marks such as brown primer with yellow paint visible in some areas, a lift with large wide tires, and a custom grill.

¶14 Later in July 2006, Victim noticed a vehicle that resembled his stolen truck. When Victim looked inside the vehicle, he identified some of his items such as an old television. Victim also noticed that the vehicle had the same tires as his truck and contained brown primer with yellow paint showing through. The only difference between this vehicle and

Victim's stolen truck was that the grill had been removed. Additionally, the vehicle had a sign in its windshield that read, "for sale, \$700."

¶15 Victim suspected the vehicle was his stolen truck. Victim spoke to an individual living in a trailer where the vehicle was parked. Victim told the individual that he wanted to speak to the vehicle's seller. The individual indicated that seller was not there, but offered to arrange a meeting between Victim and seller.

¶16 Victim contacted police and was instructed to attempt to purchase the vehicle from the seller. Victim testified that he met the seller, Torres, to purchase his truck. Victim asked questions about the vehicle and requested to see its title report. Torres provided Victim with a title report that did not match the vehicle being sold. The police arrested Torres and took him to the station where Victim agreed to press charges. The police also impounded the vehicle. Victim's truck was released to him by police after he provided the valid title report.

¶17 During trial, Officer R. of the Phoenix Police Department testified that he met Victim at a bank to discuss purchasing his vehicle from the seller. Officer R. identified Torres as the seller. After Torres was taken into custody, Officer R. testified that Torres provided what appeared to be a

valid title report to the vehicle containing Torres' signature. The title, however, did match the vehicle for sale.

¶18 While Torres was in custody, Officer R. testified that he read Torres his *Miranda* rights. Torres then told Officer R. that he planned on selling the truck to Victim to earn extra cash after being hospitalized.

¶19 A jury convicted Torres of theft of means of transportation, a class 3 felony. A.R.S. § 13-1814(A)(1). The superior court imposed an aggravated term of six years. The court considered aggravating factors such as pecuniary gain and Torres' two non-dangerous prior felonies. The court gave Torres 105 days of presentence incarceration credit.

¶10 Torres timely filed his notice of appeal. See Ariz. R. Crim. P. 31.3. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, as well as A.R.S. §§ 12-120.21(A)(1), (3) (2003), 13-4031 (2001), and -4033(A)(1)-(3) (Supp. 2009).

#### **DISCUSSION**

¶11 This Court has reviewed the entire record for fundamental error. *State v. Barraza*, 209 Ariz. 441, 447, ¶ 21, 104 P.3d 172, 178 (App. 2005). Error is fundamental when it affects the foundation of the case, deprives the defendant of a right essential to his defense, or is an error of such magnitude that the defendant could not possibly have had a fair trial.

See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). Moreover, to prevail a defendant must establish that the error caused him prejudice. *Id.* at 567, ¶ 20, 115 P.3d at 607.

¶12 Under A.R.S. § 13-1814(A)(1), theft of means of transportation occurs when, "if, without lawful authority, the person knowingly . . . [c]ontrols another person's means of transportation with the intent to permanently deprive the person of the means of transportation." Thus, the State must show: (1) a person knowingly controlled another's means of transportation; (2) with the intent to permanently deprive that person of their means of transportation.

¶13 The State presented sufficient evidence showing Torres committed theft of means of transportation. First, Torres knowingly controlled Victim's truck. Under A.R.S. § 13-1801 (Supp. 2009), control means, "to act so as to exclude others from using their property except on the defendant's own terms." Torres kept Victim's truck at a location unknown to Victim, which excluded Victim from using his truck. Additionally, because Torres kept the truck at a location unknown to Victim, Torres excluded Victim from using the truck except on Torres' own terms.

¶14 Second, Torres intended to permanently deprive Victim of his means of transportation. A.R.S. § 13-1814(A)(1). Both

Victim and Officer R. testified that Torres attempted to sell the truck to Victim. Torres provided a title that did not match the truck to encourage the sale to Victim. Moreover, Torres told Officer R. that he intended to sell the truck because he needed money after his recent hospitalization.

#### CONCLUSION

¶15 After careful review of the record, we find no meritorious grounds for reversal of Torres' conviction or modification of the sentence imposed. The sentence was imposed within the sentencing limits, the court correctly awarded Torres 105 days of presentence incarceration credit, and Torres was represented at all stages of the proceedings. Additionally, Torres was present and his attorney spoke on his behalf at sentencing. Accordingly, we affirm Torres' conviction and sentence.

¶16 Upon the filing of this decision, counsel shall inform Torres of the status of the appeal and his 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 154, 156-57 (1984). On the court's own motion, Torres shall have thirty days from the date of this

