

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 07-29-2010
PHILIP G. URRY, CLERK
BY: DN

STATE OF ARIZONA,) 1 CA-CR 09-0124
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DAVID DANIEL OLDENBURG,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-135585-001 SE

The Honorable Steven K. Holding, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Cory Engle, Deputy Public Defender
Attorney for Appellant

W I N T H R O P, Judge

¶1 David Daniel Oldenburg ("Appellant") appeals his
conviction and sentence for resisting arrest. Appellant's

counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Accordingly, we review the entire record for reversible error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's conviction and sentence.

I. FACTS AND PROCEDURAL HISTORY

¶3 We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).¹

¹ We do observe that the facts of this case were hotly contested, and that Appellant's version of the events was substantially and dramatically different from that offered by the law enforcement witnesses. Accordingly, it was up to the trial court, sitting as the trier of fact, to resolve the credibility and disputed factual issues.

¶4 On September 4, 2007, the State charged Appellant by information with Count I, resisting arrest, a class six felony, and Count II, aggravated assault on a police officer, charged as a class six felony.² See A.R.S. §§ 13-2508 (2010), -1203 (2010), -1204 (2010).³ On September 15, 2008, on the State's motion, Count I was redesignated as a class one misdemeanor, and Count II was dismissed without prejudice.⁴

¶5 A bench trial was held. At trial, the State presented the following evidence: On June 3, 2007, at approximately 4:00 p.m., Officer Kristie Tow of the Phoenix Police Department arrived at Appellant's home after receiving a dispatch regarding a possible domestic violence incident and criminal damage to a woman's car at the residence. As she approached the residence, Officer Tow observed Appellant locking his front gate. The officer asked Appellant to speak with her. Appellant stated that he had not been the person who had called the police, but he volunteered to go inside and get the person who had done so. Appellant's fiancé came outside to speak with Officer Tow.

² The information was subsequently amended to redesignate Count II as a class five felony.

³ We cite the current version of the applicable statute because no revisions material to this decision have occurred.

⁴ Prior to trial, Appellant contended that the police entry into the home was illegal, and that all evidence concerning the subsequent events should be suppressed. Following an evidentiary hearing, Appellant's motion to suppress was denied.

¶16 While Appellant's fiancé came outside to speak to Officer Tow, Officer Jan Rollon arrived. The fiancé told the officers that Appellant was intoxicated, but she also stated that she no longer wanted the police at the home. There was no observable damage to her car. The officers explained that she and Appellant would need to be interviewed inside the residence in order for the officers to assess their safety. The fiancé led the officers into the house and informed them that Appellant had locked himself in the master bedroom of the residence.

¶17 The officers went to the bedroom door to speak with Appellant. They explained they wanted to hear Appellant's side of the story, but Appellant responded with expletives. After unsuccessful attempts at speaking with Appellant, Officer Rollon went to the kitchen and returned with a piece of wire with which he attempted to pick the lock on the door. While Officer Rollon was picking the lock on the door, Officer Tow called for more officers, and Officer Steven Jewell arrived.

¶18 Because Appellant had barricaded himself in the bedroom, Officer Jewel called for more assistance. Officer Rollon was able to unlock the door with the wire, and proceeded to open the door. As Officer Rollon attempted to walk through the open door, Appellant tried to slam the door shut, and the officer became wedged halfway in and halfway out of the door. Officer Rollon grabbed the collar of Appellant's shirt.

Appellant grabbed Officer Rollon's outer vest, and the two began struggling while tripping over a fallen mattress and moving toward the bathroom area. Officer Rollon struck Appellant with his left fist, trying to cause Appellant to loosen his grip on the officer's vest.

¶9 Appellant and Officer Rollon began delivering blows to each other's heads, and Officer Tow deployed her taser. The taser seemed to have little effect on Appellant, and the struggle continued. Appellant turned and started toward Officer Tow at the entrance to the bathroom. Officer Tow struck Appellant twice in the face. Officer Rollon got between the two, and the struggle between him and Appellant continued. Officer Tow deployed her taser on Appellant again. Appellant fell to the floor of the bathroom, between the bathtub and the toilet. As Appellant tried to get off the floor, Officer Rollon delivered strikes with his right foot to Appellant.

¶10 Appellant wrapped his legs around Officer Rollon's legs, and Officer Tow then kicked Appellant's legs. Officer Jewell tried pulling one of Appellant's legs away from Officer Rollon, but he was not successful. He then deployed his taser, which also did not seem to affect Appellant. By this time, Officer Rollon was able to free his left leg, and he stepped down on Appellant's face, while trying to maintain his balance

and pull his right foot free from Appellant's legs. Officers Brandon Wright and Craig Churella then arrived at the scene.

¶11 Officers Wright and Rollon commanded Appellant to sit up and allow himself to be handcuffed. Officer Rollon grabbed Appellant's right arm, while Officer Wright grabbed Appellant's left arm. Appellant pulled his arms away from both officers and laid back down on the bathroom floor, then wrapped his legs around Officer Rollon's legs again, causing the other to lose his balance. Officer Wright struck Appellant twice, and after the second strike, Appellant lost his grip on Officer Rollon's legs, allowing the officer to get his left leg free. Officer Wright hit Appellant with four closed-fist strikes to the face, and Appellant rolled himself onto the edge of the tub, with his back to the officers. Officer Rollon grabbed Appellant's left arm, while officers Jewell and Wright pulled Appellant's right arm out from under his chest. Officer Tow handcuffed Appellant. Officer Churella transported Appellant to the hospital for medical clearance,⁵ then to the Maricopa County Jail for booking.

¶12 The trial court found Appellant guilty as charged of Count I, resisting arrest, a class one misdemeanor. The court sentenced Appellant to six months' imprisonment in the Maricopa

⁵ Appellant sustained substantial injuries as a result of this encounter, including a broken jaw. Officer Rollon sustained a torn rotator cuff, and the other officers suffered relatively minor injuries.

County Jail and credited him for thirty-six days of presentence incarceration. Appellant was also ordered to pay restitution to the City of Phoenix in the amount of \$7,581.32, representing the cost of medical care and related expenses as a result of the officer's injuries. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶13 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶14 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to

proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶15 Appellant's conviction and sentence is affirmed.

/S/
LAWRENCE F. WINTHROP, Judge

CONCURRING:

/S/
PATRICIA A. OROZCO, Presiding Judge

/S/
DANIEL A. BARKER, Judge