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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
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0382
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SAMANTHA LATRICE MOORE,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-136643-001 DT

The Honorable J. Kenneth Mangum, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General By Kent E. Cattani, Chief Counsel Criminal Appeals/Capital Litigation Section Attorneys for Appellee	Phoenix
James J. Haas, Maricopa County Public Defender By Terry J. Reid, Deputy Public Defender Attorneys for Appellant	Phoenix
Samantha Latrice Moore, Appellant <i>In Propria Persona</i>	Phoenix

D O W N I E, Judge

¶1 Samantha Latrice Moore ("defendant") timely appeals her conviction for theft of means of transportation, a class 3

felony in violation of Arizona Revised Statutes ("A.R.S.") section 13-1814 (2010).¹ 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 and found no arguable question of law. Counsel requests that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given an opportunity to file a supplemental brief *in propria persona*, and she has done so.

FACTS AND PROCEDURAL HISTORY²

¶2 On May 5, 2008, defendant rented a moving truck from Budget Truck Rentals ("Budget") for one day, agreeing to return it by 8:00 a.m. the following morning. That same day, defendant called Budget to report a minor accident. Budget's manager told defendant that, based on the information reported at the accident, her contract was void, and the truck needed to be returned immediately. Defendant refused to return the truck. W.W. sent two employees to recover the vehicle, but they could not do so because defendant would not cooperate. Defendant failed to return the truck on May 6. Sometime thereafter,

¹ We cite the current version of relevant statutes because no revisions material to this decision have occurred.

² We view the evidence in the light most favorable to upholding the jury's verdict. *State v. Tamplin*, 195 Ariz. 246, 246, ¶ 2, 986 P.2d 914, 914 (App. 1999).

defendant placed a wadded-up \$20 bill and a handwritten note in Budget's night-drop box.³ The note read:

Enclosed is a payment of \$40.00 forty [sic] dollars deposited on 05/13/08 @ 11:00 pm for . . . continuous truck rental.

Nevertheless, I have spoken w/ [W.W.] Fri 5/9/08 @ [sic] Monday 5/12/08 and relayed several messages regarding any additional payment that may be due on behalf of rental. Any further question [sic] please feel free to contact me @ # provided in rental contract.

Mrs Moore

Truck should be returned this week (being Fri or Sat 5/16-17th. Pls. extend my rental services

[Defendant's signature]

W.W. testified he never spoke to defendant after May 5 and that Budget never gave her permission to keep the truck beyond May 6.

¶13 Defendant did not return the truck on May 16 or 17 as stated in her note. Meanwhile, Budget sent a demand letter to the address provided in defendant's contract; it was returned as undeliverable. W.W. also left defendant urgent phone messages, warning that the truck would be reported stolen unless returned immediately. Defendant did not respond to these calls.

¶14 Defendant never returned the truck. For weeks, she parked it outside her apartment complex, where it drew the suspicion of patrol officer B.T. On June 11, 2008, Officer B.T.

³ The drop box permits a customer to return a truck after business hours by depositing the contract and keys.

noticed the truck's door was open. As he drove by in his patrol car, he made eye contact with a woman later identified as defendant. In his rearview mirror, he saw her "quickly exit the driver's side door, close the door, and run into the apartment complex." Suspicious of the situation, he ran the license plate. It had not yet been reported stolen. The next day, Officer B.T. saw the vehicle and again ran its license plate. It had been reported as stolen earlier that day. Defendant returned to the truck and was arrested when she drove it to a nearby convenience store. W.W. identified it as the same truck defendant rented on May 5, but it was in "rough shape."

¶15 Defendant was charged with one count of theft of means of transportation. The State alleged historical priors and additional aggravators. The State requested a hearing pursuant to Arizona Rule of Evidence ("Rule") 609, to impeach defendant with her felony convictions should she testify at trial. The trial court ruled that defendant could be impeached with a sanitized version of one of the convictions.

¶16 At the conclusion of the State's case, the trial court denied defendant's motion for judgment of acquittal, pursuant to Arizona Rule of Criminal Procedure 20. Defendant took the stand and claimed W.W. never demanded the truck's return on May 5 and stated she thought she had permission to keep the truck because she spoke with C.P., a former Budget employee. She also claimed

to have called Budget's "1-800 number" to inform them that she still needed the vehicle for a few more days, and to have called "them" back periodically to report she "still had the vehicle, the vehicle was fine, and [she] was still utilizing the vehicle."

¶7 Defendant claimed she made two cash payments (totaling \$90) to C.P. at her home, but she had no receipts. She also testified that after her release on bond, she contracted with C.P. to pay Budget \$60 per month for the additional payments. Although she claimed to have sent a notarized letter to Budget memorializing the agreement, she did not produce a copy. Instead, she submitted receipts of money orders sent to Budget *after* criminal proceedings began. C.P. was not called to testify.

¶8 The jury returned a guilty verdict. The trial court found inadequate proof of prior convictions for enhanced sentencing. Defendant was sentenced to the presumptive term of 3.5 years in prison and given 180 days of pre-sentence incarceration credit. She was ordered to pay restitution and to serve six months of community supervision upon release from prison.

DISCUSSION

¶9 We have read and considered the briefs submitted by defendant and her counsel and have reviewed the entire record.

State v. Leon, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and 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.

¶10 Defendant argues there was insufficient evidence to support her conviction. Reversible error based on insufficiency of evidence occurs only if there is a complete absence of "substantial evidence" to support the conviction. *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996) (citation omitted). 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) (citations omitted).

¶11 Pursuant to A.R.S. § 13-1814(A)(2), the State was required to prove that defendant, without lawful authority, knowingly converted the rental truck for an unauthorized use or term. The State presented substantial evidence of guilt. W.W. testified the May 5 accident voided the rental contract, after

which defendant did not have lawful authority to use the truck. After W.W. informed defendant of this, she hung up and later refused to cooperate with Budget employees sent to recover the truck.

¶12 Even under the terms of the original rental agreement, defendant's use of the truck after May 6 was unauthorized. A reasonable trier of fact could find from the evidence presented that the rental period was not extended or renewed. W.W. testified defendant could not extend the rental period by placing a note and/or payment in Budget's drop box. Nor was it possible to do so by making payments past the due date. Rather, defendant was required to return to Budget and sign a new contract, which she never did.⁴

¶13 The jury could also conclude that defendant knowingly converted the truck until June 12, 2008, despite being told to return it on May 5 and later phone messages telling her to do so "as soon as possible." Although defendant challenges the truthfulness of the State's witnesses, a reasonable jury could have found the State's evidence to be credible. See *State v. Thomas*, 104 Ariz. 408, 411, 454 P.2d 153, 156 (1969) (holding it is the jury, not the appellate court, that weighs the evidence and chooses between contradictory versions) (citations omitted).

⁴ W.W. testified that, upon recovery of the vehicle, "[t]here was still property in the back," and "[i]t looked like somebody had been living in it."

¶14 In her supplemental brief, defendant does not clearly articulate the legal issues presented for our review or cite relevant legal authority. A party must present significant arguments, set forth his or her position on the issues raised, and include citations to relevant authorities, statutes, and portions of the record. See ARCAP 13(a)(6), (b)(1); see also *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999) (holding a *pro per* litigant to the same standard as an attorney) (citation omitted). The failure to present an argument in this manner usually constitutes abandonment and waiver of that issue. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) (citation omitted); see also *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (holding appellate courts "will not consider argument posited without authority.") (citation omitted).

¶15 Defendant makes several conclusory claims regarding the authenticity of transcripts, the accuracy of testimony, the testimonial capacity of W.W., the State's decision not to call C.P. as a witness, the lack of impeachment during the Rule 609 hearing (which was not required), and Budget's failure to appear at the restitution hearing. Defendant also devotes a substantial portion of her brief to challenging the sufficiency of the evidence and arguing why her view of the evidence was more credible than the State's. As we have previously

discussed, the State presented sufficient evidence of guilt. We have reviewed defendant's other allegations, even though they were inadequately developed and supported, and we find them to be without legal or factual support.

CONCLUSION

¶16 We affirm defendant's conviction and sentence. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than inform defendant of the status of the appeal and her 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, defendant shall have thirty days from the date of this decision to proceed, if she so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge