DIVISION ONE
FILED: 05-04-2010
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IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. JODY COLLIN WHITE, Appellant.	)	1 CA-CR 09-0445 DEPARTMENT E MEMORANDUM DECISION (Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court of Yavapai County

Cause No. CR 82008-0149

The Honorable Warren R. Darrow, Judge

AFFIRMED

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

DeRienzo & Williams, PLLC
by Craig Williams
Attorneys for Appellant — Prescott Valley

W E I S B E R G, Judge

¶1 Jody Collin White ("Defendant") appeals from his convictions and sentences 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 none was filed. 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 (2010), and 13-4033 (A) (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶3 We review the facts in the light most favorable to sustaining the verdicts. *See State v. Stroud,* 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). Defendant was indicted for unlawful flight from a law enforcement vehicle, a class 5 felony; driving while under the influence of alcohol and being impaired to the slighted degree, a class 1 misdemeanor; and having a blood alcohol concentration of .08 or more within two hours of driving or being in actual physical control of a vehicle, a class 1 misdemeanor.

¶4 A jury trial took place on March 18, 19, and 20, 2009. Deputy J. Sutton of the Yavapai County Sheriff's Office, testified that on February 23, 2008, he was "in complete uniform" and driving a police vehicle that was "fully marked with decals on both sides and the rear." His vehicle also had "LED lights on top, strobe lights in the head lights and the headlights."

¶5 The deputy had made a traffic stop and there were two other marked vehicles that had pulled off the road so that traffic could pass. The overhead lights on all police vehicles were on. When contact with the stopped vehicle was nearly completed, Deputy Sutton heard tires skidding, turned, and saw a jeep coming toward the officers. The jeep stopped, made a U-turn, and drove away.

¶6 The deputy thought that the driver "was avoiding me, avoiding officers." He got into his vehicle with his overhead lights still on, made a U-turn, and pursued the jeep. He first saw the jeep parked on a side street with its lights off. When the deputy turned around, the jeep was no longer parked. He followed the jeep and activated his siren, but the driver of the jeep did not stop. The deputy continued to follow the jeep onto a dirt path, but the driver still gave no indication he was going to stop. Finally, after driving out into the desert, the jeep came to rest in a wash.

¶7 The deputy stopped, exited his vehicle, drew his weapon, and approached the jeep. After he escorted the driver, later identified as Defendant, to his patrol vehicle, the deputy noticed "an odor of intoxicant, bloodshot eyes." The deputy performed a horizontal gaze nystagmus test and noted four cues of impairment.

¶8 The deputy took Defendant into custody. At the jail, the deputy read Defendant the implied consent form and Defendant consented to a blood draw and a breath test. The deputy also read Defendant his *Miranda* warnings, and Defendant agreed to be questioned. Defendant told the deputy that he had consumed at least two whiskey and coke drinks that evening. The deputy gave Defendant an intoxylizer test and reported the results as .102 and .101, both in excess of the legal limit of .08.[1]

¶9 A licensed practical nurse testified that she drew Defendant's blood at 1:27 a.m. on February 24, 2008. A criminalist testified that duplicate testing showed a blood alcohol concentration ("BAC") of .1234 and .1199 and that the blood had been drawn within two hours of when police stopped Defendant.

[1]Deputy D. Raiss testified that he maintained the Sheriff's Department Intoxylizer 8000 breath testing machine and had performed a quality assurance test of the machine on February 6, 2008. The machine was working properly on that date.

¶10 A.D., Defendant's girlfriend, testified that she was with Defendant when the jeep got stuck in the wash and that soon after, she noticed lights behind them and a man's voice telling them to get out of the jeep. She testified she did not remember hearing a siren. Defendant testified that when he saw the police cars and people outside the vehicles, he "didn't want to get in the middle of the situation," so he made a U-turn and went back toward home. He denied that he ever pulled over and turned off his lights. He stated that when the jeep got stuck, he tried to rock it out of the ditch and said that was the first time he saw lights coming behind him. Defendant also testified that he did not hear a siren.

¶11 The jury found Defendant guilty as charged. The court suspended Defendant's sentences, placed him on two years standard probation, and ordered 10 days in jail but suspended all but 24 hours of that upon completion of drug and alcohol screening. The court ordered a fine of $250, a surcharge of $210, a probation surcharge of $10, and various assessments.

CONCLUSION

¶12 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. So far as the record reveals, Defendant

was represented by counsel at all stages of the proceedings, sufficient evidence existed for the jury to find that Defendant had committed the offenses, and the disposition imposed was authorized by law.

¶13 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 his 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). On the court's own motion, 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.*

¶14 Accordingly, we affirm Defendant’s convictions and sentences.

/s/_____
SHELDON H. WEISBERG,
Presiding Judge

CONCURRING:

/s/_____
PHILIP HALL, Judge

/s/_____
JOHN C. GEMMILL, Judge