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DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0019
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DONALD CHARLES SMITH,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-136858-001 DT

The Honorable Michael W. Kemp, Judge

AFFIRMED

Terry Goddard, Arizona 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 Stephen R. Collins, Deputy Public Defender
Attorney for Appellant

D O W N I E, Judge

¶1 Donald Smith ("defendant") appeals his conviction for disorderly conduct, a class 6 felony in violation of Arizona Revised Statutes ("A.R.S.") section 13-2904 (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 advised that he has thoroughly searched the record and found no arguable question of law and 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 the opportunity to file a supplemental brief *in propria persona*, but he has not done so. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶2 On June 2, 2009, defendant went to an Auto Zone store with an old car battery. He set it down in the back of the store, where he took a new battery and left without paying. The store manager, R.B., went outside, where defendant was connecting the new battery to his car. He asked defendant

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

whether he had paid for the battery. Defendant replied he had not and offered to leave his identification, stating, "I'm sorry, dude. I'll go get the money and I'll be back. . . . I just need a loaner. I'll be back." R.B. told him he could not do that and that he would need to pay.

¶13 A verbal altercation ensued. R.B. took the new battery back into the store. Defendant followed him and was asked to leave. Defendant cursed and said, "I can do whatever the hell I want." Defendant retrieved his old battery and called R.B. "nothing but a bitch" as he left the store. Defendant was reconnecting his old battery to his car when R.B. went outside and demanded he leave the parking lot. From a few feet away, defendant "snapped" open a knife, which he pointed at R.B., threatening, "Back off me, bitch." R.B. called the police. Responding officers found defendant with a knife in his pocket.

¶14 Defendant was charged with one count of aggravated assault, a class 3 dangerous felony. The State alleged historical priors, that the offense was committed while on probation, that it was a dangerous felony, and additional aggravators.

¶15 At the conclusion of the State's case, defendant moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20, which was denied. Defendant testified

and admitted a prior felony conviction and being on probation at the time of this offense. He claimed he took out the knife to open the trunk because the trunk-release button was inoperable due to the dead battery. He denied pointing the knife at R.B. or threatening him with it.

¶16 The jury was instructed on aggravated assault and the lesser-included offenses of assault and disorderly conduct. It returned a guilty verdict as to disorderly conduct and found it to be a dangerous offense. Because a weapon was involved, and defendant had admitted a prior felony and being on probation, the court sentenced him to an aggravated term of three years' imprisonment, with 218 days of pre-sentence incarceration credit. See Ariz. Rev. Stat. § 13-703(F), (K) (2010).

DISCUSSION

¶17 We have considered the brief submitted by defense counsel and reviewed the entire record. 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. There were no irregularities in the deliberation process.

¶18 The trial court properly denied defendant's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. 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). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶9 The State presented substantial evidence of guilt, including testimony from R.B., a store clerk, and the arresting officers. Defendant admitted taking the battery without paying for it and going back into the store and saying "colorful things" to R.B. When R.B. followed him outside, defendant admitted he "snapped" open a knife and told R.B. to "back off" from three to four feet away.

CONCLUSION

¶10 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 his 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,

