DIVISION ONE
FILED: 04/10/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 10-0528
	)	
Appellee,	)	DEPARTMENT B
	)	
v.	)	
	)	**MEMORANDUM DECISION**
JERME REED NEWMAN,	)	(Not for Publication –
	)	Rule 111, Rules of the
Appellant.	)	Arizona Supreme Court)
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-163018-001

The Honorable Lisa D. Flores, Judge

AFFIRMED

Thomas C. Horne, 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 Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

K E S S L E R, Judge

¶1 Jerme Reed Newman ("Appellant") filed this appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following his

conviction of burglary in the second degree, a class 3 felony under Arizona Revised Statutes ("A.R.S.") section 13-1507 (2010).[1] Finding no arguable issues to raise, Appellant's counsel requested that this Court search the record for fundamental error. Appellant was given the opportunity to, but did not submit a supplemental brief.

¶2 After reviewing the entire record, we conclude that the evidence is sufficient to support the verdict and there is no reversible error. Therefore, we affirm Appellant's conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶3 Members of the Phoenix Police Department North Side Street Crimes Unit observed a gold Buick containing Appellant, Jante Drake ("Drake") and Autumn Hilleren ("Hilleren"), driving slowly through a residential neighborhood. After driving for approximately thirty minutes, the vehicle stopped in front of the victim's house. Drake was then seen jumping over the fence and entering the victim's house from the backyard. A few minutes later, Drake returned to the car, and then went back into the victim's house. During that time, while Drake was in the house, the surveillance team observed Appellant walking along an adjacent street to the victim's house, on its north

[1] We cite the current version of the applicable statute when no revisions material to this decision have since occurred.

side. Towards the end of the thirty-minute period, Appellant returned to the vehicle, and sat in the front passenger seat. Drake eventually returned to the vehicle carrying a white bag and Hilleren drove the vehicle to a local convenience store.

¶4 After following Appellant to the convenience store in unmarked cars, the team requested a marked car to approach the gold Buick. Upon seeing the marked police car, Appellant began to flee but ran straight into two unmarked police cars. In the course of the investigation, the police found several items in the backseat of the gold Buick. These items matched the items listed as missing by the victim.

¶5 A jury convicted Appellant of burglary in the second degree. At sentencing, Appellant stipulated to two prior convictions and to the fact that he was arrested for this offense while on probation. The court sentenced Appellant to a presumptive term of 11.25 years, to be served consecutively after completing his sentence for the probation violation.

STANDARD OF REVIEW

¶6 In *Anders* appeals, this Court must review the entire record for fundamental error. *See State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly

have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quoting *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984)). We will not reverse unless the defendant can show the fundamental error caused prejudice. *Id.* at ¶ 20. On review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against the defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

DISCUSSION

¶7 This Court has reviewed the entire record for fundamental error. After careful review of the record, we find no meritorious grounds for reversal of Appellant's conviction or modification of the sentence imposed. The record reflects Appellant had a fair trial, and was present and represented by counsel at all critical stages of trial. Appellant was given the opportunity to speak at sentencing, and the trial was conducted in accordance with the Arizona Rules of Criminal Procedure. The evidence is sufficient to sustain the verdict and the trial court imposed a lawfully authorized sentence for Appellant's offense.

¶8 Substantial evidence has been described as "more than a mere scintilla and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d

457, 468 (1997) (internal quotation marks 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) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶9 For the jury to find Appellant guilty of burglary in the second degree, it had to find Appellant or an accomplice: (1) entered or remained unlawfully; (2) in or on a residential structure; (3) with the intent to commit any theft or felony therein. A.R.S. § 13-1507; *see also* A.R.S. § 13-303 (2010) ("A person is criminally accountable for the conduct of another if . . . [t]he person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.")

¶10 The State presented substantial evidence to support the jury's verdict. Drake testified that she did in fact burglarize the home in question on that day. The police detectives testified that it is common to have a "lookout" or someone to walk around and keep watch while an accomplice commits the burglary. They also testified that Appellant was walking around while Drake committed the burglary. The jury could imply, from this testimony that Appellant was acting as a "lookout," while Drake committed the burglary. Their testimony

was supplemented by a next-door neighbor who confirmed the acts of the Appellant that day. Drake's admission, the testimony of the police detectives as well as the next-door neighbor are sufficient to support Appellant's conviction for burglary under the theory of accomplice liability.

¶11 Accomplice liability is imposed on those who aid another in the commission of an offense. *See* A.R.S. §§ 13-301 to -304 (2010). This aid can manifest itself in several different ways. For example, "[o]ne who acts as a lookout may aid and abet." *State v. Sears*, 22 Ariz. App. 23, 23-24, 522 P.2d 784, 784-85 (1974); *see also State v. Bearden*, 99 Ariz. 1, 3, 405 P.2d 885, 886 (1965) ("Aiding and abetting contemplates some positive act in aid of the commission of the offense; an active force physical or moral joined with that of the perpetrator in producing it."). Appellant's act of walking around the victim's house while Drake was burglarizing it illustrates participation in the burglary as an accomplice. The record contains sufficient evidence to support Appellant's conviction for burglary in the second degree under an accomplice liability theory.

CONCLUSION

¶12 For the foregoing reasons, we affirm Appellant's conviction and sentence. Upon the filing of this decision, counsel shall inform Appellant of the status of his appeal and his future appellate 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). Upon the Court's own motion, Appellant shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
MARGARET H. DOWNIE, Presiding Judge

/s/
PETER B. SWANN, Judge