

NOTE: 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. 31.34



DIVISION ONE  
FILED: 01/24/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0373  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) MEMORANDUM DECISION  
)  
VINCENT ANTHONY FLORES, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-152552

The Honorable Kristin Hoffman, Judge

**AFFIRMED AS CORRECTED**

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Attorneys for Appellant

Vincent Anthony Flores Tucson  
Appellant

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**T I M M E R**, Presiding Judge

¶1 Vincent Anthony Flores appeals his convictions and resulting sentences after a jury found him guilty of two counts of aggravated assault, one count of resisting arrest, and one count of possession of dangerous drugs. Flores's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after a search of the entire record on appeal, he found no arguable question of law that is not frivolous. This court granted Flores an opportunity to file a supplemental brief in propria persona, and he has done so.<sup>1</sup> For the reasons that follow, we affirm.

#### **BACKGROUND**<sup>2</sup>

¶2 At 12:30 a.m. on September 28, 2010, Phoenix Police Officers Joshua Roper and Joshua Mesquita were on patrol in a marked police vehicle. While the officers were driving west on Chambers Street near 39th Avenue, Flores - who was riding a bicycle without lights or reflectors - rode directly in front of the officers' vehicle. Roper had to slam on the brakes to avoid

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<sup>1</sup> We grant Flores's request to accept his supplemental brief, which he filed belatedly.

<sup>2</sup> We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Flores. *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

hitting him. Roper and Mesquita turned on the vehicle's lights and chirped the siren, intending to get Flores's attention and warn him about putting a light on his bicycle. Flores made a derogatory gesture and then tried to flee; Roper and Mesquita followed him. Flores got off his bike and ran into a residential neighborhood, and Roper and Mesquita pursued him. After losing sight of Flores for a minute or two, a homeowner signaled to the officers that Flores was hiding in his carport.

¶13 The officers approached Flores with the intent to arrest him. Though Flores initially complied with Roper's order to put his hands up against a wall, Flores suddenly brought his left hand to his waist as Roper tried to handcuff him. Fearing he was reaching for a weapon, Roper bear-hugged him from behind to pin his arms. Roper and Flores fell to the ground, at which point Roper released his grip in order to brace his fall. A fight on the ground ensued, and Flores successfully took out and apparently opened a knife and pointed it at Roper. Roper was able to push Flores back to the ground with the knife under him while Mesquita tried to subdue him with repeated strikes. Roper then grabbed the knife and tossed it aside while another officer arrived on the scene and helped subdue Flores. No one suffered serious injury.

¶14 The officers then arrested Flores. Officer Marco Vasquez discovered a small bag of methamphetamine in useable

condition in Flores's wallet. The State subsequently charged Flores with two counts of aggravated assault (counts one and two), class two dangerous felonies, one count of resisting arrest (count three), a class six felony, and one count of possession or use of dangerous drugs (count four), a class four felony.

¶15 A jury found Flores guilty on all counts and found that the aggravated assault offenses were dangerous offenses. During the aggravation phase, the jury found that the victims of the aggravated assaults suffered emotional harm. The trial court sentenced Flores to a slightly aggravated term of 20 years' imprisonment on counts one and two, the presumptive term of 3.5 years on count three, and the presumptive term of 10 years on count four, all sentences to run concurrently with 223 days of presentence incarceration credit. This timely appeal followed.

## **DISCUSSION**

### **I. Probable cause for arrest**

¶16 Flores argues Roper and Mesquita lacked probable cause to arrest him, demonstrated by the fact that no bicycle was introduced in evidence at trial. We disagree. The law does not require the State to introduce a defendant's vehicle to prove probable cause for stopping that person for a traffic violation. The officers had sufficient reason to stop Flores when they

spotted him riding his bicycle at night without a light in violation of A.R.S. § 28-817(A) (2004). See *Whren v. United States*, 517 U.S. 806, 810 (1996) (“[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”). The officers subsequently attained ample reason to arrest Flores after he fled, resisted arrested, and brandished a deadly weapon in a fight against them.

## II. Witness credibility

¶7 Flores also challenges the credibility of the police officers who testified at trial. He implicitly asserts Roper and Mesquita lied by testifying Flores started the physical encounter. Flores maintains Roper slammed his head into a car hood four times without any previous provocation. He directs us to exhibit 4, an audio recording of the officers’ radio communication during the chase and altercation, and asserts several “bang” noises are of this unprovoked attack. We do not re-weigh the evidence on appeal, however; that is the function of the jury. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). We do not discern error.

¶8 Flores also contends Vasquez lied by testifying Flores had a wallet in his possession, which contained methamphetamine. To substantiate his argument, he provides this court a copy of his booking slip, which does not indicate he had a wallet in his

possession, and a police report, which notes he was cited for failing to provide identification. These documents are not part of the record, however, and they cannot be considered on appeal. See *State ex rel. Goddard v. W. Union Fin. Servs., Inc.*, 216 Ariz. 361, 365 n.1, ¶ 20, 166 P.3d 916, 920 n.1 (App. 2007) (“In our review we consider only the materials considered by the superior court.”). Any new evidence must be presented to the trial court in post-conviction relief proceedings. Moreover, as stated, we cannot evaluate the credibility of witnesses on appeal; that determination is left to the jury, which had the opportunity to view the witnesses’ demeanors and determine credibility. *Williams*, 209 Ariz. at 231, ¶ 6, 99 P.3d at 46. We do not discern error.

### **III. Sentencing minute entry**

¶19 In reviewing the record, we find a discrepancy between the trial court’s oral pronouncement of Flores’s sentences and the court’s minute entry for Flores’s sentencing hearing as well as the court’s order of confinement. Flores was orally sentenced to 3.5 years of imprisonment for count three, resisting arrest, and sentenced to 10 years for count four, possession of dangerous drugs. The minute entry and order of confinement, however, reflect that Flores was sentenced to 10 years’ imprisonment for count three and 3.75 years’ imprisonment

for count four.<sup>3</sup> In Arizona, oral pronouncements take precedence over written pronouncements. *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983). Therefore, we correct the minute entry and order of confinement to reflect sentences of 3.5 years' imprisonment for count three and 10 years' imprisonment for count four.

#### CONCLUSION

¶10 After the filing of this decision, counsel's obligations pertaining to Flores's representation in this appeal have ended. Counsel need do no more than inform Flores 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, 156-57 (1984). Flores shall have thirty days from the date of this decision to proceed, if he desires, with an in propria persona motion for reconsideration or petition for review.

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<sup>3</sup> The original sentencing minute entry stated that Flores was sentenced to 3.76 years for count four. The trial court subsequently changed this sentencing to 3.75 years, noting it was a clerical error.

¶11 For the foregoing reasons, we affirm Flores's convictions and sentences as corrected.

/s/  
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/  
Daniel A. Barker, Judge\*

/s/  
Patrick Irvine, Judge\*

\*Judge Daniel A. Barker and Judge Patrick Irvine were sitting members of this court when the matter was assigned to this panel of the court. Both judges retired effective December 31, 2011. In accordance with the authority granted by Article 4, Section 3 of the Arizona Constitution and pursuant to Arizona Revised Statutes section 12-145 (2003), the Chief Justice of the Arizona Supreme Court has designated Judges Barker and Irvine as judges pro tempore in the Court of Appeals, Division One, for the purpose of participating in the resolution of cases assigned to this panel during their terms of office.