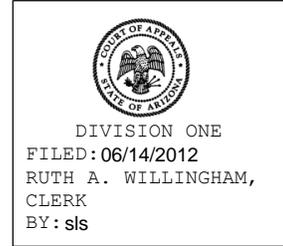


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,)
)
 Appellee,)
)
 v.)
)
 CLIFTON EARL WILLIAMS,)
)
 Appellant.)
)
)

1 CA-CR 11-0702
DEPARTMENT B
MEMORANDUM DECISION
(Not for Publication -
Rule 111, Rules of the
Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-102910-001

The Honorable Randall H. Warner, 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 Thomas K. Baird, Deputy Public Defender
Attorneys for Appellant

K E S S L E R, Judge

¶1 Defendant-Appellant Clifton Earl Williams ("Williams")
was tried and convicted of unlawful flight from a law

enforcement vehicle under Arizona Revised Statutes ("A.R.S.") section 28-622.01 (2004), and sentenced to three years imprisonment. Counsel for Williams filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Williams was given the opportunity to, but did not file, a *pro per* supplemental brief. Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. For the reasons that follow, we affirm Williams's conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 On January 17, 2011 at about 11:00 p.m., Officer D.M. ("Officer M.") was on patrol in his marked police car and noticed a white car, driven by Williams, going south on 51st Avenue without a working license plate light. Officer M. turned on his overhead lights to perform a traffic stop, but Williams continued driving and did not slow down or pull over. Williams was traveling at about thirty-five miles per hour. Officer M. then turned on his siren but Williams continued driving at the same speed, which prompted Officer M. to call for backup. Officer M. turned off his siren when he called for backup so that he could be heard on the radio, and he then turned the siren back on after talking on the radio.

¶3 Officer J.R. ("Officer R.") arrived as backup, and the

two officers continued to follow Williams into a residential area. Williams was driving at about twenty-five miles per hour through the residential area, using his turn signal, and driving safely. He then pulled into a garage at a house. At the time Williams pulled into the garage, Officer M. had been following Williams for about one mile since turning on his overhead police lights.

¶4 Officer M. pulled into the driveway behind Williams, followed by Officer R. Williams and Officer M. exited their vehicles at the same time. Officer M. drew his weapon because he could not see if Williams was holding anything. Williams yelled that he did not do anything wrong, and he ran into the house followed by Officer M. After unsuccessfully trying to shut the door on Officer M., Williams continued to run into the house. On the stairs inside the house, the officers caught up to Williams and placed him in handcuffs. The officers then took Williams outside to Officer M.'s car.

¶5 After the officers took Williams outside, Williams told the officers that the reason he did not stop was that he did not think he had done anything wrong. He also told them that he had bad experiences with police in the past.

¶6 Williams testified that he was a little confused when he first saw Officer M.'s lights because he was not speeding, so he continued to drive. Then when he turned and Officer M.

turned with him, Williams said that he realized the police were trying to pull him over. However, Williams testified that he did not stop because his house was just down the street. Williams admitted that when he got to his house, he knew that the officers were policemen and they were trying to pull him over. Williams also testified that he was driving on a suspended license, and he knew that if he were caught driving on a suspended license it could lead to a fine, ticket, or arrest.

¶7 After the State rested its case, Williams made a Rule 20 motion to dismiss the case, alleging that the State failed to present substantial evidence to warrant a conviction in the case. The court denied the motion, reasoning that there was clearly evidence that the officers had their lights and sirens on and circumstantial evidence that would allow the jury to infer intent.

¶8 A jury found Williams guilty of unlawful flight from a law enforcement vehicle. The court found two historical prior felony convictions and sentenced Williams to three years imprisonment. Williams received forty-three days of presentence incarceration credit.

DISCUSSION

I. Standard of Review

¶9 In an *Anders* appeal, this Court must review the entire record for fundamental error. *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) (citation omitted). To obtain reversal, the defendant must also show the fundamental error prejudiced him. *Id.* at 567, ¶ 20, 115 P.3d at 607. We view the facts in the light most favorable to sustaining the conviction. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

II. The Evidence Is Sufficient to Support the Verdict

¶10 The record reveals that there was substantial evidence to support the jury's guilty verdict.¹ To obtain conviction the State must show that the defendant: (1) was driving a motor vehicle; (2) that he willfully; (3) fled or attempted to elude; (4) a pursuing law enforcement vehicle; (5) which was being operated with both lights and sirens activated pursuant to A.R.S. § 28-624 (2004); and (6) the law enforcement vehicle was appropriately marked showing it to be an official law

¹ While there was no evidence that police had given Williams his Miranda warnings, *Miranda v. Arizona*, 384 U.S. 436 (1966), there is no evidence that the statements made to police which were introduced at trial were during an interrogation or questioning by the police. See *State v. Carter*, 145 Ariz. 101, 106, 700 P.2d 488, 493 (1985).

enforcement vehicle. A.R.S. § 28-622.01.

¶11 First, there was sufficient evidence to support the jury's finding that Williams was the driver of the motor vehicle that was involved in unlawful flight because he admitted to being the driver during his testimony.

¶12 Second, there is sufficient evidence that Williams willfully fled a pursuing law enforcement vehicle. Officer M.'s testimony established that he was pursuing Williams in his police car for about one mile, and Williams testified that he knew that he was being followed by a police car but instead wanted to continue driving home.

¶13 Third, there was sufficient evidence to support that the law enforcement vehicle was both using its lights and sirens and was appropriately marked. Officer M. stated that he was driving his fully marked patrol vehicle with "police" on the side and red and blue lights on top. In addition, Officer M. turned on his overhead lights when he first tried to stop Williams and turned on his siren when he realized that Williams was not slowing down. Williams testified that he could see the overhead lights. While Williams testified that he did not hear the siren, Officer M. explained that it was on during the entire pursuit, except when he called for backup over the radio.

CONCLUSION

¶14 After careful review of the record, we find no

