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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0749
)
Appellee,) DEPARTMENT S
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MARC JOSEPH ALGERI,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-103822-001

The Honorable William L. Brotherton, Jr., 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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Chief Judge

¶1 Marc Joseph Algeri ("Appellant") appeals his conviction and placement on probation for burglary in the third

degree. Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),¹ 13-4031, and 13-4033(A). Finding no reversible error, we affirm.

I. FACTS AND PROCEDURAL HISTORY²

¶3 On February 7, 2011, a grand jury issued an indictment, charging Appellant with burglary in the third degree, a class four felony in violation of A.R.S. § 13-1506.

¹ We cite the current Westlaw version of the applicable statutes because no revisions material to this decision have since occurred.

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

In pertinent part, the indictment alleged that Appellant, "with intent to commit a theft or a felony therein, entered or remained unlawfully in or on a non-residential structure of REVOLUTIONS PRO SHOP."

¶4 At trial, the following testimony was presented: Jim P. owned Revolutions Pro Shop ("the pro shop"), which was located inside a bowling alley. The pro shop shared a common wall with an adjacent storage room, and a common crawl space existed above the ceiling tiles. Only Jim P., his wife, a pro shop employee, the bowling alley manager, and the bowling alley mechanic ("Lonnie P.") had keys to the pro shop. The bowling alley was equipped with fifteen "motion-activated" surveillance cameras.

¶5 At approximately 7:30 p.m. on January 21, 2011, Jim P. closed and locked the pro shop, leaving approximately \$80 to \$100 in the cash register for use the next day. The bowling alley itself, however, remained open for business. Lonnie P. and another bowling alley employee, Michael O., worked in the bowling alley that evening.

¶6 At approximately 10:30 p.m., Lonnie P. entered the pro shop to retrieve his cell phone and charger, and as he left, he locked the door behind him. Later, at approximately midnight, he noticed that someone had broken off the pro shop's door handle. He informed Michael O. that the handle had been broken,

and he then tried to enter the pro shop to determine if anything was missing, but could not do so because the door was still locked and secure, and no other entrance to the shop existed. Lonnie P. called Jim P. to inform him of the situation.

¶17 A few minutes later, Appellant approached Lonnie P. and Michael O. They knew Appellant because he spent time with some of the employees both at and outside the bowling alley, and he occasionally bowled as a substitute in a bowling league. As they talked, Appellant followed Lonnie P. and Michael O. into the storage room, and although generally only employees were allowed inside, they did not object because they trusted him. Soon after, Lonnie P. and Michael O. went back to work, and they did not see Appellant for approximately forty to fifty minutes.

¶18 The next day, Jim P. arrived, and after forcibly entering the pro shop, he discovered the cash register was empty, despite the fact that no one could have entered the shop through the door. He also noticed the ceiling tiles were in disarray, and some appeared to have "crashed down." Also, the shelves beneath the tiles were broken.

¶19 Jim P. sought to determine how someone could have entered the pro shop, and upon further investigation, he discovered ceiling tile debris on the floor of the storage room next to the pro shop. He also noticed that ceiling tiles in the storage room near the pro shop had been moved, and boxes were

stacked beneath the open tiles. He and the bowling alley manager watched a video of the previous night recorded by the storage room camera, observed debris fall from the ceiling tiles, and saw a man, who they later identified as Appellant, walk into the frame and throw a mat over the debris. Jim P. called Lonnie P. and confirmed that Lonnie P. and Michael O. had been with Appellant in the storage room the previous evening. From the video, Jim P. determined that Appellant had been in the storage room twice: initially, with Lonnie P. and Michael O., and later, when he threw the mat over the ceiling debris.

¶10 The police were notified, and when officers arrived at the bowling alley that afternoon, they detained Appellant, who had returned earlier that day. One of the officers viewed the storage room's surveillance video, and another officer put Appellant in the back of the patrol car and advised him of his rights pursuant to *Miranda*.³ Appellant admitted being at the bowling alley the night before, but asserted he had nothing to do with the burglary. Instead, he stated that he had arrived at the bowling alley at approximately midnight, assisted in examining the pro shop's broken door handle, and left about an hour later. When confronted with the video, Appellant initially denied any involvement, and then stated he had walked into the

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

storage room with the two employees, left, and returned to look for one of them.

¶11 The State played the video for the jury at trial, and after watching the video, both Lonnie P. and Michael O. identified Appellant as the person with them in the storage room. They also identified Appellant as the person the video later showed alone in the storage room after they had left. The latter portion of the video also showed ceiling tile debris on the storage room floor that had not been present when the three men were together in the room earlier. Also, a ladder was present that had not previously been in the room, and boxes had been moved away from the wall adjacent to the pro shop.

¶12 Appellant testified that, on the night in question, he had been drinking and "probably shouldn't have been driving," but had agreed to pick up and drive home an inebriated friend who was at a nearby "strip club." On his way to the club, Appellant stopped to use the restroom at the bowling alley. While at the bowling alley, he became aware that someone had broken the pro shop's door handle, and he assisted some of the employees in an unsuccessful search for the missing portion of the handle. Appellant asserted he went to the storage room three times that evening: the first time with the employees, and the second and third times looking for them. He claimed the camera missed the second visit entirely and captured only the

last part of the third visit - when he used a carpet remnant to absorb some "shiny liquid" he discovered on the floor. He went to tell Michael O. about the liquid, but became distracted and left without telling anyone. Appellant denied stealing the money in the pro shop or climbing into the pro shop through the storage room ceiling.

¶13 The jury found Appellant guilty as charged. The trial court suspended sentencing and placed Appellant on supervised probation for two years. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶14 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentencing proceedings followed the statutory requirements. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶15 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform

Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶16 Appellant's conviction and placement on probation are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
ANN A. SCOTT TIMMER, Judge

_____/S/_____
MICHAEL J. BROWN, Judge