

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



DIVISION ONE
FILED: 11/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 12-0107
)
 Appellee,) DEPARTMENT C
)
 v.) MEMORANDUM DECISION
)
 SHANE DOUGLAS AVERY,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015CR2011-00303

The Honorable Derek C. Carlisle, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Jill L. Evans, Mohave County Appellate Defender Kingman
by Jill L. Evans
Attorneys for Appellant

H A L L, Judge

¶1 Shane Douglas Avery (defendant) appeals from his conviction and the sentence imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate 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 that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 On March 15, 2011, defendant was charged by indictment with one count of shoplifting as a third offense, a class four felony.

¶5 The following evidence was presented at trial. On the afternoon of March 15, 2011, Debbie Cayedito, a loss-prevention

officer at Walmart, observed a suspicious person¹ enter the store wearing "baggy shirt and jeans, [and] a cap." Ms. Cayedito followed defendant through the store to the automotive department, where she observed him "sticking something in his pants." Defendant then exited the store. Ms. Cayedito followed defendant out of the store and asked him to stop. Although Ms. Cayedito identified herself, defendant kept walking, and eventually began running, from Ms. Cayedito. Ms. Cayedito and another Walmart employee, Drew VanHoose, chased defendant and notified police that defendant was running through a wash.

¶16 Kingman Police Officer Scott Horton responded to a call regarding "a shoplifter [] running from Walmart." Officer Horton observed a person matching that description running across a dirt field behind the Walmart. Officer Horton activated his emergency lights and siren on his motorcycle, and continued following defendant until he stopped running. The officer explained to defendant that he was being "detained for an investigation," and handcuffed him. Officer Horton found an identification card on defendant, identifying him as Shane Douglas Avery. Ms. Cayedito and Mr. VanHoose arrived soon thereafter and identified defendant as the man they had been chasing.

¹ The person was subsequently identified as defendant.

¶17 Kingman Police Officer Gabriel Brown responded to the location where Officer Horton was holding defendant. Officer Brown conducted a "thorough search" of defendant, but he did not find any property from Walmart on his person.

¶18 After being read his *Miranda*² rights, defendant told Officer Brown that he had run away from Ms. Cayedito because "he had been in trouble for shoplifting before and he was scared that he was going to get in trouble again."

¶19 Officer Brown reviewed the surveillance footage and testified that he "observe[d] what appeared to be a pair of pants over [defendant's] shoulder." Officer Brown also stated that Ms. Cayedito showed him a pair of black jeans with store tags on them that she had found on a bush along the route where defendant had been running.

¶10 Defendant testified that although he had been walking through the Walmart with a pair of dark colored jeans over his shoulder, he eventually "set them down in one of the aisles." Defendant stated that he did not put anything in his pants, but rather adjusted his pants and belt "because [his] pants were loose and falling." Defendant further testified that when a Walmart employee said something to him, he did not speak with her and continued to walk away because he did not want to get in

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

trouble. Defendant admitted that he had prior convictions for shoplifting.

¶11 After a two-day trial, the jury found defendant guilty as charged. The state alleged, and the court found, that defendant had three prior shoplifting convictions within the past five years, which subjected him to a felony charge. The trial court sentenced defendant to a substantially mitigated sentence of one year in prison with twenty-six days of presentence incarceration credit.

¶12 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offense for which he was convicted.

¶13 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no 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.

See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant 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. Accordingly, defendant's conviction and sentence are affirmed.

_/s/ PHILIP HALL, Presiding Judge

CONCURRING:

_/s/ PETER B. SWANN, Judge

_/s/ SAMUEL A. THUMMA, Judge