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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: 2/12/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 12-0314  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
TONY FLORES, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-142416-001

The Honorable Christine E. Mulleneaux, Judge *Pro Tem*

**AFFIRMED**

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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 Charles R. Krull, Deputy Public Defender  
Attorneys for Appellant

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**D O W N I E**, Judge

¶1 Tony Flores timely appeals his convictions for criminal damage and disorderly conduct in violation of Arizona Revised Statutes ("A.R.S.") sections 13-1602 and -2904. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Despite being given the opportunity, Flores did not file a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the convictions. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Flores' girlfriend, Diane Jimenez, entered into a contract with Southwest Financial, using her 2000 Chevrolet Impala as collateral. Southwest Financial made a title loan to Jimenez, basing the loan amount on her equity in the vehicle. After Jimenez defaulted on the loan payments, the Impala was repossessed. Auto Recovery, a company that contracts with Southwest Financial, repossessed the Impala and stored it in a garage in the same building housing Southwest Financial.

¶3 Jimenez contacted Tammie Fischer at Southwest Financial to advise that Flores would be picking up her personal

property from the Impala. Fischer explained that Jimenez needed to authorize the release of property to Flores and that Flores would have to show identification before retrieving the property. Fischer gave Jimenez contact information for Auto Recovery, and later that day, Jimenez and Flores arrived to collect the personal property.

¶14 Two employees of Auto Recovery, Casey Hinderer and Westley Wheeler, were working in the garage area. Flores drove his own vehicle into the garage area where the Impala was stored. Flores was asked to remove his vehicle because it was against company policy; Flores used "some profanity," but complied. Hinderer then asked Flores for identification, which Flores refused to provide. Wheeler also asked Flores for identification before accessing the Impala, but Hinderer advised Wheeler to back off because he "could tell the situation was getting out of hand really quickly."

¶15 Flores began removing property from the Impala. Flores was told that he could take anything not bolted to the vehicle. Both employees heard "stuff breaking," "banging," and "cracking," as items were removed. Flores was seen "grabbing the dash, trying to pull the stereo out." Flores removed stereo equipment and speakers, paperwork, and other personal property. Flores was agitated and aggressive. At one point, he took a

T-ball bat from the car and held it in his hand while retrieving other items.

¶16 Flores' behavior prompted the employees to call Fischer, who immediately came to the garage area. Fischer saw Flores in the Impala, "yanking up on the center console" and "ripping the glove compartment." Fischer asked Flores "to please quit destroying the property." Flores turned to Fischer and said, "[W]hy don't you make yourself useful, bitch, and get me a screwdriver." Fischer called 9-1-1 because she "didn't know what [Flores] was capable of" and "fear[ed] for [her] safety." Flores then ripped the license plate off the Impala and left, stating: "You better hope this place is insured because I'm going to burn this place down." By the time police arrived, Flores was gone.

¶17 The Impala sustained damage to the glove box, the center console, and the rear deck lid. The stereo and speakers were missing. It was later discovered that the ignition was blocked, which a locksmith determined was due to superglue in the ignition.

¶18 Flores was charged with one count of criminal damage, a class five felony, and one count of disorderly conduct, a class one misdemeanor. A three-day bench trial ensued after the State moved to designate the criminal damage charge a class one misdemeanor. Hinderer, Wheeler, and Fischer each testified to

feeling threatened by Flores, and about the damage to the vehicle. A service technician testified about a repair estimate for the damaged Impala. A locksmith explained the damage to the ignition and the repairs he performed.

¶19 On the third day of trial, pursuant to Arizona Rules of Criminal Procedure ("Rule") 13.5(b), the State moved to amend the indictment to add Jimenez as a victim. This was the result of Fischer's testimony that Jimenez was still the legal owner of the Impala when the damage occurred. The superior court granted the motion.

¶10 At the conclusion of the State's case in chief, Flores moved for a judgment of acquittal pursuant to Rule 20. The motion was denied. Jimenez testified in Flores' defense, stating that he was acting "[n]ormal" that day and that she did not see him with a bat. Flores testified that the stereo he removed had not yet been installed, and he denied having a bat or threatening anyone.

¶11 The superior court found Flores guilty on both counts. Flores waived a presentence report and was sentenced to 18 months' unsupervised probation for each count, with the terms to run concurrently.

#### **DISCUSSION**

¶12 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. *Leon*, 104

Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within the statutory range. Defendant was present at all critical phases of the proceedings and was represented by counsel.

¶13 Viewing the evidence in the light most favorable to sustaining the verdict, and resolving all reasonable inferences against the defendant, *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984), the superior court had a factual and legal basis for its verdicts. The court obviously believed the testimony of the employees present during the encounter with Flores and not the testimony of Jimenez and Flores. See *State v. Gallagher*, 169 Ariz. 202, 203, 818 P.2d 187, 188 (App. 1991) (the credibility of witnesses is for the trier of fact and not the appellate court).

#### CONCLUSION

¶14 We affirm Flores' convictions and sentences. Counsel's obligations pertaining to Flores' representation in this appeal have ended. Counsel need do nothing 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,

