

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: 8/29/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0407
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MARCOS VELAZQUEZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-105346-001

The Honorable Paul J. McMurdie, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Michael J. Dew Phoenix
Attorney for Appellant

O R O Z C O, Judge

¶1 Marcos Velazquez (Defendant) appeals his convictions and sentences for theft of means of transportation, a class three felony, and armed robbery, a class two dangerous felony.

Defendant'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 appellate record, he found no arguable question of law that was not frivolous. See *State v. Clark*, 196 Ariz. 530, 537-38, ¶¶ 30-33, 2 P.3d 89, 96-97 (App. 1999). Defendant was given the opportunity to file a supplemental brief in propria persona, but he did not do so.

¶12 Our obligation in this appeal is to review "the entire record for reversible error." *Id.* at 537, ¶ 30, 2 P.3d at 96. Finding no reversible error, we affirm Defendant's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND

¶13 On January 30, 2011, J.V. was outside his trailer in northeast Phoenix drinking with friends (collectively, the Victims). J.V.'s sister, L.V., had lent her truck (the Truck) to J.V. and the Truck was parked near the Victims. The door of the Truck was open, and the keys were in the ignition because the Victims were using the Truck's stereo to listen to music.

¶14 Sometime close to midnight, Defendant and another man¹ (the Gunman) approached the Victims. Defendant was holding a

¹ After Defendant was arrested, Defendant told police that the other person was named "Jose," but did not provide the police with any other information besides a phone number, and the police were unable to determine the identity of the second

knife and the Gunman was waving a gun around. The weapons were displayed throughout the entire encounter with the Victims.

¶15 The Gunman ordered the Victims to lie down on the ground and surrender their money, wallets, and car keys. The Victims placed their possessions on the ground and the Gunman picked them up. At some point during the encounter, J.V.'s wife opened the door of the trailer and the Gunman pointed his gun at her and told her to go back inside or he would shoot her.

¶16 After taking the Victims' belongings, the Gunman jumped into the flatbed of the Truck as Defendant drove away. As Defendant drove the Truck away, the Gunman fired multiple shots into the air.

¶17 J.V.'s daughter called the police and reported the Truck stolen. The police located the Truck driving on the freeway and eventually pulled the Truck over. When the Truck was pulled over, Defendant was in the driver's seat, but there was no sign of the Gunman. The Gunman had exited the vehicle at some point before Defendant entered the freeway. The police searched Defendant and the Truck and found a knife in Defendant's possession that was capable of inflicting serious injury.

suspect. However, at trial, Defendant testified that he had lied to the police and the second person was actually his cousin's husband, Salvador.

¶18 Defendant was arrested and transported to police headquarters. Upon arrival, Defendant was cooperative, waived his *Miranda* rights, confessed his involvement in the crime, and wrote an apology letter to the Victims.

¶19 The State charged Defendant with one count of theft of means of transportation and one count of armed robbery.² The jury returned guilty verdicts on both counts. The court sentenced Defendant to three-and-a-half years incarceration for theft of means of transportation and seven years incarceration for armed robbery, to be served concurrently.

¶10 Defendant timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2010), and -4033.A.1 (2010).

DISCUSSION

¶11 When reviewing a claim of insufficient evidence, we view the evidence "in the light most favorable to sustaining the conviction." *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). We do not reweigh the evidence and will affirm if substantial evidence supports the jury's verdict. *Id.* "'Substantial evidence' is evidence that reasonable persons

² Defendant was indicted for two counts of armed robbery. However, prior to trial, the State moved to dismiss one of the armed robbery counts. The jury instructions and verdict forms accurately reflected the change.

could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

Theft of Means of Transportation

¶12 To convict Defendant of theft of means of transportation, the State was required to prove beyond a reasonable doubt that Defendant (1) without lawful authority; (2) knowingly controlled another person's means of transportation; (3) knowing or having reason to know that the property was stolen. See A.R.S. § 13-1814.A.5 (2010). "Knowingly" means "that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists." A.R.S. § 13-105.10(b) (Supp. 2012).³

¶13 Here, Defendant did not have permission to take the Truck. Defendant drove the Truck away from J.V.'s residence, and Defendant was in the driver's seat when the police pulled the Truck over. Defendant witnessed the Gunman wave around a gun and demand that they hand over their belongings, including the keys to the Truck. When the police pulled Defendant over, he asked one of the officers if the family was going to come and pick up the Truck. Based on this evidence, the jury could infer

³ We cite the current version of the applicable statutes when no revisions material to this decision have since occurred.

that Defendant was aware that he was driving a stolen vehicle without lawful authority.

¶14 We therefore find that substantial evidence supports the jury's verdict that Defendant was guilty of theft of means of transportation.

Armed Robbery

¶15 To convict Defendant of armed robbery, the State was required to prove beyond a reasonable doubt that (1) Defendant took the property of another person; (2) the taking was from another's person or immediate presence; (3) the taking was against the other person's will; (4) Defendant threatened to use force against any person with the intent to coerce surrender of the property or to prevent resistance to taking or keeping the property; and (5) Defendant or an accomplice, in the course of committing the robbery, was armed with a deadly weapon or simulated deadly weapon or used or threatened to use a deadly weapon, simulated deadly weapon or dangerous instrument. See A.R.S. §§ 13-1902 (2010), -1904.A (2010).

¶16 Here, Defendant took the Truck without permission from the immediate presence of the Victims. Defendant displayed a knife throughout the encounter, an action that the jury could interpret as a threat to use force if the Victims resisted. Indeed, the Victims testified that they felt threatened by the knife and were afraid to resist. One of the police officers

testified that the knife was capable of inflicting serious and potentially fatal harm.

¶17 We therefore find that substantial evidence supports the jury's verdict that Defendant was guilty of armed robbery.

Dangerous Offense

¶18 The State also had the burden of proving beyond a reasonable doubt that the armed robbery offense was a dangerous offense. An offense is a "dangerous offense" if it involved "the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument." A.R.S. § 13-105.13. Multiple witnesses testified that the Gunman fired shots as Defendant drove away. Additionally, Defendant displayed a knife throughout the encounter, and a police officer testified that the knife was capable of inflicting serious and potentially fatal harm. We therefore find that substantial evidence supports the jury's finding that the armed robbery was a dangerous offense.

CONCLUSION

¶19 We have carefully searched the entire appellate record for reversible error and have found none. See *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Moreover, substantial evidence supported the jury's guilty verdicts. Defendant was present and represented by

counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak, and the court imposed a legal sentence.

¶20 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. See *State v. Shattuck*, 140 Ariz. 582, 584, 684 P.2d 154, 156 (1984). Counsel need do nothing 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 *id.* at 585, 684 P.2d at 157. Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.

¶21 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

ANDREW W. GOULD, Presiding Judge

/S/

MARGARET H. DOWNIE, Judge