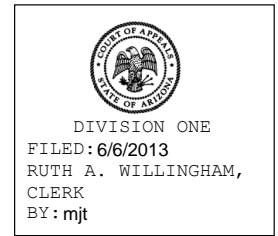


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) 1 CA-CR 12-0530  
Appellee, )  
 ) DEPARTMENT B  
v. )  
 )  
PAUL STERLING CUPID, ) **MEMORANDUM DECISION**  
 ) (Not for Publication -  
Appellant. ) Rule 111, Rules of the  
 ) Arizona Supreme Court)  
 )  
 )  
 )

Appeal from the Superior Court in Maricopa County

Case No. CR2012-100696-001

The Honorable Karen A. Potts, Judge

**AFFIRMED**

Thomas C. Horne, Arizona Attorney General Phoenix  
By Joseph T. Mariarz, Acting Chief Counsel  
Criminal Appeals Section  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender  
By Thomas K. Baird, Deputy Public Defender Phoenix  
Attorneys for Appellant

**K E S S L E R**, Judge

¶1 Appellant Paul Sterling Cupid was tried and convicted of criminal trespass in the first degree pursuant to Arizona Revised Statutes ("A.R.S.") section 13-1504(A)(1) (2010), a

class 1 misdemeanor and a domestic violence offense pursuant to A.R.S. § 13-3601(A)(1) (Supp. 2012).<sup>1</sup> He was sentenced to one year of supervised probation, its accompanying fines, and a domestic violence program. Counsel for Cupid 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). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Cupid was given the opportunity to file a *pro per* supplemental brief, but did not do so. For the reasons that follow, we affirm Cupid's conviction and sentence.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶12 On January 3, 2012, D.C. placed a 911 call to the Tempe Police Department. They arrived at D.C.'s Tempe apartment and found Cupid inside. He had broken down the door to gain entry. Whether this was the first time he had entered the apartment that evening is unclear, however he either broke down the door upon arrival, or after D.C. had already removed him from her apartment. D.C. and Cupid had been married for about four years on the night of the incident, but had lived separately for the past ten months. D.C. moved out of their shared residence in March 2011, and Cupid continued living

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

there. D.C. testified that from the date that she moved into her Tempe apartment to this incident, she had invited Cupid over about seven times. She also said that he did not keep any of his belongings at her apartment. On the evening of January 3, 2012, D.C. received several calls from Cupid. She testified that she only answered one of the calls and told Cupid that she was not home. D.C. testified she never let Cupid in her apartment on January 3, and that he forced entry after knocking several times.

¶13 Cupid testified that he made a plan with D.C. to visit her apartment that evening after work. D.C. allowed him to enter the apartment, but then forced him out a few minutes later because of a verbal argument. He tried to regain entry by knocking, but D.C. refused to let him in, so he broke the door down with his shoulder. He did not have a key to the apartment. Despite differing stories leading up to the forced entry, Cupid testified that he knew that D.C. did not want him there.

¶14 Cupid attempted to fix the broken door, which is when D.C. placed the 911 call. The recording of her telephone call captures her demanding Cupid to leave, and telling him that she was calling the police.

¶15 When the officers arrived at the Tempe residence, they both noted the broken door and the damage and debris in the entryway. Upon interviewing Cupid, the officers learned that he

lived at a different address, that the Tempe residence was D.C.'s apartment, and that Cupid did not have a key to the apartment. Cupid admitted to police that he broke the door down because D.C. would not let him in. The officers arrested Cupid for criminal trespass, and he was released the next day with conditions.

¶16 Cupid was indicted with the crime of criminal trespass in the first degree, a class 6 felony and a domestic violence offense. The State moved to amend the criminal trespass charge from a class 6 felony to a class 1 misdemeanor, and also to try Cupid without a jury.<sup>2</sup> The superior court granted the State's motion to amend.<sup>3</sup>

¶17 After a bench trial, the superior court found Cupid guilty of criminal trespass, a domestic violence offense. It sentenced Cupid to one year of supervised probation, a domestic violence program, and ordered him to pay the accompanying fines.

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<sup>2</sup> Although the record states that Cupid waived his right to trial by jury, this is irrelevant because as soon as the charge was changed to a class 1 misdemeanor, Cupid no longer had an automatic right to a jury trial. See *State v. Willis*, 218 Ariz. 8, 13, ¶ 18, 178 P.3d 480, 485 (App. 2008) (holding that defendant's misdemeanor trespass charge did not carry a long enough maximum incarceration sentence or additional severe statutory penalties to qualify for a jury trial).

<sup>3</sup> Although the State moved to amend the indictment pursuant to A.R.S. § 13-702(G) (2008), that statute no longer contained a provision allowing the court to reduce the charge to a class 1 misdemeanor. However, A.R.S. § 13-604(A) (2010) did permit such a reduction.

Cupid timely appealed.

¶8 We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and -4033(A)(1) (2010).

#### DISCUSSION

¶9 In an *Anders* appeal, this Court must review the entire record for fundamental error. Error is fundamental when it affects the foundation of the case, deprives the defendant of a right essential to his defense, or is an error of such magnitude that the defendant could not possibly have had a fair trial. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005); *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). In reviewing the sufficiency of evidence at trial, “[w]e construe the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant.” *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998). “Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction.” *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶10 There is evidence in the record to support Cupid’s conviction for criminal trespass. To obtain a conviction of

criminal trespass the State must prove that the defendant "[e]nter[ed] or remain[ed] unlawfully in or on a residential structure." A.R.S. § 13-1504(A)(1). Presence is unlawful if a person is "not licensed, authorized or otherwise privileged." A.R.S. § 13-1501(2) (Supp. 2012). The conviction of criminal trespass is also a domestic violence offense if the State establishes a specific past or present domestic relationship between the victim and the defendant. A.R.S. § 13-3601(A).

¶11 There is sufficient evidence to support that Cupid entered and remained unlawfully in D.C.'s Tempe apartment.<sup>4</sup> The evidence showed that D.C. is the only person who resides at the Tempe apartment, and she specifically did not want Cupid to enter or to remain in her apartment. Cupid's name was not on the lease, and he gave a different address to the police when they asked him where he lived. Cupid used force to gain entry into the apartment, as he was not welcome by D.C. and he did not have a key. D.C. explicitly demanded numerous times that Cupid leave, which he did not do. Cupid was aware that D.C. did not want him at her home, yet he refused to leave. Cupid's entering and remaining in the residential structure was not licensed, authorized, or otherwise privileged, thus his presence was

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<sup>4</sup> There is no question that D.C.'s apartment is a residential structure. See A.R.S. § 13-1501(11) (defining a residential structure as any structure adapted for human lodging and residence).

unlawful. See A.R.S. § 13-1501(2). The evidence in the record therefore supports a conviction of criminal trespass in the first degree.

¶12 The evidence also supports a finding that this criminal trespass qualifies as a domestic violence offense. D.C. and Cupid had been married for about four years on the night of the incident. They had previously resided together. This satisfies the requirement that their relationship be one of marriage (past or present) or of persons residing (or having resided) in the same household. See A.R.S. § 13-3601(A)(1). Thus, upon finding a conviction of criminal trespass, the superior court also correctly found this to be a domestic violence offense.

#### CONCLUSION

¶13 After careful review of the record, we find no meritorious grounds for reversal of Cupid's conviction, or modification of the sentence imposed. The evidence supports the verdict, the sentence imposed was within the sentencing limits, the proceedings were held in accordance with the Arizona Rules of Criminal Procedure and Cupid was present and represented at all stages of the proceedings below. Accordingly, we affirm Cupid's conviction and sentence.

¶14 Upon the filing of this decision, counsel shall inform Cupid of the status of the appeal and his options. Defense

counsel has no further obligations, unless, upon review, counsel finds 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). Cupid shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/S/  
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DONN KESSLER, Judge

CONCURRING:

/S/  
\_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

/S/  
\_\_\_\_\_  
SAMUEL A. THUMMA, Judge