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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: 04-08-2010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0427
)
) DEPARTMENT D
 Appellee,)
)
) **MEMORANDUM DECISION**
 v.)
) (Not for Publication -
 MARK ALAN BENNETT,) Rule 111, Rules of the
) Arizona Supreme Court)
 Appellant.)
)
)
)

Appeal from the Superior Court in Mohave County

Cause No. CR-2008-1256

The Honorable Steven F. Conn, Judge

CONVICTION AND SENTENCE AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Mohave County Appellate Defender Kingman
By Jill L. Evans
Attorney for Appellant

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969), following Mark Alan Bennett's conviction of one count of theft of a credit card. Bennett's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Bennett was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Bennett's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶2 On the morning of September 22, 2008, the victim noticed her wallet had been stolen with her credit card inside, and she went to the Mohave County Sheriff's Office to report it.¹ While waiting at the Sheriff's Office, the victim called her bank, and she discovered that the credit card had been used two times that morning, at 6:45 a.m. and 6:50 a.m. Both transactions occurred at a gasoline station. Later that day, she went to her bank and obtained the address of the gasoline station at which the card had been used.

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Bennett. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶13 Surveillance video at the gasoline station showed two vehicles pulling up to the pumps at approximately 6:41 a.m. One car was a maroon or red sedan, and the other one was a white truck with gray stripes. The sedan's driver got out and swiped a credit card to pay for gas. When that transaction was complete, he moved the car, and the truck pulled up to the spot. The passenger of the car handed the driver of the truck a credit card. The video showed the driver of the truck looking at the card, then swiping it before filling the truck with gas. According to the sales read-out and the video, there were two transactions, the first at 6:45 a.m. for \$56.46 and the second at 6:50 a.m. for \$59.45. The read-out also displayed the last four digits of the credit card as 7006, which were the last four digits of the victim's missing credit card. When a deputy went to Bennett's home a month later to question him, Bennett asked if he had come "in reference to the stolen credit card." Bennett gave the deputy conflicting accounts, at first denying seeing or using the card, then admitting that he saw a woman's name on the card and used it to pay for the gas.

¶14 The jury convicted Bennett of one count of theft of a credit card, and the superior court sentenced him to three years' probation, with 45 days in jail. Bennett 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 (2010).

DISCUSSION

¶15 The record reflects Bennett received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings.

¶16 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members with one alternate. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing and imposed a legal sentence on the crime of which Bennett was convicted.

CONCLUSION

¶17 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Bennett's representation in this

appeal have ended. Defense counsel need do no more than inform Bennett of the outcome of this appeal and his future options, 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). On the court's own motion, Bennett has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for reconsideration. Bennett has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/ _____
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/ _____
PATRICIA A. OROZCO, Presiding Judge

/s/ _____
JON W. THOMPSON, Judge