

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
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0444
)
 Appellee,) DEPARTMENT E
)
 v.) MEMORANDUM DECISION
)
 JOE INES REYES,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-164185-001 DT

The Honorable Glenn M. Davis, Judge

AFFIRMED

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

Maricopa County Public Defender's Office Phoenix
By Eleanor S. Terpstra, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Appellant Joe Ines Reyes appeals his convictions and sentences for one count of theft of means of transportation, a class three felony, and two counts of possession of burglary tools, class six felonies. Reyes's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. See *Smith v. Robbins*, 528 U.S. 259 (2000). Reyes was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 We are required to view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the verdicts. See *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001). On the morning of October 13, 2008, V.C. drove her 1997 Nissan Altima to the Mountain Park Health Center, where she was employed as a medical assistant. She parked in a lot in front of the building. At about noon, she left the building for lunch and realized her car was not where she had parked it. V.C. immediately called the police and reported that her vehicle had been stolen.

¶13 Phoenix Police Officers S.B. and R.B. were on patrol in an unmarked vehicle when they received the report of V.C.'s stolen vehicle. The officers immediately drove to 122 West Valencia; they had previously investigated a person living at that address for the theft of a different Nissan Altima, and the address is approximately one-half mile from the Mountain Park Health Center. When they arrived, they saw V.C.'s Nissan parked out in front of the home.

¶14 The officers parked about three houses down from the Valencia address. Fifteen minutes later, they saw Reyes and another man come out of the house. Reyes walked to the Nissan, opened the driver's side door, and began to move into the driver's seat. Officer R.B. drove the unmarked police vehicle towards the Nissan to block its path and prevent Reyes from driving away. When Reyes saw the police vehicle, which he recognized from a previous incident, he closed the Nissan's door and began walking back to the house.

¶15 Officers S.B. and R.B. took Reyes into custody, informed him of his *Miranda*¹ rights, and performed a search of his person. They found two sets of keys in his pants pockets. Officer R.B. testified one of the keys was a Nissan "replacement key" that had been modified, either with a grinder or sandpaper. He testified such keys are called "jiggle keys" and are "used to

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

defeat the locking mechanism of a vehicle." He was able to use the key to start the ignition of V.C.'s Nissan.

¶16 The paint near the door lock of the Nissan had been scraped. Officer R.B. testified it appeared the lock been pried open with a flat instrument, such as a flathead screwdriver, to gain access to the vehicle. During his questioning, Reyes directed Officer R.B. to some tools on a trash can near the home. Among these tools was a flathead screwdriver. Police officers also found several items of V.C.'s personal property that had been in her vehicle during a search of the home.

¶17 Reyes was charged with one count of theft of means of transportation, a class six felony, and two counts of possession of burglary tools, class six felonies. The first burglary tools count alleged Reyes possessed a "motor vehicle manipulation key with the intent to commit [a] theft," and the second count alleged he possessed "a screwdriver . . . or other article, adapted or commonly used for committing any form of burglary and intended to use . . . [it] in the commission of a burglary." After a three day trial, a jury found Reyes guilty as charged. The trial court suspended his sentences and placed him on supervised probation for a term of three years. Reyes timely appeals, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

DISCUSSION

¶18 Several statements Reyes made to the police were offered into evidence. We have found no evidence that a voluntariness hearing was held. Defense counsel, however, did not object to the introduction of any of Reyes's prior statements. And no claim or suggestion was presented, either by the evidence or by counsel, that Reyes's prior statements were involuntary. We therefore determine that no voluntariness hearing was required. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

¶19 Having considered defense counsel's brief and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports Reyes's convictions, and the trial court suspended the imposition of Reyes's sentences and placed him on probation for a lawful term. As far as the record reveals, Reyes was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶10 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Reyes of the disposition of the appeal and his future options, unless

counsel's further review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Reyes has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶11 The convictions and sentences are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge