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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: 05/17/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
)
 Appellee,) 1 CA-CR 10-0268
)
 v.) DEPARTMENT B
)
) MEMORANDUM DECISION
 ADRIAN ADAM AVENDANO,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
 _____)

Appeal from the Superior Court of Maricopa County

Cause No. CR 2004-023870-001 DT

The Honorable F. Pendleton Gaines, III, Judge
The Honorable Andrew G. Klein, Judge

AFFIRMED

Thomas C. Horne, Attorney General
by Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee Phoenix

James J. Haas, Maricopa County Public Defender
by Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant Phoenix

W E I S B E R G, Judge

¶1 Adrian Adam Avendano ("Defendant") appeals his convictions for shoplifting and unlawful flight from a law enforcement vehicle after a jury trial and the sentences imposed.

Defendant's counsel has filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 744 (1967), and *State v. Leon*, 104 Ariz. 297, 299, 451 P.2d 878, 880 (1969), advising this court that after a search of the entire record on appeal, he finds no arguable ground for reversal. This court granted Defendant an opportunity to file a supplemental brief, but nothing was filed. Counsel now requests that we search the record for fundamental error. *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Finding no reversible error, we affirm.

¶12 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).

FACTS AND PROCEDURAL BACKGROUND

¶13 We view the facts in the light most favorable to sustaining the verdict. See *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). Defendant was charged with shoplifting, a class 6 felony, aggravated assault, a class 2 dangerous felony, and unlawful flight from a law enforcement vehicle, a class 5 felony. The state alleged four historical prior felony convictions. Defendant voluntarily failed to appear at trial and was tried *in absentia*.

¶14 At trial, the security manager at a Target store in Goodyear testified that on November 23, 2003, he observed Defendant, another male, and a female placing CDs, DVDs and

camcorder bundles into a shopping cart. Having recognized them, he contacted the Goodyear Police Department. The subjects pushed the shopping cart into the lawn and garden department, exited through the fire doors and put the merchandise into a white vehicle in the parking lot. The security manager testified that the subjects did not pay for the merchandise, which he later valued at \$1,513. A surveillance tape of the incident was shown to the jury.

¶15 Officer Gillum of the Goodyear police responded to the call and arrived at Target in a fully marked police vehicle. He saw the subjects exit the garden shop and load items into the car. As he approached their vehicle, the officer put on his siren and blue and red overhead lights. Defendant, who was driving, did not stop but instead, made a U-turn, nearly hitting Officer Gillum's vehicle, and headed toward an exit road. Officer Bryant, also in a fully marked patrol vehicle, had positioned himself at the exit point. Defendant "rammed" the front of Officer Bryant's vehicle and "pushed" his way past the vehicle onto McDowell Road.

¶16 Both he and Officer Bryant pursued Defendant with their lights flashing and sirens on. During the pursuit, Defendant drove in the wrong direction on McDowell Road at 80 to 85 miles per hour, ran a red light and several stop signs and almost collided head-on with two different vehicles. He also made a left turn in front of Officer Gillum's police vehicle, causing Officer Gillum to collide with Defendant's vehicle. Defendant, however, did not stop but

drove onto the freeway. He eventually veered off and stopped the vehicle on a road across the freeway. Defendant and the other male fled.

¶7 Officer Bryant arrested the female. He and other officers pursued the male suspects on foot. The other male was found in a home under construction and surrendered to police. Defendant was later apprehended in an empty lot. After he was arrested, Defendant admitted to Officer Wooten that he should have "pulled over."

¶8 The jury found Defendant guilty of shoplifting property with a value greater than \$250 but less than \$2,000, guilty of unlawful flight from a law enforcement vehicle but not guilty of aggravated assault or any of the lesser-included offenses. Defendant admitted to two historical prior felony convictions for unsworn falsification and misconduct involving weapons. The court sentenced Defendant to presumptive, concurrent prison terms of 3.75 years for shoplifting and 5 years for unlawful flight from a law enforcement vehicle with two prior felony convictions, and awarded Defendant 105 days of presentence incarceration credit. Defendant timely appealed.

CONCLUSION

¶9 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the

