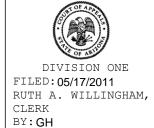
NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

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,)
STATE OF AKTZONA,	1
) 1 CA-CR 10-0268
Appellee,)
,	DEPARTMENT B
V.)
) 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ADRIAN ADAM AVENDANO,) (Not for Publication -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.

¶2 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

- 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.
- ¶4 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.

- 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.
- 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.

- 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."
- 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

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

proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Defendant was represented by counsel at all stages of the proceedings, there was sufficient evidence for the jury to find that Defendant committed the offenses, and the sentences imposed were within the statutory limits.

- After the filing of this decision, counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do no more than inform Defendant of the status of the appeal and of Defendant's future options, unless counsel's review reveals 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, Defendant has thirty days from the date of this decision to proceed, if he desires, with a motion for reconsideration or petition for review in propria persona.
- ¶11 Accordingly, we affirm Defendant's convictions and sentences.

_<u>/s/</u> SHELDON H. WEISBERG, Judge

CONCURRING: