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Ariz. R. Crim. P. 31.24



DIVISION ONE  
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RUTH WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0306  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ANTHONY ROMERO, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. No. CR2009-165077-001 DT

The Honorable Julie P. Newell, Judge *Pro Tem*

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender Phoenix  
By Terry J. Adams, Deputy Public Defender  
Attorney for Appellant

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**D O W N I E**, Judge

¶1 Anthony Romero ("defendant") appeals his conviction for burglary. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969),

defense counsel has searched the record, found no arguable question of law, and requests that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given the opportunity to file a supplemental brief *in propria persona*, but has not done so. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

#### **FACTS AND PROCEDURAL HISTORY**

¶2 On October 8, 2009, Victim parked her truck outside her house in the driveway, locked the doors, and closed the windows. At approximately 3:00 a.m., a security guard working at a construction site across the street from Victim's house noticed defendant walking up and down the street suspiciously. The security guard saw defendant throw something at a window of the truck and heard glass shatter.<sup>1</sup> Defendant ran off after the window broke, but returned a couple of minutes later and entered the truck for a minute and a half. As defendant walked away, the security guard called police and watched defendant until officers made contact with him. Police alerted Victim that the window of the truck had been broken and the radio stolen. The

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<sup>1</sup> Victim found a rock larger than a baseball in the cab of her truck.

security guard identified defendant in a one-on-one show up shortly after the incident.

¶13 Defendant was charged with burglary in the third degree, a class 4 felony. A jury trial ensued. At the conclusion of the State's case-in-chief, the court denied defendant's motion for judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). The jury found defendant guilty as charged. At sentencing, defendant stipulated to two prior felony convictions and to being on probation at the time of the offense. The trial court sentenced defendant to the presumptive term of 4.5 years, with 173 days' presentence incarceration credit.

#### **DISCUSSION**

¶14 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was represented by counsel at all critical phases of the proceedings. The jury was properly impaneled and instructed. The jury instructions were consistent with the offense charged. The record reflects no irregularity in the deliberation process.

¶15 The trial court properly denied defendant's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citations omitted). "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) (citation omitted).

¶16 The State presented substantial evidence of guilt, including an eyewitness to the crime. The security guard testified that he saw defendant break the window of the truck and then return and enter the truck. Victim testified she did not give anyone permission to enter her truck, and the radio was missing when she inspected the vehicle with the police. The security guard stated that he got a clear view of defendant and identified him shortly after the incident.

#### CONCLUSION

¶17 We affirm defendant's conviction and sentence. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than

inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
MAURICE PORTLEY, Presiding Judge

/s/  
PATRICIA A. OROZCO, Judge