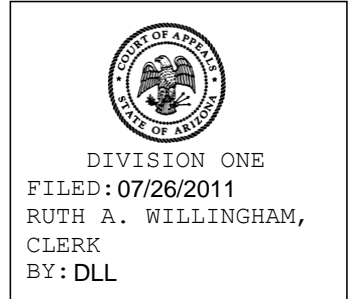


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0465
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
LUCIAN CORNEL MOSOIANU,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-152519-001DT

The Honorable Carolyn K. Passamonte, Judge Pro Tempore

AFFIRMED

Thomas C. Horne, 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 Louise Stark, Deputy Public Defender
Attorney for Appellant

O R O Z C O, Judge

¶1 Lucian Cornel Mosoianu (Defendant) timely appeals his
conviction and term of probation for count one, unlawful flight

from a law enforcement vehicle, a class five felony. Defendant's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this Court that after a search of the entire appellate record, she found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but he did not do so.

¶2 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). 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, and -4033.A.1 (2010).¹ Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶3 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996). Defendant was charged with two counts: (1) unlawful flight from a law enforcement vehicle; and (2) possession or use of cocaine, a narcotic drug. He moved to sever count one from count two

¹ We cite to the current version of the applicable statutes when no revisions material to this decision have since occurred.

arguing the offenses occurred on different dates and were unrelated. The court granted Defendant's motion to sever.

¶4 Defendant moved to preclude Detective B.'s identification. The court denied the motion finding clear and convincing evidence that Detective B. "had an opportunity to view the defendant clearly."

¶5 Detective B. testified that he is trained in facial recognition. On the night of the incident, he "noticed that there were two vehicles that seemed to be having some type of situation happening between them." He described the situation:

I observed a silver Nissan Sentra suddenly cut into a middle lane and went around a Jeep Cherokee that was traveling maybe a little slower than traffic. It immediately cut in front of the Jeep Cherokee and slammed on its brakes causing the Jeep Cherokee to slam on its brakes so the two vehicles wouldn't collide.

* * *

Once the Nissan Sentra cut into the center lane it drew my attention so I was focused on what those two vehicles were doing to see what was going on.

¶6 Detective B. turned his car around and saw the Nissan Sentra "stopped in the roadway." He "could see that the window for the driver's window was down, [and] the driver was actually looking out." Detective B. testified that "[a]t that point they were doing what I would call a brake stand where they're on the

brake with the gas, has the tires spinning and the driver was honking the horn and yelling something out of the window."

¶7 Detective B. also testified that he "absolutely" had a clear view of the driver's face. He stated:

I actually drove within maybe three to four feet past the vehicle . . . so both of our driver's windows were right next to each other.

I was able to look directly at the driver and I observed that he was a white male, that he appeared maybe little taller, he was skinny and also I was able to observe the acne on his face that's how close that we were to each other.

Detective B. identified Defendant as the driver of the Nissan Sentra.

¶8 Detective B. testified that he activated the siren and lights on his unmarked vehicle, at which point the now moving Nissan Sentra "slowed down and appeared like it might stop," but it did not. Detective B. then called for backup and two fully marked police vehicles responded with their lights and emergency sirens activated. However, Defendant still did not stop. The Nissan Sentra then "got onto the freeway and went at a high rate of speed on the ramp, got onto the I-10 freeway and got immediately over into the HOV lane." For safety reasons, the police vehicles were called off the pursuit. A police aircraft

was able to continue with its spotlight on the Nissan Sentra; however, it, too, was eventually called off the pursuit.²

¶9 Detective B. used his onboard computer terminal to check the license plate number for the Nissan Sentra. The computer terminal provided two names, including that of Defendant, along with his age, height, weight, address, hair color, and eye color. Upon returning to the precinct, Detective B. "pulled up [Defendant's] driver's license photo." When asked how sure he was that Defendant was the driver of the Nissan Sentra Detective B. responded, "100 percent sure."

¶10 Roxana G. testified that Defendant was with her on the night of the incident and that she picked him up. She emphasized that Defendant was not driving his car that night. Defendant also testified that Roxana G. picked him up, that he spent the evening with her, and that he left the keys to his Nissan Sentra at his apartment where other people lived. Nevertheless, the jury found Defendant guilty of count one.³ The court suspended imposition of sentence and placed Defendant on probation for eighteen months.

² Officers S. and B.B. corroborated Detective B.'s accounting of the pursuit.

³ Defendant waived his right to a jury trial and entered a plea of guilty for count two, which was reduced to possession of drug paraphernalia, a class six undesignated felony. The court imposed an eighteen month term of probation to run concurrently with count one.

DISCUSSION

¶11 There was sufficient evidence to support the court's verdict of guilty on count one. Evidence is sufficient when it is "more than a [mere] scintilla and is such proof" as could convince reasonable persons of Defendant's guilt beyond a reasonable doubt. *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) (citation omitted). "If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the defendant." *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶12 A person is guilty of unlawful flight from a law enforcement vehicle if he "willfully flees or attempts to elude a pursuing official law enforcement vehicle that is being operated" with the lights and siren activated and is "appropriately marked." A.R.S. §§ 28-622.01 (2004), -624.C (2004).

¶13 In this case, Detective B. identified Defendant as the driver of the Nissan Sentra, which at no point during the pursuit stopped from fleeing. Detective B. initiated the pursuit and was joined by two other vehicles, both of which were

fully marked, and all three had engaged their emergency lights and sirens. A police aircraft, utilizing a spotlight, also joined in the pursuit. Thus, there is sufficient evidence to support the jury's verdict that Defendant willfully fled pursuing law enforcement vehicles.

CONCLUSION

¶14 We have read and considered counsel's brief, carefully searched the entire record for reversible error, and we have found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the jury's finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal term of probation.

¶15 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). Defendant has 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.⁴

¶16 For the foregoing reasons, Defendant's conviction and term of probation are affirmed.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge

⁴ Pursuant to Rule 31.18.b, Defendant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.