

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



DIVISION ONE
FILED: 06/14/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 10-0581
)
Appellee,) DEPARTMENT B
)
v.) MEMORANDUM DECISION
)
CARLOS DEVON LEWIS,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
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)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-150281-001 DT

The Honorable Colleen L. French, Judge *Pro Tempore*

AFFIRMED

Thomas C. 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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Carlos Devon Lewis ("Lewis") appeals from his conviction and sentence for three offenses: (1) theft of means of transportation, (2) unlawful flight from law enforcement vehicle, and (3) aggravated criminal damage. Lewis was sentenced on July 7, 2010 and timely filed a notice of appeal on July 8, 2010. Lewis'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 searching the entire record on appeal, he finds no arguable ground for reversal. Lewis was granted leave to file a supplemental brief *in propria persona* on or before May 2, 2011, but did not do so.

¶2 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 (2010), and 13-4033(A)(1) (2010). We are required to search the record for reversible error. *Leon*, 104 Ariz. at 299, 451 P.2d at 880. Because we find no such error, we affirm.

Facts and Procedural History

¶3 On July 28, 2009, the victim parked his 1995 Neon at his girlfriend's house at about 1:30 to 2:00 A.M. Approximately thirty to forty-five minutes later, the victim heard his car start-up, looked out the window, and saw that his car lights were on. After seeing his car driven away, the victim and his

girlfriend proceeded to report the stolen vehicle to the police. The police arrived a few minutes later and the victim gave them a description of his car: a red, four-door Dodge Neon.

¶4 Officer S. and Officer A. were on duty that night and patrolling in a law enforcement vehicle driven by Officer A. when Officer A. received a "hot call" describing the victim's vehicle. Officer A. drove westbound on Indian School Road and spotted the suspect vehicle coming southbound on 19th Avenue, turning right (westbound) onto Indian School Road. From the passenger seat, Officer S. was able to see the suspect's face in the side-view and rear-view mirrors of the suspect vehicle. He described the suspect as a "dark skinned male with kind of dreadlock hair tied back . . . [and] a dark goatee." Officer A. also had a clear view of the suspect when the patrol car was only a few feet from the suspect vehicle. He confirmed Officer S.'s description of the suspect. Two other patrol cars soon joined in the pursuit.

¶5 Officer A. activated the overhead emergency lights, siren, and "spotlight" in an attempt to stop the suspect vehicle. However, the suspect made eye contact with the officers and accelerated to 50-60 mph. Soon after, the officers saw sparks flying beneath the suspect vehicle before it went airborne and crashed through a fence at Washington High School. Then, the suspect got out of the vehicle and ran onto the school

grounds. Officer A. stated the suspect was wearing a white tee-shirt, jean shorts, and white and red gym shoes.

¶16 Shortly after Officer A. set up a perimeter around the high school, a canine-unit arrived to find the suspect. The canine led the police to Lewis, who emerged from beneath a vehicle parked on the school grounds and appeared to be sweating. Lewis was then handcuffed and taken into custody. Officer A. testified he was "100 percent" sure that Lewis was the same person he had seen driving the car. Officer S. also testified he was "100 percent" sure that Lewis was the same individual who fled from the vehicle.

¶17 Officer S. proceeded to search the vehicle and found that the ignition had been "punched." The plastic casing around the ignition had been "stripped off" so a screwdriver or piece of metal could now be used to start the car. Subsequently, the police notified the victim that his car had been found, drove him to Washington High School, and showed him Lewis. The victim testified that he did not know Lewis and did not give permission to anyone with that name to take his car. In addition, the vice principal of Washington High School also testified he did not know Lewis and that Lewis did not have permission to be on the school property.

¶18 At trial, Lewis testified that he did not steal a car on July 28, 2009. He stated that he had walked to the high

school and climbed the fence to get onto the grounds to get away from his girlfriend. He further explained that when he saw the police lights, he hid by a van parked on school grounds because he thought someone had reported him for climbing the fence or his girlfriend had called the police.

¶9 Lewis was charged with (1) theft of means of transportation, (2) unlawful flight from law enforcement vehicle, and (3) aggravated criminal damage. Lewis's case proceeded to trial where he and his counsel were present for all critical stages. The State alleged historical priors, aggravating circumstances other than prior convictions, offenses committed while on release from confinement, and priors for impeachment. The court found Lewis's three prior felony convictions were admissible for impeachment. Lewis also admitted to these three prior convictions in his testimony.

¶10 At the conclusion of the trial, a twelve-person jury found Lewis guilty as charged. On July 2, 2010, Lewis was sentenced to the presumptive terms of imprisonment for the three counts: (1) 11.25 years for theft of means of transportation, (2) 5 years for unlawful flight from law enforcement vehicle, and (3) 3.75 years for aggravated criminal damage. The court stated these terms were to be served concurrently and with the appropriate presentence incarceration credit of 339 days. The court did provide Lewis with the opportunity to speak.

Disposition

¶11 We have reviewed the record and have found no meritorious grounds for reversal of Lewis's conviction or for modification of the sentence imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Lewis was present at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Accordingly, we affirm.

¶12 After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform Lewis 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). Lewis has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge