

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



DIVISION ONE
FILED: 08/09/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0788
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
BRYAN P. YOUNG,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-137247-001 DT

The Honorable Randall H. Warner, Judge

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 Terry J. Adams, Deputy Public Defender
Attorney for Appellant

Bryan P. Young Safford
Appellant

D O W N I E, Judge

¶1 Bryan P. Young appeals his conviction for unlawful flight from a law enforcement vehicle, a class five felony and violation of Arizona Revised Statutes ("A.R.S.") section 28-622.01. 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 asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Young filed a supplemental brief *in propria persona*.¹ 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 Officer Rankin was on patrol in a marked police vehicle. When he pulled up next to a Chevrolet Cavalier, the driver looked over at him and quickly turned away. The officer checked the Cavalier's registration and found it was registered to Bryan Young. A warrant check revealed an outstanding child support arrest warrant for Young. The physical description accompanying the warrant listed Young as 6'3", average build, in

¹ Although Young's supplemental brief was untimely, we have nevertheless considered it.

his mid-20's, with dark black hair. To the extent he could, Officer Rankin compared the physical description to the Cavalier's driver. He also noted that the driver was wearing a dark shirt.

¶13 When the vehicles headed southbound on Loop 101, the officer pulled behind the Cavalier and watched the car drift in and out of its lane. Officer Rankin turned on his emergency lights and attempted to make a traffic stop. When the Cavalier merged to the left, rather than the customary right, Officer Rankin turned on his siren. The Cavalier quickly accelerated to eighty or ninety miles per hour. Unable to safely pursue the vehicle, the officer called out a "fail to yield" over the radio. Officer Rankin observed the Cavalier cross three lanes of traffic, in an attempt to exit at Cactus Road. Missing the exit, the Cavalier spun to a stop, resting perpendicular to the roadway. It then completed a U-turn and traveled northbound toward the Cactus Road exit. Officer Rankin radioed the incident to other officers, providing a physical description of the driver and Young's address. Using a laptop computer, he pulled up a picture of Young, which the officer recognized "as somebody looking like the driver [he] had just seen in the Chevy Cavalier."

¶14 Officer Hawkinson went to Young's apartment. He saw Young, who was wearing a white shirt, walk past the apartment

building and then turn around and walk back toward his unit. When the officer tried to approach him, Young walked up the stairs, ran into his apartment, and shut his door. The officer knocked, but Young did not respond. Officer Hawkinson looked for the Cavalier and located it at a business complex just north of Young's apartment complex.

¶15 At trial, the defense presented evidence that, on the date of the offense, Young had blond hair and had been working at a restaurant where employees were required to wear white shirts. The jury found Young guilty of unlawful flight from a law enforcement vehicle. The State proved that Young had one historical prior felony conviction. The court imposed a mitigated term of 1.5 years' imprisonment, with 61 days of presentence incarceration credit. Young timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶16 We have read and considered the opening and supplemental briefs and have reviewed the entire record. 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. Young was present at all critical phases of the

proceedings and was represented by counsel. 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.

A. Insufficiency of Evidence

¶7 Young argues there was insufficient evidence to support his conviction. Reversible error based on insufficiency of evidence occurs "only if there is a complete absence of 'substantial evidence' to support the conviction." *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996). 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) (citation omitted).

¶8 Pursuant to A.R.S. § 28-622.01, the State was required to prove that Young willfully eluded a pursuing, appropriately marked, law enforcement vehicle. Young does not dispute that Officer Rankin's patrol car was appropriately marked or that the Cavalier evaded the officer's pursuit by traveling at speeds in excess of eighty miles per hour. Rather, he contends he was not the driver. Young points to testimony by his former boss and a co-worker that, on the date in question, his hair was blond, and he was wearing a white shirt. According to Young, this

undermined Officer Rankin's testimony that he made a positive comparison between Young's photograph and the person he saw driving the Cavalier.

¶9 "No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974); see also *State v. Lehr*, 201 Ariz. 509, 517, ¶ 24, 38 P.3d 1172, 1180 (2002). Although the defense presented colorable claims, reasonable jurors could have found the State's evidence more credible than defendant's in terms of the driver's identity. There was substantial evidence to support the verdict.

B. Ineffective Assistance of Counsel

¶10 We do not address Young's claims of ineffective assistance of counsel.² Ineffective assistance of counsel claims are properly brought under Ariz. R. Crim. P. 32. "Any such claims improvidently raised in a direct appeal . . . will not be

² To the extent Young suggests a violation of his right to a speedy trial, we find no error. Under Ariz. R. Crim. P. 8.5(b), a continuance must be granted "only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice." The record reflects that Young's counsel requested the continuances due to conflicts with other trials, or to secure the attendance of a defense witness with limited availability. Young was released on bail pending trial.

addressed by appellate courts regardless of merit." *State v. Sprietz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

C. Preliminary Hearing

¶11 Young also argues the trial court erred by finding probable cause to believe he had committed the charged offense. This issue is now moot, as a jury has found Young guilty beyond a reasonable doubt. *See State v. Agnew*, 132 Ariz. 567, 573, 647 P.2d 1165, 1171 (App. 1982) (finding a challenge to grand jury's probable cause determination moot after conviction).

CONCLUSION

¶12 We affirm Young's conviction and sentence. Counsel's obligations pertaining to Young's representation in this appeal have ended. Counsel need do nothing more than inform Young 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, Young 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/

DIANE M. JOHNSEN, Presiding Judge

/s/

JON W. THOMPSON, Judge