

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

FILED BY CLERK

MAR 28 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0380
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JEFFREY ANDREW KRASSOW,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20111203001

Honorable Clark W. Munger, Judge
Honorable Scott Rash, Judge

AFFIRMED

Lori J. Lefferts, Pima County Public Defender
By Lisa M. Hise

Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Jeffrey Krassow was convicted after a jury trial, held in his absence, of aggravated driving under the influence of alcohol and aggravated driving with an alcohol concentration (AC) of .08 or greater, both while his driver license was suspended, canceled, or revoked. After finding Krassow had three historical felony

convictions, the trial court sentenced him to concurrent, slightly mitigated nine-year prison terms. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record but found no “arguable legal issues to raise on appeal” and asking us to review the record for error. Krassow has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to upholding the jury’s verdicts. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In August 2010, Krassow was arrested after driving his truck erratically—repeatedly “peeling out and rushing towards [a] house with his truck”—while screaming profanity. Krassow admitted drinking alcohol and failed three field sobriety tests, including a horizontal gaze nystagmus test; testing of blood sample taken from Krassow showed he had an AC of .098. And records from the Motor Vehicle Department (MVD) demonstrated Krassow’s license had been suspended on the date of the incident and notices of that suspension had been mailed to the address he had provided MVD. This evidence is sufficient to support his convictions. *See* A.R.S. §§ 28-1381(A)(1), (2); 28-1383(A)(1); *see also* A.R.S. §§ 28-448(A) (licensee must notify MVD of address change within ten days of moving); 28-3318(D), (E) (notice of suspension complete upon mailing); *State v. Church*, 175 Ariz. 104, 108, 854 P.2d 137, 141 (App. 1993) (licensee presumed to have received notice of suspension upon proof notice was mailed).

¶3 The record supports the trial court’s finding that Krassow voluntarily absented himself from trial. *See* Ariz. R. Crim. P. 9.1. And Krassow’s sentences were

within the prescribed statutory range and imposed lawfully. See A.R.S. §§ 13-703(C), (D), (J); 28-1383(L)(1).

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none.¹ See *State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). Accordingly, Krassow’s convictions and sentences are affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Michael Miller
MICHAEL MILLER, Judge

¹Counsel observes that evidence concerning Krassow’s possible drug use was improperly admitted in violation of the trial court’s preclusion order, but that trial counsel did not request a mistrial or curative instruction. She also notes that trial counsel did not object to testimony that Krassow had said at one point, “[j]ust because I said I was going to kill you, doesn’t mean I’m going to kill you,” and suggests that testimony “was arguably more prejudicial than probative.” We agree with counsel that, because trial counsel did not object below, even assuming error exists, it is not fundamental, prejudicial error requiring reversal. See *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to object to alleged error in trial court results in forfeiture of review for all but fundamental error).