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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: 09/13/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0030  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
BIANCA YANETT CASTELLANOS, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Yuma County

Cause No. S1400CR201001596

The Honorable Maria Elena Cruz, Judge

**AFFIRMED**

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**G E M M I L L**, Judge

¶1 Defendant Bianca Castellanos was convicted of importation of marijuana, a class three felony, and possession of marijuana, a class six felony. She appealed both her

convictions and sentences but challenges only the convictions on appeal, arguing that the evidence was insufficient to support the convictions. For the following reasons, we find no reversible error and affirm both of her convictions and sentences.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶2 In December 2010, Castellanos, along with three minor children, drove her 1994 Chevrolet Suburban into the San Luis port of entry from Mexico, heading to their home in Yuma, Arizona. At the border, Castellanos appeared nervous while speaking to United States Customs and Border Protection ("CBP") Agent Winburn, telling him that she owned the vehicle and had gone to Mexico to pick up the children. Considering her claim of vehicle ownership, Agent Winburn observed "indicators" of illegal activity such as a lack of personal belongings inside the vehicle and a vehicle key ring consisting of only two keys. Agent Winburn subsequently directed Castellanos into a secondary inspection area.

¶3 Castellanos was met by CPB Agent Villa, an agent trained to observe "anomalies" of those crossing the border, such as a lack of personalization of an individual's vehicle. During Agent Villa's interaction with Castellanos, he also noticed the existence of only two keys on her key ring and that the Suburban had a "very clean" interior appearance. Agent

Villa subsequently contacted CPB Agent and K-9 Handler Nogales to do an exterior search of the Suburban with his dog. The agent's dog was trained to detect odors of concealed humans and illegal drugs, including marijuana. While searching around the Suburban, the dog alerted for the presence of drugs on the rear cargo area near the gas tank.

¶14 At this point, Agent Villa used a "fiberoptic scope" to look inside the Suburban's gas tank and immediately identified a foreign metal box inside. Agent Villa then contacted his supervisor, who requested additional assistance to disassemble the gas tank.

¶15 Homeland Security Investigation (HSI) Agents Lemmon and Johnson arrived to assist. HSI Agent Lemmon testified that mud, which was "smeared" or "splattered" on the undercarriage of the Suburban, was located on the top of the vehicle axle and not underneath, a finding inconsistent with normal driving. Additionally, "shiny" new bolts and "Bondo" were observed around the gas tank, indicative that the gas tank had been removed recently and modified. The HSI Agents explained that according to their knowledge and experience, these findings were consistent with smuggler tactics to conceal drugs when crossing the border.

¶16 During the investigation, three cellophane-wrapped bundles of a green, leafy substance with an odor consistent with

marijuana were removed from inside the gas tank. The HSI agents brought the three bundles to an evidence processing room and determined its total weight was approximately 67.6 pounds. The HSI agents generated a report, which provided a unique identifying "seizure number" for the bundles, then placed the identifying number on each bundle. Custody of the marijuana bundles was then released to CBP.

¶17 Core samples from the bundles were obtained, transferred, and tested at a Drug Enforcement Agency laboratory. The State was unable to provide adequate evidence, however, that the bundle or bundles from which the core samples were retrieved corresponded with the sample tested by the lab. Therefore, the court ruled the chain of custody was insufficient and the accompanying scientific evidence confirming the substance as marijuana was excluded. Nonetheless, one of the bundles, identified by its seizure number, was admitted as evidence at trial. HSI Agent Johnson confirmed that the bundle, according to his training and experience, looked and smelled like marijuana both at the time of seizure and also at the time of his trial testimony.

¶18 After the State rested, Castellanos made a motion for acquittal, arguing insufficient evidence was presented at trial to convict. The motion was denied.

¶19 Castellanos then testified that on December 20, 2010,

she drove the Suburban to Mexico and back to the United States border. She confirmed her purchase of the Suburban occurred two months prior to the date in question, and that the vehicle was registered and insured in her name. Castellanos contended, however, that she lacked any knowledge of the marijuana located in her Suburban.

¶10 The jury convicted Castellanos of importation and possession of marijuana. She was sentenced to a presumptive one-year term for possession and a three and one-half year term for importation, to be served concurrently. Castellanos timely appealed, and we have jurisdiction in this matter pursuant to Arizona Constitution Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).<sup>1</sup>

#### **ANALYSIS**

¶11 Castellanos argues that the trial court erred in denying her motion for judgment of acquittal and that insufficient evidence supported her conviction for importation and possession of marijuana. On appeal, the issue raised is limited to whether a conviction requires chemical analysis evidence to confirm the existence of marijuana. Therefore, we confine our analysis to this issue.

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<sup>1</sup> We cite to the current versions of the statutes when no revisions material to this decision have occurred since the date of the alleged offenses.

¶12 We review the denial of a motion for acquittal de novo, "viewing the evidence in the light most favorable to sustaining the verdict." *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). A judgment of acquittal is appropriate only "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence is more than a mere scintilla and 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. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993) (citation omitted). "When reasonable minds may differ on inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal." *State v. West*, 226 Ariz. 559, 563, ¶ 18, 250 P.3d 1188, 1192 (2011) (quoting *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997)). The credibility of witnesses and the weight given to their testimony are issues for the jury, not the trial judge. *State v. Just*, 138 Ariz. 534, 545, 675 P.2d 1353, 1364 (App. 1983).

¶13 A de novo review is also applied when reviewing the sufficiency of the evidence. *West*, 226 Ariz. at 562, ¶ 15, 250 P.3d at 1191. In making a determination, we make "no distinction between the probative value of direct and circumstantial evidence." *Bible*, 175 Ariz. at 560, n.1, 858

P.2d at 1163 (1993). We view the facts in the light most favorable to upholding the jury's verdict, and resolve all conflicts in the evidence against the defendant. *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). "We review the sufficiency of evidence presented at trial only to determine if substantial evidence exists to support the jury verdict." *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005).

¶14 Although circumstantial, the evidence here is sufficient to survive a Rule 20 motion for judgment of acquittal and to uphold convictions for one count of possession of marijuana and one count of importation of marijuana. Marijuana is defined as "all parts of any plant of genus *cannabis*, from which the resin has not been extracted, whether growing or not, and the seeds of such plant. Marijuana does not include the mature stalks of such plant or the sterilized seed of such plant which is incapable of germination." A.R.S. § 13-3401(19)(2011). To sustain a conviction, the State is not required to prove by chemical analysis that the substance in the defendant's possession is an illegal drug; instead, the identity of the substance may be proven by circumstantial evidence. *State v. Nightwine*, 137 Ariz. 499, 503, 671 P.2d 1289, 1293 (App. 1983); see also *State v. Saez*, 173 Ariz. 624, 629-30, 845 P.2d 1119, 1124-25 (App. 1992) (finding sufficient evidence to establish

substance as cocaine by testimony of drug's appearance, narcotic effect, and purchase price); *State v. Ampey*, 125 Ariz. 281, 282, 609 P.2d 96, 97 (App. 1980) (concluding sufficient evidence of marijuana presented through officer's report and defendant's admission).

¶15 The evidence presented at trial showed that two CBP agents detected indicators of illegal activity when observing Castellanos at the border, including a lack of personalization of her Suburban and a limited number of keys on her key ring. CBP Agent Nogales' dog, trained to detect illegal drugs including marijuana, alerted for the presence of drugs near the gas tank of Castellanos' Suburban. Signs of concealment were observed around the gas tank, including the use of "Bondo" and irregular mud splatter, consistent with known drug smuggler tactics. Also "shiny" bolts were observed around the gas tank, indicating the gas tank was recently removed. When HSI agents removed the gas tank, three cellophane-wrapped bundles of a green, leafy substance weighing approximately 67.6 pounds were located. HSI Agent Johnson, a trained and experienced agent who observed the substance both at the time of confiscation and at trial, testified that the bundled substance looked and smelled like marijuana.

¶16 In finding the evidence as sufficient to be submitted to the jury, the trial court explained its reasoning as follows:



[T]here is sufficient evidence . . . .  
[s]pecifically the location of the  
substance, the amount of the substance, the  
behavior of the defendant upon reaching the  
port of entry officials, the dog alert who  
is trained to detect narcotics[,] . . . a  
substance which otherwise would not be found  
in a gas tank, the smell of the substance as  
it sits in the courtroom and the look of it.

We agree with the trial court that the body of evidence,  
including the location and amount of the substance, is  
substantial and sufficient for a jury to convict Castellanos of  
both possession and importation of marijuana.

¶17 Castellanos further contends that because neither  
Castellanos nor a co-defendant admitted to personal or actual  
knowledge of the marijuana, the evidence is insufficient absent  
chemical analysis evidence. But we are not aware of any such  
requirement. To the contrary, this court has established that  
circumstantial evidence is sufficient to prove a substance is an  
illegal drug. *State v. Jonas*, 162 Ariz. 32, 34, 780 P.2d 1080,  
1082 (App. 1988), *aff'd as modified*, 164 Ariz. 242, 792 P.2d 705  
(1990). The test, therefore, is whether the circumstantial  
evidence presented at trial could support the conclusion reached  
by the jury. We conclude that the evidence, viewed in the light  
most favorable to supporting the conviction and resolving all  
conflicts against defendant, is sufficient to support the jury's  
conclusion that the substance located in Castellanos' Suburban  
was marijuana.

**CONCLUSION**

¶18 For the foregoing reasons, we affirm Castellanos' convictions and sentences.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Chief Judge