

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: 10/10/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 13-0017  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
CARLOS OSHAN MERKHAI, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2012-125811-001

The Honorable John R. Ditsworth, Judge

**AFFIRMED**

---

William G. Montgomery, Maricopa County Attorney Phoenix  
By Joseph T. Maziarz, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

James J. Haas, Maricopa Public Defender Phoenix  
By Christopher V. Johns, Deputy Public Defender  
Attorneys for Appellant

---

O R O Z C O, Judge

¶1 Carlos Oshan Merkhai (Defendant) appeals his  
conviction for possession of marijuana. 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, he 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 has not done 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). Finding no reversible error, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶3 Defendant was a passenger in a maroon Cadillac traveling eastbound on Northern near 27<sup>th</sup> Avenue on the evening of May 16, 2012. At approximately 8:30 p.m., Phoenix Police Officers J. and R. conducted a traffic stop of the Cadillac after discovering the vehicle's license plate had been suspended. Officer J. initiated the stop by activating the patrol car's overhead lights and siren. He then illuminated both of the car's spotlights and directed the beams into the cabin of the Cadillac.

¶4 The Cadillac traveled for approximately half a block and then pulled into a parking lot. Aided by the spotlight, Officer J. testified at trial that Defendant "leaned to the left and appeared to lean downwards, towards the center area of the

vehicle, in the passenger's compartment." Officer J. further testified he was "one hundred percent positive that [Defendant] leaned to the left."

¶15 The officers exited the patrol car and Officer J. made contact with the driver and asked for his driver's license and proof of insurance. The driver was unable to produce either and Officer J. arrested him and secured him in the patrol car.

¶16 After the driver was secured, Defendant was asked to step out of the Cadillac so Officer J. could search the vehicle. Defendant exited the vehicle leaving the front passenger door open, at which point Officer R. noticed a bag of a "green leafy substance" underneath the armrest located in the middle of the front seat. Officer R. indicated to Officer J. he observed what he believed to be marijuana in the vehicle.

¶17 Officer R. inspected the center console while Officer J. spoke with Defendant. He found two baggies of marijuana underneath the center console within Defendant's reach. Defendant indicated to the officers the marijuana was not his and that the Cadillac belonged to his mother. In addition, he admitted to driving the vehicle earlier in the evening.

¶18 A forensic scientist for the Phoenix Police department analyzed the contents of the two baggies and determined there were 1.8 grams and 27 grams of usable marijuana.

¶19 Defendant was initially charged with a single count of

possession of marijuana, a class six felony. The State moved to designate the charge a class one misdemeanor and to proceed as a bench trial pursuant to A.R.S. § 13-604. Defendant waived his right to a jury trial.

¶10 At trial the court found Defendant guilty of Possession of Marijuana, a class one misdemeanor. The court articulated various grounds supporting the guilty verdict. The court explained Defendant was a "licensee" of the vehicle, because a family member originally entrusted him with the Cadillac as a permissive user. Moreover, the court relied on Officer J.'s testimony that he witnessed Defendant, move to the left and down towards the center console where the marijuana was located. Based on the above facts the court concluded the "defendant's dominion and control over the marijuana" had been established. The trial court sentenced Defendant to one year of supervised probation and ordered him to pay a statutory fine and complete twenty-four hours of community service.

#### **DISCUSSION**

¶11 When reviewing the sufficiency of the evidence, the inquiry is limited to whether substantial evidence exists to support the verdict. *State v. Scott*, 177 Ariz. 131, 138, 865 P.2d 792, 799 (1993). Substantial evidence is 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*, 164 Ariz. 64, 67, 796 P.2d 866, 869 (1990). We review the evidence in "the light most favorable to sustaining the verdict." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶12 Possession of marijuana requires proof that the "defendant had knowledge of the drug's presence, that it was in fact marijuana, and the defendant must exercise some control over it." *State v. Murphy*, 117 Ariz. 57, 61, 570 P.2d 1070, 1074 (1977); see also A.R.S. § 13-105.34 (Supp. 2012) ("'Possess' means knowingly to have physical possession or otherwise to exercise dominion or control over property."). It is immaterial whether the defendant has "actual or constructive possession" of the evidence. *State v. Curtis*, 114 Ariz. 527, 530, 562 P.2d 407, 410 (1977) (holding constructive possession exists when the defendant exercises some dominion over the drugs or the place where they were found) (internal quotations omitted).

¶13 In this case, a forensic scientist verified the substance found in the Cadillac was marijuana. Defendant was identified at trial as the passenger of the vehicle. He was the "licensee" of the Cadillac and had been driving earlier in the evening indicating control over the vehicle and its contents. Even though Defendant did not have physical possession of the drugs, he did have constructive possession of the marijuana. He exercised "some dominion and control" over the drugs based on

the location where the drugs were found. In addition, Officer J. witnessed Defendant move down and to the left towards the center console where the drugs were found.

¶14 Thus, substantial evidence was presented to support the trial court's finding that Defendant was guilty of Possession of Marijuana.

#### CONCLUSION

¶15 We have carefully searched the entire appellate record for reversible error and have found none. See *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. Moreover, substantial evidence supported the superior court's guilty verdicts. Appellant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his attorney were given an opportunity to speak, and the court imposed a legal sentence.

¶16 Counsel's obligations pertaining to Appellant's representation in this appeal have ended. See *State v. Shattuck*, 140 Ariz. 582, 584, 684 P.2d 154, 156 (1984). 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. See *id.* at 585, 684 P.2d at 157.

Defendant 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.

¶17 For the foregoing reasons, Appellant's conviction and sentence is affirmed.

/S/

---

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

---

RANDALL M. HOWE, Presiding Judge

/S/

---

SAMUEL A. THUMMA, Judge