DIVISION ONE
FILED: 08/31/2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 09-0745
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
SHANE DEWEY HIVELY,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Mohave County

Cause No. CR-2009-0108

The Honorable Steven F. Conn, Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Jill L. Evans, Mohave County Appellate Defender — Kingman
Attorney for Appellant

O R O Z C O, Judge

¶1 Shane Dewey Hively (Defendant) appeals his convictions and sentences for possession of dangerous drugs and possession of drug paraphernalia.

¶2 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 did not do so.

¶3 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). 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, and -4033.A.1 (2010).[1] Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶4 Defendant was charged with one count of possession of dangerous drugs for sale (methamphetamine), a class 2 felony, and one count of possession of drug paraphernalia (methamphetamine), a class 6 felony. "We view the facts and all reasonable inferences therefrom in the light most favorable to

[1] We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶5 On January 18, 2009, Arizona Department of Public Safety (DPS) Officer C. pulled his patrol vehicle behind a car he observed parked on the side of Highway 91 with its lights on. Officer C. observed Defendant standing next to the car on the driver's side looking at an object that he was holding. Once the patrol car's spotlight was shining on him, Defendant immediately dropped the object and quickly approached the driver's side door of Officer C.'s vehicle. Concerned about the manner in which Defendant dropped the object and his rapid approach to the patrol vehicle, Officer C. placed Defendant in handcuffs and seated him on the shoulder of the road.

¶6 Officer C. testified he asked Defendant what he threw under the car and Defendant initially denied knowing what Officer C. was talking about. Officer C. asked Defendant a second time, and Defendant responded that he found an object in the road but he did not know what was in it. Officer C. retrieved the object from under Defendant's car and found a plain, silver metal can that contained several magnets and six plastic bags with a white powder. Based on his training and experience, Officer C. testified he believed the white powder to

be methamphetamine. Officer C. read Defendant his rights per *Miranda*.[2] Defendant indicated he understood his rights.

¶7 Shortly after reading Defendant his rights, Defendant said to Officer C., "If you help me out, I can get you information on any drug dealer in the area;" that he used to deal methamphetamine but no longer did; he was a "meth addict;" and had last used two days prior. When Officer C. opened the can and showed the contents to Defendant; Defendant said the substance was "probably meth" and said the contents of each plastic bag weighed "about one gram" and had an approximate value of "$100 apiece."[3] Defendant was arrested and subsequently indicted by a grand jury.

¶8 At trial, Defendant testified he was driving on Highway 91 the evening of his arrest when he saw something shiny in the road and pulled his car over to take a look at the object. Defendant stated at the time Officer C. arrived, he did not realize the spotlight was from a patrol vehicle because

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[2] *Miranda v. Arizona*, 396 U.S. 868 (1969).

[3] Defendant filed a motion in limine to preclude statements he made after being read his rights on the ground that their prejudicial effect outweighs their probative value. *See* Ariz. R. Evid. 403. The trial court denied the motion and allowed the statements to be admitted for the purpose of proving knowledge or intent. *See* Ariz. R. Evid. 404.b. The jury instructions limited the use of the evidence to proving knowledge or intent. *See State v. Newell*, 212 Ariz. 389, 403, ¶ 68, 132 P.3d 833, 847 (2006) ("We presume that the jurors followed the court's instructions."). Additionally, Defendant never challenged the voluntariness of the statements.

Officer C. had not activated the vehicle's red and blue emergency lights or siren. Defendant testified he had just picked the can up from the road and was examining it when Officer C. pulled up. He further testified that he panicked when the patrol vehicle's spotlight was shined on him and he let the can fall to the ground. Defendant denied ownership of the can, or that he told Officer C. that he dealt drugs in the past or had used meth recently. Defendant denied telling Officer C. "It's probably meth" in response to Officer's C. question regarding what was in the can.

¶9 A DPS detective assigned to work narcotics in the area testified at trial that it was his experience magnets were used to attach metal containers to the bottom frame of a vehicle to avoid detection and that methamphetamine was commonly weighed and prepackaged in the same type of plastic zip lock bags Officer C. found in the can lying under Defendant's car. He also testified that it was his experience the section of highway where Defendant was arrested was commonly traveled by people who dealt drugs.

¶10 A jury convicted Defendant of the lesser-included offense of possession of dangerous drugs in violation of A.R.S. § 13-3407.A.1 (2010) and possession of drug paraphernalia in violation of A.R.S. § 13-3415.A (2010). Defendant filed a timely notice of appeal.

DISCUSSION

¶11 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996). "[A]n appellate court does not reweigh the evidence to decide if it would reach the same conclusions as the trier of fact." *State v. Barger*, 167 Ariz. 563, 568, 810 P.2d 191, 196 (App. 1990). We "will overturn the trial court's findings only if no substantial evidence supports them." *State v. Rodriguez*, 205 Ariz. 392, 397, ¶ 18, 71 P.3d 919, 924 (App. 2003). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Miles*, 211 Ariz. 475, 481, ¶ 23, 123 P.3d 669, 675 (App. 2005) (quoting *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996)).

Possession of dangerous drugs (methamphetamine)

¶12 To convict Defendant of the charge of possession of dangerous drugs (methamphetamine), the jury had to find that Defendant knowingly possessed methamphetamine. A.R.S. § 13-3407.A.1.

¶13 Substantial evidence supported the jury's conviction for possession of dangerous drugs. Officer C. testified that an analysis conducted on the white powder found in the can indicated the substance was in fact methamphetamine.

¶14 The narcotics officer's testimony, coupled with Officer C.'s testimony that Defendant was holding the can when he first arrived and that when the patrol car's spotlight shined on him, Defendant immediately threw the can under his car, supports the jury's finding that Defendant knew methamphetamine was in the can. Thus, substantial evidence was presented at trial to support Defendant's conviction for possession of dangerous drugs.

Possession of drug paraphernalia

¶15 To convict Defendant of the charge of possession of drug paraphernalia, the State was required to prove Defendant knowingly used or possessed the metal can and plastic bags found in the can "with intent to use, drug paraphernalia to . . . pack, repack, store, contain, [or] conceal . . . a drug. . ." A.R.S. § 13-3415.A. Drug paraphernalia is defined in part as "[c]ontainers and other objects used, intended for use or designed for use in storing or concealing drugs." A.R.S. § 13-3415.F.2.(j).

¶16 The testimonies of Officer C. and the narcotics officer support Defendant's conviction for possession of drug paraphernalia. Therefore, sufficient evidence was presented for the jury to find Defendant knowingly used and possessed the plastic bags and metal can to package and conceal methamphetamine.

CONCLUSION

¶17 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *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 and substantial evidence supported the jury's finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶18 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). 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.[4]

[4] Pursuant to Rule 31.18.b, Defendant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.

¶19 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

/S/
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PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/
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DANIEL A. BARKER, Judge

/S/
_____
LAWRENCE F. WINTHROP, Judge