

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 03/20/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 11-0127
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
JESSE JOE VRIZUELA,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-104445-001 DT

The Honorable Susan M. Brnovich, Judge

AFFIRMED

Thomas C. Horne, 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 Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Jesse Joe Vrizuella has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant did not submit a supplemental brief but requested that counsel raise two issues: the denial of his pretrial motion to suppress evidence and the sufficiency of the evidence at trial.

FACTS¹

¶2 Phoenix police detectives executed a search warrant on Defendant's residence on January 25, 2010. They found him alone in the house and, in a bedroom with a sign that read, "Jesse's room," found a loaded .22 caliber rifle, a loaded handgun, ammunition, drug paraphernalia, and approximately 36 grams of heroin, 5.3 grams of methamphetamine, and 1.3 grams of marijuana. Detectives also discovered a stolen Yamaha Grizzly Quad, or "ATV," in the backyard.

¶3 Defendant was arrested and subsequently given his *Miranda*² warnings. During his interview, Defendant told the

¹ We review the facts in the light most favorable to sustaining the verdict. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (citation omitted).

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

detective that: he had rented the house for about six months; he was a prohibited possessor and his right to possess firearms had not been restored;³ he used methamphetamines; and he sold and traded heroin for various pieces of property. When asked whether the ATV was stolen, Defendant said he purchased it from another man and it was "most likely" stolen. Defendant was subsequently charged with possession of narcotic drugs for sale, a class two felony; possession of a firearm while being a prohibited possessor, a class four felony; possession of a firearm during the commission of a felony, a class four felony; possession or use of dangerous drugs, a class four felony; possession or use of marijuana, a class six felony; and theft of means of transportation, a class three felony.

¶4 Prior to his trial, Defendant filed an unsuccessful motion to suppress the evidence discovered pursuant to the search warrant. After a hearing, his motion for reconsideration was also denied. He did not appear for his trial and was tried in absentia in September 2010. The jury found him guilty as charged.

¶5 Defendant was arrested on a bench warrant in December 2010, and his sentencing hearing was held in February 2011. After he admitted to three historical prior felony convictions,

³ Defendant also said that he had recently purchased the rifle for his nephew, and that he owned the handgun for protection because he had been robbed before.

he was sentenced to fourteen years for possession of narcotic drugs for sale; eight years for possession of a firearm while being a prohibited possessor; eight years for possession of a firearm during the commission of a felony; eight years for possession or use of dangerous drugs; three years for possession or use of marijuana; and ten years for theft of a means of transportation. The sentences were ordered to run concurrently and Defendant was given sixty days of presentence incarceration credit.

¶6 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012), 13-4031 (West 2012), and 13-4033(A)(1) (West 2012).

DISCUSSION

I. Motion to Suppress

¶7 "We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion if it involves a discretionary issue, but review constitutional issues and purely legal issues de novo." *State v. Moody*, 208 Ariz. 424, 445, ¶ 62, 94 P.3d 1119, 1140 (2004) (citations omitted). We consider only the evidence produced at the hearing on the motion, and we view that evidence in the light most favorable to upholding the trial court's ruling. *State v. Gay*, 214 Ariz. 214, 217, ¶ 4, 150 P.3d 787, 790 (App. 2007) (citations omitted).

¶18 In Defendant's motion to suppress, he challenged the truthfulness of the statements in the affidavit underlying the search warrant. Specifically, Defendant pointed to statements in the "synopsis" portion of the affidavit that characterized his house as a place of "ongoing criminal activity," including "trafficking in stolen property" and "sales of narcotic drugs." He argued that pursuant to *Franks v. Delaware*, when the court considers the affidavit with the recklessly false statements excised, the affidavit does not contain probable cause to support the issuance of a search warrant for Defendant's residence. 438 U.S. 154, 156 (1978). As a result, he argued that all of the physical and testimonial evidence obtained should have been suppressed.

¶19 At the hearing, no evidence was presented and both parties argued about the sufficiency of the affidavit. The trial court rejected Defendant's argument that the police had no evidence to connect him to any illegal activity. After the court identified significant facts in the affidavit to support the warrant (police observed different vehicles that were suspected of being involved in burglaries visiting Defendant's residence over a period of time; a suspect interviewed by police alleged Defendant traded in stolen property and illegal drugs from his house; Defendant's address and telephone number were listed in an advertisement for a suspected stolen table saw; and

police observed many different people enter and leave the house with backpacks), the court noted that the synopsis "was just a summary and didn't list any underlying facts." The court read the affidavit without considering the synopsis, and found there were sufficient facts in the affidavit to establish probable cause to believe that some illegal activity was taking place at Defendant's address. Accordingly, the court found that the search warrant was properly granted.

¶10 During the subsequent hearing on Defendant's motion for reconsideration, the trial court, after considering *Franks*, affirmed its earlier decision because Defendant had not demonstrated a prima facie case that would require the State to produce evidence to support the legality of the warrant. Based upon the record, we find no abuse of discretion. The trial court properly analyzed the issue and did not err when it determined that the affidavit provided probable cause for issuance of the search warrant.

II. Sufficiency of the Evidence

¶11 As our supreme court has stated, "[w]e 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, 411-12, ¶ 6, 103 P.3d 912, 913-14 (2005) (citation omitted). Substantial evidence is evidence

that a reasonable individual could rely upon to justify a finding of guilt beyond a reasonable doubt. *Id.*

¶12 "The sufficiency of the evidence must be tested against the statutorily required elements of the offense." *State v. Pena*, 209 Ariz. 503, 505, ¶ 8, 104 P.3d 873, 875 (App. 2005). Defendant was convicted of six felony offenses; we will address each one in turn.

Drug Possession Charges

¶13 Defendant was convicted of possession of narcotic drugs for sale, possession of dangerous drugs, and possession of marijuana. "The elements of possession of a narcotic for sale are: (1) exercise of dominion and control over the substance; (2) knowledge that the substance is present; (3) knowledge that the substance is a narcotic; and (4) possession of the substance for the purpose of sale." *State v. Salinas*, 181 Ariz. 104, 106, 887 P.2d 985, 987 (1994) (citations omitted); A.R.S. § 13-3408 (West 2012).⁴

¶14 Detectives testified that when they executed the search warrant they found approximately 36 grams of heroin in Defendant's bedroom. And, Defendant stipulated that the search revealed 36 grams of heroin, 5.3 grams of methamphetamine, and 1.3 grams of marijuana. Additionally, the detective who

⁴ Unless indicated otherwise, we cite to the current version of a statute if it has not undergone a material change since the criminal offense occurred.

interviewed Defendant told the jury that Defendant admitted that he lived alone, sold and traded heroin, and used the funds from the heroin sales to buy more heroin. Thus, there was sufficient trial evidence to allow a reasonable jury to conclude beyond a reasonable doubt that Defendant possessed and sold heroin.

¶15 Similarly, there was trial evidence that Defendant possessed or used dangerous drugs. Methamphetamines are included in the definition of "dangerous drugs" in A.R.S. § 13-3401(b)(6) (West 2012). Not only did the detectives find 5.3 grams of methamphetamine, Defendant told the detective who interviewed him that he had been using methamphetamine. As a result, there was sufficient evidence for the jury to conclude that the State had proven the elements of possession or use of dangerous drugs beyond a reasonable doubt.

¶16 Finally, the trial evidence also demonstrated that Defendant possessed marijuana. Possession of marijuana "requires only that the defendant exercise control over the drug, have knowledge of the drug's presence, and know that the substance is in fact marijuana." *State v. Cota*, 191 Ariz. 380, 382, ¶ 8, 956 P.2d 507, 509 (1998) (citation omitted); see A.R.S. § 13-3405(A) (West 2012). Here, marijuana was found in a room marked by a sign that read, "Jesse's room" and the marijuana was admitted as evidence. Because Defendant told the police that he lived alone in the house there was sufficient

evidence for the jury to conclude beyond a reasonable doubt that he was guilty of possession of marijuana.

Firearms Charges

¶17 Defendant was also convicted of possessing a firearm during the commission of a felony and while being a prohibited possessor in violation of A.R.S. § 13-3102(A)(4) and (A)(8) (West 2012).⁵ The jury heard the detectives testify that they found a .22 caliber rifle and a handgun in Defendant's bedroom, and the firearms were admitted into evidence. The jury also heard that Defendant admitted to the detective who interviewed him that Defendant knew he was a prohibited possessor, and the jury saw the certified public record that showed Defendant's right to possess firearms had not been restored. Based on the totality of the evidence, the jury could have reasonably

⁵ This section provides, in part:

A. A person commits misconduct involving weapons by knowingly:

. . .

4. Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor; or

. . .

8. Using or possessing a deadly weapon during the commission of any felony offense

. . . .

concluded beyond a reasonable doubt that Defendant was guilty of possession of a firearm while being a prohibited possessor.

¶18 Additionally, because there was evidence that Defendant had heroin for sale and possessed methamphetamine and marijuana, the jury had sufficient evidence to find Defendant guilty beyond a reasonable doubt of possession of a firearm during the commission of a felony.

Theft of Means of Transportation

¶19 Finally, Defendant was convicted of theft of means of transportation, in violation of A.R.S. § 13-1814(A)(5) (West 2012). Theft of a vehicle occurs if a person “[c]ontrols another person's means of transportation knowing or having reason to know that the property is stolen.” *Id.*

¶20 Detectives found a stolen ATV in Defendant's backyard. When questioned, Defendant told detectives he had bought it from someone but he knew that the ATV was “most likely” stolen. Based on the trial evidence, the jury could have reasonably concluded beyond a reasonable doubt that Defendant was guilty because he controlled another person's ATV knowing that it had been stolen.

¶21 We find that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was represented by counsel at all stages of the

proceedings, and the sentences imposed were within the statutory limits.

¶122 We have also searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

CONCLUSION

¶123 Accordingly, we affirm Defendant's convictions and sentences. After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's 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, 585, 684 P.2d 154, 157 (1984). Defendant can, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JON W. THOMPSON, Presiding Judge

/s/

JOHN C. GEMMILL, Judge