IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MIGUEL DURAN DURAN,
Appellant.

No. 2 CA-CR 2013-0488
Filed August 26, 2014

Appeal from the Superior Court in Pinal County
No. S1100CR201202163
The Honorable Jason Holmberg, Judge

AFFIRMED

COUNSEL

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Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 After a jury trial, Miguel Duran was convicted of conspiracy and transportation of a dangerous drug for sale, and the trial court imposed concurrent, "slightly aggravate[d]" sentences totaling twelve years' imprisonment. In the sole issue raised on appeal, Duran contends the trial court erred in denying his motion for a judgment of acquittal, made pursuant to Rule 20, Ariz. R. Crim. P., at the close of the state's case. We conclude there was substantial evidence to support Duran's convictions, and therefore affirm.

¶2 A motion for a judgment of acquittal under Rule 20 shall be granted when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). When a trial court denies a Rule 20 motion, this court must determine de novo "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. West*, 226 Ariz. 559, ¶¶ 15, 16, 250 P.3d 1188, 1191 (2011), *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990) (emphasis omitted). "Substantial evidence is more than a 'mere scintilla,'" *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997), and may be direct or circumstantial, *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. Further, "'[w]hen 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.'" *Id.* ¶ 18, *quoting State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997) (alteration in *West*).

¶3 A defendant commits conspiracy

> if, with the intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense.

A.R.S. § 13-1003(A). And a defendant is guilty of transportation of a dangerous drug for sale if he or she transports or offers to transport for sale a dangerous drug as defined in A.R.S. § 13-3401(6). A.R.S. § 13-3407.

¶4 In this case, an undercover Oro Valley Police Department officer made contact with Raoul Garcia and arranged to purchase a large quantity of "crystal methamphetamine." On the day of the arranged sale, Garcia and the officer planned to meet in Casa Grande. Garcia stated he had hired someone to drive him to the meeting and arranged for another "security vehicle" to follow him as well.

¶5 Garcia and Eslyn Villa arrived at the restaurant where he and the officer had arranged to meet in a sport utility vehicle (SUV) that contained the methamphetamine. While the officer was meeting with Garcia and Villa, Duran, accompanied by Luis Ramos, was driving a minivan owned by Villa through a nearby parking lot. Cellular telephone calls were made between Garcia, Villa, and Ramos throughout the trip to the restaurant and after the vehicles arrived.

¶6 Other officers at the scene in unmarked vehicles testified Duran had driven the minivan past their vehicles "extremely slowly," watching them closely. They testified Duran had only driven in that manner near their unmarked vehicles, which, they explained, had certain characteristics that made it possible to identify them as law enforcement vehicles. And the officers observed Duran walking in a "determined" manner and

"scanning" around the parking lots and businesses near the restaurant where the methamphetamine sale was taking place.

¶7 After the undercover officer gave a signal, other officers moved in to arrest Garcia and Villa. Another group of officers arrested Duran and Ramos, who remained "very relaxed."

¶8 Duran maintains that "in order to be convicted for conspiracy, [he] must have committed some overt act to aid in the commission of the crime." As the state points out, however, it was not necessary for the state to prove that Duran had committed an overt act. Rather, it needed only to prove that "one of the parties" committed "an overt act in furtherance of the offense." § 13-1003(A). As described above, there was clear evidence that, at a minimum, Garcia committed such an act by meeting the officer with the drugs.

¶9 Duran also contends, however, that he was merely present at the crime. But he does not cite relevant legal authority in support of his argument. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi). Rather, he cites an unpublished memorandum decision[1] and *State v. Baldenegro*, 188 Ariz. 10, 923 P.2d 275 (App. 1996), in which this court addressed whether a victim's presence at the site of a shooting was sufficient to establish he was in reasonable apprehension of injury. The argument is therefore waived on appeal. *See* Ariz. R. Crim. P. 31.13(c)(i)(vi); *State v. Felkins*, 156 Ariz. 37, 38 n.1, 749 P.2d 946, 947 n.1 (App. 1988).

¶10 In any event, however, there was sufficient evidence to show Duran was more than merely present. "Criminal conspiracy need not be, and usually cannot be, proved by direct evidence," so a common plan "may be inferred from circumstantial evidence." *State v. Arredondo*, 155 Ariz. 314, 317, 746 P.2d 484, 487 (1987). Although "the mere presence of a person at the scene of a crime," will not

[1]Unpublished memorandum decisions may not be cited for precedential authority in Arizona. *See* Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24; *State v. Harlow*, 219 Ariz. 511, n.1, 200 P.3d 1008, 1010 n.1 (App. 2008).

support a conspiracy conviction, "[o]nce the existence of a conspiracy is established," even a "slight" connection or amount of conduct will establish a defendant's knowing participation. *Id.*

¶11 In this case, various officers gave testimony that in a drug transaction such as the one at issue here, there usually will be some kind of security or lookouts involved. These individuals would generally act as protection and "look out for . . . law enforcement" or rival drug dealers, often "walking around or observing the general area looking for" law enforcement. An officer also testified it was not "common . . . to bring unsuspecting or unwitting persons along for the ride" in such a transaction.

¶12 As described above, Duran was driving what Garcia had described as a "security vehicle," he drove past law enforcement vehicles in a manner suggesting he was scouting them, and he was observed engaging in other behavior consistent with a lookout. And although no calls were recorded between his phone and that of the others, throughout the incident his passenger engaged in calls with people in the vehicle carrying the methamphetamine, from which the jury reasonably could infer coordination of the two vehicles.

¶13 Villa also told police officers that he had seen Duran leaving an apartment with Garcia, who was carrying a brown grocery bag like the one later found containing the drugs. He also described a discussion among the four persons involved in the deal concerning the temporary tags on Villa's minivan and the fact that such tags might raise suspicion. Viewing all of this evidence together in the light most favorable to the trial court's ruling, there was sufficient evidence to withstand the Rule 20 motion.

¶14 For these reasons, we affirm Duran's convictions and sentences.