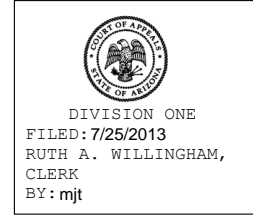


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0440  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 111, Rules of the  
MELCHISEDCH GARCIA ARELLANO, ) Arizona Supreme Court)  
)  
Appellant. )  
)

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Appeal from the Superior Court in Navajo County

Cause No. S0900CR201100329

The Honorable John N. Lamb, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
by Joseph T. Maziarz, Chief Counsel  
Criminal Appeals  
Attorneys for Appellee

Roser Law Office St. Johns  
by Samuel J. Roser  
Attorney for Appellant

Melchisedch Garcia Arellano Buckeye  
Appellant

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**T H U M M A**, 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 Melchisedch Garcia Arellano has advised the court that, after searching the entire record, he has been unable to discover any arguable questions of law, and has filed a brief asking this court to conduct an *Anders* review of the record. In addition, Arellano has filed a pro se supplemental brief. Finding no error, Arellano's conviction and sentence are affirmed.

#### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 Navajo County Sheriff Deputy Murray stopped Arellano for speeding. Deputy Murray issued Arellano a citation for speeding and for failing to have a valid driver's license and impounded the car. Arellano and passenger Zuguey Castro-Moreno were then allowed to leave. During an inventory search, Deputy Murray saw in plain view duct tape, plastic baggies and nylon rope, items that he knew to be indicators of drug trafficking. Deputy Murray then walked his certified narcotics dog around the car. The dog alerted to the exterior and to the center console area inside the car. Deputies then conducted a videotaped search

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<sup>1</sup> This court views the facts "in the light most favorable to sustaining the verdict, and resolve[s] all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).

of the car and discovered 5.2 pounds of methamphetamine underneath the center console.

¶3 The next day, Arellano and Castro-Moreno were arrested when they arrived at the Sheriff's Office to claim the car. During searches incident to those arrests, Navajo County Sheriff Deputy Robertson found a \$2 bill in Arellano's wallet and, in Castro-Moreno's purse, found a \$2 bill, several Saint Jude cards and a Santa Marta card. Deputy Robertson recognized all of the items to be indicia of drug trafficking.

¶4 Arellano was charged with one count of Transportation of a Dangerous Drug for Sale, a Class 2 felony. At trial, Deputies Murray and Robertson testified as did Castro-Moreno, who had accepted a plea agreement. After the close of the evidence and closing arguments, the eight-person jury deliberated and found Arellano guilty as charged. Arellano received a mitigated sentence of five years in prison, with 406 days of presentence incarceration credit, and the court imposed a \$150,000 fine.

¶5 Arellano timely appealed his conviction and sentence. This court has jurisdiction pursuant to Article 6, Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).<sup>2</sup>

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<sup>2</sup> Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

## DISCUSSION<sup>3</sup>

### I. Impound And Subsequent Search Of The Car.

¶6 Arellano first argues the State illegally impounded his car when the deputy did not let the passenger who had a license drive the car after the stop. State law mandates an officer impound a vehicle if the driver does not have a valid driver's license; however the officer may not impound the vehicle if the driver's spouse is a passenger with a valid license. See A.R.S. § 28-3511 (A)(2), (D), (E). Here, the deputy properly impounded the car because Arellano did not have a valid driver's license and Arellano stated Castro-Moreno was his girlfriend, not his wife.

¶7 Next, Arellano contends the State violated his Fourth Amendment right against unreasonable search and seizure when the deputy: (1) conducted an inventory search; (2) walked the certified narcotics dog around the car and (3) positioned the dog inside the car, removed the panels from the center console and opened the opaque packages containing methamphetamine.

¶8 An inventory search is valid if the law enforcement officer has legal custody of the vehicle, and the search was conducted in good faith and was not a subterfuge for a

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<sup>3</sup> Arellano also alleges ineffective assistance of counsel. This court expressly does not address that argument, which may be raised in a timely petition for Post Conviction Relief filed pursuant to Arizona Rule of Criminal Procedure 32.

warrantless search. *State v. Schutte*, 117 Ariz. 482, 486, 573 P.2d 882, 886 (App. 1977). "An inventory search conducted pursuant to standard procedures is presumptively considered to have been conducted in good faith and therefore reasonable." *State v. Organ*, 225 Ariz. 43, 48, ¶ 21, 234 P.3d 611, 616 (App. 2010). Here, the deputy's inventory search was valid because he had legal custody of the car via impoundment and was following Navajo County Sheriff's Office standard impounding procedures.

¶9 Additionally, the narcotics canine search did not violate Arellano's Fourth Amendment rights, as "a dog sniff is not a search for Fourth Amendment purposes when, . . . it is conducted on the exterior of a car in a public place at which the police have a right to be present." *State v. Box*, 205 Ariz. 492, 496-97, ¶ 15, 73 P.3d 623, 627-28 (App. 2003).<sup>4</sup> Furthermore, a law enforcement officer does not need "an individualized reasonable suspicion of drug-related activity before subjecting a vehicle lawfully detained to a dog sniff." *State v. Paredes*, 167 Ariz. 609, 613, 810 P.2d 607, 611 (App. 1991)(citation omitted). Here, Arellano's vehicle was on the interstate

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<sup>4</sup> See also *Illinois v. Caballes*, 543 U.S. 405, 410 (2005)("A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment."); cf. *Florida v. Jardines*, 133 S. Ct. 1409, 1415 (2013)(dog sniff conducted at curtilage of home, as a "constitutionally protected area," is a Fourth Amendment search).

shoulder and subject to impound. Additionally, the deputy had reasonable suspicion of drug-related activity because the record shows that duct tape, plastic baggies and nylon rope were present and are indicators of drug trafficking.

¶10 Finally, the investigative search did not violate Arellano's constitutional rights because police have probable cause to search the entire car when a certified narcotics dog alerts to the outside of the car. *State v. Weinstein*, 190 Ariz. 306, 310-11, 947 P.2d 880, 884-85 (App. 1997). Deputy Murray testified his narcotics dog exhibited recognizable alerts to Arellano's car, and as a result, the deputy had probable cause to thoroughly search the vehicle. There was no error.

## **II. Sufficiency Of The Evidence.**

¶11 Arellano claims the evidence was insufficient to support the charge and conviction for transportation of drugs for sale. A jury's verdict can be set aside for insufficiency of the evidence only if there is no "substantial evidence" to support the conviction. *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996). Here, the jury had sufficient evidence to convict Arellano of knowingly "transfer[ring] a dangerous drug" because he was driving a car with 5.2 pounds of

methamphetamine concealed in the center console. See A.R.S. § 13-3407.<sup>5</sup>

### **III. Alleged Errors In Judicial Rulings.**

¶12 Arellano argues the superior court erred in denying his motion to suppress because the traffic stop was illegal. The standard of review is abuse of discretion. *State v. Moody*, 208 Ariz. 424, 445, ¶ 62, 94 P.3d 1119, 1140 (2004). This court reviews evidence only from the suppression hearing, and does so in the light most favorable to upholding the superior court's ruling. *State v. Gay*, 214 Ariz. 214, 217, ¶ 4, 150 P.3d 787, 790. Both Deputy Murray's testimony and video evidence proved Arellano was driving several miles over the speed limit, which authorized the traffic stop for speeding. The superior court properly denied Arellano's motion to suppress because the evidence presented at the suppression hearing was sufficient to support the finding that the traffic stop was legal.

¶13 Arellano next contends the superior court erred in allowing the jury instructions to include accomplice liability. This court reviews the superior court's "decision to give a jury instruction on accomplice liability for an abuse of discretion."

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<sup>5</sup> Arellano also alleges a break in the chain of custody when a Deputy drove the car to the police station without Arellano or Castro-Moreno being present. Arellano, however, cites no authority for the proposition that law enforcement continuously having custody of an item (albeit outside of a defendant's presence) is an impermissible break in the chain of custody.

*State v. King*, 226 Ariz. 253, 258, ¶ 14, 245 P.3d 938, 943 (App. 2011). Jury instructions are not viewed piecemeal, but rather as a whole to evaluate whether they accurately describe the law. *State v. Gallegos*, 178 Ariz. 1, 10, 870 P.2d 1097, 1106 (1994). This court will uphold the conviction unless the instructions, as a whole, incorrectly inform the jury on the applicable legal standards. *State v. Strayhand*, 184 Ariz. 571, 587, 911 P.2d 577, 593 (App. 1995).

¶14 A person may be convicted under accomplice liability if he or she "solicits . . . another person to commit the offense; or . . . provides means or opportunity to another person to commit the offense." A.R.S. § 13-301. Here, Castro-Moreno testified Arellano asked her to drive with him to New Mexico and instructed her to pick up his car from the body shop. The superior court did not err when it appropriately included accomplice liability in the jury instructions.

¶15 Finally, Arellano argues the superior court erred by accepting Castro-Moreno's *Alford*<sup>6</sup> plea. Arellano, however, has not shown standing to challenge the court's acceptance of Castro-Moreno's plea. Although Castro-Moreno's plea was accepted shortly before Arellano's trial, the State promptly disclosed the fact of and substance of her plea and the court granted

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<sup>6</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).



Arellano a trial continuance given that plea. Moreover, Arellano had a full and fair opportunity to cross-examine Castro-Moreno about her plea at trial. Arellano has not shown that Castro-Moreno's plea impermissibly infringed on the fairness of his trial.<sup>7</sup>

#### **IV. Allegations Of Prosecutorial Misconduct.**

¶16 Arellano argues prosecutorial misconduct because the State improperly secured Castro-Moreno's plea shortly before the original trial date. Arellano provides neither argument about how Castro-Moreno's plea agreement infringed upon his rights nor legal authority for his assertion that the prosecutor's plea offer to Castro-Moreno was impermissible because of its close proximity to the trial date.

¶17 Arellano next claims the prosecutor violated the Arizona Rules of Criminal Procedure by delaying disclosure of Castro-Moreno's plea until shortly before trial. There is no evidence, however, suggesting the State improperly failed to make any required disclosure to Arellano. Ariz. R. Crim. P. 15.1.

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<sup>7</sup> Arellano summarily states the superior court was "duty bound" to sua sponte instruct the jury on all potential lesser included offenses. In a case involving 5.2 pounds of methamphetamine where defendant was charged with Transportation of a Dangerous Drug for Sale, Arellano has not shown error (let alone fundamental error) in the failure to sua sponte instruct the jury on any lesser included offense. See *State v. Tschilar*, 200 Ariz. 427, 437, ¶ 42, 27 P.3d 331, 341 (App. 2001).

¶18 Arellano also alleges the State offered testimony from Castro-Moreno that the prosecutor knew was untruthful. The record indicates that Castro-Moreno's trial testimony was inconsistent with prior interview statements. The record also reflects that Arellano was allowed to cross-examine Castro-Moreno, to point out those inconsistencies for evaluation by the jury and to argue that Castro-Moreno was not a credible witness. The fact that such inconsistencies exist does not mean the prosecutor offered knowingly false testimony. Arellano has not shown prosecutorial misconduct.

**V. Allegations Of Due Process Errors.**

¶19 Arellano argues his due process rights were violated because he was not given *Miranda*<sup>8</sup> warnings when he was arrested. "Miranda warnings are required to be given only when a defendant is in custody and under interrogation." *State v. Vickers*, 159 Ariz. 532, 538, 768 P.2d 1177, 1183 (1989) (citing *Miranda*). Here, while Arellano was in custody, it is clear he understood his *Miranda* rights because he asked for an attorney, refused to be interviewed and provided no substantive statement (incriminating or otherwise). There was no *Miranda* violation.

¶20 Arellano argues the State violated his due process rights by failing to test for DNA or fingerprints. There is no "rule or case authority that requires the State to examine

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<sup>8</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

evidence for possible fingerprints" (or, by implication, DNA). *State v. Chavez*, 23 Ariz. App. 606, 608, 535 P.2d 26, 28 (1975).

¶21 Arellano also argues his conviction was improper because he was never issued a citation for the alleged traffic offense for which the deputy originally pulled him over. Arellano, however, was issued a citation. Moreover, law enforcement is not required to issue a traffic citation after conducting a stop; such citations are immaterial to the drug conviction from which Arellano appeals. There was no error.

#### CONCLUSION

¶22 This court has read and considered counsel's brief and Arellano's supplemental brief, and has searched the record provided for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.2d 89, 96 (App. 1999). From that review, the record reveals no reversible error. The proceedings appear to have been conducted in compliance with the Arizona Rules of Criminal Procedure, Arellano was represented by counsel at all stages of the proceedings and the sentence imposed was within the statutory limits. Arellano's conviction and resulting sentence is therefore affirmed.

¶23 Upon the filing of this decision, defense counsel is directed to inform Arellano of the status of his appeal and of his future options. Defense counsel has no further obligations

unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Arellano shall have thirty days from the date of this decision to proceed, if he desires, with a pro se motion for reconsideration or petition for review.

/S/ \_\_\_\_\_  
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/ \_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

/S/ \_\_\_\_\_  
DONN KESSLER, Judge