

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ANISSA LYNNE AGUIRRE-SMITH, *Appellant*.

No. 1 CA-CR 12-0783
FILED 12-19-2013

Appeal from the Superior Court in Mohave County
No. S8015CR201101263
The Honorable Derek C. Carlisle, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Myles A. Braccio

Counsel for Appellee

Mohave County Legal Advocate's Office, Kingman
By Jill L. Evans

Counsel for Appellant

STATE v. AGUIRRE-SMITH
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Maurice Portley delivered the decision of the Court, in which Judge John C. Gemmill and Judge Kent E. Cattani joined.

PORTLEY, Judge

¶1 Anissa Lynne Aguirre-Smith was convicted and sentenced for possession of dangerous drugs for sale, possession of drug paraphernalia, and promoting prison contraband. She contends that the trial court erred by denying her motion to suppress evidence and also argues that there was insufficient evidence to support the convictions for possession of dangerous drugs for sale and promoting prison contraband. For reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 A police officer, knowing that Aguirre-Smith was wanted on a pending misdemeanor charge, stopped her while she was driving her truck and arrested her. A police dog alerted on the driver's seat of her truck, which indicated the presence of drugs, but, after a search, no drugs were found. Before transporting Aguirre-Smith to the police station booking facility, an officer warned her that she would be guilty of a felony if she brought contraband into the booking facility. She denied having anything illegal.

¶3 Based on suspicion that Aguirre-Smith had drugs hidden on or in her body, she was strip searched at the booking facility. Because they did not find any drugs on her person, the police sought and obtained a warrant for a cavity search. While transporting Aguirre-Smith to the hospital, the officer noticed that she was moving around suspiciously in the back of his patrol car. When the officer was getting her out of the patrol car at the hospital, Aguirre-Smith had her pants undone and appeared to have something in her mouth. As officers tried to force the object from her mouth, some spit from her mouth struck an officer on the side of the face. A short time later, a nurse discovered a wet baggie that contained methamphetamine inside Aguirre-Smith's bra.

¶4 Aguirre-Smith was charged with possession of dangerous drugs (methamphetamine) for sale, a class 2 felony; possession of drug

STATE v. AGUIRRE-SMITH
Decision of the Court

paraphernalia, a class 6 felony; promoting prison contraband, a class 2 felony; and aggravated assault, a class 5 felony. Prior to trial, she moved to suppress the methamphetamine and other evidence found on her arguing that the evidence was fruit of an illegal stop and arrest. After an evidentiary hearing, the trial court denied the motion to suppress because the police had probable cause to stop and arrest her.

¶5 After listening to all the evidence, the jury acquitted Aguirre-Smith of aggravated assault, but found her guilty as charged on the other three counts. She was subsequently sentenced to concurrent mitigated prison terms, the longest being seven and one-half years. We have jurisdiction over Aguirre-Smith's 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 2013), 13-4031 and -4033(A)(1) (West 2013).

DISCUSSION

I. Denial of Motion to Suppress

¶6 Aguirre-Smith argues that the trial court erred in denying her motion to suppress evidence. "Whether an illegal arrest occurred is a mixed question of fact and law. We give great deference to the trial court's factual determination, but we review the ultimate question de novo." *State v. Blackmore*, 186 Ariz. 630, 632, 925 P.2d 1347, 1349 (1996). We restrict our review to the evidence presented at the suppression hearing, *id.* at 631, 925 P.2d at 1348, and consider it in the light most favorable to upholding the ruling. *State v. Walker*, 215 Ariz. 91, 94, ¶ 16, 158 P.3d 220, 223 (App. 2007). We will uphold the trial court's ruling if correct for any reason. *State v. Cañez*, 202 Ariz. 133, 151, ¶ 51, 42 P.3d 564, 582 (2002).

¶7 At the suppression hearing, evidence was presented that two weeks before Aguirre-Smith was stopped and arrested, the police executed a search warrant at her home and found small plastic baggies and a scale with methamphetamine residue in her bedroom. Because she was not present when her home was searched, the police submitted a charge of misdemeanor possession of drug paraphernalia to the city attorney and requested issuance of an arrest warrant. When her truck was stopped and Aguirre-Smith was arrested, an arrest warrant had not yet been issued on the drug paraphernalia charge.

¶8 Aguirre-Smith does not dispute that probable cause existed to charge her with possession of drug paraphernalia, but argues the police lacked authority to stop and arrest her on that charge because Arizona law

STATE v. AGUIRRE-SMITH
Decision of the Court

does not allow an officer to arrest without a warrant for a misdemeanor not committed in the officer's presence. Although true at one time, "[t]hat rule has now been changed by a statute allowing arrests for misdemeanors based on probable cause. A.R.S. § 13-3883(A)(4) (1989)." *State ex rel. McDougall v. Superior Court*, 191 Ariz. 182, 186, 953 P.2d 926, 930 (App. 1997). Here, as in *McDougall*, A.R.S. § 13-3883(A)(4) (West 2013) (provisions of this statute not dispositive to this case have been preempted by *Arizona v. United States*, 567 U.S. ___ (2012)) authorized the officer to stop and arrest defendant without a warrant for the offense of misdemeanor possession of drug paraphernalia even if the offense did not occur in his presence given the probable cause developed in the search of her home. See *State v. Keener*, 206 Ariz. 29, 32, ¶ 13, 75 P.3d 119, 122 (App. 2003) (noting that under § 13-3883(A)(4), officers could arrest defendant for driving on a suspended license, even though they did not witness the driving, because they had probable cause of the crime and that defendant did it). Accordingly, the trial court did not err by denying her motion to suppress.

II. Claim of Insufficient Evidence

¶9 Aguirre-Smith also argues there was insufficient evidence to support her convictions for possession of dangerous drugs for sale and promoting prison contraband. We review claims of insufficient evidence de novo. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993).

¶10 In considering claims of insufficient evidence, our review is limited to whether substantial evidence exists to support the verdicts. See *State v. Scott*, 177 Ariz. 131, 138, 865 P.2d 792, 799 (1993); see also Ariz. R. Crim. P. 20(a) (requiring trial court to enter judgment of acquittal "if there is no substantial evidence to warrant a conviction"). "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. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). We will reverse a conviction for insufficient evidence only if "there is a complete absence of probative facts to support [the jury's] conclusion." See *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

A. Possession of Dangerous Drugs for Sale

¶11 Aguirre-Smith contends the evidence was insufficient to permit the jury to find that the methamphetamine was possessed for the purpose of sale. Specifically, she argues that because the narcotics officer

STATE v. AGUIRRE-SMITH
Decision of the Court

who testified as an expert did not opine that the methamphetamine was possessed for sale, there was no evidence of possession for sale.

¶12 The culpable mental state for commission of an offense can be established by circumstantial evidence. *State v. Vann*, 11 Ariz. App. 180, 182, 463 P.2d 75, 77 (1970) (noting that because intent is a state of mind, “proof of intent generally must be circumstantial in nature”); see *State v. Speer*, 221 Ariz. 449, 460, ¶ 57, 212 P.3d 787, 798 (2009). Although the narcotics officer did not offer an opinion on the ultimate fact of whether the methamphetamine found on Aguirre-Smith was possessed for sale, his testimony fully supported such a conclusion by the jury. The amount of methamphetamine possessed by Aguirre-Smith was 15.4 grams, which the narcotics officer testified was in excess of an amount that would be possessed by a mere user. In addition, the baggy containing the methamphetamine also held multiple small “jewelry” baggies. The narcotics officer testified that methamphetamine sellers often use small “jewelry” bags to package and distribute the drugs they sell. Moreover, Aguirre-Smith was also found in possession of \$875, in small denominations. The narcotics officer testified that this amount of money, particularly in small denominations, is evidence of possession for sale. Given the evidence, jurors could reasonably find that Aguirre-Smith possessed the methamphetamine for purpose of sale. See *State v. Webster*, 170 Ariz. 372, 373-74, 824 P.2d 768, 769-70 (App. 1991) (holding evidence of pagers and possession of amount of cocaine in excess of typical user sufficient to support conviction of possession of narcotic drug for sale).

¶13 The fact that Aguirre-Smith testified that the methamphetamine was possessed for personal use and offered explanations for her possession of all of the baggies of methamphetamine as well as the large sum of cash does not preclude a finding of possession of drugs for sale. The jury was free to disregard her testimony. See *State v. Cox*, 217 Ariz. 353, 357, ¶ 27, 174 P.3d 265, 269 (2007) (“No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury.”) (quoting *State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974)). Moreover, the State is not required “to negate every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence.” *State v. Nash*, 143 Ariz. 392, 404, 694 P.2d 222, 234 (1985). Consequently, there was substantial evidence to support her conviction for possession of methamphetamine for sale.

STATE v. AGUIRRE-SMITH
Decision of the Court

B. Promoting Prison Contraband

¶14 The offense of promoting prison contraband is committed “[b]y knowingly taking contraband into a correctional facility or the grounds of a correctional facility.” A.R.S. § 13-2505(A)(1) (West 2013). “Contraband” is defined as including “any dangerous drug.” A.R.S. § 13-2501(1) (West 2013). A “correctional facility” is defined, in pertinent part, as: “any place used for the confinement or control of a person: (a) Charged with or convicted of an offense; or (b) Held for extradition; or (c) Pursuant to an order of court for law enforcement purposes.” A.R.S. § 13-2501(2). Aguirre-Smith argues that her conviction for promoting prison contraband must be reversed because there was no evidence she took the methamphetamine into a “correctional facility” as defined in § 13-2501(2).

¶15 The conviction for promoting prison contraband was based on the fact that Aguirre-Smith had methamphetamine hidden on her when she was taken to the booking facility at the police station. At trial, she admitted to having methamphetamine hidden between her “butt cheeks” when she entered the booking facility. Her claim of insufficient evidence is limited to arguing that the police department booking facility is not a “correctional facility.”

¶16 The essence of her argument is that § 13-2501(2)(a) defines a “correctional facility” as a place used to hold persons “[c]harged with or convicted of a crime” and that she had only been arrested – not formally “charged” with a crime – when she took the methamphetamine into the holding facility. We need not reach the issue of whether a person arrested by police is “charged with” an offense for purposes of § 13-2501(2) because the jury heard evidence that the police station holding facility where Aguirre-Smith was taken is used not only to hold persons under arrest but also to hold persons who have been formally charged with or convicted of an offense. Specifically, the jury heard the testimony of a police sergeant that the cells in the police holding facility are occasionally employed to temporarily hold persons who have been formally charged or convicted while they wait to go “upstairs” to see the judge. Thus, there was substantial evidence to support a finding by the jury that Aguirre-Smith knowingly took contraband into a correctional facility.

STATE v. AGUIRRE-SMITH
Decision of the Court

CONCLUSION

¶17 For the foregoing reasons, we affirm Aguirre-Smith's convictions and sentences.



Ruth A. Willingham · Clerk of the Court
FILED: gsh