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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MICHELLE LAMAE MUIR, *Appellant*.

No. 1 CA-CR 17-0202
FILED 10-31-2017

Appeal from the Superior Court in Maricopa County
No. CR2016-114369-001
The Honorable Jay R. Adleman, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Bain & Lauritano, Glendale
By Amy E. Bain
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Chief Judge Samuel A. Thumma joined.

J O N E S, Judge:

¶1 Michelle Muir appeals her convictions and sentences for one count each of theft of means of transportation, trafficking in stolen property in the second degree, and theft. After searching the entire record, Muir's defense counsel identified no arguable question of law that is not frivolous. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asked this Court to search the record for fundamental error. Muir was granted an opportunity to file a supplemental brief *in propria persona* and did not do so. After reviewing the entire record, we find no error. Accordingly, Muir's convictions and sentences are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In February 2016, Noel H. purchased a new 2016 Rockland custom utility trailer for \$2,200 and parked it in his driveway until he had an opportunity to register and insure it. On March 17, 2016, Noel saw a small, four-door gray pickup truck back into his driveway. The truck sped away when its occupants noticed Noel in the driveway. About an hour later, a neighbor observed a small gray truck driving away with the trailer. Noel immediately contacted the police and reported the trailer stolen.

¶3 Ten days later, on Easter Sunday, Gilberto C. came across an ad on OfferUp.com for a double-axle open trailer being sold by "Michelle." The ad stated:

14' double axle trailer. Attached pictures[.] VIN number clearance. DO NOT have title. I REPEAT NO TITLE. Will

¹ "We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant." *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015) (quoting *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

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give buyer notarized bill of sale tomorrow since today is Easter. Trailer is on . . . the corner of Miller and Hess Lane in Buckeye Arizona 85326[.] I'll be here for the next 30 minutes. I AM ON THE CORNER WITH THE TRAILER. IF YOU WANT TO SEE IT DRIVE BY. Do not waste my time it's a steal at this price.

Gilberto thought the trailer was an unusually good deal, but “sometimes you find good deals on OfferUp.” When Gilberto arrived at the intersection, the trailer was hooked up to a small silver four-door truck. Gilberto spoke with a woman later identified as Muir and two other males. Gilberto agreed to purchase the trailer for the advertised price: \$600. Gilberto paid Muir \$400; the two then agreed to meet the next day at the bank, where Gilberto would pay the remaining \$200 and Muir would provide him a notarized bill of sale.

¶4 The following day, Monday, Gilberto went to the Motor Vehicle Department (MVD) to find out whether a notarized bill of sale would enable him to title the trailer in his name. When the MVD representative advised Gilberto the trailer had been reported stolen, he immediately contacted the police. The police confirmed the trailer was the same one that had been stolen from Noel.

¶5 Gilberto arranged to meet Muir at the bank as planned. Muir arrived in the same silver pickup truck with two males and was immediately apprehended by the Buckeye Police Department. After being advised of her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), Muir stated she had bought the trailer for \$300 from an unknown Hispanic male two or three weeks earlier. Although Muir had been using the trailer to move during that time, she did not have a title, did not register the trailer in her name, had not insured it, and did not suggest she had any paperwork evidencing ownership. Muir believed the price was “too good to be true” but did not check with law enforcement or MVD to see if it was stolen, choosing instead to check, twice, with a non-law-enforcement-affiliated third-party website. When the detective suggested Muir must have known the trailer was stolen, she stated, “I’m sure it was, that’s what I wrote in my ad,” presumably referring to the last line: “it’s a steal at this price.” Muir never returned Gilberto’s money.

¶6 Muir was indicted on one count each of theft of means of transportation, trafficking in stolen property in the second degree, and theft. At trial, Noel visually identified the trailer Gilberto purchased from Muir as the one that was stolen from him. At the conclusion of the State’s

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case, Muir’s counsel moved for judgment of acquittal pursuant to Arizona Rule of Criminal Procedure 20(a) based upon the State’s failure to present evidence that Muir knew the trailer was stolen. The motion was denied.

¶7 Muir testified in her defense. Muir admitted placing the ad on OfferUp and the basic details of the transaction but denied any knowledge the trailer was stolen. According to Muir, she found the trailer on a resale website and met the seller at a Circle K to consummate the sale on March 6, 2016 – ten days before Noel reported it stolen. Muir paid \$300 and received a notarized bill of sale. Muir admitted the price “was a great deal” and “could have been too good to be true,” so she performed an “online VIN check” at “a random website” she was unable to identify by name, on March 6, and again prior to the sale on March 27, which returned no reported theft or insurance issues.

¶8 However, the investigating detective had testified, based upon his training and experience, that “if you have a really good price and it’s too good to be true, it probably is.” The detective also found Muir’s statement that she had checked the VIN through a third-party agency two times suspicious, surmising, “why would you check it twice after they already checked it once? . . . if it wasn’t stolen then, are they worried about something coming up or someone reporting it stolen [at a later date]?”

¶9 The jury convicted Muir as charged. The trial court suspended imposition of sentence and placed Muir on concurrent terms of probation for two years on each count. Muir timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1),² 13-4031, and -4033(A)(1).

DISCUSSION

¶10 Our review reveals no fundamental error. *See Leon*, 104 Ariz. at 300 (“An exhaustive search of the record has failed to produce any prejudicial error.”). As relevant here, a person is guilty of theft of means of transportation if, “without lawful authority, the person knowingly . . . [c]ontrols another person’s means of transportation with the intent to permanently deprive the person of the means of transportation.” A.R.S. § 13-1814(A)(1). A vehicle is defined by the relevant statute as “a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used

² Absent material changes from the relevant date, we cite a statute’s current version.

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exclusively on stationary rails or tracks.” A.R.S. § 28-101(67). A person is guilty of trafficking in stolen property in the second degree if she “recklessly traffics in the property of another that has been stolen.” A.R.S. § 13-2307(A). “Traffic” means “to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another, or to buy, receive, possess or obtain control of stolen property, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the property to another person.” A.R.S. § 13-2301(B)(3). A person acts recklessly if she acts with “awareness and conscious disregard of a substantial risk, which disregard constitutes a gross deviation from the applicable standard of conduct.” *In re William G.*, 192 Ariz. 208, 213 (App. 1997). “A person commits theft if, without lawful authority, the person knowingly . . . [c]ontrols property of another with the intent to deprive the other person of such property.” A.R.S. § 13-1802(A)(1). The record contains sufficient evidence upon which the jury could determine beyond a reasonable doubt the trailer was stolen, Muir knew or should have known the trailer was stolen, and Muir acted unreasonably when she chose to proceed with its sale, wrongfully depriving Noel of the trailer and Gilberto of \$400.

¶11 All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Muir was represented by counsel at all stages of the proceedings and was present at all critical stages including the entire trial and the verdict. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages) (citations omitted); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages). The jury was properly comprised of eight jurors, and the record shows no evidence of jury misconduct. *See* A.R.S. § 21-102(B); Ariz. R. Crim. P. 18.1(a). The trial court properly instructed the jury on the elements of the charged offenses, the State’s burden of proof, and Muir’s presumption of innocence. At sentencing, Muir was given an opportunity to speak, and the court stated on the record the evidence and materials it considered and the factors it found in imposing the sentences.³ *See* Ariz. R. Crim. P. 26.9, 26.10. Additionally, the sentences imposed were within the statutory limits. *See* A.R.S. §§ 13-901(A), -902(A).

³ Although the record does not contain a presentence report, it is apparent from the record the trial court ordered the report and that both the court and the parties received and considered the report, as well as letters written on Muir’s behalf, before ultimately suspending the imposition of sentence. Under these circumstances, the absence of the presentence report does not amount to fundamental error. *See State v. Maese*, 27 Ariz. App. 379, 379-80 (1976).

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CONCLUSION

¶12 Muir's convictions and sentences are affirmed.

¶13 Defense counsel's obligations pertaining to Muir's representation in this appeal have ended. Defense counsel need do no more than inform Muir of the outcome of this appeal and her future options, unless, upon review, counsel finds an issue appropriate for submission to our supreme court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶14 Muir has thirty days from the date of this decision to proceed, if she wishes, with an *in propria persona* petition for review. See Ariz. R. Crim. P. 31.19(a). Upon the Court's own motion, we also grant Muir thirty days from the date of this decision to file an *in propria persona* motion for reconsideration.