

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

CHRISTOPHER ANGELO BROWN, *Appellant*.

No. 1 CA-CR 16-0665
FILED 2-6-2018

Appeal from the Superior Court in Maricopa County
No. CR2014-002748-001
The Honorable Jay R. Adleman, Judge

AFFRIMED

COUNSEL

Arizona Attorney General's Office, Phoenix
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Counsel for Appellee

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

Christopher Angelo Brown, San Luis
Appellant

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MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

CATTANI, Judge:

¶1 Christopher Angelo Brown appeals his convictions and sentences for two counts of aggravated assault, two counts of aggravated driving under the influence, resisting arrest, possession of marijuana, and possession of drug paraphernalia. Brown's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), certifying that, after a diligent search of the record, she found no arguable question of law that was not frivolous. Brown filed a supplemental brief raising four issues. After considering those issues and reviewing the record for reversible error, *see State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999), we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Officers Coffey and Hilger responded to a disabled vehicle on a highway exit ramp at around 2:30 a.m. one morning in March 2014. While Officer Coffey was in his patrol car at the scene, Brown exited the highway, came within feet of colliding with the patrol car, swerved to avoid the collision, and skidded to a stop near the intersection. Officer Coffey moved his car behind Brown's stopped car, flashed his lights and siren, and initiated a traffic stop. When Brown opened his car door, Officer Coffey smelled alcohol and marijuana.

¶3 When Officer Coffey tried to handcuff Brown, Brown repeatedly pulled away, and when he was able to break away, he faced the officers and started throwing punches at them until he was tased twice.

¶4 Officer Hilger saw a pill bottle fall from Brown's pocket during the stop. The bottle contained seven grams of marijuana. Blood testing revealed that Brown's blood alcohol concentration was 0.091 and that his blood contained an active marijuana metabolite.

¶5 The State charged Brown with three counts of aggravated assault, two counts of aggravated driving under the influence, resisting arrest, possession of marijuana, and possession of drug paraphernalia.

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Brown's counsel moved to suppress the evidence from the traffic stop, arguing that the police did not have probable cause to initiate the stop. After a suppression hearing, the superior court denied the motion and found that the stop was reasonable. Brown then moved, *pro se*, to dismiss the charges, alleging that the State violated his right to a speedy trial under Rule 8 of the Arizona Rules of Criminal Procedure. The superior court denied the motion.

¶6 A jury convicted Brown of all charges except one count of aggravated assault. The jury also found that there was an aggravating circumstance to the aggravated assault of Officer Coffey. The superior court sentenced Brown to concurrent terms of imprisonment, the greatest of which is an aggravated 10-year term, with credit for 101 days of presentence incarceration.

¶7 Brown timely appealed.

DISCUSSION

I. Brown's Supplemental Brief.

¶8 Brown argues that (1) the superior court should have excluded evidence from the traffic stop, (2) he was denied his right to a speedy trial, (3) prosecutorial misconduct warrants reversal of his convictions, and (4) the superior court improperly sentenced him beyond the presumptive term. Each of these arguments fails.

A. Exclusion of Evidence.

¶9 Brown argues that, because the superior court concluded that he did not break any traffic laws, it necessarily follows that the officers lacked probable cause to stop him and conduct a search. In reviewing the superior court's denial of Brown's motion to suppress, we review legal determinations *de novo*, but we accept the court's factual findings unless wholly unsupported by the record. *State v. Bennett*, 237 Ariz. 356, 358, ¶ 8 (App. 2015). We review only the evidence presented at the suppression hearing, and consider it in the light most favorable to affirming the superior court's ruling. *State v. Brown*, 233 Ariz. 153, 156, ¶ 4 (App. 2013).

¶10 Officer Coffey observed Brown drive at a high rate of speed, come within feet of colliding with the patrol car, swerve, and skid to a stop. Even assuming none of these actions individually constituted a traffic infraction, they cumulatively supported reasonable suspicion of reckless driving under Arizona Revised Statutes ("A.R.S.") § 28-693. *See State v.*

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Curiel, 130 Ariz. 176, 180 (App. 1981) (noting that a stop is justified if specific, articulable facts, taken with rational inferences, create a reasonable suspicion of criminal activity); *see also Terry v. Ohio*, 392 U.S. 1, 21 (1968). Accordingly, the court did not err by denying Brown's motion to suppress.

B. Speedy Trial.

¶11 Brown argues that the superior court's denial of his motion to dismiss violated his right to a speedy trial under Rule 8 of the Arizona Rules of Criminal Procedure. We review the denial of a motion to dismiss on speedy trial ground for an abuse of discretion and resulting prejudice. *See State v. Spreitz*, 190 Ariz. 129, 136 (1997).

¶12 Under Rule 8.2(a)(3), in a complex case, the State must try the defendant within 270 days of the arraignment. The superior court may exclude days from the Rule 8 computation of time if the delay was "caused by or on behalf of the defendant" or resulted from "continuances [under] Rule 8.5." Ariz. R. Crim. P. 8.4(a)(1), (5). Under Rule 8.5, the superior court may grant a continuance for either party upon a finding of "extraordinary circumstances . . . and that delay is indispensable to the interests of justice."

¶13 Brown was arraigned on October 27, 2014 and the superior court designated the case complex under Rule 8.2(a)(3). The superior court excluded 380 days as "delays occasioned by or on behalf of the defendant." *See Ariz. R. Crim. P. 8.4(a)(1)*. The superior court excluded an additional 28 days after granting the State a continuance because Officer Coffey had a medical procedure that conflicted with the trial dates. *See Ariz. R. Crim. P. 8.5(b)*. Thus, Brown's last day under Rule 8 was September 1, 2016. Trial started on July 26, 2016. Accordingly, there was no denial of Brown's rule-based right to a speedy trial.

C. Prosecutorial Misconduct.

¶14 Brown urges reversal based on prosecutorial misconduct. Prosecutorial misconduct warrants reversal only if "(1) misconduct is indeed present[,] and (2) a reasonable likelihood exists that the misconduct could have affected the jury's verdict, thereby denying defendant a fair trial." *State v. Moody*, 208 Ariz. 424, 459, ¶ 145 (2004). The misconduct must be "so pronounced and persistent that it permeates the entire atmosphere of the trial," rendering "the resulting conviction a denial of due process." *State v. Morris*, 215 Ariz. 324, 335, ¶ 46 (2007).

¶15 Brown asserts that the prosecutor told defense counsel that he could not argue the validity of the traffic stop as a defense and that he could

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not impeach one of the State's witnesses. The record does not indicate that either of these exchanges occurred.

¶16 Brown also asserts that trial delay evidenced prosecutorial misconduct. But Brown's claim appears to be based only on the State's request for a continuance in July 2015. Moving for a continuance is not misconduct. *See* Ariz. R. Crim. P. 8.5(a) ("A party may ask to continue trial by filing a motion . . ."). Accordingly, Brown has not shown prosecutorial misconduct.

D. Sentencing.

¶17 Brown asserts that the superior court used "serious physical injury" to both increase his sentence and to classify the crime as dangerous. But the jury determined that the aggravated assault against Officer Coffey was *not* a dangerous offense, and the sentence imposed was within the appropriate range for a non-dangerous offense. The aggravated assault of Officer Coffey was a class 2 felony, which carries a presumptive term of imprisonment of 5 years and a maximum term of 10 years. A.R.S. § 13-702(D). The jury found an aggravating circumstance—emotional harm to the victim—and the superior court considered that aggravating circumstance, along with mitigating circumstances, when it sentenced Brown. Because Brown's sentence of 10 years is within the range prescribed by § 13-702(D) for a class 2 felony with an aggravating circumstance, Brown's claim fails.

II. Fundamental Error Review.

¶18 We have read and considered counsel's brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. We find no error.

¶19 Brown was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Brown all his constitutional and statutory rights, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial was sufficient to support the jury's verdicts. Brown's sentences fall within the range prescribed by law, and there is no indication that he was deprived of any credit for presentence incarceration to which he was entitled.

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CONCLUSION

¶20 Brown's convictions and sentences are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Brown's representation in this appeal will end after informing Brown of the outcome of this appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court's own motion, Brown has 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA