

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

MIRANDA ANN BALDONADO, *Appellant*.

No. 1 CA-CR 17-0599  
FILED 5-17-2018

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Appeal from the Superior Court in Yavapai County  
No. P1300CR201501231  
The Honorable Tina R. Ainley, Judge

**AFFIRMED**

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COUNSEL

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

Law Office of Nicole Countryman, Phoenix  
By Nicole Countryman  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene joined.

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**S W A N N**, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), from Miranda Ann Baldonado's drug-related convictions and the court's imposition of prison and probation terms. Neither Baldonado nor her counsel identify any issues for appeal. We have reviewed the record for fundamental error. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). We find none.

¶2 Baldonado was indicted for transportation of a narcotic drug for sale (Count 1), possession or use of drug paraphernalia (Count 2), and tampering with physical evidence (Count 3). The charges were based on heroin that law enforcement recovered from a vehicle in which Baldonado was a passenger, and from a package removed from Baldonado's body by medical personnel. Baldonado moved to suppress the physical evidence on the theory that it was the product of an unlawful search. She further argued that her consent to the medical procedure did not extend to the surrender of the extracted material to law enforcement. After an evidentiary hearing, the superior court denied the motion to suppress.

¶3 The matter proceeded to a jury trial, at which the state presented evidence of the following facts. On the morning of August 3, 2015, an officer from the Yavapai County Sheriff's Office sat in his patrol car, with his drug-detecting canine, monitoring interstate traffic. A passing vehicle caught his attention. The officer followed the vehicle for a few miles before pulling it over based on a traffic violation: items hanging from the rearview mirror.

¶4 The vehicle was occupied by a male driver and two female passengers, including Baldonado in the front seat. The driver complied with the officer's request that he exit the vehicle. The officer examined the driver's identification, explained the traffic violation, and asked about the group's travel plans. The driver responded that they were returning to New Mexico from a concert in California. The officer walked back to the

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vehicle and spoke to Baldonado, who specifically denied having gone to a concert and stated instead that the group had visited an amusement park. The officer asked to search the vehicle. The driver consented but Baldonado did not. Meanwhile, a second officer had arrived on the scene. The second officer finished checking a driver's license while the first officer employed his canine to sniff the exterior of the vehicle. The canine alerted to the odor of illegal drugs in the rear-hatch area of the vehicle.

¶5 The officers detained the vehicle's occupants. A search of the vehicle revealed more than a pound of heroin in a bag in the rear-hatch area. A third officer who had arrived on the scene read Baldonado her *Miranda*<sup>1</sup> rights and asked her if she had any contraband on her person. Baldonado responded that she had heroin inside her body, and the other passenger said the same. The officers immediately gave each of the women an opportunity to remove the heroin in the privacy of the backseat of a patrol car. The backseat passenger successfully removed a condom-wrapped package of heroin from her body and gave it to the officers. Baldonado, however, reported that she was unable to remove the heroin from her body and she wanted it out, so one of the officers placed her in his vehicle and began to drive her to a nearby hospital.

¶6 On the way to the hospital, Baldonado stated that the heroin was about to fall out. Based on that information, the officer changed course and took her to a jail. There, however, a detention officer determined that the heroin was not falling out. Accordingly, the officer took Baldonado to the hospital. As they arrived, Baldonado repeated that she wanted the heroin out of her body. Baldonado received medical attention in a hospital room while the officer stood outside. Medical personnel exited the room and handed the officer a condom-wrapped package of heroin that they said they had removed from Baldonado's body.

¶7 After her discharge from the hospital, Baldonado consented to several law-enforcement interviews. She stated that she was dating the vehicle's driver, and that when the vehicle was pulled over she tried to conceal the heroin in her body to protect him but soon realized that there was too much to hide. She made inconsistent disclosures regarding when she knew about the heroin's presence in the vehicle. At one point, she claimed, consistent with the boyfriend's testimony, that the boyfriend did not tell her about the heroin until approximately one hour before the traffic stop. But at another point in the interviews, Baldonado stated that she learned of the boyfriend's plan to purchase and transport heroin when the

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

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group arrived in California. She made inconsistent statements regarding whether she accompanied the boyfriend when he picked up the heroin.

¶8 Baldonado's fellow passenger testified. According to the passenger, Baldonado had invited her to go on a trip to California, and once there, Baldonado had briefly left the group's hotel room with her boyfriend to meet someone. The two first told the passenger about the heroin during the traffic stop, and the passenger complied with Baldonado's directive to retrieve the bag containing the heroin and copy Baldonado's insertion of material from the bag into her vagina. An expert testified that the total amount of heroin recovered in this case was consistent with possession for sale, and that people commonly travel to purchase and redistribute illegal drugs throughout the region.

¶9 Baldonado moved for judgments of acquittal under Ariz. R. Crim. P. 20. The court denied the motion. The court also denied Baldonado's motion to amend the indictment to reflect facilitation. The jury found Baldonado guilty as charged, and found that the amount of heroin underlying Count 1 exceeded the statutory threshold amount.

¶10 The court denied Baldonado's post-verdict motions for judgments of acquittal and a new trial. The court entered judgments on the jury's verdicts, imposed a minimum prison term of three years for Count 1 (with credit for 46 days of presentence incarceration), and suspended the imposition of sentence on Counts 2 and 3 in favor of a three-year probation term to begin upon Baldonado's release from custody.

¶11 We find no fundamental error. Baldonado was present and represented at all critical stages.

¶12 The superior court did not err by denying Baldonado's motion to suppress: the traffic stop was lawful, the stop gave rise to reasonable suspicion to support an investigative detention, the investigative detention was of reasonable duration, and the investigation gave rise to probable cause for a search of the vehicle and Baldonado's arrest. See A.R.S. §§ 28-959.01(A)-(B) (prohibiting operation of motor vehicle with object displayed in manner that obstructs or reduces driver's clear view through windshield), 13-3883(B) (authorizing detention as reasonably necessary to investigate actual or suspected violation of traffic law committed in officer's presence); *State v. Sweeney*, 224 Ariz. 107, 111-12, ¶¶ 13-19 (App. 2010) (describing scope of valid investigative detention, and noting that de minimis delays for travel-plan inquiries and exterior dog sniffs may not constitute illegal extension of an investigative detention);

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*State v. Teagle*, 217 Ariz. 17, 27, ¶ 36 n.7 (App. 2007) (noting that dog sniff of exterior of vehicle is not a search, and dog's alert creates probable cause to search entire vehicle); *State v. Weinstein*, 190 Ariz. 306, 311 (App. 1997) (holding that contraband in vehicle creates probable cause for arrest); *State v. Wren*, 108 Ariz. 356, 361–62 (1972) (holding passengers' association with driver sufficient to create probable cause for arrest). And it is clear from Baldonado's conduct that she consented to surrender the heroin concealed within her body — she availed herself of the opportunity to try to remove it in the patrol car, she alerted law enforcement when she believed it was falling out, she repeatedly stated that she wanted it removed, and she did not object to her transport to the hospital or the medical personnel's disposition of the heroin. See *State v. Becerra*, 239 Ariz. 90, 92, ¶ 9 (App. 2016) (describing reasonableness standard for assessing consent to searches).

¶13 The jury was properly comprised under A.R.S. § 21-102, and was properly instructed. The state presented sufficient evidence to support the jury's verdicts. With respect to Count 1, a person commits possession of narcotic drugs for sale above the statutory threshold amount if she knowingly possesses more than one gram of heroin for sale. A.R.S. §§ 13-3408(A)(2), -3401(20)(ttt), (21)(m), (36)(a). The state presented evidence that more than a pound of heroin, an amount consistent with possession for sale, was in the vehicle. The state also presented evidence that Baldonado knew of the heroin's presence and had accompanied her boyfriend when he picked it up. With respect to Count 2, a person commits possession of drug paraphernalia if she uses, or possesses with the intent to use, drug paraphernalia to pack, repack, store, contain, conceal, or otherwise introduce into the human body an illegal drug. A.R.S. § 13-3415(A). The determination of whether an item is drug paraphernalia is based on all logically relevant factors, including the item's proximity to drugs. A.R.S. § 13-3415(E). The state presented evidence that Baldonado possessed a condom in which heroin was packed. With respect to Count 3, a person commits tampering with physical evidence if she conceals physical evidence with the intent to impair its availability in a judicial proceeding that she knows is about to be instituted. A.R.S. §§ 13-2809(A)(1), -2801(2). The state presented evidence that at the time of the traffic stop, Baldonado inserted the condom-wrapped heroin into a body cavity for the purpose of trying to prevent its discovery by law enforcement.

¶14 We affirm Baldonado's convictions. We also affirm her prison sentence and probation terms, which were proper under A.R.S. §§ 13-702(D), -901(A), -902(A)(4), -3408(B)(2), -3415(A), and -2809(C), and we

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conclude that the court properly calculated presentence incarceration under § 13-712(B).

¶15 Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Baldonado of the status of this appeal and her future options. *Id.* Baldonado has 30 days from the date of this decision to file a petition for review *in propria persona*. *See* Ariz. R. Crim. P. 31.21(b)(2)(A). Upon the court's own motion, Baldonado has 30 days from the date of this decision in which to file a motion for reconsideration.



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