

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JESUS BUSSO-ESTOPELLAN, *Appellant*.

No. 1 CA-CR 17-0611
FILED 9-27-2018

Appeal from the Superior Court in Maricopa County
No. CR2010-132202-002
The Honorable Erin Otis, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Jesse Finn Turner
Counsel for Appellant

STATE v. BUSSO-ESTOPELLAN
Decision of the Court

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge David D. Weinzweig joined.

M c M U R D I E, Judge:

¶1 Jesus Busso-Estopellan appeals his convictions of Possession or Use of Marijuana and Possession of Drug Paraphernalia, both Class 6 felonies, and the resulting sentences. Busso’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, counsel found no arguable question of law that was not frivolous. Busso was given the opportunity to file a supplemental brief, but did not do so. Counsel asks this court to search the record for arguable issues. *See Penson v. Ohio*, 488 U.S. 75 (1988); *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). After reviewing the record, we affirm Busso’s convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND

¶2 In June 2010, Arizona Department of Public Safety officer Christopher D’Souza observed Busso’s vehicle straddling the fog line at the edge of the freeway and weaving side to side in his lane. D’Souza executed a traffic stop and asked Busso for his driver’s license. Busso did not have a driver’s license but handed D’Souza an identification card.

¶3 D’Souza ran Busso’s information through his computer and discovered Busso had an outstanding warrant for driving on a suspended license. D’Souza then asked Busso to step out of the vehicle, placed Busso under arrest, and searched Busso. During the search, Busso told D’Souza that he “had weed on him.” D’Souza did not find any marijuana during his search of the vehicle, but found two marijuana pipes.

¶4 D’Souza transported Busso to the police station and conducted an interview. During the interview, D’Souza again asked Busso if he had drugs in his possession. D’Souza informed Busso that he would be transported to jail and bringing drugs to jail would be a more serious offense. Busso then produced a small bag of marijuana from the front of his pants and gave the bag to D’Souza.

STATE v. BUSSO-ESTOPELLAN
Decision of the Court

¶5 The State charged Busso with one count of Possession or Use of Marijuana, one count of Possession of Drug Paraphernalia, and one count of Driving Under the Influence. Before trial, Busso requested a voluntariness hearing and moved to suppress his statement to D’Souza and the pipes found during the search of his car. Following a hearing, the superior court denied both motions.

¶6 At trial, the State’s criminalist testified that the substance in the bag Busso gave D’Souza was marijuana based on a chemical color test and a microscopic inspection. She further testified that she performed the same tests on the substance in a pipe D’Souza discovered in Busso’s car, and those tests similarly indicated the substance in the pipe was marijuana. Because the material in the remaining pipe was too charred to be identified by a microscopic test, the criminalist testified that she conducted a chemical test and a gas chromatograph-mass spectrometer (GC-MS) test on the second pipe. Both tests indicated the substance in the second pipe was marijuana.

¶7 After a four-day trial, the jury found Busso not guilty of Driving Under the Influence but guilty of the remaining counts. Busso was later sentenced to six months’ incarceration for each of the offenses to be served concurrently. The court awarded Busso 2278 days of presentence incarceration credit.¹ Additionally, the court imposed mandatory fines and fees. Busso timely appealed.

DISCUSSION

¶8 We have read and considered counsel’s brief and have reviewed the record for any arguable issues. *See Leon*, 104 Ariz. at 300. We find none.

¶9 Busso was present and represented by counsel at all stages of the proceedings against him or waived his right to be present. The record reflects the superior court afforded Busso his constitutional and statutory rights, and the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial

¹ While on release pending trial, Busso was charged with two counts of First Degree Murder, and one count of Misconduct Involving Weapons. Following the verdicts in this trial, Busso moved to defer his sentencing until after his capital trial, resulting in his continuing accrual of presentence incarceration credit.

STATE v. BUSSO-ESTOPELLAN
Decision of the Court

hearings, and the evidence presented at trial and summarized above was sufficient to support the jury's verdicts. Busso's sentences fall within the range prescribed by law with proper credit given for presentence incarceration.

CONCLUSION

¶10 Busso's convictions and sentences are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Busso's representation in this appeal will end after informing Busso 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).



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