

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

JESSE VALENTINE SANCHEZ, *Appellant*.

No. 1 CA-CR 17-0710  
FILED 12-4-2018

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Appeal from the Superior Court in Maricopa County  
No. CR2016-143038-001  
The Honorable Peter A. Thompson, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Adele Ponce  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Nicholaus Podsiadlik  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Vice Chief Judge Peter B. Swann and Judge David D. Weinzweig joined.

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**J O N E S, Judge:**

**¶1** Jesse Sanchez appeals his convictions and sentences for one count each of possession of marijuana and possession of drug paraphernalia. Sanchez argues the trial court erred when it denied his motion to dismiss the charges based upon his claim of immunity under the Arizona Medical Marijuana Act (AMMA), Ariz. Rev. Stat. (A.R.S.) §§ 36-2801<sup>1</sup> to -2819. For the following reasons, we affirm Sanchez's convictions and sentences.

**FACTS AND PROCEDURAL HISTORY**

**¶2** On the morning of August 25, 2016, a Buckeye police officer stopped Sanchez on his way to school because his license plate was suspended. Sanchez was the sole occupant of the vehicle. When Sanchez rolled down the window, the officer noted a strong odor of marijuana and saw a box on the center console that the officer believed was used to smoke marijuana wax. After Sanchez advised he did not have a medical marijuana card, the officer detained Sanchez and searched the vehicle, finding a black pouch containing a pipe used to smoke marijuana and clear plastic bags containing marijuana.

**¶3** Sanchez was arrested, and after being advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), explained the marijuana and paraphernalia belonged to his friend who did have a medical marijuana card. Sanchez reported that he had driven the friend to a medical marijuana dispensary the day before while the two were on their way to a concert. Sanchez claimed his friend had left the marijuana and paraphernalia in Sanchez's vehicle after the concert.

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<sup>1</sup> Absent material changes from the relevant date, we cite a statute's current version.

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¶4 The State charged Sanchez with one count each of possession of marijuana and possession of drug paraphernalia. Sanchez moved to dismiss the charges, arguing the AMMA protected him against prosecution “for . . . [b]eing in the presence or vicinity of the medical use of marijuana,” A.R.S. § 36-2811(D)(2), and requested an evidentiary hearing on the issue. The State accepted Sanchez’s facts but argued they failed to present a colorable claim that the AMMA granted him immunity. Following oral argument, the trial court denied the motion to dismiss without an evidentiary hearing.

¶5 After a two-day bench trial, Sanchez was convicted of both counts. The trial court suspended the imposition of sentences and placed Sanchez on probation for one year. Sanchez timely appealed, and this Court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

## DISCUSSION

¶6 Sanchez argues the trial court abused its discretion when it denied both his motion to dismiss and his request for an evidentiary hearing. We review both orders for an abuse of discretion. *State v. Smith*, 242 Ariz. 98, 104, ¶ 22 (App. 2017) (denial of motion to dismiss); *State v. Hulsey*, 243 Ariz. 367, 377, ¶ 21 (2018) (denial of evidentiary hearing). An abuse of discretion occurs if the court errs in applying the law or the record does not support its decision. *Merlina v. Jejna*, 208 Ariz. 1, 3, ¶ 6 (App. 2004) (citing *Files v. Bernal*, 200 Ariz. 64, 65, ¶ 2 (App. 2001)). Our review of a pretrial ruling is limited to the evidence before the court at the time of the ruling, which we view in the light most favorable to affirming the court’s order. See, e.g., *State v. Rushing*, 243 Ariz. 212, 225, ¶ 56 (2017) (motion to suppress); *State v. Goudeau*, 239 Ariz. 421, 444-45, ¶ 60 (2016) (motion to sever); *State v. Huerstel*, 206 Ariz. 93, 107, ¶ 62 (2003) (voluntariness hearing); *State v. Foshay*, 239 Ariz. 271, 274, ¶ 5 (App. 2016) (motion to preclude expert testimony).

### I. The Trial Court Did Not Err when It Denied Sanchez’s Request for an Evidentiary Hearing.

¶7 Sanchez argues the trial court abused its discretion when it denied his request for an evidentiary hearing. “Trial courts have broad discretion in determining whether an evidentiary hearing is required, but ‘should err on the side of granting an evidentiary hearing so that they can gather as much relevant information as possible before making their rulings.’” *Hulsey*, 243 Ariz. at 378, ¶ 23 (quoting *State v. Spears*, 184 Ariz.

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277, 289 (1996)). However, where the facts presented are uncontested, an evidentiary hearing is unnecessary. *See State v. Tarkington*, 157 Ariz. 556, 559 (App. 1988) (citing *State ex rel. Berger v. Superior Court*, 111 Ariz. 335, 338 (1974)).

¶8 Here, the facts presented to the trial court were uncontested. The only issue presented was whether, under those facts, the AMMA immunized Sanchez from prosecution. As such, the court did not err when it denied Sanchez's request for an evidentiary hearing.

**II. The Trial Court Did Not Abuse Its Discretion by Denying Sanchez's Motion to Dismiss.**

¶9 Sanchez argues the trial court abused its discretion by denying his motion to dismiss because A.R.S. § 36-2811(D)(2) protects a person from prosecution where his possession of marijuana is merely "incidental" to another person's authorized medical use. Even if this were a viable theory — a question we need not and do not reach — Sanchez does not assert facts suggesting mere presence or vicinity.<sup>2</sup>

¶10 A person possesses an object if he "knowingly . . . ha[s] physical possession or otherwise . . . exercise[s] dominion or control over property." A.R.S. § 13-105(34). The uncontested facts reflect that Sanchez, a non-cardholder, was the sole occupant and owner of a vehicle that smelled strongly of marijuana and in which marijuana and paraphernalia were found. These facts establish possession and not mere presence. *Cf. State v. Ottar*, 232 Ariz. 97, 102, ¶ 18 (2013) ("It is not necessary for a defendant charged with actually possessing drugs to be found to have had a 'right,' legal or otherwise, to control their disposition or use."). Sanchez is not immunized for his illegal possession. Accordingly, we find no abuse of discretion.

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<sup>2</sup> Indeed, rather than arguing application of the statute to the facts of his own case, Sanchez relies entirely upon four hypothetical scenarios involving military veterans, grandparents, and hospice nurses. Irrelevant hypotheticals do not constitute, and are not an adequate replacement for, the legal analysis required by Arizona Rule of Criminal Procedure 31.10(a)(7)(A) which requires an appellant to present his arguments "with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies." (Emphasis added).

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**CONCLUSION**

**¶11** For the foregoing reasons, Sanchez's convictions and sentences are affirmed.



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