

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KEMAR CHRISTIE, *Appellant*.

No. 1 CA-CR 17-0726
FILED 4-4-2019

Appeal from the Superior Court in Maricopa County
No. CR 2015-000765-001
The Honorable Douglas Gerlach, Judge

AFFIRMED

COUNSEL

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

Michael J. Dew Attorney at Law, Phoenix
By Michael J. Dew
Counsel for Appellant

Kemar Christie, Kingman
Appellant

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MEMORANDUM DECISION

Judge Jennifer B. Campbell delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Randall M. Howe joined.

CAMPBELL, Judge:

¶1 Kemar Christie timely appeals from his convictions and sentences for sale or transportation of marijuana over two pounds and possession of drug paraphernalia. After searching the record on appeal and finding no arguable question of law that was not frivolous, Christie’s counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), asking this court to search the record for reversible error. This court granted counsel’s motion to allow Christie to file a pro per supplemental brief, and Christie did so. We reject the arguments raised in Christie’s supplemental brief and, after reviewing the entire record, find no reversible error. We affirm Christie’s convictions and sentences.

BACKGROUND¹

¶2 In connection with an investigation of a drug trafficking organization, police began surveillance of a house rented by Kemar Christie. As part of the surveillance, officers examined trash left on the street outside the home. In the garbage, police found a small amount of marijuana, a packaging label, and pieces of cardboard. A couple of weeks later, police observed a man leave the house in a vehicle and stop at a nearby store. In the store, police watched the man purchase packing tape, grease, and stretch wrap – items typically used to pack and ship marijuana.

¶3 Later that day, Christie left the house driving the same vehicle. The police pulled his car over after they saw him commit a traffic violation. A K9 unit was dispatched to determine if the odor of contraband emanated from the vehicle. The dog circled the car, sniffing various areas. He first alerted at the trunk area, indicating that it either had contained or did contain contraband. The dog then accessed the interior of the car

¹ We view the facts in the light most favorable to sustaining the convictions and resolve all reasonable inferences against Christie. *State v. Guerra*, 161 Ariz. 289, 293 (1989).

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through the open driver's side door. The dog again alerted, this time to packages in the back seat. Police then searched the car, finding eight packages. In total, the packages contained 126.32 pounds of marijuana wrapped in plastic.

¶4 Based on this information, police obtained and executed a search warrant on Christie's home. Inside, they found marijuana, packing tape, grease, packing peanuts, and a large amount of used plastic wrap that smelled of marijuana. After administering *Miranda* warnings, police interviewed Christie. He admitted that he packaged the marijuana and intended to "drop" the packages at shipping locations. Eventually he admitted that he had been engaged in transportation of marijuana in this manner for two years and that he usually received \$100 per package.

¶5 After trial, the jury found Christie guilty of sale or transportation of more than two pounds of marijuana and possession of drug paraphernalia. He was sentenced to the presumptive terms for each offense, to be served concurrently, with 36 days of presentence incarceration credit.²

DISCUSSION

¶6 In his supplemental brief, Christie asserts that the State did not offer him the same plea agreement as his codefendant, but points to no authority requiring the State to do so. In fact, under Arizona law, the State has no such obligation, as "criminal defendants have no constitutional right to a plea agreement and the State is not required to offer one." *State v. Darelli*, 205 Ariz. 458, 461, ¶ 11 (App. 2003).

¶7 Christie next argues that law enforcement lied when they testified that they made him no promises, asserting that detectives promised to "cut [him] a deal with the prosecutor" if he revealed his cell phone password. The record does not support Christie's argument. Police testified to obtaining a search warrant and using software to extract data from his cell phone. Christie did not present any evidence at trial to rebut

² Christie should have received only 35 days of presentence incarceration credit. The superior court's error, however, is in Christie's favor and is therefore not subject to fundamental error review. *See State v. Escalante*, 245 Ariz. 135, 141, ¶ 21 (2018) (explaining that fundamental error is error that prejudices the defendant and goes to the foundation of the case, takes away a right essential to a defense, or is so egregious that the defendant cannot possibly have received a fair trial).

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the State's witnesses. Any credibility determination made with respect to testimony by law enforcement was well within the jury's purview as fact-finder. *State v. Jensen*, 217 Ariz. 345, 348, ¶ 5 (App. 2008). To the extent that Christie's argument raises a question of voluntariness during a custodial interrogation, the issue was not raised below and has therefore been waived. *See State v. Snee*, 244 Ariz. 37, 39, ¶ 10 (App. 2018) ("[N]either A.R.S. § 13-3988(A) nor the Constitution require[s] the trial court to conduct a voluntariness hearing absent some objection by defendant.").

¶8 Christie argues that the State did not establish probable cause for surveillance of his home because it "did not bring the witness that told them about that house to court." The Fourth Amendment requires probable cause for the court to issue a search warrant, *Frimmel v. Sanders*, 236 Ariz. 232, 239, ¶ 26 (App. 2014), but not for general physical surveillance by police. A person has no reasonable expectation of privacy to items within public view from a public street or sidewalk. *See State v. Dugan*, 113 Ariz. 354, 356 n. 1 (1976). Here, police surveilled Christie's home from public roads, so no warrant was required, and any information gathered from that vantage point did not violate Christie's reasonable expectation of privacy.

¶9 Last, Christie argues that police destroyed evidence and "still charged [him] with the same charge." While Christie fails to identify a specific piece of evidence, the only item identified at trial as destroyed was the marijuana seized after the traffic stop. Arizona Revised Statutes ("A.R.S.") section 13-3413(D) explains that upon seizure of more than ten pounds of marijuana, "the responsible law enforcement agency may retain ten pounds . . . [and] destroy the remainder." Before the marijuana is destroyed, police must photograph it and prepare a report for identification. A.R.S. § 13-3413(D). The defendant and his attorney have the right to be present when the marijuana is photographed. A.R.S. § 13-3413(D). Ultimately, "all photographs and records made under this section and properly identified are admissible in any court proceeding for any purpose for which the seized marijuana . . . itself would be admissible." A.R.S. § 13-3413(D). Here, police served Christie with a notice that the marijuana would be destroyed pursuant to A.R.S. § 13-3413(D). Our search of the record did not reveal whether he or his attorney was present when law enforcement photographed the seized marijuana, but the photographs were entered into evidence at trial. Accordingly, we detect no error.

¶10 In addition to reviewing arguments presented in Christie's supplemental brief, we have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300. Christie received a fair trial. He

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was represented by counsel at all stages of the proceedings and was present at all critical stages.

¶11 The evidence presented at trial was substantial and supports the verdicts. The jury was properly comprised of eight members and the court properly instructed the jury on the elements of the charges, Christie's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report. Christie's attorney was given an opportunity to speak at sentencing and could have allowed Christie to speak at that time but declined to do so. *State v. Dixon*, 127 Ariz. 554, 558 (App. 1980) (holding that the trial court "effectively complied" with Rule 26.10(b)(1) when it gave the defense attorney an opportunity to speak). His sentences were within the range of acceptable sentences for his offenses.

CONCLUSION

¶12 We affirm Christie's convictions and sentences. Unless defense counsel finds an issue that may be appropriately submitted to the Arizona Supreme Court, his obligations are fulfilled once he informs Christie of the outcome of this appeal and his future options. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Christie has 30 days from the date of this decision to proceed, if he wishes, with a pro per motion for reconsideration or petition for review.



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