

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

JIM KENNETH GRIGGS, *Appellant*.

No. 1 CA-CR 18-0465  
FILED 12-24-2019

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Appeal from the Superior Court in Maricopa County  
No. CR2016-001309-001  
The Honorable Marvin L. Davis, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

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

Ortega & Ortega, PLLC, Phoenix  
By Alane M. Ortega  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Maria Elena Cruz delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge James B. Morse Jr. joined.

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**C R U Z**, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Jim Kenneth Griggs has advised this court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Griggs was convicted of: possession or use of dangerous drugs, a class 4 felony; misconduct involving weapons, a class 4 felony; possession or use of dangerous drugs on or near schools, a class 4 felony; and six counts of possession of drug paraphernalia, each a class 6 felony. Griggs has filed a supplemental brief *in propria persona*, which the court has considered. After reviewing the record, we affirm Griggs' convictions and sentences.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Griggs. *See State v. Fontes*, 195 Ariz. 229, 230, ¶ 2 (App. 1998).

¶3 Griggs lived in a residence located across the street from Palo Verde Middle School. Based on information from a confidential informant that Griggs was selling methamphetamine from his residence, law enforcement executed a controlled buy in May 2014.<sup>1</sup> The confidential informant was sent to Griggs' residence and given money to purchase methamphetamine. Law enforcement observed the confidential informant entering Griggs' residence and exiting the residence after a short period of time. The confidential informant returned to law enforcement with a substance that field tested positive for methamphetamine.

¶4 Based on the information from the confidential informant, as well as the controlled buy, law enforcement obtained a search warrant to search Griggs' residence. Then, law enforcement executed a search warrant

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<sup>1</sup> The exact date of the controlled buy was kept confidential in order to protect the identity of the informant.

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and searched Griggs' residence. Griggs was detained and interviewed by Detective Pluta during the search. Griggs allegedly told Detective Pluta that there was meth that he was going to use with a friend located in a toolbox. He also allegedly told Detective Pluta that he had injected methamphetamine for years. Law enforcement found a bag containing syringes, a loose crystalline powder inside the drawer of a red toolbox, a shelf with a mirror that had a loose crystalline substance on it, an operable digital scale, a couple of loose baggies, loose straws, and cut straws. Law enforcement also found a firearm. The loose crystalline powder tested positive for methamphetamine.

¶5 On February 19, 2016, Griggs was charged by indictment with the above-mentioned offenses. Griggs was offered a plea deal of three to three-and-a-half years, and he rejected the offer. The superior court bifurcated the trial and severed the misconduct involving weapons count. Griggs was represented by counsel prior to trial, though Griggs waived his right to counsel and represented himself at trial. Previous counsel remained as advisory counsel. Trial for the eight drug counts took place over five days beginning on August 29, 2017. The jury found Griggs guilty on all eight counts. Griggs took a plea offer for the remaining misconduct involving weapons count.

¶6 The superior court conducted the sentencing hearing in compliance with Griggs' constitutional rights and Arizona Rule of Criminal Procedure 26. The court considered aggravating circumstances of Griggs' criminal history, which included five prior felony convictions that were mostly drug-related. The court also considered mitigating circumstances, which included substance abuse issues, Griggs' family support, Griggs' age, and the fact his priors were previously admitted. With respect to the charge for possession or use of dangerous drugs, Griggs was sentenced to a slightly mitigated term of eight years. For the misconduct involving weapons charge, Griggs was sentenced to a slightly aggravated and stipulated term of five years. For possession or use of dangerous drugs on or near schools, Griggs was sentenced to a slightly mitigated term of eight years. For the six counts of possession of drug paraphernalia, Griggs was sentenced to the presumptive term of 3.75 years. Griggs was given 293 days of incarceration credit for each charge. The court found that concurrent sentences were appropriate for all counts.

¶7 Additionally, the court imposed a one-time probation assessment of \$20, a one-time payment fee of \$20, as well as \$13, \$15, and \$2 assessments. For Griggs' convictions of possession of dangerous drugs

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and possession of dangerous drugs on or near schools, the court imposed a \$1,000 fine with an 83% surcharge for a total amount of \$1,830.

**DISCUSSION**

¶8 We review the entire record for reversible error. *State v. Thompson*, 229 Ariz. 43, 45 ¶ 3 (App. 2012). Counsel for Griggs has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. However, in his supplemental brief, Griggs raises numerous issues that he asks the court address.

I. Drug Free School Zone and Admission of Maps

¶9 Griggs makes several arguments against the admission of a Google Map in his trial. Griggs claims that the court erred by allowing the State to present a Google Map rather than a drug free school zone map in order to secure his conviction under Arizona Revised Statutes (“A.R.S.”) section 13-3411, possession of drugs in a school zone. Section 13-3411(E) states that “[t]he drug free school zone map prepared pursuant to title 15 shall constitute an official record as to the location and boundaries of each drug free school zone,” but it does not require that such a map be presented at trial in order to secure a conviction.

¶10 Under the statute, a “drug free school zone” is defined as “the area within three hundred feet of a school or its accompanying grounds.” A.R.S. § 13-3411(I)(1). Prosecution presented a map that demonstrated Griggs’ residence was within 300 feet of a school. Drugs were found in Griggs’ residence. This is sufficient to secure his conviction under A.R.S. § 13-3411. Thus, the court did not err.

¶11 Griggs also argues that there are no official maps for the drug free school zones and that there are no “warning signs” posted at the entry of the school across from his residence indicating that the location was a school zone. Thus, he argues, he could not have knowingly violated the law. The statute states that “[i]t is unlawful for a person to . . . [p]ossess or use marijuana, peyote, dangerous drugs or narcotic drugs in a drug free school zone.” A.R.S. § 13-411(A)(2). The statute does not require a specific state of mind on the part of the defendant. Here, Griggs was found to be in possession of dangerous drugs within a drug free school zone. Griggs did not need to know that he was in a drug free school zone in order to be convicted under this charge.

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II. Disclosure of Confidential Informant

¶12 Griggs next argues that the court erred in including evidence obtained through the use of a confidential informant who was not disclosed prior to trial. Disclosure of “the existence or identity of an informant who will not be called to testify” is not required if “disclosure would result in substantial risk to the informant or to the informant’s operational effectiveness” provided the “failure to disclose will not infringe on the defendant’s constitutional rights.” Ariz. R. Crim. P. 15.4(b)(2). A defendant seeking to overcome the State’s policy of protecting an informant’s identity bears the burden of demonstrating that the informant’s testimony could bear on the merits of the case and that nondisclosure of the informant’s identity would deprive the defendant of a fair trial. *State v. Superior Court*, 147 Ariz. 615, 617 (App. 1985).

¶13 Griggs has failed to allege, let alone demonstrate, how nondisclosure of the informant’s identity bears on the merits of the case or how it has deprived him of a fair trial. The confidential informant was not present during the execution of the search warrant, was not present during the questioning of Griggs, and did not otherwise play a role in the investigation after the controlled buy. Moreover, as it relates to the drug offenses, Griggs was charged with possession or use, not sale. The State introduced evidence that upon service of the search warrant, law enforcement found methamphetamine, syringes, a scale, baggies, straws, and other paraphernalia. The State also introduced evidence of Griggs’ admissions to methamphetamine use for years. The identity of the confidential informant did not bear on the merits of Griggs’ case. Thus, the court did not err in refusing to allow for the disclosure of the identity of the confidential informant.

III. Suppression of Evidence Obtained Through Search Warrant

¶14 Griggs also argues that “Detective Pluta had stated he did not expect to find anything” and that it was clear “the evidence should be suppressed.” Thus, “the officer knew or should have known that the defendant’s constitutional rights were being violated.” While Griggs’ argument is not entirely clear, and it is also not clear as to what specific evidence Griggs is referring, the evidence obtained in execution of the search warrant was properly admitted at trial. Detective Pluta testified that he did not know the quantity of drugs that would be located at Griggs’ residence when executing the search warrant, but there is no support in the record for the proposition that Detective Pluta said that he “did not expect to find anything” during the search. Additionally, although the search

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warrant included an inaccurate description of the location of the front door of Griggs' residence, this does not render the search warrant and resulting search invalid.

¶15 A reviewing court must presume a search warrant is valid. *Greehling v. State*, 136 Ariz. 175, 176 (1983). The superior court's "task is to determine whether the totality of the circumstances indicates a substantial basis for the magistrate's decision" to issue a warrant. *State v. Hyde*, 186 Ariz. 252, 272 (1996). "A search warrant may not be issued unless the issuing magistrate has probable cause to believe a crime was committed or is in the process of being committed." *State v. Berge*, 130 Ariz. 135, 136 (1981). The courts must consider the totality of the circumstances when considering whether information from an informant establishes probable cause for the issuance of a warrant. *Illinois v. Gates*, 462 U.S. 213, 237-38 (1983). "[P]robable cause exists if, 'given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *State v. Crowley*, 202 Ariz. 80, 85, ¶ 12 (App. 2002) (quoting *Gates*, 462 U.S. at 238).

¶16 Here, information from the confidential informant and the controlled buy were sufficient for the issuance of a search warrant. During the evidentiary hearing held prior to trial, Detective Pluta testified about the reliability of the confidential informant, stating that this person's reliability and credibility had been established through past dealings and corroborating the confidential informant's information "through other investigative means." These investigative means included use of historical information, record checks, and surveillance. Detective Pluta further testified regarding the controlled buy and the steps taken to ensure it was reliable, including searching and removing any possessions on the confidential informant, giving the confidential informant a controlled amount of money, searching the informant after the controlled buy took place, and surveilling Griggs' residence during the entire time the confidential informant was inside. Thus, the court did not err in admitting evidence of the drugs and drug paraphernalia seized in Griggs' home.

#### IV. Exclusion of Evidence

¶17 Griggs also argues that the court erred by failing to admit various documents and testimony into evidence, including the search warrant, return of search warrant, search warrant supplement, a YouTube video, and information regarding Griggs' hernia injury. We will affirm the superior court's exclusion of evidence unless there is (1) a clear abuse of discretion or legal error and (2) prejudice. *Gasiorowski v. Hose*, 182 Ariz. 376,

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382 (App. 1994). The improper exclusion of evidence is not grounds for reversal unless its admission would have changed the result. *Id.*

¶18 Here, there is no legal error in the court's findings that the evidence was irrelevant and inadmissible. Griggs sought to introduce the search warrant, return of the search warrant, and search warrant supplement to show Detective Pluta's "honesty" and "credibility." The search warrant supplement is a form that includes a list of the items seized from Griggs' residence. However, the document was a triplicate form and so the writing was very light and illegible. At trial, Griggs argued that these documents provide evidence of the officer's credibility because "[h]e certifie[d] he left a complete list of everything," but the document looked blank. Griggs failed to explain the relevance of the search warrant supplement to his underlying charges, and he did not explain the relevance of the two other documents. The superior court did not abuse its discretion in excluding these three documents.

¶19 Griggs alleged that the YouTube video was a video that took place at his residence the day of the controlled buy and showed what happened the day of the events. However, the date of the controlled buy was never made certain or disclosed by law enforcement in order to protect the identity of the confidential informant. Thus, the video may or may not have been filmed the day of the controlled buy, and Griggs did not otherwise explain what exactly the video depicted and its relevance to his charges.

¶20 Griggs stated that he sought introduction of his hernia injury "to show [Detective Pluta's] credibility." Griggs alleges that he suffered a hernia when he was detained during the execution of the search warrant. Griggs was questioned by Detective Pluta soon after his detainment, and Detective Pluta testified that Griggs made several incriminating statements, which included Griggs admitting there was meth located in a toolbox. During trial, Griggs stated that the injury should be disclosed because it was relevant to show that he was questioned under the distress of the injury. However, Griggs later conceded that the distress of the injury did not cause him to make statements, but instead he argued that he did not make the statements at all and that Detective Pluta lied. It is unclear how any hernia injury is relevant to whether or not Griggs made the alleged statements, and Griggs failed to explain this. The superior court did not abuse its discretion in choosing to exclude this evidence.

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V. Evidence Tampering

¶21 Griggs argues that there was error because the “seal on the alleged drugs had been broken and tampered with.” At trial, Prosecution presented a package that contained the methamphetamine collected at Griggs’ residence. After the methamphetamine was collected by law enforcement, it was sealed in a package and brought to a lab for testing. The analyst that tested the methamphetamine testified at trial. When presented with the evidence, the analyst stated that the package was in a “little bit different” condition than when she had received it and tested it. The package had a piece of red tape on the back that the witness said was not hers. She testified that it appeared somebody else had cut open the bag and then resealed it. However, this would have occurred after the analyst had already conducted her tests on the methamphetamine.

¶22 Additionally, any flaws in the chain of custody of evidence go to its weight, not to its admissibility. *State v. Gonzales*, 181 Ariz. 502, 511 (1995). Prosecution does not need to “call forth every person who comes in contact with the evidence where there is nothing to suggest the probability of substitution or tampering.” *State v. Lopez*, 23 Ariz. App. 554, 556 (1975). Griggs failed to establish that there was a likelihood the methamphetamine was tampered with, and there is no indication in the record to suggest that anyone other than the laboratory technicians handled the exhibit. The trial court did not err in admitting the methamphetamine into evidence.

VI. Appointment of Advisory Counsel

¶23 Griggs argues that he had irreconcilable differences with his advisory counsel, Kerrie Droban, and that the court erred by allowing her to advise him. He claims that when the court asked if he understood that she would be his advisory counsel, Griggs stated that he did not understand, which indicated that he was not “competent at that moment.” First, Griggs underwent a Rule 11 evaluation in which he was deemed competent to stand trial. Additionally, Griggs knowingly, intelligently, and voluntarily waived his right to counsel. The superior court informed Griggs of his right to counsel, the consequences of waiving his right to counsel, and the responsibilities of self-representation. The record indicates that the court confirmed multiple times during trial whether Griggs wanted to continue to move forward *pro per*.

¶24 While Griggs may not have wanted Droban to serve as his advisory counsel, a defendant does not have the right to the appointment of a particular attorney, and advisory counsel may be appointed over a



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defendant's objection. *State v. Fayle*, 134 Ariz. 565, 577 (App. 1982); *see also State v. Evans*, 125 Ariz. 401, 404 (1980). Thus, there was no violation of Griggs' right to counsel and there was no error in allowing Droban to serve as Griggs' advisory counsel.

VII. Examination of Detective Pluta

¶25 Griggs argues that the court erred in failing to allow him to continue his questioning of Detective Pluta. Detective Pluta was called as a witness by both the State and Griggs. Griggs was given an opportunity to cross-examine Detective Pluta after the State's direct examination. Griggs questioned Detective Pluta for several minutes before stating, "I'm not going to question him right now. I'll just call him as a witness in my case." The following trial day, Griggs called Detective Pluta to the stand and after his direct examination, Griggs stated "I believe I don't have anymore [sic] questions." Griggs was then given an opportunity for redirect, and after finishing, he told the court that he had "no more questions." After asking juror questions, the judge asked Griggs if he had "any follow-up" questions for Detective Pluta. Griggs stated "[n]ot at this time." The record does not indicate that Griggs was prevented from questioning Detective Pluta nor that he was ever cut off during his examination of the witness. Thus, there was no error.

VIII. Jury Selection

¶26 Griggs makes various arguments that the court erred in jury selection. Griggs alleges that he was unable to make all the "strikes" he needed to make because there was an insufficient number of jury members. However, both parties were entitled to six peremptory challenges. Ariz. R. Crim. P. 18.4(c)(1)(B). The record indicates that Griggs was able to "strike" six jurors.

¶27 Griggs also argues that the entire jury should have been dismissed for bias. However, the record of jury selection does not demonstrate the empanelment of any biased jurors, and the judge questioned all jurors for possible bias. During jury selection, the defense asked the prospective jurors the following question: "If you were asked to make a decision right now, how many of you would vote guilty?" While Griggs argues that "almost all" of the sixty prospective jurors responded to this question in the affirmative, the record indicates that only five prospective jurors stated they would find Griggs guilty at that time. All five of these prospective jurors were dismissed, and so none were ultimately selected as jury members.

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IX. Prosecution's Closing Argument

¶28 Griggs claims that there was error because the prosecutor changed the meaning of "reasonable doubt" during her closing arguments. During closing, and in regard to the definition of "reasonable doubt," the prosecutor stated that "proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt." Further, she stated that reasonable doubt "is not absolute certainty that you have to come to in determining whether or not the defendant is guilty" and that "it does not require you to suspend your disbelief." Instead, she told the jurors that if they are "firmly convinced, then [they] must find the defendant guilty." Prosecution did not incorrectly or improperly define "reasonable doubt," and the prosecutor stated almost verbatim language that our supreme court has found to "fairly and accurately" convey the meaning of reasonable doubt. *See State v. Portillo*, 182 Ariz. 592, 596 (1995). Thus, there was no error.

X. Sentencing

¶29 Griggs argues that his sentencing was improper because he should have been sentenced under A.R.S. § 13-3419, which involves sentencing for multiple drug offenses not committed on the same occasion. Here, Griggs was charged with possession of drugs and possession of drug paraphernalia, which were all committed on the same occasion.

¶30 Griggs additionally argues his "only aggravating factors were prior convictions." The superior court considered the appropriate mitigating and aggravating factors in determining Griggs' sentence terms, and Griggs was properly sentenced under A.R.S. §§ 13-702, -703, -3407, -3415.

XI. Appointment of a Private Investigator

¶31 Griggs argues that he should have been given a private investigator before trial. Griggs' advisory counsel, Droban, stated in a settlement conference that Griggs was appointed an investigator prior to trial. Nevertheless, "[a]n accused's right to self-representation does not mean that a defendant has an unlimited right to books, witnesses, and investigators that he may feel necessary to adequately represent himself." *State v. Rigsby*, 160 Ariz. 178, 182 (1989). Griggs must demonstrate how the lack of an investigator has prejudiced him. *Id.* He has failed to do so.

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XII. Grand Jury Proceedings

¶32 Griggs argues that he had a right to attend two grand jury proceedings. However, an individual under investigation by a grand jury “*may* be permitted to appear upon the person’s written request.” Ariz. R. Crim. P. 12.5 (emphasis added). There is no evidence that Griggs sent a written request to appear before the grand jury.

XIII. Prejudicial Statements in Jury’s Presence

¶33 Griggs argues that the court erred by stating in the jury’s presence that it would be marking the search warrant, return of search warrant, and search warrant supplement for appeals purposes. Griggs claims that this statement implied that he was already guilty. However, the record shows that the court made these statements out of the presence of the jury and so the statements could not have prejudiced the jury.

XIV. Private Attorney Communications with Witness J.L.

¶34 Griggs claims there was error because he was not allowed to attend the “interview” between witness J.L. and J.L.’s attorney before trial. Due to the self-incriminating nature of J.L.’s testimony, an attorney was appointed to J.L. to provide advice and discuss the possible consequences of testifying. The conversation between J.L. and his attorney was protected by the attorney-client privilege, and Griggs was in no way entitled to participate. See *Samaritan Found. v. Goodfarb*, 176 Ariz. 497, 501 (1993) (finding that confidential communications “made to or by the lawyer for the purpose of securing or giving legal advice” are privileged). Additionally, Griggs has failed to allege how this has prejudiced him or resulted in error, especially as J.L. testified against his attorney’s advice and in a way that was beneficial to Griggs.

XV. Post-Trial Motions

¶35 Griggs claims his motions filed after trial were not “recognized for hybrid counsel.” There is no right to hybrid counsel in Arizona. *State v. Stone*, 122 Ariz. 304, 307-08 (App. 1979). Additionally, Griggs fails to explain how the court’s failure to recognize his representation as “hybrid” resulted in error.

XVI. Ineffective Assistance of Counsel

¶36 Griggs also makes various arguments that his pretrial counsel and advisory counsel during trial were ineffective. He argues that both

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pretrial counsel and advisory counsel were ineffective for failing to file a motion for reconsideration, pretrial motions, and/or a special action. He argues that pretrial counsel was ineffective for failing to ask for a new suppression hearing. He also argues pretrial counsel “had a court date” without him. He argues that advisory counsel failed to transfer his case file to him before trial, she did not help him during trial, and she sabotaged his trial by “sitting [too] far away” from him. Claims of ineffective assistance of counsel may not be raised on direct appeal. *State ex rel Thomas v. Rayes*, 214 Ariz. 411, 415, ¶ 20 (2007). Instead, they must be presented to the superior court in a post-conviction relief proceeding. *Id.*

XVII. Misconduct Involving Weapons Charge

¶37 Finally, Griggs addresses his weapons misconduct charge and claims that there was “no disclosure.” However, Griggs took a plea on this charge. In noncapital cases, a defendant cannot appeal from a judgment or sentence entered pursuant to plea agreement. A.R.S. § 13-4033(B).

CONCLUSION

¶38 We have read and considered counsel’s brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Griggs prior to trial, Griggs voluntarily and intelligently waived his right to counsel at trial, advisory counsel appropriately assisted Griggs during trial, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Griggs’ convictions and sentences.

¶39 Upon the filing of this decision, defense counsel shall inform Griggs of the status of the appeal and of his future options. Counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Griggs shall have thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

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¶40

For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
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