

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DAVID ALEXANDER BREMNER, *Appellant*.

No. 1 CA-CR 20-0592
FILED 8-24-2021

Appeal from the Superior Court in Yavapai County
No. V1300CR201980516
The Honorable Debra R. Phelan, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Oliverson & Huss PLLC, Tempe
By Jeremy Huss
Counsel for Appellant

David Alexander Bremner, Eloy
Appellant

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MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Randall M. Howe and Judge Maria Elena Cruz joined.

P E R K I N S, Judge:

¶1 David Alexander Bremner timely appealed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969), following his convictions for possession of dangerous drugs for sale, a class 2 felony; possession of drug paraphernalia, a class 6 felony; and liquor-spirituuous liquor in motor vehicles, a class 2 misdemeanor. Bremner's counsel has searched the record and found no arguable question of law that is not frivolous. *See Anders*, 386 U.S. at 744; *see also State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). Bremner filed a *pro per* supplemental brief.

¶2 Our obligation is to review the entire record for reversible error, *Clark*, 196 Ariz. at 537, ¶ 30, viewing the evidence in the light most favorable to sustaining the convictions and resolving all reasonable inferences against Bremner. *See State v. Guerra*, 161 Ariz. 289, 293 (1989). After reviewing the entire record, we find no error and reject the arguments raised in Bremner's supplemental brief. We affirm his convictions.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 In July 2019, Officer Henderson stopped a speeding vehicle driven by Heather Sontag. Bremner sat in the passenger seat. Henderson noticed an alcohol container between Bremner's feet and a yellowish liquid surrounding the container. Henderson searched the vehicle and began a driving under the influence ("DUI") investigation. Henderson requested backup because Sontag and Bremner were "abnormally nervous."

¶4 Officers Presson and Dickinson arrived and assisted Henderson with searching the vehicle. Presson found a large, 122-gram bag of methamphetamine in the glove box and a smaller bag in the center console. Both the field and lab tests confirmed the bags contained methamphetamine. Henderson also found a glass pipe with residue and burn marks. The officers arrested Bremner and read him his *Miranda* rights. During an interview with Detective Truax, Bremner claimed ownership

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over everything illegal police found in the vehicle. The State charged Bremner with three counts: (1) possession of dangerous drugs for sale, a class 2 felony; (2) possession of drug paraphernalia, a class 6 felony; and (3) liquor-spirituuous liquor in motor vehicles, a class 2 misdemeanor.

¶5 Bremner filed a motion to suppress all evidence found in the vehicle and his statements to police because the officers collected the evidence by a warrantless search. The superior court denied the motion, stating the search followed a “classic continuum of events that led to probable cause.”

¶6 The jury found Bremner guilty of counts 1 and 2, and the superior court found him guilty of count 3. The court sentenced him to 14 years’ imprisonment for possession of dangerous drugs for sale, 3 years for possession of drug paraphernalia, and 4 months for liquor-spirituuous liquor in motor vehicles. The court ordered Bremner’s sentences to run concurrently, and he received 489 days of pre-incarceration credit.

DISCUSSION

¶7 The record reveals sufficient evidence upon which the jury could determine, beyond a reasonable doubt, that Bremner is guilty of the charged offenses. The record further reflects that all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, that Bremner was represented by counsel at all stages of the proceedings, and that he was present at all critical stages. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel); *see also State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages). Bremner had the opportunity to speak on his behalf at sentencing, the superior court stated on the record the factors it considered, *see Ariz. R. Crim. P.* 26.9, 26.10, and the court imposed sentences within the statutory limits. *See A.R.S. §§ 13-3407(E), -703, -707.*

¶8 Bremner’s supplemental brief argues Henderson had no probable cause to search the vehicle because he “changed his testimony” to support a probable cause finding. We review constitutional issues and the court’s legal conclusions *de novo*. *State v. Moody*, 208 Ariz. 424, 445, ¶ 62 (2004). Officers are permitted to conduct warrantless searches of stopped vehicles if probable cause exists. *State v. Reyna*, 205 Ariz. 374, 375, ¶ 5 (App. 2003). An officer has probable cause when “reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense.” *State v. Hoskins*, 199 Ariz. 127, 137-38, ¶ 30 (2000). Henderson testified to the Grand Jury that the alcohol containers were empty. But at trial, Henderson testified the

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containers had a “drinkable” amount of alcohol in them. The officer’s conflicting testimony about the amount of alcohol in the containers is immaterial to the probable cause determination. The court received testimony and exhibits at the evidentiary hearing indicating there was alcohol left in the containers Henderson saw in the car. The court did not err in determining Henderson had probable cause, despite his conflicting testimony.

¶9 Bremner also argues that facts indicating the officers did not have probable cause were “sanitized or completely removed from the transcripts.” The record does not support this allegation.

CONCLUSION

¶10 We have reviewed the entire record for arguable issues of law and find none. We therefore affirm Bremner’s convictions and resulting sentences. *See Leon*, 104 Ariz. at 300-01.

¶11 Defense counsel’s obligations pertaining to Bremner’s representation in this appeal have ended. Counsel must only inform Bremner of the outcome of this appeal and his future options, 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). Bremner has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.



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