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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 08/19/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0691  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
JUDITH RODRIGUEZ, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-006642-006 DT

The Honorable Paul J. McMurdie, Judge

**CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED**

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By Kent E. Cattani, Chief Counsel  
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**B R O W N**, Judge

¶1 Judith Rodriguez ("Rodriguez") appeals from her convictions and sentences for conspiracy to commit possession of

marijuana for sale, sale or transportation of marijuana, and possession of marijuana for sale. For the following reasons, we affirm except as modified.

#### **BACKGROUND<sup>1</sup>**

¶12 On December 8, 2008, Cruise America, a recreational vehicle ("RV") rental company, reported to law enforcement that an individual was suspiciously renting numerous RVs, and that the individual would be in that day to rent another vehicle. Police officers responded and placed a GPS tracking device on one of the RVs. Later that day, Clemente Morales Gachupin ("Clemente") and his brother, Heriberto Morales Gachupin ("Heriberto"), rented the RV<sup>2</sup> containing the tracking device. Heriberto drove the Surprise RV to the parking lot of a 99 Cent store at Central and Van Buren in Avondale, while Clemente drove a van to the same location.

¶13 The two men left the RV in the parking lot and drove the van to a residence near 70th Avenue and Nicolette. A blue Dodge pickup truck was seen parked at the 70th Avenue residence. Police then followed the van to another residence located at

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<sup>1</sup> We view the facts in a light most favorable to sustaining the jury's verdict. See *State v. Alatorre*, 191 Ariz. 208, 210 n.1, ¶ 1, 953 P.2d 1261, 1263 n.1 (App. 1998).

<sup>2</sup> At trial this RV was referred to as the "Surprise RV," due to the use of three separate RVs in the alleged drug trafficking organization.

87th Drive. A Ford sedan registered to Rodriguez, and a pickup truck registered to Heriberto, were parked in front of the 87th Drive residence. Rodriguez loaded up the van with her two young children, an ice chest, and various bags. Heriberto and Rodriguez drove the van to the 99 Cent store parking lot. Rodriguez unloaded the van and put its contents into the Surprise RV. Clemente arrived at the 99 Cent store, driving the blue truck and pulling a white cargo trailer. Clemente and Heriberto unhooked the white trailer and attached it to the Surprise RV. Meanwhile, Rodriguez waited outside the Surprise RV and the children played nearby. Rodriguez, Clemente, and Rodriguez's two children left in the Surprise RV, while Heriberto and another individual, German Lopez-Pacheco ("German"), left in the blue truck. At approximately 11:30 p.m., the GPS tracker revealed that the Surprise RV was located at Organ Pipe National Park near Lukeville.

¶4 At approximately 7 a.m. the next morning, the Surprise RV left Lukeville and returned to the 99 Cent store parking lot in Avondale. Clemente and Heriberto unhooked the trailer from the Surprise RV and rehooked it to the blue truck. Heriberto and another individual drove the blue truck to a residence located on West Shiloh in Goodyear. Clemente drove the Surprise RV to a truck stop and parked it there, while Rodriguez followed in the van.

¶15 A similar sequence of the aforementioned events took place on December 11th. The Surprise RV was first discovered parked at a Flying J travel stop, and then later parked in front of the 99 Cent store. The blue truck appeared at the 99 Cent store parking lot with an enclosed trailer hooked to the back of the truck. The trailer was then switched to the Surprise RV. Clemente, Rodriguez, and Rodriguez's children left in the Surprise RV, headed westbound on I-10. Later that evening, the GPS tracker indicated that the Surprise RV had left the Maricopa County area and eventually stopped at Organ Pipe National Park in Lukeville.

¶16 On December 12th, at approximately 10 a.m., the GPS tracker indicated that the Surprise RV had returned to Maricopa County. The Surprise RV, blue truck, and van arrived at a Kmart shopping center. German and another individual, Christian Urias ("Christian"), unhooked the trailer from the Surprise RV and rehooked it to the blue truck. Heriberto, Christian, and German drove away in the blue truck, while Clemente drove the Surprise RV and Rodriguez drove the van to a vehicle rental facility, where they unloaded the contents of the RV into the van. Clemente, Rodriguez, and her children then left in the van.

¶17 Police officers obtained a search warrant on the morning of December 12 and were able to identify the location of the Surprise RV, as well as other RVs used in the operation.

They discovered several inoperable off-road vehicles in the trailers attached to the RVs. Upon further inspection, police officers found false walls inside the trailers that were used to hide bales of marijuana. In the trailer attached to the Surprise RV, police discovered 430 lbs. of marijuana, with an estimated value of \$215,000. In total, the value of all the recovered marijuana was estimated to be worth more than \$700,000.

¶18 Detective P. interviewed Rodriguez after she was taken into custody. A recording of the interview was played for the jury. Rodriguez stated that Clemente, her boyfriend for the past three years, supported her financially. They did not live together, but he paid her rent and all of her expenses. She admitted that she knew Clemente "went to do [his] illegal stuff." Rodriguez also acknowledged there was marijuana involved because she knew it was not possible for Clemente to make the amount of money he did solely through his fishing job. She explained that they went "camping" down to Oregon Pipe National Park approximately every three weeks, sometimes going twice in a week, and that she always took her children with her.

¶19 Rodriguez was indicted on count 1, conspiracy to commit possession of marijuana for sale; count 2, sale or transportation of marijuana; and count 3, possession of marijuana for sale, all class 2 felonies. A six-day trial

involving Rodriguez and one of her co-defendants commenced in August 2009. The trial court denied Rodriguez's motion for a Rule 20 directed verdict, noting that although the evidence against Rodriguez was much weaker than against her co-defendant, there was sufficient evidence that Rodriguez "aided or at least provided means or opportunity for another person to commit the offense, on all three offenses." See Ariz. R. Crim. P. 20.

¶10 The jury found Rodriguez guilty as charged. Rodriguez moved for a new trial, arguing that "there was no direct or indirect evidence or proof that [she] either possessed or transported marijuana." The court denied the motion and sentenced Rodriguez to three years imprisonment on each count. All sentences were to run concurrently, and the court granted Rodriguez 181 days of presentence incarceration.<sup>3</sup> Rodriguez timely appealed.

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<sup>3</sup> The sentencing minute entry states the Rodriguez was given credit for 101 days of presentence incarceration. In the event of a discrepancy between the transcript and a minute entry, the oral pronouncement controls. See Ariz. R. Crim. P. 26.16 (The judgment and sentence "are complete and valid as of the time of their oral pronouncement in open court."); see also *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983) (recognizing that the oral pronouncement of a sentence controls when there is a discrepancy between the written judgment and the oral sentence). Thus, Rodriguez is entitled to 181 days of presentence incarceration credit. See Ariz. Rev. Stat. ("A.R.S.") § 13-4037(A) (2010) (appellate court shall correct a sentence if an illegal sentence has been imposed).

## DISCUSSION

¶11 Rodriguez argues that the trial court abused its discretion in denying her Rule 20 motion for judgment of acquittal based on the State's failure to prove the corpus delicti for those crimes.

¶12 We review a trial court's ruling on the sufficiency of the evidence to establish the corpus delicti for abuse of discretion. *State v. Morris*, 215 Ariz. 324, 333, ¶ 33, 160 P.3d 203, 212 (2007). Rodriguez failed to raise this issue at trial, however, so we review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). We find no error here, much less fundamental error.

¶13 "A defendant may not be convicted of a crime based upon an uncorroborated confession without independent proof of the corpus delicti, or the 'body of the crime.'" *State v. Nieves*, 207 Ariz. 438, 440, ¶ 7, 87 P.3d 851, 853 (App. 2004) (citation omitted). "The purpose of the corpus[delicti] rule is to prevent a conviction based solely on an individual's uncorroborated confession, the concern being that such a confession could be false and the conviction thereby lack fundamental fairness." *State v. Flores*, 202 Ariz. 221, 222, ¶ 5, 42 P.3d 1186, 1187 (App. 2002) (citing *State v. Jones*, 198 Ariz. 18, 21, ¶ 10, 6 P.3d 323, 326 (App. 2000)).

¶14 Only a reasonable inference of the corpus delicti is necessary before a confession may be considered; it does not need to be proven beyond a reasonable doubt. *State v. Gerlaugh*, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982). The evidence supporting the inference may be circumstantial, and the evidence need not support an inference that the person charged actually committed criminal conduct. *State v. Hall*, 204 Ariz. 442, 453, ¶ 43, 65 P.3d 90, 101 (2003); *State v. Weis*, 92 Ariz. 254, 260, 375 P.2d 735, 739 (1962) ("The criminal agency of the person charged with the crime is not a necessary element of corpus delicti."). Thus, proof of the corpus delicti merely requires a reasonable inference that the charged crimes were actually committed, "without regard for who committed them." *Gerlaugh*, 134 Ariz. at 170, 654 P.2d at 806.

¶15 To establish the corpus delicti for each crime charged against Rodriguez, the State had to show someone (1) knowingly possessed marijuana for sale, in violation of A.R.S. § 13-3405 (2010); (2) intended to promote or aid in the commission of possessing marijuana for sale based upon an agreement that at least one person would engage in conduct constituting the offense, in violation of A.R.S. § 13-1003(A) (2010); and (3) knowingly transported marijuana for sale, in violation of A.R.S. § 13-3405.

¶16 The State presented substantial evidence of a complex, coordinated effort involving multiple individuals making trips to Lukeville for the purpose of obtaining large quantities of marijuana which could then be transported and sold. We find that there exists a reasonable inference that the three crimes charged were committed by someone. Therefore, the trial court did not err in considering Rodriguez's statements when it denied her motion for a directed verdict.

**CONCLUSION**

¶17 For the foregoing reasons, we affirm Rodriguez's convictions and sentences, except that we modify the sentencing order to reflect that she was entitled to presentence incarceration credit of 181 days.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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JOHN C. GEMMILL, Presiding Judge

/s/

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PHILIP HALL, Judge