DIVISION ONE
FILED: 12/16/10
RUTH WILLINGHAM, ACTING CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	)	No. 1 CA-CR 09-0867
	)	DEPARTMENT B
v.	)	**MEMORANDUM DECISION**
JULIE A. ACREE, Appellant.	)	(Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-118574-001 SE

The Honorable Michael W. Kemp, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
By Katia Mehu, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Edith M. Lucero, Deputy Public Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Julie A. Acree appeals from her convictions and sentences for possession of marijuana and possession of drug

paraphernalia, both class one misdemeanors. For the following reasons, we affirm the convictions and sentences.

¶2 On appeal, we view the facts in the light most favorable to sustaining the verdict. *See State v. Haight-Gyuro*, 218 Ariz. 356, 357, ¶ 2, 186 P.3d 33, 34 (App. 2008). On July 29, 2008, Acree's vehicle was parked on the side of a road near Laveen and the Gila River Indian Reservation. Police Officer Duran saw her vehicle parked in a "no trespassing zone," and stopped to investigate. As he approached the vehicle, he saw several large boulders and sticks in the back seat of the vehicle. Concerned that she may have been violating reservation or federal law by removing items from reservation land, he questioned Acree, called for a ranger to come and look at the items, and asked for permission to search Acree's vehicle, to which she agreed.

¶3 The search revealed two bags of mushrooms that Duran suspected to be hallucinogenic. Acree then asked if she could smoke and reached for her purse. Duran replied that he needed to search the purse to "make sure there's nothing in your purse that's going to hurt me or [the ranger] that's [e]n route." Inside the purse, Duran found a crumpled tissue with green leafy flaking on it that he believed to be marijuana.[1]

[1] At trial, a criminalist confirmed that the substance was .68 grams of marijuana, a usable amount.

¶4 Acree was charged with possession or use of marijuana and possession of drug paraphernalia, both class six felonies. The State later moved to amend the charges as class one misdemeanors, and the case proceeded to a bench trial.

¶5 At the close of the State's evidence, Acree moved for judgment of acquittal based on an insufficiency of evidence showing intent to possess; the trial court denied the motion. At the conclusion of the trial, the court ruled as follows:

> All right. [sic] Based upon the testimony that I've heard, the testimony of Officer Duran, I do find the testimony is credible. Defendant was alone. She was the only one that had access to this vehicle, at least at this point in time. The purse was hers. The marijuana was found on top of the purse.
>
> I do find that there is sufficient evidence that she knew that the marijuana was in her purse. I do find her guilty of Count 1, possession of marijuana.
>
> Marijuana was in a tissue, which is technically drug paraphernalia. So I do find her guilty as well of Count 2.
>
> I find the State has met its burden beyond a reasonable doubt. Defendant is guilty of both Counts 1 and 2.

¶6 Acree was sentenced to one year of unsupervised probation and this timely appeal followed. Acree's sole argument on appeal is that the trial court erred by applying the wrong legal standard to the burden of proof.

¶7 Because Acree did not object to the standard of proof at trial, we review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). To prevail under this standard of review, a defendant must establish that: (1) error occurred; (2) the error is fundamental; and (3) the error caused the defendant prejudice. *Id*. at 568, ¶¶ 23-26, 115 P.3d at 608. Error is fundamental if it "goes to the foundation of [the] case, takes away a right that is essential to [the] defense, and is of such magnitude that [the defendant] could not have received a fair trial." *Id*. at ¶ 24. We find no error here, much less fundamental error.

¶8 Judges are presumed to know and follow the law. *Fuentes v. Fuentes*, 209 Ariz. 51, 58, ¶ 32, 97 P.3d 876, 883 (App. 2004). We do not evaluate a judge's single sentence out of context, but consider court comments as a whole. *See State v. Webb*, 164 Ariz. 348, 357, 793 P.2d 105, 114 (App. 1990) (finding that challenged jury instructions must be read in the context of the entire collection of instructions).

¶9 Acree's contention, based on the trial court's use of the word "sufficient," is unfounded. Black's Law Dictionary defines "sufficient" as follows: "Adequate; of such quality, number, force, or value as is necessary for a given purpose." Black's Law Dictionary 1474 (8th ed. 2004). In other words, "sufficient" is an adjective of measurement as compared to a

certain standard; it is not the standard itself. Indeed, our supreme court has used similar language in describing the type of evidence required to support a criminal conviction. *See, e.g.*, *State v. Cox*, 217 Ariz. 353, 357, ¶ 22, 174 P.3d 265, 269 (2007) ("Substantial evidence is evidence that reasonable persons could accept as *sufficient* to support a guilty verdict *beyond a reasonable doubt*.") (emphasis added) (internal quotations omitted).

¶10 Accordingly, we affirm Acree's convictions and sentences.

/s/
_____
MICHAEL J. BROWN, Judge

CONCURRING:

/s/
_____
DIANE M. JOHNSEN, Presiding Judge

/s/
_____
JOHN C. GEMMILL, Judge