NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
FILED: 05/19/2011
RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	1 CA-CR 10-0689
Appellee,	DEPARTMENT B
v.	
ELIJAH MILIKE LEE,	MEMORANDUM DECISION (Not for Publication - Rule 111, Rules of the Arizona Supreme Court)
Appellant.	

Appeal from the Superior Court of Maricopa County

Cause No. CR 2010-102250-001DT

The Honorable Carolyn K. Passamonte, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horen, Attorney General
by Kent E. Cattani, Chief Counsel
Criminal Appeals Section
Attorneys for Appellee — Phoenix

James J. Haas, Maricopa County Public Defender
by Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant — Phoenix

W E I S B E R G, Judge

¶1 Elijah Milike Lee ("Defendant") appeals his conviction for possession of marijuana following a bench trial, and the

sentence imposed. Defendant's counsel has filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 744 (1967), and *State v. Leon,* 104 Ariz. 297, 299, 451 P.2d 878, 880 (1969), advising this court that after a search of the entire record on appeal, he finds no arguable ground for reversal. This court granted Defendant an opportunity to file a supplemental brief, but none was filed. Counsel now requests that we search the record for fundamental error. *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Finding no reversible error, we affirm. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033 (A) (2010).

FACTS AND PROCEDURAL BACKGROUND

¶2 We review the facts in the light most favorable to sustaining the verdict. *See State v. Stroud,* 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). On January 12, 2010, Phoenix Police Officer Hoenigman was on patrol in an "extremely dangerous and violent neighborhood." He observed that a car driven by Defendant had an expired vehicle license tag and initiated a stop. Officer Hoenigman asked Defendant for his driver's license and proof of insurance, which Defendant provided. A records check showed the vehicle belonged to Defendant. When asked about the expired registration, Defendant said he lacked the funds to renew it.

¶3 Because he was in an area where he had investigated numerous homicides, aggravated assaults, including aggravated assaults on police officers, and armed robberies, for safety reasons, Officer Hoenigman called for backup. Also, for safety reasons, he asked Defendant and his passenger to exit the vehicle, conducted a pat-down search on Defendant's outer clothing and asked Defendant and the passenger to sit on the ground. The officer then asked Defendant if there was anything illegal in the car that he needed to know about such as weapons or drugs. Defendant "put his head down," then "took a deep breath," and told the officer that "he had some marijuana in a blue backpack in the front seat of the car."

¶4 The officer placed Defendant in investigative detention and handcuffed him. He entered the vehicle, located the backpack, searched it and found Tupperware containing a substance the officer believed to be marijuana. He then arrested Defendant for possession of marijuana and drug paraphernalia.

¶5 He placed Defendant in his patrol vehicle and gave Defendant *Miranda* warnings. He asked Defendant if the marijuana in the Tupperware container belonged to him and Defendant responded that it did. Officer Perreira impounded the substance seized by Officer Hoenigman. The parties stipulated that the substance impounded was a useable amount of marijuana.

¶6 Defendant was charged by information with one count of possession or use of marijuana, a class 6 felony. He requested a voluntariness hearing. He also filed a motion to suppress evidence alleging that the officers' detention exceeded the scope of their reasonable suspicion and violated his federal and state constitutional rights to be free from unreasonable searches and seizures.

¶7 The court held an evidentiary hearing at which both Officer Hoenigman and Defendant testified. Defendant testified that when Officer Hoenigman asked him if he had any drugs or weapons in the vehicle, the officer told him he was going to search his vehicle. Defendant said that he initially wanted to tell the officer that he did not possess anything illegal, but believed his vehicle would be searched anyway and decided to cooperate. On rebuttal, Officer Hoenigman denied telling Defendant that he intended to search the vehicle when he questioned Defendant about what was inside.

¶8 After the hearing, the court found that Defendant's statements to the officer were voluntary and complied with *Miranda.* The court determined that Defendant was not in custody at the time he told the officer that he had marijuana in his car and that he was not coerced into to making the statements. The court also found that Defendant's detention was not unreasonable because the time between the traffic stop and the arrest was five minutes, that

the officer was in a high crime area at night, there were two people in the car, and he was concerned for his safety.[1] The court ruled that after Defendant admitted to possessing marijuana, the officer had probable cause to search the vehicle.

¶9 Following the bench trial, the court found Defendant guilty of possession of marijuana, a class 1 misdemeanor. The court suspended Defendant's sentence and placed him on probation for one year. Defendant timely appealed.

CONCLUSION

¶10 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Defendant was represented by counsel at all stages of the proceedings, there was sufficient evidence for the court to find that Defendant committed the offense and the sentence imposed was within the statutory limits.

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[1] Any time a police officer has lawfully detained a motorist, even for a traffic violation, the officer may request that the driver get out of the vehicle for the officer's safety, without violating the Fourth Amendment's prohibition against unreasonable searches and seizures. *Newell v. Town of Oro Valley,* 163 Ariz. 527, 529, 789 P.2d 394, 396 (App. 1990) (citing *Pennsylvania v. Mimms,* 434 U.S. 106, 111 (1977)).

¶11 After the filing of this decision, counsel’s obligations pertaining to Defendant’s representation in this appeal have ended. Counsel need do no more than inform Defendant of the status of the appeal and of Defendant’s future options, unless counsel’s review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Defendant has thirty days from the date of this decision to proceed, if he desires, with a motion for reconsideration or petition for review *in propria persona.*

¶12 Accordingly, we affirm Defendant's conviction and sentence.

/s/____________________________
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/____________________________
DONN KESSLER, Presiding Judge

/s/____________________________
DIANE M. JOHNSEN, Judge