

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  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 ) No. 1 CA-CR 10-0793  
 )  
 Appellee, ) DEPARTMENT A  
 )  
 v. ) **MEMORANDUM DECISION**  
 )  
 DENIELLE NICOLE GIVENS, ) (Not for Publication -  
 ) Rule 111, Rules of the  
 Appellant. ) Arizona Supreme Court)  
 )  
 )

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Appeal from the Superior Court in Yavapai County

Cause No. V1300CR820080252

The Honorable Warren R. Darrow, Judge

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

DeRienzo & Williams PLLC Prescott Valley  
by Craig Williams  
Attorneys for Appellant

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H A L L, Judge

¶1 Denielle Nicole Givens (defendant) appeals from her convictions and the sentences imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which she has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 Defendant was charged by information with: Count I: knowingly transported for sale a narcotic drug, to-wit: cocaine, over the threshold, a class two felony, in violation of Arizona Revised Statutes (A.R.S.) section 13-3408(A)(7) (2010); Count II: knowingly transported for sale a narcotic drug, to-wit:

cocaine, a class two felony, in violation of A.R.S. § 13-3408(A)(7); Count III: knowingly possessed or used a narcotic drug, to-wit: cocaine, a class four felony in violation of A.R.S. § 13-3408(A)(1); and Count IV: used or possessed drug paraphernalia, a class six felony in violation of A.R.S. § 13-3415(A) (2010).

¶15 The following evidence was presented at trial. On April 11, 2008, several officers of the Yavapai County Sheriff's Office conducted surveillance on defendant. Detective Brandon Rumpf observed defendant pass him driving her 2004 Chevrolet Impala east on Highway 260 toward Camp Verde. Eventually, defendant pulled into a Burger King parking lot, sat in her car for a few minutes, and left. Detective Rumpf then followed defendant to a Bashas' shopping center, where defendant and a passenger exited the vehicle, walked up to a video store, returned to the vehicle, sat in the vehicle for a few minutes and then drove back onto the freeway and eventually exited the freeway and parked in front of a Subway restaurant.

¶16 While watching defendant's parked vehicle, Detective Rumpf observed someone step out of the vehicle, while speaking on a cell phone, and then return to the vehicle. Defendant then drove the car back to the Burger King. Rumpf stated that defendant sat in the vehicle for approximately 15 minutes, drove

across the street to a Denny's Restaurant, and then defendant and the passenger entered the restaurant.

¶17 Sometime later, defendant exited the restaurant and, as she approached her vehicle, an older model white Ford Van pulled into the parking lot. The detective also observed that, at the same time, two Hispanic males walked out of the restaurant and stood next to a red pick-up truck parked next to defendant's vehicle. Defendant approached the driver's window of the van, placed her hands "near the window," and then the van exited the parking lot.

¶18 Defendant then spoke briefly with the two Hispanic males and returned to her vehicle and exited the parking lot. Detective Rumpf followed defendant onto a residential street, observed her make an "abrupt u-turn," and followed her as she began traveling in the opposite direction.

¶19 Detective Rumpf followed defendant until she came to a driveway of a residence at which time he initiated a traffic stop. Initially, defendant yielded to the detective, but as the detective approached defendant's vehicle, she "sped away." Detective Rumpf raced back to his vehicle and followed defendant at high rates of speed through a residential area. Eventually, Detective Rumpf cornered defendant's vehicle in a cul-de-sac. When the vehicle came to a stop, the detective "escorted"

defendant out of her vehicle and advised her of the *Miranda* warnings.<sup>1</sup>

¶10 Detective Rumpf testified that after he told defendant "to quit lying and start telling the truth," she informed him that she received an ounce and a half of cocaine. During the detective's interview with defendant, he looked over and saw what appeared to be a bag of cocaine lying in the dirt. The detective then moved closer and discovered two bags of cocaine on the ground.

¶11 At trial, a criminalist from the Arizona Department of Public Safety Northern Regional Crime Lab testified that the bags contained 27.7 grams and 4.07 grams of cocaine, respectively.

¶12 During trial, the court granted the State's motion to dismiss Counts II and III. After a three-day trial, the jury found defendant guilty on Counts I and IV. The trial court sentenced defendant to a mitigated term of four years imprisonment on Count I and a mitigated term of six months imprisonment on Count IV.

¶13 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

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offenses for which she was convicted.

¶14 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 her 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). Defendant has thirty days from the date of this decision to proceed, if she desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

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PHILIP HALL, Presiding Judge

CONCURRING:

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JON W. THOMPSON, Judge

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LAWRENCE F. WINTHROP, Judge