IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

KYLE LESLIE CATLIN,
Appellant.

No. 2 CA-CR 2015-0467
Filed January 19, 2017

Appeal from the Superior Court in Pima County
No. CR20121707001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Barton & Storts, P.C., Tucson
By Brick P. Storts, III
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Vásquez concurred.

H O W A R D, Presiding Judge:

¶1 After a jury trial, Kyle Catlin was convicted of possession of marijuana for sale, attempted production of marijuana, and possession of drug paraphernalia. He was sentenced to concurrent prison terms, the longest of which is two years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting he has reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, he has provided "a detailed factual and procedural history of the case with citations to the record" and asks this court to search the record for error. Catlin has filed a supplemental brief raising various arguments.

¶2 Viewing the evidence in the light most favorable to sustaining the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports them here. In April 2012, police officers stopped Catlin for a traffic violation; he was carrying nearly $4,000 in cash and about two ounces of marijuana, as well as a medical marijuana caregiver card allowing him to possess 2.5 ounces of marijuana but not to cultivate marijuana. A search of his residence uncovered about two pounds of additional marijuana (an amount consistent with possession for sale, particularly in light of the amount of cash in his possession), over one hundred marijuana plants, and materials for cultivating and packaging marijuana. *See* A.R.S. §§ 13-1001(A), 13-3405(A)(2), (A)(3), 13-3415(A). His sentences are within the statutory range and were properly imposed. A.R.S. §§ 13-701, 13-1001(C)(4), 13-3405(B)(5), (B)(8), 13-3415(A).

¶3 In his supplemental brief, Catlin makes various arguments related to the application of the Arizona Medical Marijuana Act (AMMA), A.R.S. §§ 36-2801 through 36-2819, to his prosecution. Material here, § 36-2811(B)(2) of the AMMA provides immunity for "registered designated caregiver assisting a registered qualifying patient to whom he is connected through the department's registration process with the registered qualifying patient's medical use of marijuana pursuant to this chapter if the registered designated caregiver does not possess more than the allowable amount of marijuana." The allowable amount for a registered caregiver is 2.5 ounces per registered patient. § 36-2801(1)(b)(i).

¶4 Thus, as this court has explained, "[m]arijuana possession and use are illegal in Arizona," and "[t]he protections provided by the AMMA are not available . . . if the cardholder fails to comply with . . . the above condition[], thus subjecting the cardholder to prosecution for all marijuana use or possession." *State v. Liwski*, 238 Ariz. 184, ¶¶ 6, 8, 358 P.2d 605, 607 (App. 2015); *see also State v. Fields*, 232 Ariz. 265, ¶ 15, 304 P.3d 1088, 1092 (App. 2013). The question whether immunity applies is a question of law, with any factual issues to be resolved by the jury. *Liwski*, 238 Ariz. 184, ¶ 8, 358 P.3d at 607.

¶5 Catlin first argues the state could not prosecute him because his registry card had not been revoked. We implicitly rejected this argument in *Liwski* and, in any event, it finds no support in the statutory scheme. Although Catlin is correct that a cardholder's card is subject to revocation, *see* § 36-2815, nothing in the statute suggests that revocation must precede criminal prosecution. Instead, § 36-2811(B) unambiguously provides that immunity is unavailable to any person in possession of more than the allowable amount of marijuana. *See State v. Simmons*, 238 Ariz. 503, ¶ 12, 363 P.3d 120, 123 (App. 2015) (court applies plain language of unambiguous statute).

¶6 Catlin additionally contends he is entitled to receive "donations" for marijuana provided as a caregiver pursuant to § 36-

2811(B)(3). We rejected this argument in *State v. Matlock*, 237 Ariz. 331, ¶ 15, 350 P.3d 835, 839 (App. 2015), and decline Catlin's invitation to revisit that decision or our other decisions interpreting the AMMA. In any event, even if Catlin was correct that he could solicit donations for marijuana, that fact would be irrelevant in light of his possession of marijuana well in excess of the allowable amount.

¶7 Catlin next argues he was prevented from proving he did not possess more than the amount of marijuana permitted by his cardholder status because the state improperly stored the marijuana seized from him. As we have explained, as a registered caregiver for one patient, Catlin was permitted under the AMMA to possess 2.5 ounces of "usable marijuana," that is, "dried flowers of the marijuana plant, and any mixture or preparation thereof, but . . . not includ[ing] the seeds, stalks and roots of the plant"; usable marijuana does not include "[m]arijuana that is incidental to medical use, but is not usable." A.R.S. §§ 36-2801(1)(b)(i), (c), (15).

¶8 Catlin seems to argue that, because the marijuana was improperly stored after seizure and was not "tested . . . for its moisture content," he was unable to show the marijuana was not usable. He did not raise this argument below and thus has forfeited all but fundamental, prejudicial error. *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). He has not identified any evidence in the record suggesting the state's storage procedures could have affected the weight of usable marijuana in his possession, much less that those storage procedures would have caused a sufficient discrepancy such that he would have only possessed 2.5 ounces of "usable" marijuana. Therefore, he has not shown prejudice, even assuming some error occurred.

¶9 Catlin also makes various arguments related to a motion to suppress evidence based on the propriety of the traffic stop leading to his arrest, the search of his person during that traffic stop, and incriminating statements he made to investigating officers. His arguments, taken as a whole, are nothing more than a request that we reweigh the evidence presented at the suppression hearing. We will not do so. *State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452,

453 (App. 2004) (trial court determines credibility of witnesses; appellate court will not reweigh evidence).

¶10 Finally, Catlin identifies several instances of what he claims constitute trial error. We have reviewed the alleged errors and conclude none warrant relief. And, pursuant to our obligation under *Anders*, we have searched the record for fundamental error and found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985). We therefore affirm Catlin's convictions and sentences.