IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ROBERT GARCIA GALVAN JR.,
Appellant.

No. 2 CA-CR 2016-0188
Filed February 27, 2017

Appeal from the Superior Court in Pima County
No. CR20151827001
The Honorable Danelle B. Liwski, Judge

AFFIRMED

COUNSEL

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By Michael T. O'Toole, Assistant Attorney General, Tucson
Counsel for Appellee

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Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Miller concurred.

S T A R I N G, Presiding Judge:

¶1 After a jury trial, Robert Galvan Jr. was convicted of aggravated driving under the influence while his license was suspended, revoked, or restricted; fleeing from a law enforcement vehicle; and resisting arrest. The trial court sentenced him to presumptive, concurrent prison terms, the longest of which is 4.5 years. On appeal, he argues the court erred in denying his motion to suppress his statement to a doctor made in the presence of a police officer, and by denying his motion for a judgment of acquittal on the charge of resisting arrest. We affirm.

Motion to Suppress

¶2 We first address Galvan's claim that the trial court erred in denying his motion to suppress. "We review a trial court's ruling on a motion to suppress for abuse of discretion, considering only the evidence presented at the suppression hearing and viewing the facts in a light most favorable to sustaining the trial court's ruling." *State v. Adair*, 241 Ariz. 58, ¶ 9, 383 P.3d 1132, 1134 (2016).

Background

¶3 In May 2015, Galvan fled from police officers attempting to initiate a traffic stop, first in his vehicle and then on foot. During the incident, Galvan was bitten multiple times by a police dog. And, although he did not wish to go, the police took him to a hospital for treatment where hospital staff drew his blood and gave a sample to the police. After an officer advised Galvan of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), he declined to waive his rights and refused to give the officer a

statement. To provide security and to ensure Galvan did not flee, however, the officer remained in the area where Galvan was being treated. Hospital staff then administered morphine as part of his treatment. Shortly after being medicated, he made inculpatory statements about his alcohol use to treating physicians, which statements were overheard by a police officer.[1]

¶4 Galvan moved to suppress test results of the blood sample given to the officer, arguing no exigency existed that permitted the blood sample to have been given to police pursuant to A.R.S. § 28-1388(E). The trial court granted the motion, concluding there had been no exigency and Galvan had not consented to medical treatment. *See State v. Nissley*, 241 Ariz. 327, ¶ 24, 387 P.3d 1256, 1262 (2017) (invocation of medical blood draw exception in § 28–1388(E) requires state to prove, inter alia, that "provision of medical services did not violate the suspect's right to direct his or her own medical treatment").

¶5 Galvan then moved to suppress his inculpatory statement made at the hospital, arguing the police had "unlawfully removed" him to the hospital and, thus, "further evidence obtained as a direct result . . . should also be suppressed." He additionally claimed the statement should be suppressed because he had asserted his right to remain silent, and because he was in an "altered state" after being given morphine.[2]

¶6 The trial court reviewed the transcript from the evidentiary hearing on Galvan's first motion to suppress and concluded "the officers could lawfully transport [Galvan] to the hospital in order to assure officer safety and to avoid being sued civilly later." It also concluded, however, that Galvan's statements "were made directly for medical treatment" and therefore "are not admissible at trial." Before trial began, however, the court reversed

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[1]The officer testified at trial that Galvan had stated he had been drinking that day and "ha[d] been drinking alcohol all night."

[2]The case was subsequently assigned to a different judge.

its ruling concerning the admissibility of Galvan's statements.[3] Confirming its finding the officers had a "reasonable basis" to take Galvan to the hospital, the court concluded Galvan's statements were admissible pursuant to *State v. Huffman*, 137 Ariz. 300, 303, 670 P.2d 405, 408 (App. 1983).

Discussion: Overheard Statement to Doctor

¶7 On appeal, Galvan argues his statement to the treating physician was subject to suppression because his blood test results had been suppressed due to his involuntarily transport to the hospital. Thus, he contends, his statements were the "fruit of the poisonous tree." But, as Galvan recognizes, the relevant constitutional violation was not transporting him to the hospital for medical treatment, but instead the warrantless seizure of his blood because he did not voluntarily consent to medical treatment. *See Nissley*, 241 Ariz. 327, ¶ 13, 387 P.3d at 1260. He cites no authority suggesting his transportation to the hospital or subsequent treatment violated a constitutional right, nor does he argue the trial court erred in concluding officers had a reasonable basis to take him to the hospital for treatment.

¶8 We recognize that a person has a "due process right to direct his or her own course of medical treatment." *Id.* ¶ 14. But Galvan has developed no argument that a violation of that right would render inadmissible his statements made during treatment. Thus, we do not address this issue further. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on appellate review).

[3]Galvan has not provided transcripts of status conferences at which the court initially granted the motion nor of the discussion before trial after which the court ultimately denied it. We therefore assume those transcripts support the court's ruling. *See State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982) ("Where matters are not included in the record on appeal, the missing portions of the record will be presumed to support the action of the trial court.").

¶9 Galvan next contends, citing *State v. Santeyan*, 136 Ariz. 108, 664 P.2d 652 (1983), that his statements to the treating physician were privileged pursuant to A.R.S. § 13-4062(4). That statute provides, "[a] physician or surgeon" "shall not be examined as a witness" without the consent of the patient, "as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient." *Id.* The state counters that *Huffman* authorizes a police officer to testify about statements a defendant made to a physician and that were overheard by the officer. We need not decide whether *Huffman* or *Santeyan* control the resolution of this case, however, because any alleged error would have been harmless.

¶10 Galvan was first observed by a police officer exiting a parking lot in a wide turn that took him to the median lane. He then "suddenly swerved across . . . three lanes of traffic and cut off [another] vehicle." The officer next observed him "bounce[] off the curb at least two times," weave in and out of his lane, and "cross[] the lane divider." When officers activated their overhead lights and sirens, Galvan continued to drive erratically, increased his speed, ignored traffic control signs, almost caused a collision with another vehicle, and refused to stop until he was cornered in an alley. He then attempted to elude officers on foot. When finally subdued, Galvan displayed multiple signs of intoxication, including a "strong odor" of alcohol, "watery and bloodshot" eyes, slurred speech, heavy swaying, unsteady balance, and "bouts of cursing and crying." Given the extensive testimony about Galvan's driving and his physical condition after apprehension, a jury would have returned a guilty verdict even without the officer's testimony recounting Galvan's statement to medical personnel. Thus, even were we to conclude the court erred by admitting Galvan's statements to the physician, any such error would be harmless beyond a reasonable doubt. *See State v. Beasley*, 205 Ariz. 334, ¶ 27, 70 P.3d 463, 469 (App. 2003) (appellate court may affirm if error "harmless beyond a reasonable doubt").

Rule 20 Motion

¶11 Galvan next contends the trial court erred in denying his motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P., as to the charge of resisting arrest. We review de novo a trial court's denial of a Rule 20 motion. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* ¶ 16, *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990).

¶12 Relevant to the resisting-arrest charge, a police officer testified that after the vehicular pursuit, he was required to send his dog after Galvan. The dog chased Galvan into a residential yard and seized his arm. Galvan struck the animal repeatedly and tried to "gouge his eyes." Although the officer commanded Galvan to stop, he continued to fight with the dog. The officer, with the dog's assistance, ultimately managed to force Galvan to the ground, where he was then handcuffed.

¶13 Galvan moved for acquittal, arguing as to the charge of resisting arrest that he had been unaware he was fighting a police dog. The court denied the motion. The following day, however, the state notified the court that "resisting arrest is a crime committed against a person" and required proof that Galvan had used "physical force against a pe[a]ce officer or another." *See* A.R.S. § 13-2508. The state clarified, however, that it did not wish to "withdraw[] the resisting arrest charge."

¶14 Galvan renewed his Rule 20 motion, arguing a judgment of acquittal was warranted because there was no evidence he had resisted the officer, only the dog, and "mere difficulty in handcuffing someone is not . . . resisting arrest, that's not a use of physical force to resist the arrest." The court denied the renewed motion, noting there was testimony Galvan had fought the officer as well, but ultimately concluded the "police dog . . . was an extension of the police officer" and the jury could find "Galvan fighting with the dog prevented [the officer] from [e]ffecting his arrest."

¶15 On appeal, Galvan again argues that the charge cannot be based on fighting with the police dog because the dog is not a "person." We need not decide, however, whether the use of physical force against a police dog can constitute resisting arrest under § 13-2508(A)(1), because there was evidence in the record that Galvan also used physical force directly against the arresting officer. Although that officer testified Galvan's "motions or actions" had been directed towards the dog, another officer who saw the altercation reported Galvan "was actually fighting with the dog, and then he was fighting with [the arresting officer]." *See* § 13-2508(A)(1); *State v. Sorkhabi*, 202 Ariz. 450, ¶ 10, 46 P.3d 1071, 1073 (App. 2002) (struggling with officers during arrest is "conduct squarely under the provisions of § 13-2508(A)(1)"). Thus, the trial court correctly denied Galvan's Rule 20 motion.

Disposition

¶16 We affirm Galvan's convictions and sentences.