IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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THE STATE OF ARIZONA,
*Appellee*,

*v.*

IAN THOMAS GOODYEAR,
*Appellant*.

No. 2 CA-CR 2016-0291
Filed October 25, 2017

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Appeal from the Superior Court in Pima County
No. CR20151936002
The Honorable Casey F. McGinley, Judge Pro Tempore
The Honorable Scott Rash, Judge

**AFFIRMED IN PART, VACATED IN PART,
MODIFIED IN PART**

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COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Jonathan Bass, Assistant Attorney General, Tucson
*Counsel for Appellee*

Joel Feinman, Pima County Public Defender
By Abigail Jensen, Assistant Public Defender, Tucson
*Counsel for Appellant*

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**MEMORANDUM DECISION**

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

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E P P I C H, Judge:

**¶1** Following a jury trial in absentia in April 2016, appellant Ian Goodyear was convicted of transportation of a dangerous drug for sale, possession of a dangerous drug, possession of a dangerous drug for sale, possession of drug paraphernalia, and possession of a deadly weapon during the commission of a felony drug offense.[1] In July 2016, the trial court sentenced him to concurrent, minimum, and presumptive prison terms, the longest of which are five years.

**¶2** On appeal, Goodyear argues: (1) the trial court erroneously denied his motion to suppress,[2] (2) his convictions for transportation and possession of a dangerous drug for sale violate the prohibition against double jeopardy, and (3) the court miscalculated the number of days of presentence incarceration credit to which he is entitled. For the following reasons, we vacate Goodyear's conviction and sentence for possession of a dangerous drug for sale, modify the

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[1]The jury found beyond a reasonable doubt that Goodyear had possessed more than nine grams of methamphetamine with respect to the counts of transportation and possession of a dangerous drug for sale.

[2] Although Goodyear and codefendant Tonya Dearman received separate trials and filed separate motions to suppress, those motions were addressed at a joint suppression hearing, and Goodyear's motion was also addressed at a later hearing.

court's sentence to include presentence incarceration credit of eighty-one days, and otherwise affirm.

**Motion to Suppress**

**¶3** In reviewing a trial court's ruling on a motion to suppress, "we consider only the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the . . . ruling." *State v. Gonzalez*, 235 Ariz. 212, ¶ 2, 330 P.3d 969, 970 (App. 2014). In reviewing a ruling on a motion to suppress, we defer to the court's factual determinations, but we review its legal conclusions de novo. *See State v. Olm*, 223 Ariz. 429, ¶ 7, 224 P.3d 245, 248 (App. 2010); *see also In re Ilono H.*, 210 Ariz. 473, ¶ 3, 113 P.3d 696, 697 (App. 2005) (whether police have reasonable suspicion to conduct investigatory stop is mixed question of law and fact we review de novo).

**¶4** During the morning of July 16, 2014, Drug Enforcement Administration Agent Michael Garbo was part of a group surveillance of a stash house located in a Tucson neighborhood known for "drug trafficking." Officers observed two vehicles with New Mexico license plates involved in "suspicious" activity at a nearby convenience store.[3] Individuals with New Mexico license plates did not frequent the area; "[t]here was a lot of transit back and forth" between the subject vehicles, activity consistent with drug sales which often occur in public places like convenience store parking lots; and, the vehicles departed "in tandem," conduct "very common[ly]" found with illegal drug activity.

**¶5** At approximately 6:30 p.m. on the same day, an agent reported seeing one of the New Mexico vehicles parked in a stall at a nearby car wash. Garbo, who was dressed in "plain clothes," drove around the front of the car wash and made eye contact with Goodyear's codefendant, Tonya Dearman, who was in the driver's

[3] Goodyear was later identified as the driver of one of those vehicles.

seat of the vehicle. Garbo approached Dearman, who had "hurriedly" left the car and started putting tokens into the car wash machine after he made eye contact with her. Garbo introduced himself as a law enforcement officer and asked if he could speak with Dearman, whom he described as looking "extremely nervous." Garbo had been wearing a digital recording device; his conversation with Dearman was played and admitted into evidence at the suppression hearing.

**¶6** After Garbo explained to Dearman that there had been "heavy criminal activity" in the area, she proceeded to talk with him. Garbo did not physically block Dearman's vehicle with his body or car during the conversation. He testified Dearman continued to talk with him as she washed her car, and that his contact with her at that point was "[a]bsolutely" consensual. When Garbo asked Dearman who was in the car, she identified one of the occupants as "Ian," explained that he "tows cars," and "that they were headed back to New Mexico," where she and Ian lived. While Garbo was speaking with Dearman outside the car, Border Patrol Agent Hector Lopez, who was dressed in "street clothes," approached the passenger side of Dearman's car and tapped on the front-passenger window, which was heavily tinted. Although Lopez did not verbally ask the front-seat passenger to roll down the window, she did so, revealing Goodyear in the back seat. Lopez then asked Goodyear to roll down his window and saw that he was shirtless and was holding "a lockback pocket knife with the blade exposed." Lopez asked Goodyear if he had any weapons or guns in the vehicle, and he responded that he had a gun.

**¶7** Lopez informed Garbo "[t]here's a gun in the car," after which Goodyear was taken out of the vehicle and "came toward[]" Garbo, who handcuffed him for "safety reasons." At that point, Garbo "did not know where the knife or any type of gun was located." Garbo conducted a pat-down search on Goodyear, during which he "felt a bag inside [Goodyear's pocket] with a hard crystalline substance," which based on his training and experience, he "felt" was crystal methamphetamine; the search also yielded a knife. The bag found in Goodyear's pocket contained 12.45 grams of crystal

methamphetamine, an amount consistent with the "distribution" of drugs.

**¶8** Garbo testified, "At that point there [were] several things kind of going on at once." The officers asked the front-seat passenger to get out of the car; she did so, leaving the door open and revealing, in plain view under the center console, a ceramic pipe "commonly used for smoking methamphetamine." Garbo testified that, "due to the fact that the door was open," the pipe was "the first observation [he] made" before he looked anywhere else in the vehicle.[4] He then opened the rear passenger door and found lying on the floor a set of digital scales consistent with narcotics paraphernalia, another ceramic pipe, and a handgun in the driver-side seatback. Garbo then opened the driver's door, and sticking out of the side of a large purse on the driver-side floorboard he found a third ceramic pipe. Inside the purse he found debit and credit cards bearing Dearman's name and "two large, clear Ziplocked bags" containing crystal methamphetamine.

**¶9** Garbo testified that once he knew a gun was involved, his encounter with Dearman was no longer consensual, and he ordered her to "move over to the other side of the wall." He stated, "Mr. Goodyear had [come] out of the vehicle, was walking in my direction. So, again, due to safety concerns, I wanted Ms. Dearman out of my way so I could, again, conduct the pat down and secure Mr. Goodyear." At that point, Garbo and Lopez were the only two officers dealing with three individuals, Dearman, Goodyear, and the

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[4]Contrary to his testimony at the suppression hearing, Garbo stated in his report that after the front-seat passenger got out of the car, he opened the rear-driver's door, revealing a scale, a ceramic pipe, and two guns. He reported "[a]t that point," he walked to the front-passenger door and saw the pipe in plain view. Because neither party challenged this apparent discrepancy at the suppression hearing or on appeal, we deem it abandoned and waived. *See State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) ("Failure to argue a claim usually constitutes abandonment and waiver of that claim.").

front-seat passenger. Dearman appeared to be "extremely high," under the influence of crystal methamphetamine.

**¶10** Goodyear filed a motion to "preclude," asking the trial court to suppress the methamphetamine found in his pocket and the items found in Dearman's car. He argued that, because the pat-down search was unwarranted, and because Garbo did not recognize the methamphetamine found in Goodyear's pocket as contraband, the evidence was seized illegally. Although Goodyear did not expressly join in Dearman's motion to suppress, in which she had presented different arguments than he had raised in his motion, his attorney fully participated in the suppression hearing. At the conclusion of that hearing, Goodyear reminded the court he had a pending motion to suppress with different arguments than Dearman had presented, but noted that "[t]he testimony [for his motion] is, basically, identical to what [the court had] heard," and agreed that no additional testimony was required.

**¶11** At the conclusion of the suppression hearing, the trial court explained that although *State v. Serna* applies to the facts at issue, because that case was decided in August 2014, after the July 2014 incident, *State v. Garcia Garcia*, was the applicable law at the relevant time. *See Serna*, 235 Ariz. 270, ¶ 28, 331 P.3d 405, 411 (2014) (during consensual encounter, absent consent, officer may frisk individual only when officer possesses reasonable suspicion that person has engaged or is about to engage in criminal activity *and* that person is armed and dangerous); *Garcia Garcia*, 169 Ariz. 530, 532, 821 P.2d 191, 193 (App. 1991) ("any reasonable fear for [officer] safety is enough to warrant a search"). The court further found the "officer's view of [Goodyear's] knife and Mr. Goodyear's statement, 'I have a gun,'" created a reasonable fear for officer safety, "such that the detention at that point was reasonable[, based on] suspicion of a crime occurring or having been committed, that a *Terry* stop[5] was—detention was appropriate under the totality of the circumstances." The court also explained that, although there was no reasonable suspicion to stop and detain Dearman initially, once Lopez

[5]*Terry v. Ohio*, 392 U.S. 1 (1968).

determined Goodyear had a gun, under *Garcia Garcia*, Garbo "could detain [Dearman] for officer safety" and Lopez could ask Goodyear to get out of the vehicle. The court relied on *Davis v. United States*, 564 U.S. 229, 241 (2011), where the Supreme Court found that a search based on officers' objectively reasonable reliance on binding precedent is not subject to the exclusionary rule, and *State v. Driscoll*, 238 Ariz. 432, ¶¶ 11, 14, 17, 361 P.3d 961, 963-65 (App. 2015), where we adopted the reasoning in *Davis*.

**¶12** The following week, at a separate suppression hearing addressing Goodyear's motion, the same judge who had presided over the initial suppression hearing[6] denied his motion for the following reasons:

> THE COURT: All right. Okay. I've read the motion to preclude. Mr. Coulter, it seems like the balance of your argument is based upon [*State v. Valle*, 196 Ariz. 324, ¶¶ 9-10, 996 P.2d 125, 128 (App. 2000)], which kind of presupposes that the witness didn't recognize the item in the pocket as either contraband or as a weapon, but in this particular case, Agent Garbo specifically testified that as soon as he felt the knife and then he went around and he felt the next pocket, he felt what appeared to him to be crystal meth.
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> He was—he didn't show any doubt that he thought it was crystal meth; and that kind of leads me to [*Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993)] which says—it is kind of the plain view doctrine. So go ahead.

[6]One judge presided over the suppression hearings, while a different judge presided over Goodyear's trial.

> MR. COULTER: Your Honor, in light of Agent Garbo's testimony, I don't have any additional argument to make.
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> . . . .
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> THE COURT: All right. The motion to preclude the evidence is denied based upon the record I just made, based upon Agent Garbo's testimony and the cases that I cited in the parties' brief.

**¶13** On appeal, Goodyear challenges the trial court's failure to suppress the evidence found in his pocket and in Dearman's car. Relying on *Wong Sun v. United States*, 371 U.S. 471 (1963), he argues any evidence seized as a result of the illegal pat-down search should be suppressed as the "'fruit of the poisonous tree.'" *Id.* at 489. Goodyear acknowledges that his "motion did not argue that his removal from [Dearman's] vehicle and pat-down was illegal because the officers lacked reasonable suspicion of criminal activity, and that he did not join in [Dearman's] motion based on *Serna*." He nonetheless contends the admission of the challenged evidence constitutes fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to raise argument in trial court forfeits review for all but fundamental, prejudicial error); *see also State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (noting fundamental error waived if not asserted). He reasons that *Serna* controls, and that because there was no reasonable suspicion criminal activity was afoot, much less that he was acting in concert with Dearman, his Fourth Amendment rights were violated.

**¶14** The Fourth Amendment to the United States Constitution prohibits unreasonable searches or seizures. U.S. Const. amend IV. Warrantless "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Fourth Amendment protections "extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *United*

*States v. Arvizu*, 534 U.S. 266, 273 (2002), *citing Terry v. Ohio*, 392 U.S. 1, 9 (1968) (officer justified in frisking individual for weapons if officer can reasonably conclude criminal activity may be afoot and person may be armed and presently dangerous).

**¶15** Relying on *Serna*, Goodyear argues possession of a knife or gun alone does not create reasonable suspicion criminal activity is afoot, and he contends that once he put the knife away and told the officer he had a gun, "there was no basis for concluding that he was 'armed and dangerous,'" and thus no reason to ask him to leave the car or to conduct the ensuing pat-down search. *Serna*, 235 Ariz. 270, ¶¶ 17, 22-23, 331 P.3d at 274-75. He similarly maintains that, because the officers did not have the authority to ask the front-seat passenger to leave the car, they were not legally in a position to see the pipe in plain view.

**¶16** As Goodyear correctly argues, even before *Serna* was decided this court held that officers may not conduct protective searches in the absence of reasonable suspicion that criminal activity is afoot, and that pat-down searches conducted during a consensual encounter are improper even if officers have grounds to believe the individual to be searched may be armed and dangerous. *See Ilono H.*, 210 Ariz. 473, ¶¶ 11-15, 113 P.3d at 699-701. Goodyear thus maintains that, "[u]nder the controlling law," removing him from the car without reasonable suspicion that criminal activity was afoot violated his Fourth Amendment rights, and that the ensuing pat-down search was illegal under *Terry* and *Serna*. He also asserts, "even *Garcia Garcia* on which the trial court relied, is to the same effect."

**¶17** But, to the extent Goodyear argues there simply was no evidence to support a finding of reasonable suspicion that criminal activity was afoot, the record belies his argument. Under well-developed case law, we find reasonable suspicion existed as a matter of law, and the pat-down search of Goodyear and the search of Dearman's car were justified for the reasons set forth below. Reasonable suspicion requires "considerably less than proof of wrongdoing by a preponderance of the evidence" and "obviously less" than necessary for probable cause. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

**¶18** As previously noted, the officers observed the following: the presence of out-of-state license plates in a high-crime area where such plates are not common; the subject vehicles were involved in suspicious conduct associated with illegal drug activity at a convenience store parking lot in the high-crime area; later that day, one of the cars seen at the convenience store that morning was spotted at a nearby car wash; and, when an officer approached the driver of the vehicle at the car wash, she appeared nervous and exhibited conduct associated with methamphetamine intoxication. *See, e.g.*, *State v. Primous*, 242 Ariz. 221, ¶¶ 23-24, 394 P.3d 646, 651 (2017) (presence in "dangerous neighborhood" relevant for reasonable suspicion); *State v. Magner*, 191 Ariz. 392, ¶ 15, 956 P.2d 519, 524 (App. 1998) ("'[D]ramatic' indications of nervousness may contribute substantially to a suspicion of criminal activity."), *quoting United States v. Green*, 52 F.3d 194, 199 (8th Cir. 1995), *disapproved of on other grounds by State v. O'Meara*, 198 Ariz. 294, ¶ 9, 9 P.3d 325, 327 (2000). All of these factors, combined with Lopez's observation of Goodyear holding an open knife while seated behind a passenger in the New Mexico vehicle, while acknowledging he also had a gun, were sufficient to provide, at the very least, reasonable suspicion that criminal activity was afoot. *Primous*, 242 Ariz. 221, ¶ 20, 394 P.3d at 650 (officers may consider whether suspects are acting in concert, suggesting reasonable suspicion they were engaged in illegal activity as a group and might be armed and dangerous); *State v. Teagle*, 217 Ariz. 17, ¶ 26, 170 P.3d 266, 273 (App. 2007) (in reviewing totality of circumstances, appellate court "accord[s] deference to a trained law enforcement officer's ability to distinguish between innocent and suspicious actions").

**¶19** Moreover, based on the totality of the circumstances, a "reasonably prudent man" would believe not only that Goodyear was armed, which he undeniably was, but that he was dangerous, justifying the detention and ensuing frisk for weapons. *Terry*, 392 U.S. at 27; *see also Harmelin v. Michigan*, 501 U.S. 957, 1003 (1991) ("direct nexus between illegal drugs and crimes of violence"); *O'Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d at 327 (to determine reasonable suspicion, "one must look at all of the factors . . . and examine them collectively"). And once the officers had reasonable suspicion to detain Goodyear,

combined with the fluid nature of the overall situation, including the fact that two officers were dealing with three individuals, one of whom had a knife and a gun in an undetermined location, it was reasonable for them to ask the front-seat passenger to get out of the vehicle for the safety of the officers and everyone involved.

**¶20** Once the front-seat passenger got out of the car, leaving the car door open and exposing in plain view a ceramic pipe commonly used to smoke methamphetamine, it was not necessary for officers to obtain a search warrant to search the vehicle, or Dearman's purse, which had a methamphetamine pipe sticking out of its "side." "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *California v. Acevedo*, 500 U.S. 565, 580 (1991); *see also United States v. Fladten*, 230 F.3d 1083, 1086 (8th Cir. 2000) (observation of "[a]n item commonly used in the manufacture of methamphetamine . . . in plain view in the back seat" of automobile gave officers probable cause for warrantless search); *State v. Reyna*, 205 Ariz. 374, ¶ 5, 71 P.3d 366, 367 (App. 2003) (automobile exception to exclusionary rule permits warrantless search when probable cause exists to believe there is contraband in a stopped, but readily mobile vehicle).

**¶21** Accordingly, to the extent Goodyear challenges the trial court's findings at the initial suppression hearing, in light of our decision, we need not address the propriety of that ruling, including whether the good-faith exception applies here. We may uphold a court's ruling on a motion to suppress if legally correct for any reason. *See State v. Boteo-Flores*, 230 Ariz. 551, ¶ 7, 288 P.3d 111, 113 (App. 2012).

**Double Jeopardy Violation**

**¶22** Goodyear contends a double jeopardy violation occurred because his convictions for transportation and possession of a dangerous drug for sale "were both based on the meth found in Dearman's purse." He thus asks us to vacate his conviction for possession of a dangerous drug for sale because it is a lesser-included offense of transportation of a dangerous drug for sale. Because

Goodyear did not object to the charges or convictions below, our review is limited to fundamental, prejudicial error. *Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607. And, although fundamental error is waived if not asserted, *Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d at 140, we do not ignore fundamental error when we find it, *State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007).

**¶23** A double jeopardy violation is fundamental, prejudicial error. *State v. Ortega*, 220 Ariz. 320, ¶ 7, 206 P.3d 769, 772 (App. 2008). We review de novo an assertion that a double jeopardy violation has occurred. *State v. Musgrove*, 223 Ariz. 164, ¶ 10, 221 P.3d 43, 46 (App. 2009), and we view the facts in the light most favorable to upholding the jury's verdicts, *Ortega*, 220 Ariz. 320, ¶ 2, 206 P.3d at 771. A criminal defendant's double jeopardy rights are violated when the defendant is convicted of both an offense and a lesser-included offense, even if the defendant receives concurrent sentences. *See State v. Brown*, 217 Ariz. 617, ¶ 13, 177 P.3d 878, 882 (App. 2008); *see also State v. Chabolla-Hinojosa*, 192 Ariz. 360, ¶ 10, 965 P.2d 94, 96-97 (App. 1998) ("[W]hen a person is convicted of an offense, the prohibition against double jeopardy protects against further prosecution for that or any lesser-included offense.").

**¶24** The state asserts that, "[b]ecause each conviction is supported by separate evidence," Goodyear failed to establish that a double jeopardy violation or fundamental error occurred. The state acknowledges that, "under normal circumstances, possession of a dangerous drug for sale is a lesser-included offense of transportation of a dangerous drug for sale *if the convictions are based on the same corpus of drugs*." *See State v. Cheramie*, 218 Ariz. 447, ¶¶ 11, 22, 189 P.3d 374, 376, 378 (2008) (possession of dangerous drug is lesser-included offense of transportation of dangerous drug for sale); *see also* A.R.S. § 13-3407(A)(2), (A)(7); *State v. Price*, 218 Ariz. 311, ¶ 5, 183 P.3d 1279, 1281 (App. 2008) ("For double jeopardy purposes, a lesser included offense and the greater offense of which it is a part constitute the same offense, and multiple punishments for the same offense are not permissible."). The state contends, however, that because the two baggies found in Dearman's purse contained "significantly different amounts of methamphetamine," to wit, 54.5 grams and 220.8 grams, it was "reasonable to infer" that Goodyear and Dearman had

possessed one of those baggies for sale, and the other to transport for sale. The state also maintains that the methamphetamine would not have been divided into two baggies if the parties had intended to use it for one purpose, and that the placement of the baggies in Dearman's purse on the floor was to facilitate "quick and easy access to them in order to conduct furtive, on-the-spot illicit transactions," as further supported by the presence of the digital scale in the car.

**¶25** We agree with the state that Garbo found two bags of methamphetamine in Dearman's purse, each containing amounts consistent with the sale of drugs. We also note that Goodyear's attorney specifically told the court he did not "need" a lesser-included offense instruction on the possession of a dangerous drug for sale offense. However, we cannot ignore that the state did not distinguish between the two baggies when charging Goodyear, nor did the prosecutor do so at trial. Goodyear was charged with a single count each of transportation and possession of a dangerous drug for sale, stemming from the two bags found in Dearman's purse and identified generally in the indictment only as "METHAMPHETAMINE." Although the state's criminalist presented testimony regarding the amount of methamphetamine in each bag, the prosecutor also asked him, "And would you agree [the total weight in the two baggies is] over half a pound?"

**¶26** Additionally, although the prosecutor noted in her opening statement that Goodyear was an accomplice "with the transportation and possession for sale of the methamphetamine that was in [Dearman's purse]," she nonetheless referred to the methamphetamine as an aggregate corpus, to wit, "that half pound of meth." During closing argument, the prosecutor not only explained that Goodyear was Dearman's accomplice in transporting and possessing the methamphetamine for sale, but she also stated "that methamphetamine was headed back to Silver City[, New Mexico] that same night," without referring to any sale in Tucson. In addition, after referring to the aggregate amount, the prosecutor stated that Goodyear knew Dearman "was going to take that meth from Tucson, back to New Mexico where it sells for about three times the purchase price here in Tucson." Moreover, nothing in the record establishes or even suggests that the jury, in reaching its verdicts, differentiated

between the two bags of methamphetamine. Thus, it appears the same corpus of drugs constituted the evidence for both the possession and transportation of a dangerous drug for sale offenses. *See Ortega*, 220 Ariz. 320, ¶ 7, 206 P.3d at 772. We therefore vacate Goodyear's conviction for possession of a dangerous drug for sale.

**Presentence Incarceration Credit**

**¶27** We agree with Goodyear, and the state concedes, that the trial court miscalculated the number of days of presentence incarceration credit to which he is entitled. Goodyear acknowledges he did not object on this basis below. Although failure to raise an issue in the trial court normally forfeits appellate review for all but fundamental, prejudicial error, *see Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607, a limited exception exists for "alleged errors that did not become apparent until the trial court pronounced sentence," *State v. Vermuele*, 226 Ariz. 399, ¶ 14, 249 P.3d 1099, 1103 (App. 2011). The issue is therefore properly before us despite Goodyear's failure to raise it below. Accordingly, we review for an abuse of discretion. *Id.* ¶ 15.

**¶28** A defendant is entitled to credit for "[a]ll time actually spent in custody pursuant to an offense." A.R.S. § 13-712(B); *see State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993) ("[F]or purposes of presentence incarceration credit, 'custody' begins when a defendant is booked into a detention facility."). Goodyear's presentence report shows he was arrested on July 16, 2014, and was released after the charges were dismissed on the following day (two days of credit); the charges were later refiled and Goodyear was rearrested in June 2015 and released on his own recognizance that same day (one day of credit); he was then arrested in New Mexico on May 5, 2016, after his trial in absentia, and was extradited to Arizona, where he was sentenced on July 22, 2016 (seventy-eight days of credit). *See State v. Hamilton*, 153 Ariz. 244, 246, 735 P.2d 854, 856 (App. 1987) (defendant not entitled to credit for date of sentencing). Thus, based on the record before us and pursuant to A.R.S. § 13-4037(B), we modify the trial court's sentence to include presentence incarceration credit of eighty-one days rather than the fifty-eight days originally ordered.

**Disposition**

**¶29** Accordingly, we vacate the conviction and sentence for possession of a dangerous drug for sale and modify the sentence to include additional days of presentence incarceration credit consistent with this decision. We affirm Goodyear's convictions and sentences in all other respects.