IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

NOEL ALEJANDRO RAMIREZ-LUGO,
Appellant.

No. 2 CA-CR 2019-0187
Filed May 28, 2021

Appeal from the Superior Court in Pima County
No. CR20153234001
The Honorable Kenneth Lee, Judge
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
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MEMORANDUM DECISION

Presiding Judge Espinosa authored the decision of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

E S P I N O S A, Presiding Judge:

¶1 Noel Ramirez-Lugo appeals from his conviction for possession of a narcotic drug for sale. He argues the trial court erred by denying his motions to suppress evidence derived from a stop and search of his car, admitting drug courier profiling evidence, and denying his motion for judgment of acquittal. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdict. *State v. Gunches*, 225 Ariz. 22, n.1 (2010). In August 2015, a special agent from the Department of Homeland Security was conducting video surveillance on a residence in Tucson and observed Ramirez-Lugo arrive in a gray sedan, which he parked in the driveway. Ramirez-Lugo was holding a tool when he exited the vehicle and appeared to remove another tool from the car before walking toward the front of the car. Another man had arrived at the house shortly before Ramirez-Lugo and approached Ramirez-Lugo's vehicle carrying an orange box. The second man opened the hood of the car and worked under the hood for about fifteen minutes while Ramirez-Lugo watched. The agent relayed this information to another agent, who then informed the Pima County Sheriff's Department what the agent had seen.

¶3 About thirty minutes after Ramirez-Lugo had arrived, he left the residence in the gray sedan, and Pima County Sheriff Deputy Chase Garrett, who had been assisting with the surveillance, followed him. Garrett initiated a traffic stop only a few minutes later and, after issuing Ramirez-Lugo a warning for an unsafe lane change, asked if he could search the car, to which Ramirez-Lugo consented. Detective Brian Hill from the Sheriff's Department, who had arrived to assist Garrett, noticed Ramirez-Lugo had something "sticking out from his chest" and "the chest portion of [his] outfit was poofed out." Hill asked Ramirez-Lugo if he had any weapons on him, and Ramirez-Lugo responded he did not and said the bulge in his shirt was due to necklaces. He then showed Hill a "wad" of

about ten "charms" and "different beads." Ramirez-Lugo explained they were "religious symbols for luck," but that "they didn't work this time."

¶4 Detective Hill searched Ramirez-Lugo's car and after lifting the hood and inspecting the engine compartment found a "kilo sized brick" wrapped in electrical tape. Hill and Garrett cut open the package, which contained 988 grams of cocaine inside several layers of shrink wrap under the tape, worth $16,000 to $20,000 in Arizona, but up to $40,000 outside of the state. Ramirez-Lugo also had just over $800 in his pocket and wallet. Following his arrest, he repeatedly stated he had not had any problems with the vehicle he had been driving and provided differing accounts of his day, but never mentioned he had been to the surveilled residence or had met with a mechanic.

¶5 After a jury trial, Ramirez-Lugo was convicted as noted above, and sentenced to a four-year prison term. We have jurisdiction over his appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Motions to Suppress

¶6 Ramirez-Lugo argues the trial court erred by denying his motions to suppress evidence seized from the car he was driving, claiming Deputy Garrett lacked reasonable suspicion to conduct the traffic stop and Detective Hill's search of the car's engine compartment was beyond the scope of his consent. We review the denial of such motions for an abuse of discretion, *State v. Sallard*, 247 Ariz. 464, ¶ 7 (App. 2019), but whether reasonable suspicion exists is a mixed question of law and fact that we review de novo, *State v. Kjolsrud*, 239 Ariz. 319, ¶ 8 (App. 2016). Considering only the evidence presented at the suppression hearing, we view the facts in the light most favorable to sustaining the trial court's ruling. *See State v. Manuel*, 229 Ariz. 1, ¶ 11 (2011).

¶7 Deputy Garrett testified that he observed Ramirez-Lugo driving a gray sedan eastbound on Irvington Road. As he approached the on-ramp for I-19, Ramirez-Lugo "cut across a double yellow solid line and went into the turn lane from there," instead of waiting until "where the turn lane actually starts," which Garrett testified was a violation of A.R.S. § 28-729. He further explained that other traffic had been on the road when Ramirez-Lugo made this maneuver and the "entire car went over the double yellow solid lines."

¶8 After initiating the stop and issuing Ramirez-Lugo a warning for violating § 28-729, Garrett returned Ramirez-Lugo's driver license and

paperwork and asked if there were any "drugs, guns, bombs, . . . hand grenades, rocket launchers, flame throwers" in the car, and Ramirez-Lugo responded, "No." Garrett then asked, "Do you mind if we check real quick," and Ramirez-Lugo responded, "No, I don't mind." Detective Hill searched the car while Garrett stood by with Ramirez-Lugo. Ramirez-Lugo never asked to stop the search, not to look in particular areas of the car such as the trunk or under the hood, or otherwise limit the search. Hill opened the hood and found in the air-filter housing where an air filter should have been, "a black block" wrapped in electrical tape.

Seizure of Vehicle

¶9 Ramirez-Lugo contends the trial court erred in denying his motion to suppress because driving over the double solid yellow lines did not constitute an offense under § 28-729 and Deputy Garrett lacked reasonable suspicion to conduct the traffic stop. "An investigatory stop of a motor vehicle constitutes a seizure under the Fourth Amendment." *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118 (1996). Because such stops are less intrusive than arrests, officers need not possess probable cause to justify them, *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 880 (1975), but instead need only have a reasonable suspicion that the driver has committed an offense, *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); *Tornabene v. Bonine ex rel. Ariz. Highway Dep't*, 203 Ariz. 326, ¶ 27 (App. 2002). Under this standard, the officer must be able to articulate "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Livingston*, 206 Ariz. 145, ¶ 9 (App. 2003) (quoting *Gonzalez-Gutierrez*, 187 Ariz. at 118).

¶10 Section 28-729 states in relevant part that "[a] person shall drive a vehicle as nearly as practicable entirely within a single lane and shall not move the vehicle from that lane until the driver has first ascertained that the movement can be made with safety." § 28-729(1). Citing *Livingston*, Ramirez-Lugo argues that his "brief" movement out of his lane in preparation for his upcoming left turn did not violate the statute. In *Livingston*, we upheld the trial court's grant of a defendant's motion to suppress, agreeing that she had not violated § 28-729 when her right side tires "had crossed the white shoulder line on one occasion" on a "rural, curved, and dangerous" stretch of highway. 206 Ariz. 145, ¶¶ 1, 4-5.

¶11 Unlike in *Livingston*, however, the roadway here was straight, not curved, and Ramirez-Lugo's deviation from the lane was not slight. Rather, Deputy Garrett testified that the "entire car went over the double yellow solid lines" and stayed in the center lane, "before the turn lane

actually opened." Ramirez-Lugo admitted doing so and there was no indication he "first ascertained that [his] movement c[ould] be made with safety." *See* § 28-729(1).

¶12 Moreover, even if § 28-729 had not been violated, Deputy Garrett repeatedly testified that Ramirez-Lugo's driving violated "several statutes," and Ramirez-Lugo does not challenge that basis for reasonable suspicion. Of note, A.R.S. § 28-727 provides that when no passing "signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of the signs or markings." And A.R.S. § 28-726(A)(2) directs that "[a] person shall not drive a vehicle to the left side of the roadway . . . where appropriate signs or markings have been installed to define a no passing zone." Solid yellow lines indicate a no passing zone. *See Silvestri v. Hurlburt*, 26 Ariz. App. 243, 245 (1976). The trial court did not specify the basis for its reasonable suspicion finding, but Garrett's testimony established that by crossing over the double solid yellow lines, Ramirez-Lugo violated at least one traffic statute, and thus, the court could find Garrett had reasonable suspicion of a traffic violation. *See* A.R.S. § 28-1594 (officer "may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this title").[1]

¶13 Ramirez-Lugo also contends the traffic stop was invalid as pretextual because Deputy Garrett "was determined to pull [him] over." The subjective motives of an officer, however, do not invalidate an otherwise lawful traffic stop. *Whren v. United States*, 517 U.S. 806, 813 (1996); *State v. Vera*, 196 Ariz. 342, ¶ 5 (App. 1999). The trial court did not err in determining Garrett lawfully conducted the stop and therefore denying Ramirez-Lugo's motion to suppress on that basis.

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[1]Ramirez-Lugo claims he complied with A.R.S. § 28-729(2), because he "change[d] lanes to the center turn lane and proceeded to turn left at the next intersection." Although that subsection permits a vehicle to drive in the center lane "in preparation for a left turn," Ramirez-Lugo provides no authority that it applies to the situation here, where there is a separate turn lane provided for left turns and entering the center lane ahead of the marked turn lane requires crossing over double solid yellow lines. *See* §§ 28-729(2), 28-751(3) ("a driver of a vehicle shall not turn a vehicle other than as directed and required by the markers, buttons or signs"); *cf. Silvestri v. Hurlburt*, 26 Ariz. App. 243, 245 (1976) (solid yellow lines indicate no passing zone).

Search of Vehicle

¶14 Ramirez-Lugo next argues the trial court erred because the search of his vehicle exceeded the scope of his consent. Specifically, he contends that he agreed only to a search "inside" the car, pointing to Deputy Garrett's wording when he asked to search the car, thus excluding the engine compartment and the use of tools from the purview of the search. The recording of Garrett's and Ramirez-Lugo's conversation, admitted at the suppression hearing, includes the following exchange:

> Garrett: Real quick. You said there's nothing illegal inside the vehicle?
>
> Ramirez-Lugo: No.
>
> Garrett: No drugs, guns, bombs, . . . hand grenades, rocket launchers, flame throwers, nothing like that?
>
> Ramirez-Lugo: No.
>
> Garrett: Do you mind if we check real quick?
>
> Ramirez-Lugo: No, I don't mind.

"A general consent to search is unqualified, absent an announcement of the object of the search or other express limitation, subject only to the bounds of reasonableness." *State v. Becerra*, 239 Ariz. 90, ¶ 9 (App. 2016). And "[e]ven after a person initially consents to a search, [he] nevertheless remains free to withdraw or narrow the scope of [his] consent at any time." *Id.*

¶15 Ramirez-Lugo asserts, without citation to supporting authority or further explanation, that a reasonable person consenting to a search "inside" the car "would not expect officers to pop the hood and use a tool to take things apart on the engine." The state, on the other hand, citing several cases, argues it was reasonable for Detective Hill to "unscrew the area" where the air filter should have been as part of his search, "particularly given that [Hill testified] it was a common area to hide drugs, it was part of his usual practice, he did no damage to the vehicle, and Ramirez-Lugo did not limit the scope of his search." We agree with the state and the trial court's determination that under the totality of the circumstances, the search here was within the bounds of Ramirez-Lugo's consent. *See State v. Paredes*, 167 Ariz. 609, 610-11 (App. 1991) (officer's

questions whether currency, drugs, or illegal weapons were present in the vehicle "should reasonably have alerted the defendant that if consent were given, the officer would look in the passenger compartments, in the trunk, under the hood, and possibly under the vehicle"); *see also Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (objectively reasonable for police to conclude that general consent to search vehicle included containers in car that might bear drugs); *United States v. Ferrer-Montoya*, 483 F.3d 565, 568-69 (8th Cir. 2007) (officer removing screws of console panel, doing no damage to vehicle, and searching false compartment did not exceed scope of general consent to search vehicle for drugs). Because Ramirez-Lugo has not demonstrated such a conclusion was clear error, we uphold the trial court's denial of his motion to suppress.[2] *See Becerra*, 239 Ariz. 90, ¶ 14.

Expert Testimony

¶16 Ramirez-Lugo next argues the trial court erred by admitting irrelevant and unfairly prejudicial expert testimony by Deputy Garrett, which constituted "inadmissible profile testimony" that he had moved to preclude before trial. After the court denied his motion as premature, Ramirez-Lugo renewed the motion and at the conclusion of a hearing on the issue, the court granted the motion in part, precluding the state from introducing evidence regarding an empty car seat and bag of fast food in the car Ramirez-Lugo had been driving. But, because Ramirez-Lugo's asserted defense was that he lacked knowledge about the drugs in the car, the court permitted the state to introduce testimony regarding the jewelry and beads he had been wearing. The court also allowed Garrett to testify as a "for-sale expert," but precluded him from offering opinions about what he believed the defendant knew. We review the admission of expert testimony for abuse of discretion. *State v. Salazar-Mercado*, 234 Ariz. 590, ¶ 13 (2014).

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[2]We also reject Ramirez-Lugo's suggestion that his consent was not voluntarily given because it came "only after he had inquired at least two separate times whether he was free to leave." This argument was passingly raised in Ramirez-Lugo's third motion to suppress based on *Rodriguez v. United States*, 575 U.S. 348 (2015), and is not meaningfully argued on appeal. The claim is therefore waived. *See State v. Bolton*, 182 Ariz. 290, 298 (1995) (failure to offer sufficient argument for appellate review "constitutes waiver of that claim"); *see also* Ariz. R. Crim. P. 31.10(a)(7)(A) (appellant's brief shall include argument containing contentions, reasons, and supporting citations).

¶17 At trial, Deputy Garrett testified he had been involved in "hundreds of drug cases" with federal and local agencies and had learned from drug users and dealers "how the drug trade itself works." He had experience with several drug trafficking cases "where people wear beads [and] necklaces for good luck in smuggling." Garrett testified that on the day he encountered him, Ramirez-Lugo was wearing "several different charms all over him, his necklace, his arms, as well as inside the vehicle itself," which "was very consistent with what we have seen before." Garrett explained that Ramirez-Lugo told him the necklaces and beads were "for luck" but that "they didn't work this time."

¶18 Garrett also described the packaging of the cocaine that was found in Ramirez-Lugo's vehicle, stating,

> the brick itself actually had been wrapped with several different layers, which is, again, consistent with what we see smuggled across the border where they layer it with multiple layers of shrink wrap and then other items and then wrap it with black electrical tape. Again, this [is] a way they use to mask the odor to try to conceal it all inside the bag, and then they wrap it up with the black tape so it is harder to spot during a search of the vehicle.

¶19 Garrett further explained that there are two typical ways drug transporters can be paid: sometimes they are "given a small amount [of cash] at the time that they pick up the narcotics, and they are given the rest once they deliver the narcotics," but other times "they are just paid once they deliver the narcotics at th[e] destination." Garrett testified that officers "found a large amount of cash both in [Ramirez-Lugo's] pocket, as well as in his wallet." Garrett was asked whether, based on his training and experience, the kilo of cocaine found in the car was "consistent with being for personal use or for sale." Garrett testified that "a kilo of cocaine is well over an amount for personal use. Generally, on personal use, people will see anywhere from under a gram to a gram," and this was a far larger amount. Garrett also testified that when "transporting larger amounts of narcotics, they are usually given to someone trusted within the organization." And he estimated that the approximate value of the cocaine found was $16,000 to $20,000.

Relevance and Unfair Prejudice

¶20 Ramirez-Lugo contends Deputy Garrett's testimony was irrelevant and unfairly prejudicial under Arizona Rules of Evidence 401, 402, and 403. Because he did not object to the testimony on this basis at trial, however, our review is limited to fundamental error. *See State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). In such a review, if trial error exists, we must determine, based on the totality of the circumstances, whether the error was fundamental. *Id.* ¶ 21. "A defendant establishes fundamental error by showing that (1) the error went to the foundation of the case, (2) the error took from the defendant a right essential to his defense, *or* (3) the error was so egregious that he could not possibly have received a fair trial." *Id.* If the defendant establishes fundamental error under prongs one or two, he must make an additional showing of prejudice. *Id.*

¶21 Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and the fact "is of consequence in determining the action." Ariz. R. Evid. 401. Under Rule 402, Ariz. R. Evid., "[r]elevant evidence is admissible" unless otherwise precluded by statute or rule, and "irrelevant evidence is not admissible." To be relevant, such evidence need not be sufficient to support a finding of an ultimate fact; "it is enough if the evidence, if admitted, would render the desired inference more probable." *State v. Paxson,* 203 Ariz. 38, ¶ 17 (App. 2002) (quoting *Reader v. Gen. Motors Corp.*, 107 Ariz. 149, 155 (1971)). "This standard of relevance is not particularly high." *State v. Oliver*, 158 Ariz. 22, 28 (1988). However, a court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Ariz. R. Evid. 403. "Unfair prejudice results if the evidence has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror." *State v. Mott*, 187 Ariz. 536, 545 (1997). "But not all harmful evidence is unfairly prejudicial. After all, evidence which is relevant and material will generally be adverse to the opponent." *State v. Schurz*, 176 Ariz. 46, 52 (1993).

¶22 "A police officer's expert testimony concerning whether drugs were possessed for sale has long been admissible in this state." *State v. Carreon*, 151 Ariz. 615, 617 (App. 1986). So long as proper foundation is laid, an officer may testify about whether a defendant possessed drugs for sale rather than personal use, the identification of narcotics, and how drugs are packaged for sale. *Id.* Such testimony does not invade the province of the jury, but rather assists the jury in understanding the evidence. *Id.*; Ariz. R. Evid. 704(a) ("An opinion is not objectionable just because it embraces an ultimate issue.").

¶23 We conclude that Deputy Garrett's unobjected-to testimony was relevant to prove the elements of the offense. *See* A.R.S. § 13-3408(A)(2). Garrett's testimony that smugglers often wear beads and religious necklaces as good luck charms was relevant to Ramirez-Lugo's knowledge of the drugs in his car because it provided context to Ramirez-Lugo's statement that those items were "for luck" but that "they didn't work this time."[3] Garrett's testimony that large amounts of drugs for transport are "usually given to someone trusted within the organization" was likewise probative of Ramirez-Lugo's knowledge of the drugs and further relevant to rebut any suggestion that he was an unknowing carrier of the drugs. Garrett's testimony explaining how traffickers get paid was germane to the amount of cash Ramirez-Lugo was carrying in his wallet and pockets and also probative of his knowledge of the drugs in the car. And the information regarding the packaging, amount, and value of the drugs was relevant to whether Ramirez-Lugo had the drugs for personal use or for sale.

¶24 Lastly, Garrett's testimony was not subject to preclusion under Rule 403 as unfairly prejudicial. The testimony tended to show that Ramirez-Lugo knowingly possessed cocaine for sale, rather than for personal use. Although the evidence was adverse to him, it was not unfairly so. *See Schurz*, 176 Ariz. at 52. Accordingly, Ramirez-Lugo has not met his burden of establishing error on this basis, much less fundamental error. *See Escalante*, 245 Ariz. 135, ¶ 21.

Drug-Courier Profile Evidence

¶25 Ramirez-Lugo also argues Deputy Garrett's testimony improperly invited the jury to convict him simply because he "fit the drug courier profile"—including wearing beads and good luck charms, having $800 cash on him, the cocaine being wrapped in several layers of tape and shrink wrap—so he "must be a drug trafficker too." Drug-courier profile evidence "is a loose assortment of general, often contradictory,

[3]Ramirez-Lugo also cites Arizona Rule of Evidence 404(b). But, as noted above, Garrett's testimony regarding the beads was relevant to Ramirez-Lugo's knowledge, and he has not developed any argument that Garrett's testimony was inadmissible other-act evidence; we therefore do not address it further. *See Bolton*, 182 Ariz. at 298 (failure to offer sufficient argument for appellate review "constitutes waiver of that claim"); *see also* Ariz. R. Crim. P. 31.10(a)(7)(A) (appellant's brief shall include argument containing contentions, reasons, and supporting citations).

characteristics and behaviors," *State v. Lee*, 191 Ariz. 542, ¶ 10 (1998), "offered to implicitly or explicitly suggest that *because* the defendant has those characteristics, a jury should conclude that the defendant must have committed the crime charged," *State v. Haskie*, 242 Ariz. 582, ¶ 14 (2017). The profiles often consist of "a wide variety of factors, such as an individual's age, clothing, jewelry, luggage, use of cash to make purchases, nervous or unusually calm behavior, and plane travel from 'drug source' cities." *State v. Garcia-Quintana*, 234 Ariz. 267, ¶ 11 (App. 2014). However, while such evidence is not admissible as substantive proof of guilt, *Lee*, 191 Ariz. 542, ¶¶ 11-12, it has legitimate uses, such as assisting a jury in understanding the modus operandi of a drug-trafficking organization, *Escalante*, 245 Ariz. 135, ¶ 22.

¶26 Deputy Garrett's testimony was not drug-courier profile evidence. The testimony was not offered to prove Ramirez-Lugo was guilty because he fit the characteristics of drug traffickers, but rather, as noted above, it provided context for the jury and established general facts and reasonable inferences concerning the nature of the physical evidence found in Ramirez-Lugo's car and on his person relevant to proving the charges. *See State v. Gonzalez*, 229 Ariz. 550, ¶ 15 (App. 2012) (upholding admission of modus operandi testimony providing circumstantial evidence of defendant's knowledge, undercutting defense theory). We cannot say the trial court erred in admitting Garrett's testimony.[4]

Motion for Judgment of Acquittal

¶27 Finally, Ramirez-Lugo argues the trial court erred by denying his motion for judgment of acquittal made at the close of the state's

[4]Ramirez-Lugo also contends, citing *United States v. Varela-Rivera*, 279 F.3d 1174 (9th Cir. 2002), that because he had not been charged with conspiracy to distribute or traffic drugs, testimony on the modus operandi of drug trafficking is categorically inadmissible. But such an absolute approach was rejected in *United States v. Supelveda-Barraza*, 645 F.3d 1066, 1071-72 (9th Cir. 2011), which held that "expert testimony on drug trafficking organizations and the behavior of unknowing couriers is admissible when relevant, probative of a defendant's knowledge, and not unfairly prejudicial," requiring a "case-by-case" approach, not "pursuant to per se rules." *See also Gonzalez*, 229 Ariz. 550, ¶ 1 ("There is no per se rule of inadmissibility for [modus operandi of a drug trafficking organization] testimony, and trial courts have the discretion to consider the relevancy and danger for unfair prejudice of such evidence on a case-by-case basis.").

evidence. We review the court's ruling de novo. *State v. West*, 226 Ariz. 559, ¶ 15 (2011). Rule 20(a)(1), Ariz. R. Crim. P., provides that after the close of evidence, "the court must enter a judgment of acquittal on any offense charged in an indictment . . . if there is no substantial evidence to support a conviction." Substantial evidence is that which a reasonable juror could accept as sufficient to support a conclusion of guilt beyond a reasonable doubt. *State v. Fulminante*, 193 Ariz. 485, ¶ 24 (1999). On appeal, "the 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." *State v. Cox*, 214 Ariz. 518, ¶ 8 (App. 2007) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶28 Ramirez-Lugo claims the state presented "[n]o evidence" of his guilt and instead "relied solely on the inappropriate expert testimony relating the inference of guilty knowledge due to completely benign conduct." We disagree.

¶29 First, the state was required to prove that Ramirez-Lugo knowingly possessed a narcotic drug for sale. *See* A.R.S. § 13-3408(A)(2). Cocaine is a narcotic drug, *see* A.R.S. § 13-3401(5), (20)(bb), and Ramirez-Lugo stipulated that the substance in his vehicle was 988.2 grams of cocaine. Ramirez-Lugo, as the sole occupant and driver of the vehicle in which the cocaine was found, exercised control over the drugs and therefore possessed them. *See* A.R.S. § 13-105(34) (defining "possess" as "knowingly to have physical possession or otherwise to exercise dominion or control over property"); *State v. Teagle*, 217 Ariz. 17, ¶ 41 (App. 2007) ("Constructive possession can be established by showing that the accused exercised dominion and control over the drug itself, or the location in which the substance was found.").

¶30 And the state presented substantial evidence that Ramirez-Lugo's possession of the cocaine was knowing. A Homeland Security special agent observed Ramirez-Lugo exit the vehicle holding a tool, meeting another man at the front of the vehicle, and then watching as the man worked under its hood. Only minutes later, Ramirez-Lugo was pulled over and the package of drugs was discovered under the hood where the car's air filter should have been. Ramirez-Lugo denied that the car had any problems, which could have explained why a man was working on it. Moreover, he told Detective Hill that he was wearing charms and beads "for luck" but that "they didn't work this time." Lastly, the state presented substantial evidence supporting the "for sale" element of the crime, including Deputy Garrett's experience that people typically would possess

one gram or less of cocaine, that 998 grams of cocaine were recovered from a concealed location in the engine compartment, packaged with multiple layers of shrink wrap and electrical tape, and the cocaine in the car was worth more than $16,000. *See State v. Arce*, 107 Ariz. 156, 161-62 (1971) (for sale element may be inferred from circumstantial evidence, including the amount of drugs, their location, and packaging). The trial court did not err in denying Ramirez-Lugo's motion for judgment of acquittal.

Disposition

¶31 For all of the above reasons, Ramirez-Lugo's conviction and sentence are affirmed.