IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CAYETANO MORALES,
Appellant.

No. 2 CA-CR 2021-0114
Filed October 20, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Gila County
No. S0400CR20200126
The Honorable Bryan B. Chambers, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Cayetano Morales was convicted of transportation of a dangerous drug for sale, possession of a dangerous drug, and possession of drug paraphernalia. The trial court sentenced him to presumptive, concurrent prison terms, the longest of which is ten years, and ordered him to pay a fine. On appeal, Morales argues the court abused its discretion by denying his motion to suppress evidence seized during a traffic stop. He also argues there was insufficient evidence to support his conviction for drug possession and the value of the drug used to calculate the fine for his transportation conviction. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining Morales's convictions. *See State v. Allen*, 235 Ariz. 72, ¶ 2 (App. 2014). Early one morning in February 2020, an Arizona Department of Public Safety trooper drove his patrol car onto the highway, following a vehicle that appeared to be missing its license plate. As he drove closer, the trooper discovered that the vehicle had a Texas license plate, but the plate had a "cover to distort the numbers for cameras," and appeared to be missing a "license plate light." Based on these violations, he conducted a traffic stop, intending to write a repair order. The trooper called the license plate number in to dispatch and was advised that the plate number could not be found in the records. The trooper informed the two occupants of the reason for the traffic stop and asked for a driver license, registration, and proof of insurance. Morales, the driver of the vehicle, provided his driver license, and the passenger provided a driver license, an unsigned New Mexico title for the vehicle, and a temporary dealer tag that "should have been on the vehicle." The driver licenses indicated both Morales and the passenger lived in Silver City, New Mexico.

¶3 During the stop, dispatch informed the trooper that the license plate on the car had expired and was "assigned" to a different vehicle. Suspecting the vehicle had been stolen, the trooper decided to

check the vehicle identification number (VIN) located near the driver's side door. As a safety precaution, he asked Morales to step out of the vehicle and accompany him back to his patrol car while conducting his investigation. At the patrol car, the trooper engaged in conversation with Morales to ease his "nervousness" and check for "criminal indicators." When the trooper asked how they had spent the weekend, Morales stated that he and his passenger were coming from Phoenix and had "spent their time hanging out at a casino."

¶4 After speaking with Morales, the trooper spoke with the passenger, who owned the vehicle. The passenger gave a different account of their weekend, telling the trooper that the two had stayed with family all weekend while visiting his sick, dying grandmother. After hearing the conflicting accounts, the trooper requested permission to search the vehicle to "check and make sure there was no criminal activity going on." Both Morales and the passenger denied this request, and the trooper called a canine unit to conduct a dog sniff.

¶5 Around twenty minutes later, the canine unit arrived and alerted on the vehicle. Morales and the passenger were then placed in separate patrol vehicles, and a search of the vehicle was conducted. The search revealed two large bags containing a "crystalline substance" taped under the center console, a small bag containing a similar substance in the driver's door panel, and over $2,000 in cash. The trooper arrested Morales and the passenger and called for assistance from a sergeant, who had more experience with large drug seizures. The two large bags were later tested and confirmed to contain methamphetamine. A grand jury indicted Morales for possession of a dangerous drug for sale, transportation of a dangerous drug for sale, possession of a dangerous drug, and possession of drug paraphernalia.

¶6 A jury found Morales guilty of all the charges. It also found that the state had proven two aggravating factors and determined that the value of the methamphetamine was $50,000. On the state's motion at sentencing, the court vacated the conviction for possession of a dangerous drug for sale. Morales was sentenced as described above, and the court imposed a fine of $150,000 based on the value of the methamphetamine. *See* A.R.S. § 13-3407(H). This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Motion to Suppress

¶7 Morales contends the trial court erred by denying his motion to suppress,[1] arguing the stop was unreasonably prolonged while the trooper waited for the canine unit to arrive and was not supported by reasonable suspicion. "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 (2016). But whether reasonable suspicion supports prolonging a traffic stop to conduct a dog sniff is a mixed question of law and fact that we review de novo. *State v. Majalca*, 251 Ariz. 325, ¶ 11 (App. 2021).

¶8 A traffic stop that is solely based on a traffic violation generally becomes unreasonable when it is prolonged beyond the stop's mission of issuing a ticket or, as in this case, a warning and a repair order. *Id.* ¶ 13. Confirming that the driver and vehicle are authorized to operate on the roadway is a task incident to a traffic stop. *See State v. Kjolsrud*, 239 Ariz. 319, ¶ 11 (App. 2016); *State v. Teagle*, 217 Ariz. 17, ¶ 22 (App. 2007). A dog sniff, however, is considered a detour from the mission of a traffic stop. *Majalca*, 251 Ariz. 325, ¶ 13. And unless "(1) the encounter between the driver and the officer becomes consensual, or (2) during the encounter, the officer develops a reasonable and articulable suspicion that criminal activity is afoot," the officer must let the driver leave once the stop's mission is complete. *State v. Sweeney*, 224 Ariz. 107, ¶ 17 (App. 2010).

¶9 Morales does not challenge the trooper's initial traffic stop. *See* A.R.S. § 13-3883(B) (officer may conduct investigatory stop for any traffic law violation); *see also* A.R.S. §§ 28-2354(D) (person must not apply covering that obscures information on license plate), 28-925(C) (license plate must be illuminated). Rather, relying on *Sweeney*, 224 Ariz. 107, he contends the twenty-minute delay for the canine unit to arrive was not justified because the "initial reason for the traffic stop had been resolved" and the expired plate, conflicting stories, and the occupants' general nervousness did not amount to reasonable suspicion.

¶10 In *Sweeney*, an officer, who was a member of the canine unit, conducted a routine stop based on a traffic violation. *Id.* ¶ 2. During the stop the officer noted nine factors that aroused suspicion of criminal activity

[1]Before trial, Morales moved to join the motion to suppress and supplement filed by his co-defendant in the separate case brought against the co-defendant.

including Sweeney's nervousness, his vague answers to the officer's questions, and his driving of a car with a license plate from a different state than where he rented it. *Id.* ¶ 9. Nonetheless, the officer decided to issue the warning ticket and wished Sweeney a safe trip. *Id.* ¶ 5. As Sweeney began walking back to his vehicle, the officer asked to speak with him again. *Id.* It was during this second encounter that the officer requested first to search the vehicle and then to conduct a dog sniff. *Id.* Sweeney denied both and turned to return to his vehicle. *Id.* ¶¶ 5-6. The officer detained him and conducted a dog sniff, which led to the discovery of cocaine and ultimately resulted in Sweeney's arrest. *Id.* ¶ 6.

¶11 Sweeney moved to suppress the evidence, arguing in part that "the detention went beyond the scope of the traffic stop." *Id.* ¶ 7. After an evidentiary hearing, the trial court denied the motion. *Id.* ¶ 9. This court reversed, reasoning that after Sweeney had been detained and then released, the subsequent detention and search of his vehicle without his consent was unlawful because no new circumstances had occurred to "form a particularized and objective basis for the second seizure." *Id.* ¶¶ 31-33.

¶12 *Sweeney* is distinguishable from the case before us. Although issuance of a warning or repair order for the license plate violations was the reason for the initial stop here, it quickly evolved into an investigation of a suspected stolen vehicle. Indeed, the trooper testified at the suppression hearing that when he called the canine unit, Morales and the passenger were "not free to leave yet." The trooper's suspicion of criminal activity developed immediately after initiating the stop when he ran the Texas plate and dispatch was unable to find it in the system. He testified that, in his experience, this usually indicated either "an error in the system" or that "the plate is not valid for highway use." After the passenger provided an unsigned New Mexico title and a temporary Texas tag, the trooper returned to his vehicle and confirmed that the plate information he had provided to dispatch was correct. He then decided to run the VIN to determine whether there was "a glitch in the system," the vehicle had a "fictitious plate," or "the vehicle [was] stolen."

¶13 Moreover, the trooper testified that Morales and the passenger appeared unusually nervous, despondent, and "tried to avoid eye contact." Despite casually conversing with Morales and explaining that he would receive "just" a warning for the license plate violations, Morales's nervousness never abated. Morales and the passenger also gave conflicting reasons for being in Arizona, which led the trooper to believe they were "hiding something." Based on the totality of circumstances, the trooper had reasonable suspicion of criminal activity and the subsequent dog sniff of

the vehicle was appropriate. *See State v. Woods*, 236 Ariz. 527, ¶ 13 (App. 2015) (we defer to officers' "ability to distinguish between innocent and suspicious actions" based on training and experience (quoting *Teagle*, 217 Ariz. 17, ¶ 26)).

¶14 In *Sweeney*, we noted that "if objectively reasonable suspicion had actually developed during the traffic stop, the officer could have detained [Sweeney] for a reasonable period to conduct the sniff before terminating the stop even if a dog had not been present at the scene." *Sweeney*, 224 Ariz. 107, n.10. Consistent with *Sweeney*, here, the trooper was justified in prolonging the stop to conduct a dog sniff because (1) his decision was supported by reasonable suspicion that developed during the single encounter, *see id.*, and (2) he had not yet confirmed "proof of entitlement to operate the vehicle."[2] *See Teagle*, 217 Ariz. 17, ¶ 22.

Sufficiency of the Evidence

¶15 Morales argues the trial court erred by denying his motion for a judgment of acquittal under Rule 20, Ariz. R. Crim. P., on his possession of a dangerous drug charge. We review de novo a court's ruling on a Rule 20 motion. *State v. West*, 226 Ariz. 559, ¶ 15 (2011).

¶16 "[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 (1990)). We will reverse only if no substantial evidence supports the conviction. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005). "[S]ubstantial evidence is more than a mere scintilla and is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Allen*, 253 Ariz. 306, ¶ 70 (2022) (quoting *State v. Ellison*, 213 Ariz. 116, ¶ 65 (2006)). Substantial evidence may include both circumstantial and direct evidence. *West*, 226 Ariz. 559, ¶ 16. "[T]here is no difference between the probative value of direct or circumstantial evidence." *State v. Rhymes*, 107 Ariz. 12, 15 (App. 1971).

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[2]Even if we ignored the factors discounted by Morales, because the trooper had reasonable suspicion to believe that the vehicle had a fictitious plate, he would have been authorized to impound the vehicle. *See* A.R.S. § 28-2092(2) (officer may seize vehicle for fictitious license plate); *State v. Perez*, 141 Ariz. 459, 464 (1984) ("We are obliged to affirm the trial court's ruling if the result was legally correct for any reason.").

¶17 Morales, who had been driving the vehicle, argues the small bag found in the driver's side door was not conclusively determined to be a dangerous drug because it was never tested and, therefore, the state did not provide sufficient evidence for the possession charge. For a possession conviction, the state must prove the defendant "[p]ossess[ed] or use[d] a dangerous drug." § 13-3407(A)(1). "'Possession' means a voluntary act if the defendant knowingly exercised dominion or control over property." A.R.S. § 13-105(35). A dangerous drug is defined by statute and includes methamphetamine. *See* § 13-105(11); A.R.S. § 13-3401(6)(c)(xxxviii).

¶18 At trial, the state presented evidence that 897 grams of methamphetamine had been found in the vehicle. Morales also admitted during an interview with law enforcement after his arrest that there was a "good amount" of methamphetamine in the vehicle. Although he may not have been directly referring to the small bag found in the driver's side door, other evidence supported the jury's verdict. For example, the trooper described the various quantities of the substance found in the vehicle, including the substance in the small bag found in the driver's door. The large bags tested positive for methamphetamine and the one found in the passenger's pocket when he was booked into jail was identified as methamphetamine. Furthermore, the drug detection dog specifically alerted to the presence of drugs at the driver's side door. Viewed collectively, a reasonable jury could conclude that the substance found in Morales's possession was methamphetamine. Therefore, the trial court did not err in denying his Rule 20 motion.

¶19 Morales next argues that the state did not present sufficient evidence supporting the trial court's $150,000 fine imposed for the transportation of a dangerous drug for sale conviction under A.R.S. § 13-1407. We review de novo whether sufficient evidence supports a jury's determination of the methamphetamine's value supporting the imposition of a fine under § 13-3407(H). *See West*, 226 Ariz. 559, ¶¶ 15-16. When a person is convicted under § 13-3407(A), the court must impose a fine of the greater of "one thousand dollars or three times the value as determined . . . of the dangerous drugs involved in or giving rise to the charge." § 13-3407(H).

¶20 During trial, the state presented the testimony of Eric Axlund, who was the sergeant in charge of the criminal targeting unit and who had experience investigating crimes involving large quantities of drugs. Axlund testified that the street value of methamphetamine could range from $10 a gram to $60 a gram, depending on various factors such as the time of year, the location, and availability. In general, the further from the

Mexican border the methamphetamine is sold, the more expensive it is. But specifically in Silver City, New Mexico, where Morales and the passenger were from, Axlund opined that the street value for the 897 grams of methamphetamine would be over $50,000 if it were sold by the gram or half gram. In the aggravation phase, after hearing both parties' arguments concerning the street value of the methamphetamine, the jury found that the value of the methamphetamine was $50,000. The trial court affirmed that value at sentencing and imposed a fine treble that amount as required by § 13-3407(H).

¶21 Morales argues that the record does not support the state's argument that the methamphetamine was going to be sold (1) in New Mexico or (2) by the gram or half gram. However, the passenger told the trooper that they "needed to hurry and get back to New Mexico" when he declined to give consent for a search of his vehicle. A jury could reasonably conclude from the evidence that the end destination for the drugs was New Mexico. As Morales points out, Axlund testified that the value of the methamphetamine would be lower if it were sold in bulk. However, it was for the jury to weigh the evidence. *See State v. Williams*, 209 Ariz. 228, ¶ 6 (App. 2004) (finding sufficient evidence to support conviction and concluding "it was for the jury to weigh the evidence and determine the credibility of the witnesses"). We do not reweigh evidence on appeal. *State v. Rodriguez*, 205 Ariz. 392, ¶ 18 (App. 2003). At trial, Morales never offered a different valuation. Although on appeal, Morales contends that during trial he argued "against elevating the valuation of the drugs beyond their value in Arizona," the record belies this assertion. Notably, several times during trial, Morales mentioned the $50,000 valuation in questioning why no weapons were found to "protect those drugs . . . that were so expensive." Sufficient evidence was presented to support the fine imposed by the trial court.[3]

Disposition

¶22 For the reasons stated above, we affirm Morales's convictions and sentences.

[3] Additionally, Morales never challenged the presentence report, which estimated that the value of the methamphetamine was $50,000. *See* Ariz. R. Crim. P. 26.8(b)-(c). A trial court can rely on uncontested facts in a presentence report. *See State v. Molina*, 211 Ariz. 130, ¶ 29 (App. 2005).