

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

AMANDA MANUELA PENA,
Appellant.

No. 2 CA-CR 2013-0324
Filed April 21, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20123262001
The Honorable Jane L. Eikleberry, Judge

AFFIRMED IN PART; MODIFIED IN PART

COUNSEL

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STATE v. PENA
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, Amanda Pena was convicted of aggravated driving under the influence of an intoxicant (DUI) with a minor present and aggravated driving with an illegal drug or its metabolite in her body with a minor present. The trial court suspended the imposition of sentence and placed her on concurrent, three-year terms of probation for both counts and imposed various fines, fees, and assessments. On appeal, Pena argues the court erred by denying her motions to suppress evidence obtained during an illegal traffic stop and an incriminating statement she made before receiving *Miranda*¹ warnings. She also argues the court erred at sentencing by ordering her to pay attorney fees, a related assessment, a surcharge, and a probation assessment and by designating her convictions as felonies. For the reasons that follow, we modify the surcharge levied against Pena but otherwise affirm her convictions and sentences.

Factual and Procedural Background

¶2 “[W]e view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury’s verdicts.” *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In July 2011, Arizona Department of Public Safety Officer Saleem Abdullah initiated a traffic stop after he saw Pena make a lane change and a right turn at an intersection without using her turn signal.

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

STATE v. PENA
Decision of the Court

¶3 Abdullah approached Pena’s sport utility vehicle (SUV), which had three other occupants, including a child under fifteen years of age, and immediately “detect[ed] the distinct odor of marijuana” coming from inside the vehicle. After Pena handed her driver’s license to Abdullah, he asked her to step out of the vehicle and asked whether she “had been using marijuana recently.” Pena answered that “she had [smoked marijuana] at the park approximately a half an hour [before].” Abdullah conducted several field-sobriety tests, placed Pena under arrest, and advised her of her rights pursuant to *Miranda*. Analysis of a blood draw taken approximately an hour and a half later showed that Pena had THC,² a metabolite of THC, and a metabolite of cocaine in her system.

¶4 Pena was charged with aggravated driving under the influence with a minor present and aggravated driving with an illegal drug or its metabolite in her body with a minor present. Before trial, Pena filed a motion to suppress the evidence obtained after the stop, arguing the stop had been illegal because her failure to signal did not constitute a traffic violation. She also moved to suppress the statement she had made while getting out of her SUV because Abdullah had not yet given *Miranda* warnings. The trial court denied both motions.

¶5 The jury found Pena guilty of both offenses. At sentencing, Pena requested that the trial court defer designating her class-six felony convictions as felonies pursuant to A.R.S. § 13-604(A) and provide her with the “opportunity to earn misdemeanors.” The state argued “the specific nature and circumstances of the crime and the history and character of [Pena] . . . [gave] no support for waiting to determine whether to leave the offenses as designated felonies.” The court found that felony designations were “not unduly harsh” and designated the offenses as felonies. It then sentenced Pena as described above, reaffirmed a prior \$400 assessment for attorney fees, and imposed over \$4,800 in other fines and assessments. “[D]ue to her financial situation and the fines with DUI,” Pena asked the court to “waive the surcharges

²Tetrahydrocannabinol, the primary psychoactive component of marijuana.

STATE v. PENA
Decision of the Court

or reduce the attorney fees” that it had imposed. The court denied her request. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Motions to Suppress

¶6 Pena argues that the trial court erred in denying her motions to suppress the evidence obtained during the traffic stop and the statement she made before receiving *Miranda* warnings. We review the denial of a motion to suppress for an abuse of discretion. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007). In doing so, “we view the facts in the light most favorable to upholding the trial court’s ruling and consider only the evidence presented at the suppression hearing.” *State v. Zinsmeyer*, 222 Ariz. 612, ¶ 4, 218 P.3d 1069, 1074 (App. 2009), *overruled on other grounds by State v. Bonfiglio*, 231 Ariz. 371, ¶ 15, 295 P.3d 948, 951 (2013). However, we review the court’s ultimate legal conclusions de novo. *Gay*, 214 Ariz. 214, ¶ 30, 150 P.3d at 796.

Traffic Stop

¶7 Pena first argues “the trial court erred by denying [her] motion to suppress all evidence because the stop was illegal.” “An investigatory stop of a motor vehicle constitutes a seizure under the Fourth Amendment.” *State v. Livingston*, 206 Ariz. 145, ¶ 9, 75 P.3d 1103, 1105 (App. 2003), *quoting State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). But because it is a less intrusive form of detention, “[a] police officer need only have reasonable suspicion that a person is engaged in criminal activity or has violated a traffic law to conduct a stop of a vehicle.” *State v. Moran*, 232 Ariz. 528, ¶ 4, 307 P.3d 95, 98 (App. 2013). Reasonable suspicion is “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778, *quoting United States v. Cortez*, 449 U.S. 411, 417-18 (1981). As long as reasonable suspicion exists, “the subjective motives of an officer do not invalidate an otherwise lawful traffic stop.” *Livingston*, 206 Ariz. 145, ¶ 13, 75 P.3d at 1106.

¶8 Abdullah testified that he had initiated a traffic stop because Pena failed to use her turn signal when she moved from the

STATE v. PENA
Decision of the Court

right lane, into a right-hand turn bay, and then executed a right turn.³ Section 28-754(A), A.R.S., states:

A person shall not turn a vehicle at an intersection unless the vehicle is in proper position on the roadway . . . or otherwise turn a vehicle from a direct course or move right or left on a roadway unless and until the movement can be made with reasonable safety. A person shall not so turn any vehicle without giving an appropriate signal in the manner provided by this article in the event any other traffic may be affected by the movement.

¶9 This court interpreted the “may be affected” portion of § 28-754 in *State v. Starr*, 222 Ariz. 65, 213 P.3d 214 (App. 2009). In that case, an officer had observed the defendant’s vehicle move from the left lane to the right lane on Interstate 40 without signaling. *Id.* ¶6. As he did so, the defendant “passed an on-ramp in which a large commercial truck was merging onto Interstate 40.” *Id.* The defendant moved to suppress evidence seized during the ensuing traffic stop, arguing the “stop was unlawful because there was no traffic violation” pursuant to § 28-754(A). *Starr*, 222 Ariz. 65, ¶¶ 2, 13, 213 P.3d at 216, 218. The trial court denied the motion. *Id.* ¶ 2.

³On appeal, Pena acknowledges that she “argued to the trial court that the unsignaled turn from the turn bay did not affect traffic, [but] she did not argue that the unsignaled turn from the curb lane in[]to the turn bay did not affect traffic.” Normally, we review arguments raised for the first time on appeal for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). However, the analysis for each traffic violation is essentially the same, and Pena’s arguments are without merit in any event, under either the fundamental or harmless error standards. Therefore, we address Pena’s arguments contemporaneously below.

STATE v. PENA
Decision of the Court

¶10 On review, this court affirmed. *Id.* ¶ 1. We acknowledged that “§ 28-754 does not require drivers to signal every time they make a turn.” *Starr*, 222 Ariz. 65, ¶ 20, 213 P.3d at 219-20. But, we also noted:

A driver who makes an unsignaled turn or move deprives other drivers of a warning that a change of course is about to take place. To the extent that information enters into the decision-making calculus of a nearby driver, that driver “may be affected.” . . . [I]t is enough that the move may influence the factors a driver would consider in order to drive safely.

Id. ¶ 24. We further noted that the commercial truck driver would have considered the presence of traffic in the right lane as he merged onto the highway, but the officer had testified that the defendant’s failure to signal would have suggested to the truck driver that the defendant planned to remain in the left lane. *Id.* ¶ 25. Thus, the failure to signal in *Starr* deprived the truck driver of information that may have affected the driver’s course. *Id.* We therefore concluded that “[t]he presence of this merging vehicle on the on-ramp was a specific, articulable fact that satisfied the ‘may be affected’ requirement of . . . § 28-754(A).” *Starr*, 222 Ariz. 65, ¶ 25, 213 P.3d at 221.

¶11 Here, Pena argues “[t]here was no specific articulable fact” to support the trial court’s finding of reasonable suspicion because “Abdullah could not describe where the other vehicles were or how they may have been affected.” We disagree. During the suppression hearing, Abdullah testified that traffic had been “moderate,” meaning, traffic was not “jampacked, rush hour type conditions or anything like that, but it wasn’t a sporadic one car on the road,” and he noted that there had been “moderate traffic as you would see flowing through a light.” He explained that vehicles had been stopped at the red light as Pena approached the intersection, while others—including Abdullah—were traveling behind her SUV. Abdullah also stated that on previous occasions, he “ha[d] observed vehicles go straight [through an intersection] from a right turn lane”

STATE v. PENA
Decision of the Court

when they had failed to signal a right turn. To be “cautious,” he moved into the right-hand turn bay behind Pena’s SUV in case she continued straight through the intersection and into other lanes of traffic. He stated: “I don’t know what [Pena’s] vehicle is doing if it’s not signaling.”

¶12 In *Starr*, although the officer identified a particular commercial truck driver who could have been affected by the defendant’s driving, he did not observe “an actual change in movement by the [other] vehicle” in response to the defendant’s “unsignaled turn or move.” 222 Ariz. 65, ¶ 24, 213 P.3d at 221. Here, even though Abdullah did not identify a particular other vehicle that may have been affected, he did state that there had been “moderate traffic,” with other vehicles stopped at the intersection. Like Abdullah, the drivers of those other vehicles may not have “know[n] what [Pena’s] vehicle is doing if it’s not signaling.” This “satisfied the ‘may be affected’ requirement of . . . § 28-754(A).” *Starr*, 222 Ariz. 65, ¶ 25, 213 P.3d at 221.

¶13 In applying § 28-754, “[i]t is not necessary to speculate in what way another driver may have reacted.” *Starr*, 222 Ariz. 65, ¶ 24, 213 P.3d at 221. Moreover, a traffic stop that is objectively lawful is not rendered illegal simply because a police officer fails to appreciate or recite the legal ground that supports the action. *See, e.g., United States v. Willis*, 431 F.3d 709, 716-17 (9th Cir. 2005) (upholding stop when officer issued no traffic citations but “could have relied on the traffic violation as a justification for stopping” defendant). Therefore, the trial court did not abuse its discretion in denying Pena’s motion to suppress. *See Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d at 790.

Pre-Miranda Statement

¶14 Pena argues the trial court erred in denying her motion to suppress the incriminating statement she made prior to receiving *Miranda* warnings. Abdullah smelled the odor of marijuana coming from inside the vehicle as he approached it, and he asked Pena if she had been smoking marijuana. Pena responded that she had smoked marijuana in the park about a half-hour before. A police officer has authority to detain and question a person without administering

STATE v. PENA
Decision of the Court

Miranda warnings if the officer has a reasonable, articulable suspicion of criminal activity. *State v. Pettit*, 194 Ariz. 192, ¶ 15, 979 P.2d 5, 8 (App. 1998). *Miranda* warnings are required only when a person is subjected to a “custodial interrogation.” *Miranda*, 384 U.S. at 444; *see also Oregon v. Elstad*, 470 U.S. 298, 309 (1985).

¶15 The objective test used to determine whether an interrogation is custodial “is whether under the totality of the circumstances a reasonable person would feel that he was in custody or otherwise deprived of his freedom of action in a significant way.” *State v. Carter*, 145 Ariz. 101, 105, 700 P.2d 488, 492 (1985); *see State v. Spreitz*, 190 Ariz. 129, 143, 945 P.2d 1260, 1274 (1997). In making this determination, courts may consider: “(1) whether the objective indicia of arrest are present; (2) the site of the interrogation; (3) the length and form of the investigation; and, (4) whether the investigation had focused on the accused.” *State v. Stanley*, 167 Ariz. 519, 523, 809 P.2d 944, 948 (1991); *see Stansbury v. California*, 511 U.S. 318, 324-25 (1994) (officer’s knowledge or beliefs bear upon custody issue only if conveyed to individual questioned and affect how reasonable person would gauge breadth of freedom of action). In the context of roadside investigative questioning, an interrogation becomes custodial for purposes of *Miranda* only when “police have both reasonable grounds to believe that a crime has been committed and reasonable grounds to believe that the person they are questioning is the one who committed it.” *Pettit*, 194 Ariz. 192, ¶ 15, 979 P.2d at 8.

¶16 Abdullah’s initial question, at an early stage of the traffic stop, did not constitute a custodial interrogation. *See id.* (“A motorist subjected to a traffic stop is ordinarily not ‘in custody’ for *Miranda* purposes.”). Although he smelled marijuana as he approached Pena’s SUV, Abdullah “did not know that [she] was committing [a DUI-related offense] until after [s]he admitted that [s]he [had been smoking marijuana]” and the field sobriety tests confirmed his suspicion she was under the influence. *In re Roy L.*, 197 Ariz. 441, ¶ 14, 4 P.3d 984, 988-89 (App. 2000). His question was brief and nonaccusatory. *See Pettit*, 194 Ariz. 192, ¶ 16, 979 P.2d at 8 (“Neutral, nonaccusatory questioning in furtherance of a proper preliminary investigation is permissible under *Miranda*.”). And,

STATE v. PENA
Decision of the Court

although Abdullah stated that “[f]rom the moment [he] smelled the marijuana, no one was free to leave,” he never communicated that intention to Pena. *See Stansbury*, 511 U.S. at 324-25.

¶17 Relying on this court’s decision in *State v. Hummons*, 225 Ariz. 254, ¶ 6, 236 P.3d 1201, 1203 (App. 2010), Pena nevertheless argues “[she] was in custody when . . . Abdullah took and retained her driver’s license, a critical means of identification as well as required authorization for operating her vehicle.” In *Hummons*, we acknowledged that “an officer’s ‘retention of [identification] papers under some circumstances may transform an interview into a seizure, where it is prolonged or is accompanied by some other act compounding an impression of restraint,’ because, under such circumstances, ‘a reasonable person would not feel free to depart.’” *Id.* ¶ 6 (internal citations omitted). But Pena’s reliance on *Hummons* is misplaced. That decision was vacated by our supreme court on review. *State v. Hummons*, 227 Ariz. 78, 253 P.3d 275 (2011). Thus, it has “no precedential value.” *Wertheim v. Pima County*, 211 Ariz. 422, n.2, 122 P.3d 1, 5 n.2 (App. 2005). And in any event, there is no indication in the record from the suppression hearing that a significant amount of time had passed between the moment Abdullah took Pena’s driver’s license and when she made the incriminating statement, or that Abdullah’s request that she step out of the vehicle communicated that “[Pena’s] detention would not be temporary.” *Berkemer v. McCarty*, 468 U.S. 420, 441-42 (1984).

¶18 Even assuming Abdullah’s question constituted a custodial interrogation, the admission of Pena’s statement would have been harmless error. *See State v. Ross*, 180 Ariz. 598, 604, 886 P.2d 1354, 1360 (1994). An error is harmless “if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict.” *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993). Pena concedes that “her pre-*Miranda* statement likely had little effect on her conviction for driving with a drug or metabolite in her system.”

¶19 There was a substantial amount of other evidence demonstrating Pena’s impairment: She twice failed to use her turn signal, was slow to pull her vehicle over after Abdullah had activated his emergency lights, her hands were shaking as she

STATE v. PENA
Decision of the Court

handed over her identification, her eyelids were sagging, her eyes were dilated and red, and her speech was slow and uneven while responding to Abdullah's questions. Pena displayed five out of eight cues for impairment during a walk-and-turn field sobriety test, three of four cues during a one-legged stand, and similar cues during a Romberg test.⁴ Moreover, after being given the *Miranda* warnings, Pena also stated that "there would be large amounts of THC in her blood because she was a pothead and smoked weed all the time." And, analysis of the blood drawn shortly thereafter confirmed the presence of THC and its metabolite. Thus, the trial court did not abuse its discretion by denying Pena's motion to suppress her statement. *See Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d at 790.

Attorney Fees and Surcharges

¶20 Pena argues "the trial court erred when it did not waive the attorney's fees and assessments." Specifically, she challenges the imposition of a \$400 attorney fee, a \$25 indigent administrative assessment fee, a \$675.75 surcharge, and a \$20 probation assessment. We review a court's decision to add surcharges and attorney fees at sentencing for an abuse of discretion. *See State v. Torres-Soto*, 187 Ariz. 144, 145-46, 927 P.2d 804, 805-06 (App. 1996).

¶21 Section 11-584(C)(1) and (3), A.R.S., provides that after appointing a public defender for an indigent defendant, a trial court may nevertheless impose an indigent administrative assessment and "[r]equire that the defendant . . . repay to the county a reasonable amount to reimburse the county for the cost of the person's legal services." In setting the amount to be repaid, "the court shall take into account the financial resources of the defendant and the nature of the burden that the payment will impose." A.R.S. § 11-584(D). Rule 6.7(d), Ariz. R. Crim. P., similarly provides that:

⁴During a Romberg test, suspects are directed to tilt their heads back and close their eyes while silently counting for thirty seconds. During the Romberg test in this case, Abdullah observed that, while she counted, Pena had "upper body sway" and "eyelid tremors."

STATE v. PENA
Decision of the Court

If in determining that a person is indigent under Rule 6.4(a), the court finds that such person has financial resources which enable him or her to offset in part the costs of the legal services to be provided, the court shall order him or her to pay . . . such amount as it finds he or she is able to pay without incurring substantial hardship to himself or herself or to his or her family.

¶22 Pena first argues “the trial court was required to make a specific finding that [she] had the current capability to contribute to her legal defense” before imposing fees pursuant to § 11-584. Although Pena generally objected to the court’s imposition of surcharges and attorney fees, she did not request findings of fact. Therefore, she has forfeited review for all but fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). And although Pena correctly asserts that “[b]efore imposing fees pursuant to § 11-584 and Rule 6.7(d), the court is required to make specific factual findings,” the failure to do so is not fundamental error. *State v. Moreno-Medrano*, 218 Ariz. 349, ¶¶ 9, 12-13, 185 P.3d 135, 139 (App. 2008).

¶23 Next, Pena argues that “the assessments under A.R.S. §§ 12-116.01 and 12-116.02 are waivable,” as well as the \$20 probation assessment imposed pursuant to A.R.S. § 12-114.01,⁵ and that “the assessments in this case were . . . large enough to amount to a hardship requiring waiver of the assessments and probation fees.” We disagree. Normally, the trial court has discretion to waive these assessments if “the payment . . . would work a hardship on the persons convicted or adjudicated or on their immediate families.” A.R.S. §§ 12-116.01(F), 12-116.02(D); *see* A.R.S. § 12-114.01(C). But the court has no discretion to waive a “fine or assessment . . . or a surcharge imposed pursuant to § 12-116.01 or 12-116.02 for a conviction of [a DUI-related] offense.” A.R.S. § 28-1389; *see State v. Rogers*, 227 Ariz. 55, ¶ 5, 251 P.3d 1042, 1043 (App. 2010). And

⁵In her opening brief, Pena incorrectly states that the court imposed a probation assessment in the amount of \$25.

STATE v. PENA
Decision of the Court

although the court may have had discretion to waive the \$20 probation assessment, *see* A.R.S. § 12-114.01(C), the additional hardship caused by that assessment is de minimis and does not rise to the level of an abuse of discretion. *See State v. Beltran*, 189 Ariz. 321, 322, 942 P.2d 480, 481 (App. 1997) (abuse of discretion when “undisputably indigent” defendant given “\$64,900 surcharge on top of a \$110,000 fine”); *Torres-Soto*, 187 Ariz. at 146, 927 P.2d at 806 (abuse of discretion when “unemployed farmworker” given “\$85,500 in surcharges and \$375 in attorneys’ fees, in addition to . . . fine of \$150,000”).

¶24 Although Pena has not raised the issue on appeal, however, we do find fundamental error in the trial court’s calculation of the surcharge imposed pursuant to §§ 12-116.01, 12-116.02, and 16-954. *See State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007) (“Although we do not search the record for fundamental error, we will not ignore it when we find it.”). The imposition of an improper fee beyond what is authorized by statute “constitutes an illegal sentence, which is necessarily fundamental, reversible error.” *State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 910 (App. 2013), *quoting State v. Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d 784, 789 (App. 2009); *see Rogers*, 227 Ariz. 55, ¶¶ 4, 9, 251 P.3d at 1143-44; *State v. Soria*, 217 Ariz. 101, ¶ 7, 170 P.3d 710, 712 (App. 2007). Here, the court imposed a surcharge of \$675.75, apparently relying on *State v. Rogers*, which authorizes a surcharge in that amount for DUI offenses. However, the calculation in *Rogers* applied a surcharge of seven percent pursuant to § 12-116.01(C), because that defendant had been sentenced before January 2012. *Rogers*, 227 Ariz. 55, ¶ 9, 251 P.3d at 1044; *see* A.R.S. § 12-116.01(C) (“[A] surcharge shall be levied through December 31, 2011 in an amount of seven per cent, and beginning January 1, 2012 in an amount of six per cent, on every fine . . .”). But Pena was sentenced after January 2012, and therefore, a surcharge of only six percent should have been imposed pursuant to § 12-116.01(C) as amended. Thus, the total surcharge imposed in this case pursuant to §§ 12-

STATE v. PENA
Decision of the Court

116.01, 12-116.02, and 16-954 should have totaled \$667.50.⁶ *See Rogers*, 227 Ariz. 55, ¶ 9, 251 P.3d at 1044. Because Pena was prejudiced by this error, we modify the \$675.75 surcharge imposed during Pena’s sentencing to reflect this change. *See id.*

Felony Designation

¶25 Pena argues the trial court erred “when it designated the offenses [as] felonies citing the fact that [she] took that risk when she did not accept [a] plea agreement which permitted the . . . court to designate the offenses [as] misdemeanors.” We review a trial court’s decision on whether and how to designate a conviction for an abuse of discretion. *See State v. Soriano*, 217 Ariz. 476, ¶ 15, 176 P.3d 44, 49 (App. 2008).

¶26 Section 13-604(A), A.R.S., provides that if a trial court finds a non-dangerous, class-six felony conviction “unduly harsh,” it may choose to designate the conviction as a class-one misdemeanor or leave the conviction undesignated until probation is terminated. *See State v. Russell*, 226 Ariz. 416, ¶¶ 7-8, 249 P.3d 1116, 1118 (App. 2011). In doing so, the court must consider “the nature and circumstances of the crime and . . . the history and character of the defendant.” A.R.S. § 13-604(A).

¶27 At sentencing, Pena asked the trial court to leave her convictions undesignated, giving her the opportunity to earn misdemeanor designations. She emphasized that she had not taken an earlier plea offer for similar convictions because her counsel “could not encourage [her] to take a plea and give up all of her Constitutional rights for no benefit to her at all.” The state responded that the nature of Pena’s convictions, and the fact that “a probation officer discovered [Pena] recently smoked marijuana,” indicated that felony convictions would not be unduly harsh. The court denied Pena’s request, stating:

⁶When applied to a fine for \$750, § 12-116.01 requires a surcharge of \$450, § 12-116.02 requires a surcharge of \$97.50, and § 16-954 requires a surcharge of \$120.

STATE v. PENA
Decision of the Court

I find that it's not unduly harsh to sentence [Pena] for two felonies which a jury convicts her of. Although the plea offers that were made to her provided that she would plead to undesignated offenses, which certainly is a benefit over going to trial, being convicted of felonies and having it at the discretion of the judge whether the matters are designated felonies or not[,] I am going to designate both of these offenses as felonies.

¶28 Pena argues on appeal that “[t]he only factor mentioned by the trial court was that [Pena] took her chances when she did not accept a plea agreement” and that “[i]t is improper for the . . . court [to] punish [Pena] because of her assertion of her constitutional right to a jury trial.” However, the court’s reference to the rejected plea bargain appears to be a response to her argument regarding her attorney’s advice. Pena’s convictions and the presentence report provided ample information for the court to find that the felony designations would not be “unduly harsh.” A.R.S. § 13-604(A); *see State v. Medrano*, 185 Ariz. 192, 196, 914 P.2d 225, 229 (1996) (“Judges are presumed to know and follow the law and to consider all relevant sentencing information before them.”). Thus, the court did not abuse its discretion. *See Soriano*, 217 Ariz. 476, ¶ 15, 176 P.3d at 49.

Disposition

¶29 For the reasons stated above, we modify and reduce the \$675.75 surcharge imposed pursuant to §§ 12-116.01, 12-116.02, and 16-954 to \$667.50, but we otherwise affirm Pena’s convictions and sentences.