Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2010-000941-001 DT 04/18/2011

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
T. Melius
Deputy

STATE OF ARIZONA KENT C KEARNEY

v.

JUAN HERNANDEZ (001) PHILLIP G NOLAND

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

**Lower Court Case No.: 14054674-01**

Defendant Appellant Juan Hernandez (Defendant) was convicted in Phoenix Municipal Court of carrying a concealed weapon. Defendant contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On April 25, 2010, at approximately midnight, Officer Sosa saw a vehicle—Dodge truck[1]—with a missing headlight. He followed the vehicle into a street ending in a cul de sac. Officer Sosa asked Defendant if he could search the vehicle[2] and if there was a weapon in the truck. Although Defendant initially denied having a weapon in the vehicle, he later told Officer Sosa he did have one.[3] Defendant did not tell the officer where he kept the gun.[4]

Officer Sosa proceeded to search the truck and found the gun in the area behind the seat with the barrel facing up.[5] He testified he needed to move the seat in order to retrieve the fire-arm.[6] The Officer further stated the weapon was completely concealed from his view.[7] Officer Sosa confirmed Defendant owned the weapon.[8] Defendant stipulated he had no CCW.[9]

[1] Audio recording of August 31, 2010, bench trial, 2:18. Although both Defendant and the prosecutor referred to a written transcript in their respective briefs, the audio recording is the official record. Furthermore, this court was not provided with a written transcript or a copy of the unofficial record that both Defendant and State used.
[2] *Id*., at 2:20.
[3] *Id* at 2:20-21.
[4] *Id*. at 2:21.
[5] *Id*.
[6] *Id*. at 2:21-22.

When asked if he found the gun "in that compartment, that area behind the seats," Officer Sosa answered "yes."[10] He also agreed the area behind the seat could not be used for anything other than a storage area.[11] Officer Sosa described the vehicle as a single cab with three seats and the "back of the driver's seat touches the back side where the window is and the wall of the vehicle."[12]

The trial court stated that, although the area is an area that can be used for storage, it did not think "technically it is a storage compartment."[13]

The trial court convicted Defendant of carrying a concealed weapon and found the area behind the driver's seat was not a storage compartment. Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

*A. Did the Trial Court Err in Deciding the Area Behind the Driver's Seat Was Not a Storage Area Within the Meaning of A.R.S. § 13-3102 (G).*

A.R.S. §13-3102(G)—in effect at the time of the offense—reads:

> Subsection A, paragraph 1 of this section shall not apply to a weapon or weapons carried in a belt holster that is wholly or partially visible, carried in a scabbard or case designed for carrying weapons that is wholly or partially visible or carried in luggage. Subsection A, paragraph 2 of this section shall not apply to a weapon or weapons carried in a case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, map pocket, trunk or glove compartment of a means of transportation.

In this case, the parties all agree Defendant was carrying a gun in the area behind the driver's seat. The parties disagree about the specific definition of the term "storage compartment" and if the area behind the driver's seat is tantamount to a storage compartment in a pickup truck. Defendant argues the area behind the driver's seat is a small confined area where Defendant stored clothes and tools. The prosecutor maintains a storage compartment must be an enclosed area.

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[7] *Id*. at 2:22.
[8] *Id*. at 2:24.
[9] *Id*. at 2:30.
[10] *Id*. at 2:26-27.
[11] *Id*. at 2:28-29.
[12] *Id*. at 2:46.
[13] *Id*. at 2:48-49.

Defendant attempts to support his position by referring to Arizona Attorney General Opinion I85–095. This opinion, however, fails to support Defendant's position. The letter opines:

> Based on the plain meaning of the language of A.R.S. § 13–3102(F),[14] it is not a crime to carry a weapon that is in a case, holster or scabbard anywhere inside a vehicle. Likewise, it is lawful to carry a weapon inside a storage compartment, trunk, pack, luggage, or glove compartment of a vehicle, whether the weapon is or is not in a case, holster or scabbard.

Nothing in this opinion addresses the issue before the court about whether the area behind the seat is a "storage compartment" for purposes of this statute. Defendant suggests the Court of Appeals' use of the term "compartment"[15] when describing the location of a rifle in *Morari v. Atlantic Mut. Fire Ins. Co.*, 10 Ariz. App. 142, 457 P.2d 302 (Ct. App. 1969),[16] is instructive. However, Defendant presented no evidence showing if the area behind the seat in the *Morari* pickup is identical—or even similar to—the area behind the seat in Defendant's truck.

Neither party provided authority about storage areas nor if a storage area is synonymous with a storage compartment when interpreting the concealed weapons statute in effect at the time of the incident. There is a dearth of law about this issue, and the Arizona Legislature has not defined the term "storage compartment."

When construing statutes, the court must read the statute as a whole and give effect to the statute's plain meaning when possible. ("If a statute's meaning is clear and unambiguous, we give effect to its plain language without resorting to other rules of construction.") *Arizona Dept. of Revenue v. Salt River Project Agricultural Improvement and Power Dist*., 212 Ariz. 35, 126 P.3d 1063 ¶15 (Ct. App. 2006); A.R.S. § 1–213. Furthermore,

> Statutory language is the best indicator of that intent and we will give terms 'their ordinary meaning, unless the legislature has provided a specific definition or the context of the statute indicates a term carries a special meaning.

*State v. Oaks*, 209 Ariz. 432, 104 P.3d 163 ¶10 (Ct. App. 2005) (citations omitted). Courts often look to Webster's International Dictionary when needing the ordinary meaning of words. *State Tax Commission v. Peck*, 106 Ariz. 394, 396, 476 P.2d 849, 851 (1970). The term "compartment" is defined as "a separate division or section" or "one of the parts into which an enclosed space is divided.[17] The word "storage" is defined as "a space or a place for storing."[18]

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[14] A.R.S. § 13-3102 (F) is a predecessor statute to A.R.S. § 13-3102 (G).
[15] "The Hallabrin rifle was in the compartment behind the seat of the truck". 10 Ariz. App. at 142, 457 P.2d at 304.
[16] The *Morari* decision was reversed by the Supreme Court in *Morari v. Atlantic Mut. Fire. Ins. Co*., 105 Ariz. 537, 468 P.2d 564 (1970), but was cited for the limited purpose of showing the court utilized the term "compartment" when describing an area behind the seat of the truck.
[17] Merriam–Webster Dictionary. http://merriam–webster.com/dictionary/compartment.
[18] Merriam–Webster Dictionary http://merriam–webster.com/dictionary/storage.

Pickups have dedicated storage areas including map cases, glove boxes, consoles and underseat storage bins (which are fully enclosed when the seat is down).[19] Specialized storage bins may be purchased[20] (for example the box–like enclosures that are secured within the bed portion of a pickup) and may include gun racks or gun organizers so guns can be safely stored. In this case, the trial court determined the storage area behind the seat—while being used to store some of Defendant's items—was not a storage compartment.

The term "storage compartment," while not specifically defined, was followed by a series of specific areas where guns were allowed within a vehicle. The other mentioned places are a map pocket, trunk, or glove compartment. All of these locations shared a similar characteristic as all are discrete locations within a vehicle. The statutory doctrine of "expressio unius est exclusio alterius[21]" provides assistance in determining that a storage compartment must also be a discrete area and not just a portion of the vehicle where individuals may choose to store items.

This case presents a mixed question of law and fact. In reviewing a trial court's decision, an appellate court is to review de novo the trial court's legal conclusions but must defer to the trial court's factual determinations including any findings based on a witness' credibility and the reasonableness of the inferences that the witness drew. *State v. Blackmore*, 186 Ariz. 630, 632, 925 P.2d 1347, 1349 (1996); *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245 ¶ 7 (Ct. App. 2010). The appellate court does not re-weigh the evidence to see if the appellate court would reach the same conclusion: instead, it views the evidence in the light most favorable to upholding the trial court's decision.[22] *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989); *State v. Stanley*, 167 Ariz. 519, 525, 809 P.2d 944, 950, (1991). The trial court determined the area behind the seat was a storage area and not a storage compartment.

This court agrees with the trial court's interpretation of the term "storage compartment" and believes the Legislature intended to provide for either enclosed spaces or spaces where guns could be safely stored and not to any open area where an individual may choose to leave possessions. This interpretation comports with the plain meaning of the term "storage compartment".

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[19] The Court notes that during trial Defendant (defense counsel) mentioned the owner's manual as potentially providing information about the area behind the driver's seat as a storage area. Defendant has not provided this Court with any manufacturer's reference for this space as a storage area.

[20] The Internet lists many sources where storage containers may be purchased.

[21] "[T]he Legislature's expression of one or more items of a class is to be interpreted as an intent to exclude all items of the same class that are not expressed." *Arizona Board of Regents for and on behalf of University of Arizona v. State ex rel State of Ariz. Public Safety Retirement Retirement Fund Manager Adm'r.*, 160 Ariz. 150, 157, 771 P.2d 880, 887 (Ct. App. 1989)

*B. Should Defendant Be Acquitted as the Gun Was Not Within His Immediate Control.*

Defendant argues the gun was not accessible as the police officer needed to move the seat to retrieve it. This argument was not brought before the trial court and is therefore waived. Failure to raise the issue at trial waives the right to raise the issue on appeal. *State v. Gatliff*, 209 Ariz. 362, 102, P.3d 981 ¶ 9 (Ct. App. 2004). The court will only review the issue for fundamental error. *State v. Kiles*, 222 Ariz. 25, 313 P.3d 174 ¶ 16 (2009). Fundamental error is limited to rare cases. This Court finds no fundamental error.

III. CONCLUSION.

Based on the foregoing, this Court concludes the Phoenix Municipal Court did not err when it convicted Defendant.

**IT IS THEREFORE ORDERED** affirming the judgment and sentence of the Phoenix Municipal Court.

**IT IS FURTHER ORDERED** remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

*/s/ Myra Harris*
THE HON. MYRA HARRIS
JUDICIAL OFFICER OF THE SUPERIOR COURT 042920111618