

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000754-001 DT

05/04/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

ARON R MEZO (001)

ZACHARY D CAIN

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number M-0751-CR-2010-033066.

Defendant-Appellant Aron R. Mezo (Defendant) was convicted in Scottsdale Municipal Court of allowing consumption of alcohol on unlicensed premises and endangering safety or health of others. Defendant contends the evidence was not sufficient to support the convictions, and that the State failed to make proper disclosure of a cooperation agreement. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On October 13, 2010, Defendant was charged with allowing minors on premises, A.R.S. § 4-241(Q); selling alcohol without a license, A.R.S. § 4-244(1); allowing consumption of alcohol on unlicensed premises, A.R.S. § 4-244.05(A); endangering safety or health of others, A.R.S. § 13-2908(A)(1); maintaining premises where persons gather for unlawful conduct, A.R.S. § 13-2908(A)(2). The trial court began trial on May 10, 2011.

Kasey St. Pierre testified he worked as the promotions and events director at the Afterlife Nightclub, and was so employed on November 21, 2009. (R.T. of May 10, 2011, at 97.) He said Defendant, Aron Mezo, was the owner and was his boss. (*Id.* at 97-99.) He said he would discuss the daily workings of the establishment many times each day. (*Id.* at 99.) The Afterlife did not have a liquor license, and thus its purpose was to provide a place where people from age 18 to age 21 could gather. (*Id.* at 100.) There was on the premises, however, a party bus rented from a person in Tucson whose purpose was to serve as a location where alcohol could be provided after 2:00 a.m., which is when licensed establishments must stop serving alcohol. (*Id.* at 100-02.) Mr. St. Pierre discussed this arrangement with Defendant, and Defendant directed the way in which these activities were to be done. (*Id.* at 102-03, 106, 108.) In order for a person to buy

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alcohol in the bus, the person had to purchase a wristband. (*Id.* at 105.) This included persons under 21 years of age. (*Id.* at 106–07.) For the cash collected for the alcohol, the promoter would get half, and the Afterlife would get half. (*Id.* at 103-04.) The party bus was present on November 21, 2009, and it had in it alcohol for sale. (*Id.* at 104.)

On cross-examination, Defendant’s attorney brought out the fact that the City of Scottsdale had charges pending against Mr. St. Pierre. (R.T. of May 10, 2011, at 110–11.) Defendant’s attorney questioned Mr. St. Pierre whether the Scottsdale City Attorney had promised leniency to him in exchange for testifying against Defendant, and Mr. St. Pierre denied there were any such promises. (*Id.* at 111–14.) Defendant’s attorney asked Mr. St. Pierre about certain events he contended would give Mr. St. Pierre a motive to fabricate testimony against Defendant. (*Id.* at 114–27.) On redirect, the State’s attorney questioned Mr. St. Pierre about events that would show he was not fabricating testimony. (*Id.* at 127–33.)

Dylan Dunham testified he was 17 years old on November 20, 2009, and he was at the Afterlife with his friend, Brian Fagan, in the early morning hours. (R.T. of May 10, 2011, at 45–48, 51.) He said there were people there asking customers if they wanted to buy wristbands that would allow them to go into the party bus. (*Id.* at 48, 50, 56, 58.) He said they were providing drinks in the bus that contained alcohol, specifically vodka, and that he drank a lot that night. (*Id.* at 49–50, 52–53, 57.) He said he got into a dispute that led to a fight, which resulted in injuries to him. (*Id.* at 49–52, 56, 59.) As a result of this fight, he called the police. (*Id.* at 52.)

Officer Craig Abernathy testified he was working as a uniform officer in the early morning hours of November 21, 2009, when he went to the Afterlife Club to investigate a fight. (R.T. of May 10, 2011, at 61–62.) He saw Dylan Dunham holding a broomstick in a threatening manner. (*Id.* at 62.) Based on his observations of Mr. Dunham, he concluded Mr. Dunham had been drinking alcohol. (*Id.* at 63.) He also saw bumps and bruises on him. (*Id.*) Mr. Dunham said he had been jumped by four men at the Afterlife. (*Id.* at 64.)

Steven Negron testified he was a police officer with the City of Scottsdale, and on the evening of November 20, 2009, he and Officer Beck were working in a plainclothes capacity investigating liquor violations, focusing on the Afterlife Nightclub. (R.T. of May 10, 2011, at 7–8, 17, 33–35.) At 11:40 p.m., he and Officer Beck went to the Afterlife and each paid \$15.00 for admission. (*Id.* at 10–11, 29, 35–36, 43.) They went through the premises and found no evidence of alcohol consumption, so they left. (*Id.* at 11–13, 37–38.)

At 2:37 a.m. on November 21, 2009, Officer Negron received a call advising of a fight at the Afterlife, so they returned to that location. (R.T. of May 10, 2011, at 13–14, 38.) When they arrived, the officers who made the call were handling the fight situation, so Officer Negron and Officer Beck looked around and saw people coming out of a bus parked just northeast of the front door. (*Id.* at 14–15, 39.) Officer Negron spoke to two young women who had come out of the bus, who said people were selling alcohol in that bus. (*Id.* at 17, 39.) They also said a person had to buy a wristband to get into the bus and drink alcohol. (*Id.* at 31.) The two females took the

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two officers into the Afterlife where the officers paid \$15.00 each to a person named Carl Cartagena, and he gave them each a wristband. (*Id.* at 18–19, 29–30, 36, 39, 43.) After they received the wristbands, the two officers, the two females, and Carl went through the back patio and into the bus. (*Id.* at 21–22.)

In the bus there was a table with several jug-type coolers. (R.T. of May 10, 2011, at 22.) A person there gave Officer Negron a cup, and from one of the coolers he obtained a red-colored liquid that had the taste and smell of alcohol. (*Id.* at 22–23.) In the bus, Officer Negron saw a vodka bottle, which was consistent with the alcohol he tasted in the red liquid. (*Id.* at 24.) Officer Negron asked Carl who made the concoction, and Carl said he did. (*Id.* at 25.) As the officers were leaving, Carl told them to keep it on the DL (down low) and leave the cups in the bus, which they did. (*Id.* at 25–26, 41.)

The officer returned to the Afterlife and went to the dance area, and later saw Carl in the DJ booth. (*Id.* at 26.) Officer Beck reported their observations to other officers, and two uniformed patrol officer entered the Afterlife and went to the DJ booth. (*Id.* at 26–27.) Officer Negron put on his police vest and returned to the bus, where he retrieved his cup, which still had a portion of the red liquid in it. (*Id.* at 27–28.) He tested the liquid with a PBT machine and it tested positive for alcohol. (*Id.* at 28–29.)

Officer Austin Beck testified he was a police officer with the City of Scottsdale, and on the evening of November 20, 2009, he and Officer Negron were working in a plainclothes capacity investigating liquor violations, focusing on the Afterlife Club. (R.T. of May 10, 2011, at 72–73, 92.) At 11:30 p.m., he and Officer Negron went to the Afterlife and each paid \$15.00 for admission. (*Id.* at 73–74, 90.) They went through the premises and found no evidence of alcohol consumption, so they left. (*Id.* at 74–75, 92.) At 2:37 a.m., they received a call advising that a fight had broken out at the Afterlife, so they returned. (*Id.* at 75–76.) Officer Beck saw a bus parked by the doorway of the Afterlife, and two females told them alcohol was being served in the bus. (*Id.* at 76–77.) One of the women said they would have to buy wristbands to get into the bus, and she took them into the Afterlife to find the person selling wristbands. (*Id.* at 77–78.) Officer Beck and Officer Negron each bought wristbands for \$15.00 each. (*Id.* at 78, 90.) They then went into the bus and obtained a red liquid the smelled like a mixture of vodka and fruit punch. (*Id.* at 81–82.) The person serving the alcohol, whom he identified as Carl Cartagena, said to keep this on the down low because they were not allowed to be serving alcohol. (*Id.* at 88, 95, 96.)

After the witnesses finished testifying that first day, the trial court continued the trial until June 7, 2011. (R.T. of May 10, 2011, at 136.) The next trial day, Detective John Miller testified about being in charge of the investigation of the Afterlife Club on November 21, 2009. (R.T. of June 7, 2011, at 138–57, 159.) Once the State rested, Defendant moved for a motion for judgment of acquittal, which the trial court denied. (*Id.* at 203.) Defendant then presented a witness, and then testified himself. (*Id.* at 204, 219.) After hearing arguments of counsel, the trial court found Defendant guilty of Count 2 and Count 4, and not guilty of Counts 1, 3, and 5. (*Id.* at 263.)

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On July 26, 2011, the trial court held the sentencing. (R.T. of July 26, 2011, at 267.) During his statement to the trial court, Defendant contended his fired manager had been given some consideration for his testimony because “all the charges were dropped against him the very next day.” (*Id.* at 276.) The trial court then imposed sentence. (*Id.* at 283–84.) On August 8, 2011, 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 State present sufficient evidence to support the conviction.

Defendant contends the State did not present sufficient evidence to support the conviction. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.”

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the trier-of-fact, but whether there is a complete absence of probative facts to support its conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

Defendant was charged with violating A.R.S. § 13–2908(A)(1), which provides as follows:

A. A person commits criminal nuisance:

1. If, by conduct either unlawful in itself or unreasonable under the circumstances, such person recklessly creates or maintains a condition which endangers the safety or health of others.

The evidence presented showed Defendant was allowing alcohol to be served to minors on his premises. That was sufficient evidence from which the trial court could find Defendant was engaging in conduct unlawful in itself. The Arizona Legislature has prohibited minors from drinking, which indicates a determination that drinking alcohol endangers the safety or health of that minor. Thus, the evidence was sufficient to support the trial court’s finding that Defendant engaged in unlawful conduct that created or maintained a condition that endangered the safety or health of minors in general. Moreover, the evidence showed the consumption of alcohol led to a fight that injured Dylan Dunham. Thus, Defendant engaged in unlawful conduct that created or maintained a condition that endangered the safety or health of Dylan Dunham in particular. The evidence was thus sufficient to support the trial court’s verdict.

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B. *Did Defendant properly present his claim that a State's witness was testifying pursuant to a plea deal the witness received from the State.*

Defendant contends the State dismissed charges against Kasey St. Pierre in exchange for his testimony against Defendant. Absent fundamental error, failure to raise an issue at trial waives the right to raise the issue on appeal. *State v. Gendron*, 168 Ariz. 153, 154–55, 812 P.2d 626, 627–28 (1991); *State v. Gatliff*, 209 Ariz. 362, 102 P.3d 981, ¶ 9 (Ct. App. 2004). Fundamental error is limited to those rare cases that involve error going to the foundation of the defendant's case, error that takes from the defendant a right essential to the defendant's defense, and error of such magnitude that the defendant could not possibly have received a fair trial, and places the burden on the defendant to show both that error existed and that the defendant was prejudiced by the error. *State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045, ¶ 11 (2009). Further, the Arizona courts have held it is particularly inappropriate to consider an issue for the first time on appeal when the issue is a fact intensive one. *State v. West*, 176 Ariz. 432, 440–41, 862 P.2d 192, 200–01 (1993); *State v. Brita*, 158 Ariz. 121, 124, 761 P.2d 1025, 1028 (1988); *In re MH 2007–001895*, 221 Ariz. 346, 212 P.3d 38, ¶¶ 14–15 (Ct. App. 2009). At the time of sentencing, Defendant stated to the trial court the State had dismissed the charges against Mr. St. Pierre. (R.T. of July 26, 2011, at 276.) The record thus contains no explanation why Defendant did not present this claim to the trial court by motion.

Because Defendant never filed a motion with the trial court presenting this claim, there is no record to support Defendant's contention that the State dismissed the charges against Mr. St. Pierre, much less to support his contention the State did so in exchange for his testimony against Defendant. Defendant does attach to his Opening Brief exhibits containing material pertaining to Mr. St. Pierre's case, but because an appellate court does not act as a fact-finder, it does not consider materials that are outside the record on appeal. *State v. Schackart*, 190 Ariz. 238, 247, 947 P.2d 315, 324 (1997); *State v. Fischer*, 219 Ariz. 408, 199 P.3d 663, ¶ 43 n.13 (Ct. App. 2008); *Melgar v. Campo*, 215 Ariz. 605, 161 P.3d 1269, ¶ 19 n.8 (Ct. App. 2007).

Moreover, even if this Court were to consider those exhibits attached to Defendant's Opening Brief, those exhibits do not support Defendant's contention. The Order signed by the Judge of the Scottsdale City Court states the State moved to dismiss the charges against Mr. St. Pierre without prejudice because "The State is unable to proceed at this time." If that is the true reason, it shows the State did not dismiss the charges in exchange for Mr. St. Pierre's testimony. And if this statement is not true, that would present a fact-intensive issue that would have to be developed by the trial court. Thus, because Defendant has not provided this Court with a record that supports his claim, this Court is unable to grant relief on that issue.

III. CONCLUSION.

Based on the foregoing, this Court concludes the State presented sufficient evidence to support the conviction, and that Defendant waived any argument about a plea deal between the State and a witness by not presenting this claim first to the trial court.

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

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

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

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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