

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000028-001 DT

06/04/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

KENNETH M FLINT

v.

PETER ANTHONY SANTIN (001)

CAMERON A MORGAN

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number M-751-CR-2010-029438.

Defendant-Appellant Peter Anthony Santin (Defendant) was convicted in Scottsdale Municipal Court of possession of drug paraphernalia. Defendant contends (1) the trial court erred in denying his Motion To Suppress, which alleged the officers violated his right to privacy when they entered his apartment, (2) the State did not present sufficient evidence to support the conviction, and (3) the trial court did not have jurisdiction. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On September 15, 2010, Defendant was cited for possession of drug paraphernalia, A.R.S. § 13-3415(A). Prior to trial, Defendant filed a Motion To Suppress alleging the officers violated his right to privacy when they entered his apartment.

At the hearing on Defendant's motion to suppress, Officer Christopher Watson testified he was on duty on September 15, 2010, working with Officer Jeff Stewart. (R.T. of Apr. 20, 2011, at 14-15.) They received a report of unusual activity at 1075 North Miller Road, Number 365, so they went to that location and contacted Defendant. (*Id.* at 14-17.) At 11:51, they met Defendant outside his apartment and told him they had received information about possible drug activity in his apartment. (*Id.* at 17-18, 35.) Officer Watson asked if they could go into the apartment, and Defendant said he would rather they not because the place was trashed at the time. (*Id.* at 19, 21-22, 35-36.) Officer Watson said he had been in worse, and Defendant immediately replied that they could come in. (*Id.* at 22, 36.) Defendant then held open the door and led both officers into the apartment. (*Id.* at 22, 43.)

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Defendant went into the living room area and sat on a couch, and Officer Watson stood near him. (R.T. of Apr. 20, 2011, at 24.) Officer Stewart went to the hallway to make sure no one else was there. (*Id.* at 25–26.) While in the living room, Officer Watson saw on the coffee table a grinder and some Naproxen pills. (*Id.* at 37–39, 52.) In order to see the grinder and the pills, Officer Watson did not have to move anything or manipulate anything. (*Id.* at 39, 44–45.) When Officer Stewart returned to the living room area, he saw the item on the table; when he said it was a grinder, Defendant replied that it was. (*Id.* at 30–31.) Prior to the finding of the grinder and the pills, Defendant never withdrew his permission for the officers to be in his apartment or in the area where the officers found the grinder and the pills. (*Id.* at 40–42.) Defendant told the officers he smoked marijuana sometimes because it helps him sleep. (*Id.* at 50.)

Officer Jeff Stewart testified he was on duty on September 15, 2010, working with Officer Watson. (R.T. of Apr. 20, 2011, at 59.) Officer Watson asked Defendant if they could go into his apartment; Defendant said he would rather they not because the place was messy; Officer Watson said he had seen messy apartments before; and Defendant then said they could come in. (*Id.* at 62, 78.) Officer Stewart did a cursory look-around to make sure no one else was in the apartment, which took 10 to 15 seconds. (*Id.* at 63, 65, 67, 76.) Officer Stewart returned to where Defendant and Officer Watson were, and after 2 to 3 minutes saw a grinder on the coffee table. (*Id.* at 68, 72.) Officer Stewart bent down to look at the grinder and saw in it a green leafy substance he identified as marijuana, (*Id.* at 70, 74, 87.)

After hearing arguments of the attorneys, the trial court ruled on Defendant's Motion To Suppress. (R.T. of Apr. 20, 2011, at 99.) It found the officers did not engage in any subterfuge or intimidation. (*Id.* at 99–100.) It found the 10 to 15 seconds for a safety search was reasonable. (*Id.* at 100.) It found everything the officers saw was in plain view and the officers did not have to move anything to find or identify those items. (*Id.* at 101.) Finally, the trial court found Defendant consented to the officer's entry into the apartment, that Defendant did not put any limitations on the consent, and the officers did not commit any violations while they were in Defendant's apartment. The trial court therefore denied Defendant's Motion To Suppress. (*Id.* at 102.)

Trial in this matter began on July 27, 2011, and the parties stipulated the alleged paraphernalia contained marijuana residue. (R.T. of July 27, 2011, at 104, 139–40.) Officer Christopher Watson testified he was on duty on September 15, 2010, and went to 1075 North Miller Road, Number 365, where he contacted Defendant. (*Id.* at 105–06.) Accompanying him was Officer Stewart. (*Id.* at 107.) Defendant allowed them to come into the apartment, and while there, he saw a grinder commonly used to grind marijuana. (*Id.* at 107–12.) He noted the lid was off the grinder, and he saw some residue inside the grinder. (*Id.* at 112–13, 118–19, 127.) He said even with the lid off the grinder, it could still process marijuana. (*Id.* at 125–26, 127–28.) He said Defendant admitted it was a grinder. (*Id.* at 114, 116.) Defendant admitted to smoking marijuana occasionally, but said there was no marijuana in the apartment. (*Id.* at 115.)

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Officer Jeff Stewart testified about working with Officer Watson on September 15, 2010. (R.T. of July 27, 2011, at 129.) He testified about seeing the metal grinder on the coffee table in Defendant's apartment. (*Id.* at 131.) He said the top part of the grinder was missing, but it still could be used to process marijuana. (*Id.* at 132–34.) He saw what he believed to be marijuana residue in the grinder. (*Id.* at 134.) He said Defendant admitted it was a grinder. (*Id.* at 135.)

Both sides then rested and presented arguments to the trial court. (R.T. of July 27, 2011, at 142–43.) Defendant's attorney brought up the fact that the complaint in this matter was filed by a police officer and not the prosecutor. (*Id.* at 145.) Defendant's attorney contended that made the complaint invalid. (*Id.* at 146.) The prosecutor noted this was the first time he had heard of this argument. (*Id.* at 147.) Defendant's attorney agreed he had not given the prosecutor notice of this argument. (*Id.* at 148–49.) Defendant's attorney said this may go to the trial court's subject matter jurisdiction. (*Id.* at 149–50.) The trial court allowed the attorneys to file simultaneous memoranda on that issue. (*Id.* at 150–51.) After hearing the prosecutor's final argument, the trial court agreed the grinder was still operable. (*Id.* at 153.) The trial court then stated the State had proved the charge against Defendant. (*Id.* at 153–54.)

The prosecutor and Defendant's attorney submitted to the trial court briefs on the issue of jurisdiction. After hearing arguments from the attorneys, the trial court ruled the State properly charged Defendant with a misdemeanor. (R.T. of Aug. 24, 2011, at 161.) For sentence, the trial court imposed a fine on Defendant. (*Id.* at 161–62.) On August 26, 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 trial court abuse its discretion in finding Defendant consented to the officers' entry into his apartment and in finding the officers found the item in plain view.*

Defendant contends the trial court abused its discretion in finding he consented to the officers' entry into his apartment and abused its discretion in finding the officers found the grinder in plain view. In reviewing a trial court's ruling on a motion to suppress, an appellate court is to defer to the trial court's factual determinations, including findings based on a witness's credibility and the reasonableness of inferences the witness drew, but is to review de novo the trial court's legal conclusions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 75, 81 (2004); *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).

Residents are entitled to full constitutional protection against unreasonable search and seizure, thus for a search to be reasonable, there must be consent, a warrant, or exigent circumstance. *State v. Davolt*, 207 Ariz. 191, 84 P.3d 456, ¶¶ 23–24, 34 (2004). If law enforcement officers are in a location where they are constitutionally permitted to be, they may seize any item in plain view that has evidentiary value, and the discovery does not have to be inadvertent. *Horton*

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v. California, 496 U.S. 128, 135–36 (1990); *State v. Apelt*, 176 Ariz. 349, 362, 861 P.2d 634, 647 (1993); *State v. DeCamp*, 197 Ariz. 36, 3 P.3d 956, ¶ 20 (Ct. App. 1999). In the present case, the officers testified Defendant gave his consent to their entry, Defendant's consent was voluntary, Defendant placed no limits on that consent, and Defendant never revoked that consent until after they found the grinder and Defendant asked for an attorney. Defendant never testified, thus he never contradicted the testimony of the officers. The trial court thus found Defendant consented to the officers' entry into the apartment and their presence there, and the record fully supports the trial court's ruling.

Defendant contends there should be a requirement that the officers first advise a person of the right to refuse a search. There are two problems with this position. First, no Arizona case has imposed such a requirement. This Court is not in a position in the legal structure to adopt such a legal requirement, so it will have to be left to the Arizona Supreme Court or the Arizona Court of Appeals to do so. Second, it appears from this record Defendant knew exactly what his rights were. While the officers were in Defendant's apartment, he told them as follows:

No, I'll be honest with you, my dad's a lawyer. If I had mass quantities of drugs in here, you wouldn't be here right now. My dad would be coming up the stairs telling you unless you have a warrant, you need to leave. I would have been flushing my stuff down the toilet, but I'm not stupid either. I just don't have anything to hide.

(R.T. of July 27, 2011, at 111.) Defendant thus knew he had the right to refuse entry to the officers.

In the present case, both officers testified they saw the grinder in plain view and did not have to move or manipulate anything. Defendant did not testify, thus he never contradicted the testimony of the officers. The trial court found the officers discovered the grinder in plain view, and the record fully supports the trial court's ruling. The trial court therefore properly denied Defendant's Motion To Suppress.

B. Did the State present sufficient evidence to support the conviction.

Defendant contends the State did not present sufficient evidence showing he used the grinder, and did not present sufficient evidence the grinder could be used to process marijuana. 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." "Criminal intent, being a state of mind, is shown by circumstantial evidence. Defendant's conduct and comments are evidence of his state of mind."

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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).

In the present case, the parties stipulated the residue in the grinder was marijuana, and Defendant admitted using marijuana occasionally to sleep. This Court concludes this was sufficient evidence from which the trial court could find Defendant possessed the grinder with the intent to process marijuana.

For the use of the grinder, the officers testified a person could use the grinder to process marijuana even though the top was missing. In the stipulation presented to the trial court, the State's expert said he could not tell whether the grinder would work. (R.T. of July 27, 2011, at 141.) To the extent that produced a conflict in the evidence, the standard to resolve conflicts is as follows:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves "an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge" rather than a "question . . . of law or logic," it is not appropriate for this Court to "substitute [its] judgment for that of the trial judge."

C. *Did the trial court have jurisdiction in this matter.*

Defendant contends the trial court did not have jurisdiction in this matter because it was a class 6 felony. A class 6 felony shall be designated a misdemeanor if a complaint is filed in justice court or municipal court charging the offense as a misdemeanor. A.R.S. § 13-604(B)(2). In the present case, a complaint was filed with the municipal court charging the offense as a misdemeanor, thus the trial court had jurisdiction to try this case.

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Defendant contends, however, A.R.S. § 13-604(B) requires the prosecutor to be the one to file the complaint, and thus the process here was defective because the police officer filed the complaint. In *State v. Maldonado*, 223 Ariz. 309, 223 P.3d 653 (2010), the court held the failure to file a charging document altogether did not deprive the court of jurisdiction, and the defendant waived any issue about the failure to file the charging document by not objecting prior to trial. *Maldonado* at ¶¶ 7-26. In the present matter, Defendant never objected prior to trial that it was the police officer and not the prosecutor who filed the complaint. If Defendant had objected, the prosecutor either could have filed a new complaint, or stated to the trial court that the officer had permission to act as the prosecutor's agent in filing the complaint. Because Defendant did not object prior to trial, this Court concludes Defendant has waived this issue.

Defendant contends, however, this is a matter of subject matter jurisdiction, which he may raise at any time. Based on the reasoning in *Maldonado*, this Court concludes any defect would be a matter of personal jurisdiction that a defendant will waive if not raised prior to trial, and not a matter of subject matter jurisdiction.

III. CONCLUSION.

Based on the foregoing, this Court concludes the (1) the trial court did not err in denying Defendant's Motion To Suppress, (2) the State presented sufficient evidence to support the conviction, and (3) the trial court had jurisdiction in this matter.

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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