

2018 WL 5729206

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UNDER ARIZONA RULE OF THE SUPREME

COURT 111(c), THIS DECISION IS NOT

PRECEDENTIAL AND MAY BE CITED

ONLY AS AUTHORIZED BY RULE.

Court of Appeals of Arizona, Division 1.

STATE of Arizona, Appellee,

v.

Howard Alonzo CAMPBELL, Appellant.

No. 1 CA-CR 17-0654

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FILED 10/30/2018

Appeal from the Superior Court in Maricopa County; No. CR2016-001055-001; The Honorable [Joan M. Sinclair](#), Judge. **AFFIRMED**

Attorneys and Law Firms

Arizona Attorney General's Office, Phoenix, By Joseph T. Maziarz, Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix, By Jeffrey L. Force, Counsel for Appellant

Judge [Paul J. McMurdie](#) delivered the decision of the Court, in which Presiding Judge [Diane M. Johnsen](#) and Judge [David D. Weinzwieg](#) joined.

MEMORANDUM DECISION[McMURDIE](#), Judge:

*1 ¶1 Howard Alonzo Campbell appeals his convictions of one count of Conspiracy to Commit Sale or Transportation of Marijuana, a class two felony; four counts of Possession of Marijuana for Sale, class two felonies; one count of Possession or Use of Marijuana, a class six felony; three counts of Possession of Drug Paraphernalia, class six felonies; and the resulting sentences. Campbell's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), certifying that, after a diligent search of the record, he found no arguable question of law that was not frivolous. Counsel asks

this court to search the record for arguable issues. See *Penson v. Ohio*, 488 U.S. 75 (1988); *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). Campbell was given the opportunity to file a supplemental brief, and raised the following arguments: (1) the superior court erroneously denied Campbell's pretrial motion to suppress, and (2) the superior court abused its discretion by not giving due weight to Campbell's suppression hearing testimony considering the alleged prosecutorial misconduct. After reviewing the record, we affirm Campbell's convictions and sentences.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 On September 6, 2013, United States postal inspector Kerry Fisher observed a man enter a United States Post Office carrying a small box. Suspicious of the way the box was wrapped, Fisher followed the man into the lobby, watched him mail the box, and then intercepted it. Fisher observed that the shipping address on the box was for Gainesville, Florida, a known destination for marijuana mailings. Upon further investigation, Fisher discovered the return address on the box was fictitious. The box was placed in front of a narcotic detection K9 that alerted to the presence of narcotics. Based on this information, Fisher obtained a search warrant, searched the box, and found two pounds and one ounce of marijuana.

¶3 On December 10, 2013, Fisher observed two women enter a different post office, each carrying two boxes. During an inspection of those four boxes, Fisher found that all four were addressed to North Carolina hotels, and the return addresses were associated with business complexes that did not correspond with the names provided on the labels. After separate inspections, a narcotic detection K9 alerted to the presence of narcotics in all four boxes. Fisher obtained a search warrant and searched the four boxes. The boxes contained seven pounds and two ounces; ten pounds and two ounces; nine pounds and fifteen ounces; and nine pounds and twelve ounces of marijuana, respectively.

¶4 Fisher sent the boxes and samples acquired from each of the boxes to a forensic lab for controlled substance and fingerprint analysis. The lab later reported that Campbell's finger and palm prints were on the inside of the boxes.

*2 ¶ 5 On May 20, 2015, Fisher, along with Phoenix Police Officers Anthony Schiaveto and Patrick Ard (“the officers”), went to Campbell’s apartment to arrest him. After the officers placed Campbell under arrest, Campbell asked if he could put his shoes on. The officers accompanied Campbell into his apartment and walked across the apartment to Campbell’s bedroom. While walking Campbell through the apartment, the officers noticed industrial rolls of cellophane and smelled marijuana.

¶ 6 Based primarily on the officers’ observations, Fisher obtained a warrant to search Campbell’s apartment. During the search, the officers found approximately 27 grams of marijuana, gloves, priority mail boxes, priority mail labels with partially handwritten names that did not belong to the listed addresses, bank statements, sequential \$750 money orders, industrial rolls of cellophane wrap, ledgers, and scales.

¶ 7 Before trial, Campbell moved to suppress the evidence seized from his apartment. At the pretrial suppression hearing, Campbell testified that after the officers handcuffed him, they remained outside while Campbell put on his shoes, which were right by the door. Campbell further testified he never gave the officers consent to enter or search his apartment. The officers testified that they escorted Campbell into his apartment to get his shoes. Fisher further testified that the officers conducted a protective sweep. The superior court denied Campbell’s motion to suppress, stating it found the officers’ testimony more credible than Campbell’s. Campbell moved for reconsideration, which the superior court denied.

¶ 8 Campbell also challenged the composition of the jury under *Batson v. Kentucky*, 476 U.S. 79 (1986), and challenged the admissibility of fingerprint analysis testimony pursuant to *Arizona Rule of Evidence 702* and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). After appropriate hearings, the superior court denied Campbell’s motions.

¶ 9 At trial, the State’s forensic latent print analysts testified that they manually compared Campbell’s finger and palm prints to those found on the seized boxes containing marijuana and that the prints matched. The State’s forensic chemist testified that the substance in the boxes was marijuana based on stereoscopic sample

inspections and gas chromatograph-mass spectrometer tests. Also, Officer Schiaveto testified that the items discovered in Campbell’s apartment are commonly associated with narcotic sales operations.

¶ 10 After a six-day trial, the jury found Campbell not guilty of one count of Possession of Marijuana for Sale and the lesser included offense of Possession of Marijuana, not guilty of one count of Possession of Drug Paraphernalia, but guilty of the counts noted above. The jury also found the aggravating circumstance that Campbell committed the Conspiracy and Possession of Marijuana crimes for pecuniary gain. The court sentenced Campbell to five years’ incarceration and awarded Campbell 33 days of presentence incarceration credit. Additionally, the court imposed mandatory fines and fees. Campbell timely appealed.

DISCUSSION

¶ 11 We have read and considered counsel’s brief, as well as Campbell’s supplemental brief, and have reviewed the record for any arguable issues. See *Leon*, 104 Ariz. at 300. We find none.

¶ 12 In his supplemental brief, Campbell argues: (1) the superior court erroneously denied Campbell’s pretrial motion to suppress, and (2) the superior court abused its discretion by not giving due weight to Campbell’s suppression hearing testimony considering the alleged prosecutorial misconduct.

A. The Superior Court Did Not Erroneously Deny Campbell’s Motion to Suppress.

*3 ¶ 13 “We review the denial of a motion to suppress evidence for abuse of discretion, considering the facts in the light most favorable to sustaining the ruling.” *State v. Valenzuela*, 239 Ariz. 299, 302, ¶ 9 (2016).

¶ 14 Based on the facts before us, the superior court did not err by denying the motion to suppress. Campbell does not dispute the arrest warrant was valid, so Fisher and the officers were lawfully present at Campbell’s apartment. Fisher and the officers testified that the officers walked Campbell into his apartment, where they smelled marijuana and saw drug paraphernalia in plain view. Based on this testimony, which the court found

credible, the superior court did not abuse its discretion by determining the subsequent search was supported by probable cause.

¶ 15 Campbell argues that because the use of medical marijuana is not a crime in Arizona, the officers had an affirmative duty to ask whether Campbell had a prescription for marijuana before the scent of marijuana could form the basis for probable cause. Our supreme court has rejected this argument. Notwithstanding the Arizona Medical Marijuana Act, “the odor of marijuana in most circumstances will warrant a reasonable person believing there is a fair probability that contraband or evidence of a crime is present.” *State v. Sisco*, 239 Ariz. 532, 536, ¶ 16 (2016). Campbell provides no reason to conclude this case is an exception to the general rule.

¶ 16 Finally, Campbell argues the trial court erred by not considering the information in the search warrant affidavit. The trial court did not consider the information in the warrant, explaining “[Campbell did] not offer the warrant at the evidentiary hearing or attach it to his motion indicating any defects” and accordingly “failed to establish a prima facie case that the evidence should be suppressed on the basis of a faulty warrant.” Although Campbell asserts that the warrant and affidavit were “clearly attached” to his motion to suppress, they were not included as an exhibit to the motion or offered at the suppression hearing. Accordingly, the superior court did not err.

B. The Superior Court Did Not Abuse Its Discretion by Failing to Give Campbell's Testimony Due Weight.

¶ 17 Campbell alleges the prosecutor offered knowingly false testimony during the suppression hearing, and the officers' testimony was vague and inconsistent. Given Campbell's assertion, he argues the superior court abused its discretion by not according more weight to his testimony. Campbell further argues that had the superior court believed his testimony, it would have accepted that his shoes were by the apartment entrance rather than across the apartment, and therefore, there was no legal basis for the officers' entry and subsequent search.

¶ 18 We defer to the discretion of the trial judge who personally observed the proceedings to make credibility determinations, *State v. Fischer*, 242 Ariz. 44, 50, ¶ 21 (2017), and will not disturb the superior court's findings unless clearly erroneous, *Castro v. Ballesteros-Suarez*, 222

Ariz. 48, 51, ¶ 11 (App. 2009). To the extent Campbell suggests we should reweigh the evidence because of the prosecutorial misconduct claims he raises on appeal, we decline to do so. Because Campbell did not raise any prosecutorial misconduct objections at trial, he has waived those arguments absent a showing of fundamental error. See *State v. Ramos*, 235 Ariz. 230, 234, ¶ 8 (App. 2014). A fundamental error goes “to the foundation of the defendant's case, takes away a right essential to the defense, or is of such magnitude that it denied the defendant a fair trial.” *State v. Escalante*, 245 Ariz. 135, 135, ¶ 1 (2018). To prevail under fundamental error review, Campbell “must establish both that fundamental error exists and that the error in his case caused him prejudice.” See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 20 (2005).

*4 ¶ 19 Based on the record before us, we find no fundamental error. The superior court acted well within its discretion in evaluating witness credibility, and we defer to the superior court's judgment.

¶ 20 Campbell was present and represented by counsel at all stages of the proceedings against him or waived his right to be present. The record reflects the superior court afforded Campbell all his constitutional and statutory rights, and the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial and summarized above was sufficient to support the jury's verdicts. Campbell's sentences fall within the range prescribed by law, with proper credit given for presentence incarceration.

CONCLUSION

¶ 21 Campbell's convictions and sentences are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Campbell's representation in this appeal will end after informing Campbell of the outcome of this appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584–85 (1984).

All Citations

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Footnotes

- 1 We view the facts in the light most favorable to upholding the verdicts and resolve all reasonable inferences against Campbell. See [State v. Harm](#), 236 Ariz. 402, 404, ¶ 2, n.2 (App. 2015) (citing [State v. Valencia](#), 186 Ariz. 493, 495 (App. 1996)).

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