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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 08/21/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0633  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 111, Rules of the  
Shanda Kay Cumins, ) Arizona Supreme Court)  
)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2011-005052-001

The Honorable Robert L. Gottsfield, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
and Matthew H. Binford, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
by Christopher V. Johns, Deputy Public Defender  
Attorneys for Appellant

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**T H U M M A**, Judge

¶1 Shanda Kay Cumins (Defendant) appeals her conviction and sentence for possession of marijuana, a class one misdemeanor. Defendant argues the superior court abused its discretion finding statements Defendant made to the police were voluntary. Defendant timely filed an appeal and we have jurisdiction pursuant to Ariz. Const. art. VI, section 9, Ariz. Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4301 and 13-4303. (Westlaw 2012)<sup>1</sup> For the following reasons, we affirm.

#### STANDARD OF REVIEW

¶2 We review the superior court's ruling on a motion to suppress and findings of fact for an abuse of discretion, reviewing legal conclusions *de novo*. *State v. Newell*, 212 Ariz. 389, 397, ¶ 27, 132 P.3d 833, 841 (2006). We consider "only the evidence presented at the suppression hearing" and view "the facts in the light most favorable to support the trial court's ruling." *State v. Hummons*, 227 Ariz. 78, 79, ¶ 2, 253 P.3d 275, 276 (2011). We draw "all reasonable inferences . . . in favor of upholding the court's factual determinations." *State v. Rojers*, 216 Ariz. 555, 559, ¶ 17, 169 P.3d 651, 655 (App. 2007). We "defer to the superior court's determinations of the credibility of the officers and the reasonableness of the inferences they

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<sup>1</sup> Absent material revisions to this decision, we cite the current Westlaw version of applicable statutes.

drew." *State v. Mendoza-Ruiz*, 225 Ariz. 473, 475, ¶ 6, 240 P.3d 1235, 1237 (App. 2010).

#### BACKGROUND

¶3 At a pre-trial voluntariness hearing, Officer T.A. testified he arrested Defendant after a traffic stop, during which a baggie containing marijuana was found in the car. Defendant was a passenger in the car. Officer T.A. testified he handcuffed Defendant and placed her in the back seat of a police car and read Defendant her *Miranda* rights. Officer T.A. testified Defendant said she understood her rights. Officer T.A. testified Defendant said she had gone to an apartment with the driver to purchase marijuana for a friend, and the baggie in the car contained marijuana. Officer T.A. testified that he did not make any promises or threats when talking to Defendant; did not call Defendant names or hear others call her names and did not draw or point his gun at Defendant. Officer T.A. testified Defendant never asked for an attorney, adding that if Defendant had asked for an attorney, he would have stopped questioning her. Officer T.A. testified he vaguely remembered Defendant being concerned about picking up her children. After the on-scene interview, Defendant was transported to the police station.

¶4 At the police station, Officer D.W. questioned Defendant, with Officer T.A. observing. Officer D.W. testified

he was in plain clothes during the interview, did not threaten or make promises, did not call Defendant names or yell at her and did not have his gun out. Officer D.W. testified Defendant never asked for an attorney, that he would have stopped the interview if Defendant asked for an attorney and Defendant did not appear confused by his questions. Officer D.W. testified that, during this interview, Defendant admitted purchasing the baggie of marijuana for twenty dollars; admitted trying to hide the baggie during the traffic stop and also admitted her fingerprints would be found on the baggie. Defendant testified at the suppression hearing and painted a different picture. Defendant denied admitting she purchased or tried to hide the marijuana and denied saying her fingerprints were on the baggie. Defendant claimed Officer D.W. called her names, yelled and threatened her. Defendant testified she was uncomfortable, scared and intimidated during Officer D.W.'s interview. Defendant claimed she asked Officer T.A. for a lawyer, but that her request was refused. When questioned by the court, Defendant testified she had been able to call someone to pick up her children and had no problem doing so.

¶15 After hearing the testimony and arguments at the suppression hearing, the court determined "the State has shown, by a preponderance of the evidence and under the totality of the circumstances, that the Defendant's statements were voluntary."

The court held *Miranda* was not "violated in any way." After a bench trial, where Defendant's admissions were received in evidence, she was found guilty and sentenced to twelve months of unsupervised probation.

#### DISCUSSION

¶6 Statements made to a police officer must be voluntary to be admissible. *State v. Ellison*, 213 Ariz. 116, 127, ¶ 30, 140 P.3d 899, 910 (2006). "A confession is 'prima facie involuntary and the state must show by a preponderance of the evidence that the confession was freely and voluntarily made.'" *Newell*, 212 Ariz. at 399, ¶ 39, 132 P.3d at 843 (quoting *State v. Montes*, 136 Ariz. 491, 496, 667 P.2d 191, 196 (1983)). When determining whether a statement is voluntary, the court "must look to the totality of the circumstances surrounding the confession and decide whether the will of the defendant has been overborne." *State v. Lopez*, 174 Ariz. 131, 137, 847 P.2d 1078, 1084 (1992). "[T]he trial court has the duty to resolve any conflicts in the evidence, and [appellate courts] will uphold the findings of the trial court on the voluntary nature of a confession if the findings are supported by adequate evidence in the record." *State v. Rhymes*, 129 Ariz. 56, 57, 628 P.2d 939, 940 (1981).

¶7 Here, the evidence presented by the Officers and Defendant is in clear conflict. While the Officers testified

Defendant never asked for a lawyer, Defendant claims she requested a lawyer, but was denied the opportunity to call one. In addition, Defendant claimed the Officers yelled at and intimidated her, but the Officers denied doing so. As another example, Defendant claims that concern for the pickup of her children "created a coercive atmosphere," but admitted she had no problems making arrangements for her children. The trial court, in denying Defendant's motion to suppress, resolved the conflicting evidence by finding the Officers' testimony to be more credible. Although Defendant asks us to accept her testimony instead of the testimony of the Officers, we defer to the superior court's credibility determinations. *Mendoza-Ruiz*, 225 Ariz. at 475, ¶ 6, 240 P.3d at 1237. The Officers' testimony is sufficient to show that the admissions were voluntarily made. Because there is adequate evidence to uphold the trial court's findings, there was no abuse of discretion in finding Defendant's statements were made voluntarily.

**CONCLUSION**

¶18 For the foregoing reasons, we affirm Defendant's conviction and sentence.

/S/\_\_\_\_\_  
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/\_\_\_\_\_  
JON W. THOMPSON, Presiding Judge

/S/\_\_\_\_\_  
PETER B. SWANN, Judge