

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA,  
*Appellee,*

v.

MICHAEL BOEHLJE,  
*Appellant.*

No. 1 CA-CR 21-0447  
FILED 11-1-2022

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Appeal from the Superior Court in Maricopa County  
No. CR2020-109060-001  
The Honorable Timothy J. Ryan, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Rebecca Jones  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Lawrence S. Matthew  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge David D. Weinzweig delivered the decision of the Court, in which Judge Randall M. Howe and Judge D. Steven Williams joined.

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**WEINZWEIG**, Judge:

¶1 Michael Boehlje appeals his conviction and sentence for possession or use of dangerous drugs. We affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 This appeal relates to a traffic stop in the early morning of February 28, 2020. Two Scottsdale police officers were on patrol in a marked vehicle. Officer Silva was the driver; he was three months into his field training. Officer Fielding was the passenger; he was Officer Silva's training officer and an eight-year veteran of the force. The officers spotted a suspicious grey van circling an empty parking lot, and then saw its driver Boehlje commit an illegal turn. Officer Silva activated the lights and siren to stop the van.

¶3 Officer Fielding approached the van on the driver's side and used his flashlight to look inside the vehicle. At that point, Officer Fielding saw a tied-off, plastic baggie under the center console that contained a "white, crystalline substance," and "immediately recognized" it was methamphetamine "based on [his] training and experience." Officer Fielding shared this discovery with Officer Silva, and Officer Silva returned to the van to look for himself. Approaching from the passenger side, Officer Silva saw the plastic bag and recognized the contents as methamphetamine.

¶4 Officer Silva arrested Boehlje. He then retrieved the plastic bag and confirmed it contained methamphetamine. Incident to that arrest, Officer Silva searched Boehlje and found methamphetamine and marijuana in his pockets, along with a glass pipe. The State charged Boehlje with one count of possession or use of dangerous drugs, a class 4 felony, and one count of possession or use of marijuana, a class 6 felony, but later dismissed the marijuana charge.

¶5 Before trial, Boehlje moved to suppress the items seized from the van and his pockets. Boehlje said that no evidentiary hearing was required because the facts were undisputed. The superior court denied the

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motion to suppress, finding the officers had reasonable suspicion to stop the van for making an illegal turn, and then saw the methamphetamine in plain view, sparking a reasonable suspicion of illegal drugs. The court reasoned that “[t]he articulated suspicion that the contraband in question was methamphetamine was sufficient to warrant detention and arrest.”

¶6 After a three-day trial, the jury found Boehlje guilty of possession or use of dangerous drugs. Boehlje was sentenced to a minimum term of three years’ imprisonment (as a category 2, non-dangerous, repetitive offender) with credit for 46 days of presentence incarceration. Boehlje timely appealed. We have jurisdiction. *See* Ariz. Const. art. 6, § 9; A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶7 Boehlje contends the superior court should have suppressed the evidence discovered in the van and his pockets under the Fourth Amendment. We review the denial of a motion to suppress for an abuse of discretion, *State v. Spears*, 184 Ariz. 277, 284 (1996), and “defer to the trial court’s factual findings, including findings on credibility and [on] the reasonableness of the inferences drawn by the officer, but we review de novo mixed questions of law and fact and the trial court’s ultimate legal conclusions” as to whether a search was lawful, *State v. Teagle*, 217 Ariz. 17, 22, ¶ 19 (App. 2007). Because the superior court held no suppression hearing, we look to the undisputed facts for and against the suppression motion. *See State v. Navarro*, 241 Ariz. 19, 20, n.1 (App. 2016) (considering undisputed facts to decide suppression arguments where no hearing was held).

¶8 The Fourth Amendment protects a person from “unreasonable searches and seizure,” U.S. Const. amend. IV, which generally means that police officers must secure a judicial warrant before conducting a search, *Maryland v. Dyson*, 527 U.S. 465, 466 (1999). A warrantless search is permissible, however, if it qualifies for an exception to the warrant requirement. *Riley v. California*, 573 U.S. 373, 382 (2014). The State has the burden to “prov[e] by a preponderance of the evidence the lawfulness in all respects of the acquisition of all evidence that the State will use at trial.” Ariz. R. Crim. P. 16.2(b)(1); *Rodriguez v. Arellano*, 194 Ariz. 211, 215, ¶ 12 (App. 1999).

¶9 The superior court denied the motion to suppress under the plain view exception to the warrant requirement. The plain view exception empowers police officers to seize contraband if the officers are “lawfully in

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a position from which they view an object,” and have probable cause to believe the object is contraband “without conducting some further search of the object.” The incriminating character of the evidence must be “immediately apparent.” *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). Probable cause exists when a reasonable person would believe, based on the totality of circumstances, that contraband or evidence of a crime is present. *State v. Sisco*, 239 Ariz. 532, 535, ¶ 8 (2016). The facts “need not show it is more likely than not that contraband or evidence of a crime will be found.” *Id.*

¶10 We discern no error. First, there is no dispute the officers had probable cause to stop the vehicle. Only then did Officer Fielding notice the methamphetamine in the central console—in his plain view. Second, Officers Fielding and Silva both averred that the incriminating character of the contraband was immediately apparent to them, pointing to their law enforcement training and experience. Third, Officer Silva uncovered still more incriminating evidence when he searched Boehlje incident to the arrest. That search was proper.

¶11 On appeal, Boehlje insists the evidence “possessed no immediately apparent incriminating character,” and emphasizes an equivocal statement from Officer Silva that he found “possible” drugs and drug paraphernalia. We are not persuaded. The plain view doctrine does not require absolute certainty. *See State v. Garcia*, 162 Ariz. 471, 474 (App. 1989) (officer had probable cause to search the envelope based on his training and experience and did not have to know for certain that the envelope contained drugs). What is more, Officer Fielding saw the drugs in plain view, too.

CONCLUSION

¶12 We affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA