

FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 30274-1-III
)	
Respondent,)	
)	
v.)	
)	
CORNELIO ISSAC MENDOZ MALTOS,)	
)	UNPUBLISHED OPINION
Appellant.)	
)	
)	

Sweeney, J. — This appeal follows a conviction for possession of more than 40 grams of marijuana. The defendant assigns error to the court’s conclusion that he had abandoned the bag containing the drugs. We conclude that the findings support that conclusion and that conclusion supports the court’s refusal to suppress the drug evidence. We also conclude that the court properly notified the defendant of his legal financial obligations and improperly imposed a sentencing condition. We affirm the conviction, but reverse the improper sentencing condition.

FACTS

Adams County Sheriff's Deputy Jason Erikson stopped a car because passenger Cornelio Issac Mendoz Maltos was not wearing a seat belt. The car pulled into a convenience store parking lot. Deputy Erikson smelled marijuana inside the car and saw a plastic bag of green plant matter on the ground below the driver's side door. The driver and Mr. Mendoz Maltos said that they had been smoking marijuana. The driver consented to a search of the car.

Deputy Erikson ordered the driver and Mr. Mendoz Maltos to sit on the curb. Instead, Mr. Mendoz Maltos went inside the convenience store. Deputy Erikson saw this and retrieved Mr. Mendoz Maltos from the restroom.

Deputy Erikson went into the gas station a second time. Two store clerks told him that Mr. Mendoz Maltos had thrown a duffle bag behind the counter. One of the clerks knew Mr. Mendoz Maltos from school. She said that Mr. Mendoz Maltos told her to watch the bag for him. But the court's findings do not reflect this.

The bag smelled like marijuana. Deputy Erikson unzipped it and found marijuana inside. Mr. Mendoz Maltos did not try to retrieve the bag or mention the bag to Deputy Erikson.

The State charged Mr. Mendoz Maltos with possession of more than 40 grams of marijuana. He moved to suppress the drug evidence. The trial court concluded:

To challenge the legality of a search, the person objecting must demonstrate

a reasonable expectation of privacy in the items or area concerned. Here, the evidence establishes Defendant purposefully left the duffle bag in the store when he went to the restroom and made no effort to retrieve it when directed to leave. He otherwise claimed no interest in the duff[le] bag prior to it being searched. In effect, Defendant abandoned his property in the store and thus could no longer have a reasonable expectation of privacy as to its contents. Accordingly, the search of the duffle bag was lawful.

Clerk's Papers (CP) at 93-94. And the court refused to suppress the evidence.

The court found Mr. Mendoz Maltos guilty following a bench trial. It imposed a sentencing condition that Mr. Mendoz Maltos "shall not own, use or possess any firearm or ammunition." CP at 55. It also ordered Mr. Mendoz Maltos to pay legal financial obligations. The judgment and sentence listed seven legal financial obligations, but the court left empty the space designated "total." CP at 48. Later, Mr. Mendoz Maltos signed a payment plan with the county clerk. It showed that Mr. Mendoz Maltos owed \$2,845.00.

DISCUSSION

Search

Mr. Mendoz Maltos assigns error to the court's refusal to suppress the drug evidence seized from his duffle bag. He argues that he left the bag in the custody of his friend the clerk at the convenience store and he did not abandon it.

Unchallenged findings are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564,

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571, 62 P.3d 489 (2003). We review conclusions of law on a suppression motion de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

The Fourth Amendment of our federal constitution and article I, section 7 of our state constitution prohibit warrantless searches. *State v. Evans*, 159 Wn.2d 402, 407, 150 P.3d 105 (2007). But property that has been abandoned is not protected from police searches. *Evans*, 159 Wn.2d at 409. A defendant has abandoned property if “the defendant in leaving the property has relinquished her reasonable expectation of privacy.” *State v. Dugas*, 109 Wn. App. 592, 595, 36 P.3d 577 (2001) (quoting *United States v. Hoey*, 983 F.2d 890, 892-93 (8th Cir. 1993)).

Mr. Mendoz Maltos contends that he had a reasonable expectation of privacy in the duffle bag. We disagree with him for a couple of reasons. First, Mr. Mendoz Maltos left the bag in a public place and the bag smelled like marijuana; police did not need to open it to know what was in it. Second, the court made no finding that Mr. Mendoz Maltos expected the clerks to hold the bag for safekeeping. We conclude that it would then be unreasonable to expect the obvious contents to be private.

The judge then correctly concluded that Mr. Mendoz Maltos abandoned his bag. Like in *State v. Young* and *State v. Reynolds*, he left the bag in an area where he had no expectation of privacy. *State v. Reynolds*, 144 Wn.2d 282, 27 P.3d 200 (2001) (holding

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defendant abandoned jacket by stuffing it underneath her); *State v. Young*, 86 Wn. App. 194, 935 P.2d 1372 (1997) (holding that drugs thrown behind a tree were abandoned). Nor did Mr. Mendoz Maltos try to retrieve the bag. We also conclude that he abandoned the bag. Deputy Erikson's search was lawful.

Failure to Total Legal Financial Obligations

Mr. Mendoz Maltos next contends that the court failed to follow a statutory requirement that it list the total legal financial obligation in the judgment and sentence. Statutory interpretation is a question of law that we review de novo. *State v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003). RCW 9.94A.760(1) provides that “[t]he court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.”

This statute was not violated here. The judgment and sentence does not list Mr. Mendoz Maltos' total legal financial obligations, but his payment agreement with the county clerk does. CP at 65. It lists his total legal financial obligation as \$2,845.00. That payment agreement suffices as a “subsequent order to pay.” *See* RCW 9.94A.760(1).

Sentencing Restriction—Ammunition

Mr. Mendoz Maltos next challenges sentencing conditions that prohibit possession of ammunition, as not crime related. Whether the restriction is crime related is a question of law that we will review de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Courts may impose crime-related prohibitions as a part of a sentence. RCW 9.94A.505(8). A crime-related prohibition is “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). There is no indication that ammunition was related to the circumstances of Mr. Mendoz Maltos’s possessing marijuana.

The State suggests that the condition is acceptable because Mr. Mendoz Maltos cannot possess firearms and the condition notifies him that federal law prohibits him from possessing ammunition. Br. of Resp’t at 11. Federal law does prohibit that. 18 U.S.C. § 922(g)(1). However, the condition is still not “directly related” to his crime. *See* RCW 9.94A.505(8). It is not an authorized sentencing condition. We reverse imposition of the restriction.

We affirm the conviction but reverse the sentencing condition that Mr. Mendoz Maltos not possess ammunition.

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A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Sweeney, J.

WE CONCUR:

Korsmo, C.J.

Siddoway, J.