

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
	:	
	:	
Donald MacQuarrie,	:	No. 581 C.D. 2008
Appellant	:	Submitted: October 31, 2008

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: December 8, 2008

Donald MacQuarrie (MacQuarrie) appeals from an order of the Court of Common Pleas of Delaware County (trial court) finding MacQuarrie guilty of the summary offense charged (failure to remove debris from exterior of premises). The issues before the Court are: 1) whether the evidence obtained against MacQuarrie should have been suppressed, and 2) whether the municipality had the authority to use its police powers to regulate the condition of the exterior of MacQuarrie's residence and enforce removal as a remedy. For reasons that follow, we affirm the trial court.

On December 21, 2006, Haverford Township code enforcement officer and building inspector, Steven Andrien (Inspector Andrien) issued a citation to MacQuarrie for violation of Section 302.1 of the Haverford Township

Property Maintenance Code (violation) for failure to remove debris from the exterior of his property located at 133 Wilson Avenue, Haverford Township, Delaware County. MacQuarrie appealed the citation, and a hearing was held before District Justice Burke who found MacQuarrie guilty of the violation and imposed a fine of \$150.00. On May 23, 2007, MacQuarrie appealed to the trial court, and on October 31, 2007, the trial court found MacQuarrie guilty of the violation and imposed a \$150.00 fine. MacQuarrie timely appealed pro se<sup>1</sup> to this Court.<sup>2</sup>

MacQuarrie argues the trial court erred in failing to suppress the evidence against him. Specifically, MacQuarrie contends photographs of his property were obtained in a warrantless search of the exterior of his premises, in violation of his constitutional rights. We disagree.

The debris upon the exterior of MacQuarrie's property was in plain view. "The plain view doctrine involves an officer's observation . . . from a lawful vantage point where it is immediately apparent to the officer that the object is incriminating. In order to determine whether [an officer] w[as] at a 'lawful vantage point,' we consider whether [his] conduct violated Fourth Amendment principles." *Commonwealth v. English*, 839 A.2d 1136, 1139 (Pa. Super. 2003) (citation omitted).

A search within the meaning of the Fourth Amendment occurs when an expectation of privacy that society is prepared to consider as reasonable is infringed. Under state constitutional principles, we employ the

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<sup>1</sup> All of MacQuarrie's appeals have been filed pro se.

<sup>2</sup> This Court's scope of review in an appeal of a summary conviction is limited to determining whether the trial court committed an error of law or whether the trial court's findings are not supported by competent evidence. *Commonwealth v. Whiteford*, 884 A.2d 364 (Pa. Cmwlt. 2005).

same two-part test used by the United States Supreme Court to determine the extent of Fourth Amendment protection, that is, we first decide whether a person has established a subjective expectation of privacy in the place searched, and then determine whether the expectation is one that society is prepared to recognize as reasonable and legitimate.

*Id.*

At trial, Inspector Andrien testified that in April, 2007, he took the photographs of the exterior of MacQuarrie's premises from his neighbor's side of the common driveway, and to the rear of the driveway on his neighbor's property. Notes of Testimony, October 31, 2007 (N.T.) at 11, 13. It is disputed whether the neighbor gave Inspector Andrien permission to be on his property. Notwithstanding, MacQuarrie had no reasonable expectation of privacy in his neighbor's driveway, or his property to the extent that it could be plainly viewed from an adjacent property. *See English*. Thus, the debris upon the exterior of MacQuarrie's premises that was open and exposed to view from the neighbor's property had no constitutional protection. *See Id.* Accordingly, Inspector Andrien's photography from the neighbor's driveway did not constitute a violation of MacQuarrie's fourth amendment rights. Hence, MacQuarrie's motion to suppress was properly denied.

MacQuarrie further argues the trial court erred in finding the municipality had the authority to use its police powers to regulate the condition of the exterior of MacQuarrie's residence and enforce removal as a remedy. Specifically, MacQuarrie argues the Court in *Teal v. Twp. of Haverford*, 578 A.2d 80 (Pa. Cmwlth. 1990), held that the General Assembly did not confer authority upon the municipalities to declare "debris" to be nuisances per se, thus his conviction cannot stand. The ordinance in *Teal* prohibited the storage of disabled

vehicles for more than seventy-two hours. The authority for the ordinance was based on a nuisance statute.<sup>3</sup> Hence, the township in *Teal* had to show that the disabled vehicles in question were a nuisance. *See Teal*.

The authority for the ordinance in the instant case, however, comes from a building and housing sanitation statute;<sup>4</sup> the basis of which is promoting the public health, safety, morals and other general welfare of the township. Hence, the township in this case did *not* have to declare debris to be a nuisance to enforce an ordinance prohibiting same. The ordinance in question requires the maintenance of exterior properties in a clean, safe and sanitary condition. MacQuarrie's exterior contained "tires, hand trucks, ladders, lumber, barrels, cans, pneumatic jacks for cars, hoses, scrap metal, iron [and what] looks like a kitchen sink . . . ." N.T. at 13. Clearly, he was not maintaining his property in a clean, safe, and sanitary condition. Therefore, the trial court properly found MacQuarrie guilty of not removing "debris" from the exterior of his home.

For the above reasons, the order of the trial court is affirmed.

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JOHNNY J. BUTLER, Judge

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<sup>3</sup> Section 1502 of the First Class Township Code (Code), Act of June 14, 1931, P.L. 1206, *as amended*, 53 P.S. §56526.

<sup>4</sup> Section 1502 of the Code, 53 P.S. §56519.

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ORDER

AND NOW this 8th day of December, 2008, the October 31, 2007 order of the Court of Common Pleas of Delaware County is hereby affirmed.

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JOHNNY J. BUTLER, Judge