

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040146-CA
v.)	
)	
Conni Gulli,)	F I L E D
)	(June 22, 2006)
)	
Defendant and Appellant.)	<u>2006 UT App 252</u>

Fifth District, Cedar City Department, 021500873
The Honorable J. Philip Eves

Attorneys: Randall C. Allen, Cedar City, for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City,
for Appellee

Before Judges McHugh, Orme, and Thorne.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

Defendant Gulli contends the trial court erred in denying her motion to suppress evidence found pursuant to a consensual search. The State urges us to conclude that, even if the court erred in denying the motion to suppress, the error was harmless given the quantum of other evidence of Gulli's guilt. Although it is unlikely that an error was made in denying the motion to suppress, we agree with the State regarding harmless error.

The evidence discovered pursuant to the search was exceedingly incriminating. Equally incriminating was Gulli's confession to several individuals that she was the one who had set fire to her former in-laws' house. Even though at trial Gulli denied having made such a confession, at least three witnesses testified that they had heard Gulli confess to the

crime. That testimony, when coupled with other circumstantial evidence--e.g., the severe loathing Gulli openly expressed toward her former in-laws, the police investigation that had cleared other people on whom her defense sought to cast suspicion, and evidence rebutting Gulli's assertion that she was physically unable to have committed the crime--leads us to conclude, beyond a reasonable doubt, that Gulli would still have been convicted of arson in spite of any improperly admitted physical evidence. See State v. Genovesi, 909 P.2d 916, 922 (Utah Ct. App. 1995) ("[W]e cannot declare federal constitutional error harmless unless we sincerely believe that it was harmless beyond a reasonable doubt.") (internal quotations and citations omitted).

Gulli also contends that new counsel should have been appointed to represent her during sentencing because a conflict of interest arose between her and her trial counsel when she asserted, post-trial, an ineffective assistance of counsel claim. Though "conflict-free representation is guaranteed by the Sixth Amendment," a defendant must establish both that her trial counsel "had an actual conflict of interest, and that the conflict adversely affected [counsel]'s performance." State v. Lovell, 1999 UT 40, ¶22, 984 P.2d 382 (emphasis added).

To show an actual conflict of interest, a defendant must show that trial counsel "had to make choices that would advance [trial counsel's] own interests to the detriment of [the defendant]'s." Id. Gulli has failed to show an actual conflict of interest here that would have adversely affected her during the sentencing phase. While the inquiry into whether trial counsel's assistance was ineffective certainly pitted Gulli against her trial counsel during the hearing on the matter, once the trial court found her counsel's performance to be adequate, any apparent or actual conflict between their interests ceased. In fact, Gulli has not asserted on appeal any specific example of how, at sentencing, her counsel's interests would have been at odds with her own interests and how counsel would have been in a position to advance his interests at her expense.

Additionally, Gulli has not actually alleged on appeal that her trial counsel's representation during sentencing was deficient in any way, nor has she specifically explained how her trial counsel's performance at sentencing prejudiced her. She has thus failed to establish a conflict of interest that would

have merited the appointment of new counsel under the Sixth Amendment. See id.

Affirmed.

Gregory K. Orme, Judge

WE CONCUR:

Carolyn B. McHugh, Judge

William A. Thorne Jr., Judge